

2005 No. 706

PENSIONS

**The Occupational Pension Schemes (Winding up etc.)
Regulations 2005**

<i>Made</i>	- - - -	<i>22nd March 2005</i>
<i>Laid before Parliament</i>		<i>23rd March 2005</i>
<i>Coming into force, except for</i>		
<i>paragraph 4 of the Schedule,</i>		<i>6th April 2005</i>
<i>paragraph 4 of the Schedule</i>		<i>6th April 2006</i>

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SCHEDULE

Consequential amendments

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 9, 25(2), 97(1), (2)(b) and (3), 101I, 101L, 113, 181(1) and 183(3) of the Pension Schemes Act 1993(a), sections 49(2)(b), 56(3), 57(1) and (5), 68(2)(e), 73(2)(b), (6), (7) and (9), 73A(7), (8)(a) and (b) and (10), 73B(4), (5) and (8), 74(2) and (3)(e), 76(2), 91(5)(c), 118(1)(a) and (b), 119, 124(1) and (3E), 174(2)(a) and (3) of the Pensions Act 1995(b) and sections 30(1) and (2) and 83(4) and (6) of, and paragraph 8(1) of Schedule 5 to, the Welfare Reform and Pensions Act 1999(c), and of all other powers enabling him in that behalf, by this instrument which is consequential on section 270 of the Pensions Act 2004(d) and section 326 of and Part 3 of Schedule 42 to the Finance Act 2004(e) and is made before the end of the period of six months beginning with the coming into force of those provisions(f), and having consulted such persons as the Secretary of State considers appropriate with respect to regulations 16 and 17(g), hereby makes the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Winding up etc.) Regulations 2005.

(2) These Regulations, apart from paragraph 4 of the Schedule, come into force on 6th April 2005 and that paragraph comes into force on 6th April 2006.

(3) Regulations 3 to 13 do not apply in the case of any scheme which—

- (a) was regarded by virtue of regulation 2 of the Occupational Pension Schemes (Winding Up) Regulations 1996(h) (commencement of winding up) as having begun to be wound up before 6th April 2005 for the purposes of those Regulations; or
- (b) in accordance with section 124(3A) to (3E) of the 1995 Act began to wind up before that date.

Interpretation

2.—(1) In these Regulations—

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- (a) 1993 c.48. Section 9 is amended by sections 136(3) and (4), 151 and 177 of, and paragraphs 21 and 24 of Schedule 5 and Part 3 of Schedule 7 to, the Pensions Act 1995 (c.26) and section 1(1) of, and paragraph 35(1) to (4) of Schedule 1 to, the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2). Section 25(2) is substituted by paragraph 33(b) of Schedule 5 to the Pensions Act 1995 and amended by paragraph 40(a) of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999. Section 97 is amended by paragraph 4 of Schedule 6 to the Pensions Act 1995 and by section 56 of, and paragraph 8(1) of Schedule 5 to, the Child Support, Pensions and Social Security Act 2000 (c.19). Sections 101I and 101L are inserted by section 37 of the Welfare Reform and Pensions Act 1999 (c.30). Section 113 was amended by section 1(2)(a) of the Employment Rights (Dispute Resolution) Act 1998 (c.8) and by section 52 of the Child Support, Pensions and Social Security Act 2000. Section 181(1) is cited for the meaning it gives to “prescribe” and “regulations”. Section 183(3) was amended by sections 122, 173 and 177 of, and paragraph 45 of Schedule 3, paragraph 15(b) of Schedule 6 and Part 1 of Schedule 7 to, the Pensions Act 1995, and by section 84(1) of, and paragraphs 28 and 42 of Schedule 12 to, the Welfare Reform and Pensions Act 1999.
 - (b) 1995 c.26. Section 73 is substituted and sections 73A and 73B are inserted by section 270(1) of the Pensions Act 2004 (c.35). Section 74(2) is amended by sections 270(2)(b) and 320 of, and Part 1 of Schedule 13 to, that Act. Section 74(3)(e) is inserted by section 270(2)(c) of that Act. Section 118(2) was amended by section 47(3) of the Child Support, Pensions and Social Security Act 2000. Section 124(1) is cited for the meaning it gives to “prescribed” and “regulations”. Subsections (3A) to (3E) are inserted into section 124 by section 49(2) of the Child Support, Pensions and Social Security Act 2000.
 - (c) 1999 c.30.
 - (d) 2004 c.35.
 - (e) 2004 c.12.
 - (f) See section 185 of the Pension Schemes Act 1993 and section 120 of the Pensions Act 1995 which provide that the Secretary of State must consult such persons as he may consider appropriate before making regulations for the purposes of the provisions for the purposes of which these Regulations are made. This duty does not apply where regulations are made before the end of the period of six months beginning with the coming into force of any enactment upon which the regulations are consequential.
 - (g) See section 83(11) of the Welfare Reform and Pensions Act 1999.
 - (h) S.I. 1996/3126.

“the 1995 Act” means the Pensions Act 1995;

“the 1999 Act” means the Welfare Reform and Pensions Act 1999;

“the 2004 Act” means the Pensions Act 2004;

“assessment period” has the meaning given by section 132 of the 2004 Act (assessment periods);

“the tax condition”, in relation to a scheme, means—

- (a) that the scheme has been approved by the Commissioners of the Board of Inland Revenue for the purposes of section 590 or 591 of the Income and Corporation Taxes Act 1988(a) (conditions for approval of retirement benefit schemes or discretionary approval) at any time before 6th April 2006; or
- (b) that the scheme is registered under section 153 of the Finance Act 2004 (registration of pension schemes).

(2) In these Regulations “scheme” must be read in appropriate cases in accordance with the modifications of sections 73 to 74 of the 1995 Act made by regulation 13 (multi-employer sectionalised schemes, schemes with partial government guarantee and partly foreign schemes); and “employer” and “member” must be read accordingly.

(3) Subject to paragraphs (1) and (2) and regulation 12 (commencement of winding up), expressions used in these Regulations have the same meaning as in Part 1 of the 1995 Act (see section 124 of that Act).

Winding up

Schemes to which section 73 of the 1995 Act does not apply

3.—(1) Section 73 of the 1995 Act does not apply to any scheme which is—

- (a) a public service pension scheme under the provisions of which there is no requirement for assets related to the intended rate or amount of benefit under the scheme to be set aside in advance (disregarding requirements relating to voluntary contributions);
- (b) a scheme which is made under section 7 of the Superannuation Act 1972(b) (superannuation of persons employed in local government etc.) and provides pensions to local government employees;
- (c) a scheme which is made under section 2 of the Parliamentary and Other Pensions Act 1987(c) (power to provide for pensions for Members of the House of Commons etc.);
- (d) a scheme in respect of which a relevant public authority, as defined in subsection (4) of section 307 of the 2004 Act (modification of that Act in relation to certain categories of schemes), has given a guarantee or made any other arrangements for the purposes of securing that the assets of the scheme are sufficient to meet its liabilities;
- (e) a scheme which does not meet the tax condition;
- (f) a scheme which—
 - (i) has been categorised by the Commissioners of the Board of Inland Revenue for the purposes of its approval as a centralised scheme for non-associated employers;
 - (ii) which is not contracted-out; and
 - (iii) under the provisions of which the only benefits that may be provided on or after retirement (other than money purchase benefits derived from the payment of voluntary contributions by any person) are lump sum benefits which are not calculated by reference to a member’s salary;

(a) 1988 c.1.
(b) 1972 c.11.
(c) 1987 c.45.

- (g) a scheme—
 - (i) the only benefits provided by which (other than money purchase benefits) are death benefits; and
 - (ii) under the provisions of which no member has accrued rights (other than rights to money purchase benefits);
- (h) a scheme with such a superannuation fund as is mentioned in section 615(6) of the Income and Corporation Taxes Act 1988^(a) (fund established to provide superannuation benefits in respect of persons' employment in a trade or undertaking wholly outside the United Kingdom);
- (i) a scheme with fewer than two members;
- (j) a scheme with fewer than 12 members where all the members are trustees of the scheme and either—
 - (i) the rules of the scheme provide that all decisions are made only by the trustees who are members of the scheme by unanimous agreement; or
 - (ii) the scheme has a trustee who is independent in relation to the scheme for the purposes of section 23 of the 1995 Act^(b) (power to appoint independent trustees) (see subsection (3) of that section) and is registered in the register maintained by the Authority in accordance with regulations made under subsection (4) of that section;
- (k) a scheme with fewer than 12 members where all the members are directors of a company which is the sole trustee of the scheme and either—
 - (i) the rules of the scheme provide that all decisions are made only by the members of the scheme by unanimous agreement; or
 - (ii) one of the directors of the company is independent in relation to the scheme for the purposes of section 23 of the 1995 Act and is registered in the register maintained by the Authority in accordance with regulations made under subsection (4) of that section;
- (l) the Chatsworth Settlement Estate Pension Scheme; or
- (m) the scheme established by the Salvation Army Act 1963^(c).

(2) Before 6th April 2006 paragraph (1)(e) applies with the addition at the end of the words “and is not a relevant statutory scheme providing relevant benefits”; and for the purposes of that paragraph “relevant statutory scheme” and “relevant benefits” have the same meaning as in Chapter 1 of Part 14 of the Income and Corporation Taxes Act 1988^(d) (see sections 611A and 612(1) of that Act).

Corresponding PPF liability: modifications of the pension compensation provisions etc.

4.—(1) For the purposes of section 73 of the 1995 Act, when determining the corresponding PPF liability in relation to any liability of a scheme to or in respect of a member for pensions or other benefits, the pension compensation provisions apply as if—

- (a) those provisions applied to all schemes to which section 73 of the 1995 Act applies and any reference in the pension compensation provisions to members, employers or any other expression the construction of which is dependent on the meaning of “scheme” were to be read accordingly (but subject to the following provisions of this regulation);
- (b) sections 140 to 142, 164 and 168(2)(a) and (c) to (f) of the 2004 Act were omitted;
- (c) Schedule 7 to that Act (pension compensation provisions) applied—

(a) Section 615(6) was amended by section 79 of, and paragraph 11 of Schedule 10 to, the Finance Act 1999 (c.16).

(b) Section 23 is substituted by section 36(3) of the Pensions Act 2004.

(c) 1963 c.xxxii.

(d) Section 611A was inserted by section 75 of, and paragraph 15 of Schedule 6 to, the Finance Act 1989 (c.26) and amended by section 52(1) of, and paragraph 5 of Schedule 5 to, the Finance Act 1999. The definition of “relevant benefits” was amended by section 79 of, and paragraph 10(1) of Schedule 10 to, the Finance Act 1999.

- (i) with the substitution for the references in paragraphs 5(4A), 15(5A) and 19(5A)(a) to the Board of references to the trustees or managers of the scheme;
 - (ii) with the substitution for the references in paragraphs 20(1)(a) and 32(1)(a) to the commencement of the assessment period of references to the commencement of the winding up period;
 - (iii) with the substitution for the reference in paragraph 35(4) to the time immediately before the assessment period which begins on the assessment date of a reference to the time immediately before the winding up period begins;
 - (iv) with the addition at the end of paragraph 35(5) of the words—
 - “and in this sub-paragraph as it applies for the purposes of section 73(4)(b) of the Pensions Act 1995, “the employer” includes both any person included by virtue of regulation 4(1)(a) of the Occupational Pension Schemes (Winding up etc.) Regulations 2005 and any person who is the employer apart from by virtue of that regulation.”;
 - (v) with the substitution for other references to the assessment date of references to the winding up date; and
 - (vi) with the omissions specified in paragraph (2);
 - (d) no determination might be made under paragraph 29 of Schedule 7 (Board’s powers to alter rates of revaluation and indexation) after the time as at which the corresponding PPF liability is determined for the purposes of section 73 of the 1995 Act;
 - (e) no order might be made under paragraph 30 of that Schedule (Secretary of State’s powers to vary any percentage paid as compensation) after that time;
 - (f) the Pension Protection Fund (Compensation) Regulations 2005 applied with the modifications specified in paragraph (3); and
 - (g) (so far as they are included in the pension compensation provisions) the Pension Protection Fund (Hybrid Schemes) (Modification) Regulations 2005(b) applied with the substitution for the reference in regulation 3(2) of those Regulations to the assessment date of a reference to the winding up date.
- (2) The omissions are—
- (a) paragraphs 2, 20(4), 23A(c), 24, 25, 27 and 31A(d) and all references to those paragraphs;
 - (b) in paragraph 26—
 - (i) in sub-paragraphs (2)(b)(i), (6B)(a)(e) and (9)(a) and (b), the words “or a connected occupational pension scheme”;
 - (ii) in sub-paragraph (6B)(b) the words “or a relevant connected occupational pension scheme”; and
 - (iii) the words following sub-paragraph (6B)(b).
- (3) The modifications are—
- (a) in regulation 4 (compensation for surviving dependants)—
 - (i) in paragraph (2) omit the words following “otherwise”;
 - (ii) for regulation 4(3) substitute—

(a) Paragraphs 5, 15 and 19 are modified in their application to cash balance schemes by regulation 25 of the Pension Protection Fund (Compensation) Regulations 2005 (S.I. 2005/670).

(b) S.I. 2005/449.

(c) Paragraph 23A is inserted by regulation 3 of the Occupational Pension Schemes (Modification of Pension Protection Provisions) Regulations 2005 (S.I. 2005/705).

(d) Regulation 3(4) of the Pension Protection Fund (Hybrid Schemes) (Modification) Regulations 2005 modifies Schedule 7 in its application to hybrid schemes so that it reads as if it contained paragraph 31A.

(e) Sub-paragraph (6B) is inserted by regulation 22 of the Pension Protection Fund (Compensation) Regulations 2005.

“(3) In the case of a surviving dependant the circumstances are where the admissible rules of the scheme provide for the payment of pension or other benefits to that person.”;

- (b) for references in regulations 5, 6, 9, 10(1), 11(1), 12(1), 13, 14 and 15 to the assessment date, wherever they occur, substitute references to the winding up date; and
- (c) omit regulation 16 (modification of admissible rules).

(4) In this regulation—

- (a) “corresponding PPF liability” has the meaning given in section 73(5) of the 1995 Act;
- (b) “the pension compensation provisions” has the same meaning as in Part 2 of the 2004 Act (see section 162 of that Act); and
- (c) “the winding up date” means the date on which the winding up period began or, if the crystallisation date for the scheme for the purposes of regulation 4 of the Occupational Pension Schemes (Winding Up) Regulations 1996 (calculation of amounts of liabilities) is an earlier date, that date.

(5) In the case of any scheme in relation to which there is no assessment period during the winding up period, section 73(4)(b) applies as if the words from “to the extent” to “the corresponding PPF liability” were omitted.

Early leaver’s rights: deemed election for contribution refund

5. Where, on the commencement of the winding up period, a member becomes a person to whom Chapter 5 of Part 4 of the 1993 Act^(a) applies (early leavers: cash transfer sums and contribution refunds), that Chapter applies as if—

- (a) he had elected on the day on which that period begins for a contribution refund;
- (b) he had accordingly acquired a right to such a refund (and not a right to a cash transfer sum) under section 101AB of that Act; and
- (c) all steps required to be taken under that Chapter preliminary to that election had been taken.

Adjustments to discretionary awards

6.—(1) For the purposes of section 73A of the 1995 Act^(b) (operation of scheme during winding up period) and this regulation, “discretionary award”, in relation to an occupational pension scheme, means an award of a pension or other benefit under the scheme where either—

- (a) entitlement to the award arises as a result of the exercise of a discretion conferred by the scheme rules that may be exercised in circumstances specified in those rules; or
- (b) the amount awarded depends on the exercise of such a discretion.

(2) Where section 73A of the 1995 Act applies, the circumstances in which trustees or managers of the scheme are required to adjust any such entitlement as is referred to in section 73A(7)(a) are where—

- (a) the entitlement to a pension or other benefit is—
 - (i) the entitlement of a member; or
 - (ii) the entitlement to a pension or other benefit in respect of a member other than a member who dies during the winding up period; and
- (b) it appears to the trustees or managers that as a result of—
 - (i) the discretionary award in question;
 - (ii) that award and any other awards under the scheme rules to which section 73A(7)(a) applies; or

^(a) Chapter 5 of Part 4 of the Pension Schemes Act 1993 is inserted by section 264 of the Pensions Act 2004.

^(b) Section 73A is inserted by section 270 of the Pensions Act 2004.

- (iii) all the awards under the scheme rules to which that section applies and any entitlements in respect of the member to which section 73A(7)(b) applies (“survivor entitlements”),

the total amount of the liability for pensions and other benefits in respect of the member is greater than it was immediately before the commencement of the winding up period.

(3) In those circumstances, the trustees or managers are required to adjust the entitlement—

- (a) to the discretionary award;
- (b) to that award and the other awards mentioned in paragraph (2)(b)(ii); or
- (c) to the awards and entitlements mentioned in paragraph (2)(b)(iii),

in such manner as they think fit so that the total amount of that liability does not exceed its amount immediately before the commencement of the winding up period.

(4) If—

- (a) the commencement of the winding up of the scheme is backdated (whether in accordance with section 154 of the 2004 Act or otherwise); and
- (b) the requirement under paragraph (3) to adjust any entitlement arises as a result of that backdating,

the adjustment must be made with effect from the time the award takes effect.

(5) Where a discretionary award takes effect during a period that is a winding up period or an assessment period in relation to a scheme, the trustees or managers of the scheme must give the person to whom the award is made notice in writing not later than one month after the date on which the award is made—

- (a) that the award may be adjusted by virtue of this regulation; or
- (b) where the award takes effect before the scheme has begun to be wound up, that it may be so adjusted if the scheme begins to be wound up and the commencement of the winding up is backdated.

(6) Such a notice may be given by post and, if the person to whom it is given is not in employment to which the scheme relates, is to be treated as having been given if it is sent to him by post to his last address known to the trustees or managers.

Adjustments to survivors’ benefits

7.—(1) Where section 73A of the 1995 Act applies, the circumstances in which trustees or managers of the scheme are required to adjust any such entitlement as is referred to in section 73A(7)(b) are where—

- (a) it appears to the trustees or managers that as a result of—
 - (i) the entitlement in question having arisen; or
 - (ii) that entitlement and any other entitlements under the scheme rules to which section 73A(7)(b) applies having arisen;

the amount of the total liability for pensions and other benefits in respect of the member is greater than it was immediately before the commencement of the winding up period, or

- (b) regulation 6(3) requires the trustees or managers to adjust the entitlement.

(2) In the circumstances mentioned in paragraph (1)(a), the trustees or managers are required to adjust the entitlement or entitlements in such manner as they think fit so that the total amount of the liability for pensions and other benefits in respect of the member does not exceed its amount immediately before the commencement of the winding up period.

(3) See regulation 6(3) for the manner in which the trustees or managers are required to adjust the entitlement or entitlements where that regulation applies.

(4) If—

- (a) the commencement of the winding up of the scheme is backdated (whether in accordance with section 154 of the 2004 Act or otherwise); and
- (b) the requirement under paragraph (2) to adjust any entitlement arises as a result of that backdating,

the adjustment must be made with effect from the time the award takes effect.

(5) Where any such entitlement of a person as is referred to in section 73A(7)(b) of the 1995 Act arises during a period that is a winding up period or an assessment period in relation to a scheme, the trustees or managers of the scheme must give the person notice in writing not later than one month after the date on which it arises—

- (a) that it may be adjusted by virtue of this regulation; or
- (b) where the entitlement arises before the scheme has begun to be wound up, that it may be so adjusted if the scheme begins to be wound up and the commencement of the winding up is backdated.

(6) Such a notice may be given by post and is to be treated as having been given to the person if it is sent to him by post to his last address known to the trustees or managers.

Entitlement to death benefits treated as arising before commencement of winding up period

8.—(1) This regulation applies where—

- (a) an occupational pension scheme to which section 73 of the 1995 Act applies is being wound up;
- (b) a member of the scheme died before the winding up began;
- (c) during the winding up period a person (“the beneficiary”) becomes entitled under the scheme rules to one or more benefits within paragraph (2) in respect of the member; and
- (d) the beneficiary could have become so entitled before the winding up period began had the trustees or managers of the scheme taken any action earlier.

(2) The benefits are—

- (a) a pension of a kind permitted by the pension death benefit rules set out in section 167 of the Finance Act 2004 (pension death benefit rules); and
- (b) a lump sum of a kind permitted by the lump sum death benefit rule set out in section 168 of that Act (lump sum death benefit rule).

(3) For the purposes of section 73B(6)(a)(a) (liabilities to which the winding up provisions do not apply)—

- (a) the beneficiary’s entitlement to payment of so much of the pension (if any) as is attributable to the period between the member’s death and the commencement of the winding up period; and
- (b) the beneficiary’s entitlement to payment of the lump sum,

are to be treated as having arisen immediately before the commencement of the winding up period.

(4) In the case of a scheme which begins to be wound up before 6th April 2006, this regulation has effect as if the benefits referred to in paragraph (2) were—

- (a) a pension payable to the deceased member’s former spouse or dependant; and
- (b) a lump sum calculated by reference to the member’s remuneration.

(a) Section 73B is inserted by section 270 of the Pensions Act 2004.

Calculation of the value or amount of scheme assets and liabilities

9. For regulation 4 of the Occupational Pension Schemes (Winding Up) Regulations 1996(a) (calculation of amounts of liabilities) substitute—

“Calculation of the value or amount of scheme assets and liabilities

4.—(1) The liabilities of a scheme to which section 73 applies and their amount or value must be determined, calculated and verified by the actuary of the scheme—

- (a) on the assumption that any questions relating to any person’s entitlement to a pension or other benefit are to be determined as at the crystallisation date;
- (b) on the assumption that liabilities in respect of pensions or other benefits will be discharged by the purchase of annuities of the kind described in section 74(3)(c)(b) (discharge of liabilities: annuity purchase) and include the expenses involved in discharging them;
- (c) subject to sub-paragraph (b) and paragraph (4), on the general assumptions specified in regulations 7(2), (3) and (7) to (10) and 8(2) of the MFR Regulations(c) (determination and valuation of liabilities and further provisions as to valuation: methodology, assumptions, etc.) so far as they relate to the calculation and verification of liabilities; and
- (d) otherwise in accordance with the guidance given in GN 19(d), so far as that guidance applies for the purposes of these Regulations.

(2) For the purpose of paragraph (1)(b) the actuary must estimate the cost of purchasing the annuities.

(3) A calculation of the value or amount of the liabilities of a scheme for the purposes of section 73 must be accompanied by a statement that it is in accordance with the guidance mentioned in paragraph (1)(d).

(4) For the purposes of this regulation, regulations 7 and 8 of the MFR Regulations are modified as follows—

- (a) references in regulations 7(3), (7) and (8) and 8(2) of the MFR Regulations to the relevant date are to be taken as references to the date as at which the calculation is made (being a date not earlier than the crystallisation date or the commencement of winding up, if later);
- (b) in regulation 7(3) the words “subject to paragraphs (4) and (5)” are omitted; and
- (c) paragraph (i) of regulation 8(2)(a) is omitted.

(5) Paragraph (6) applies if, when the assets of the scheme are applied in accordance with section 73(3) towards satisfying any liability of the scheme mentioned in section 73(4), that liability, as calculated in accordance with the rules of the scheme (without any reduction by reason of its falling within a class of liability which is to be satisfied after another class), is in the opinion of the actuary fully satisfied by applying assets of a value less than the amount of that liability calculated in accordance with paragraph (1).

(6) If this paragraph applies the amount to be taken as the amount of that liability for the purposes of section 73(3) is to be reduced accordingly.

(7) Paragraph (8) applies if, when the assets of the scheme are so applied, the liabilities mentioned in section 73(3), as calculated in accordance with the rules of the scheme (without any reduction by reason of their falling within a class of liability which is to be

(a) Regulation 4(1) is amended by regulation 2 of S.I. 2004/403 and regulation 2(2) of S.I. 2005/72. (See also regulations 4A and 4B which are inserted respectively by regulation 3(3) of S.I. 2002/380 and regulation 2(5) of S.I. 2004/403). Regulation 4C is inserted by regulation 2(4) of S.I. 2005/72.

(b) Section 74(3)(c) was amended by S.I. 2001/3649.

(c) S.I. 1996/1536; relevant amending instruments are S.I. 1997/786 and 2000/2691.

(d) The publication GN19 may be obtained from the Institute of Actuaries, Staple Inn Hall, High Holborn, London WC1V 7QJ and from the Faculty of Actuaries, Maclaurin House, 18 Dublin Street, Edinburgh EH1 3PP.

satisfied after another class), cannot in the opinion of the actuary be fully satisfied by applying assets of a value equal to the amount of those liabilities calculated in accordance with paragraph (1).

(8) If this paragraph applies the amount to be taken as the amount of those liabilities for the purposes of section 73(3) is to be increased accordingly.

(9) If section 73 does not apply to any liability by virtue of—

- (a) section 73B(6)(d) (which provides that the winding up provisions do not apply to liabilities the discharge of which is validated under section 136 of the Pensions Act 2004); or
- (b) regulation 10(2) of the Occupational Pension Schemes (Winding up etc.) Regulations 2005 (which makes similar provision as respects liabilities discharged by virtue of regulations under section 135(4) of that Act),

the value of any corresponding assets is to be deducted from the value of the assets of the scheme for the purposes of section 73.

(10) For the purposes of paragraph (9), “the value of any corresponding assets” means—

- (a) in a case where assets of the scheme at the crystallisation date are transferred from the scheme in consideration for the discharge, the value of those assets at that date; and
- (b) in a case where assets that are not assets of the scheme at that date are so transferred, the value of those assets at the date of the discharge.

(11) Subject to paragraph (12), in this regulation “the crystallisation date” means—

- (a) in the case of a scheme where—
 - (i) the trustees or managers determined (whether in pursuance of section 38 (power to defer winding up) or otherwise) that the scheme was not for the time being to be wound up, despite rules otherwise requiring it to be so;
 - (ii) the time when the paragraph of section 73(4) into which the liability in respect of any person falls is determined is fixed under the provisions of the scheme; and
 - (iii) that time falls on or after the date of the determination mentioned in paragraph (i) and before the date on which the scheme begins to be wound up, the date when that time occurs; and
- (b) otherwise, the date on which the scheme begins to be wound up.

(12) Where the trustees or managers of a scheme—

- (a) determined before 6th April 1997 that the scheme was not for the time being to be wound up, despite rules otherwise requiring it to be so; and
- (b) before that date determined a time (being a time before 6th April 1997) when the amounts or descriptions of liabilities of the scheme were to be determined for the purposes of any rule of the scheme requiring the assets of the scheme to be applied on winding up in satisfying the amounts of certain liabilities to or in respect of members before other such liabilities,

the date when that time occurs is the crystallisation date.”.

Discharge of liabilities during assessment period

10.—(1) This regulation applies in any case where any liability of a scheme in respect of a member has been discharged by virtue of regulations under section 135(4) of the 2004 Act (power to make regulations permitting discharge of scheme’s liabilities during an assessment period).

(2) Sections 73 to 73B of the 1995 Act (except section 73B(4)(b)(iii)) apply as if references to liabilities did not include the discharged liability.

(3) Section 74(2) and (4) of the 1995 Act(a) applies as if the trustees or managers of the scheme had—

- (a) in accordance with arrangements prescribed under section 74(2) of that Act, provided for the discharge of the discharged liability in one or more of the ways mentioned in section 74(3) of that Act; and
- (b) applied any amount available to them in accordance with section 73 of that Act in one or more of those ways.

Requirements to be met where liabilities discharged on winding up

11. In regulation 8 of the Occupational Pension Schemes (Winding Up) Regulations 1996 (requirements to be satisfied by transferee schemes, annuities etc.) after paragraph (5) add—

“(6) For the purposes of section 74(3)(e)(b) (liabilities treated as discharged where the trustees have provided for them to be discharged by the payment of a cash sum in circumstances where prescribed requirements are met), the circumstances which are prescribed are—

- (a) where the payment is a contribution refund under Chapter 5 of Part 4 of the 1993 Act; or
- (b) where the payment—
 - (i) is made to a member who has a right under the scheme rules to the payment of a lump sum that is a trivial commutation lump sum or a winding up lump sum for the purposes of Part 1 of Schedule 29 to the Finance Act 2004 (see paragraphs 7 to 10 of that Schedule (registered pension schemes: authorised lump sums: trivial commutation lump sum and winding up lump sum)); and
 - (ii) does not contravene any trivial commutation restriction that applies in the circumstances in question.

(7) In this regulation “trivial commutation restriction” means a restriction imposed by—

- (a) regulation 19, 20 or 60 of the Occupational Pension Schemes (Contracting-out) Regulations 1996(c) (lump sum benefits and salary related contracted-out schemes, trivial commutation of benefits derived from section 9(2B) rights and trivial commutation of guaranteed minimum pensions);
- (b) regulation 2 of the Occupational Pension Scheme (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997(d) (commutation of a pension under an occupational pension scheme); or
- (c) regulation 3(2)(b) of the Pension Sharing (Pension Credit Benefit) Regulations 2000(e) (commutation of the whole of pension credit benefit).

(8) Before 6th April 2006 this regulation applies with the modification in paragraph (9).

(9) For paragraph (6)(b)(i) substitute—

- “(i) extinguishes the whole or part of the person’s entitlement to benefits under the scheme;
- (ia) does not contravene Revenue restrictions; and”.

(10) For the purposes of this regulation a payment does not contravene Revenue restrictions if—

- (a) in the case of a scheme that is an approved scheme for the purposes of Chapter 1 of Part 14 of the Income and Corporation Taxes Act 1988 (see section 612(1) of that

(a) Section 74(2) and (4) is amended by sections 270(2)(b) and (d) and 320 of, and Part 1 of Schedule 13 to, the Pensions Act 2004.

(b) Paragraph (e) is inserted by section 270(2)(c) of the Pensions Act 2004.

(c) S.I. 1996/1172; relevant amending instruments are S.I. 1997/786, 2000/2975 and 2002/681.

(d) S.I. 1997/785; the relevant amending instrument is S.I. 2002/681.

(e) S.I. 2000/1054.

Act), it is permitted under the scheme rules in accordance with its approval for those purposes; and

- (b) in the case of a scheme that is a relevant statutory scheme for those purposes (see section 611A of that Act), it is permitted under the regulations or rules governing the scheme as such a scheme.”.

Commencement of winding up

12.—(1) Regulation 12 of the Occupational Pension Schemes (Winding Up Notices and Reports etc.) Regulations 2002^(a) (time when winding up taken to begin) does not apply in any case where in accordance with section 124(3A) to (3E) of the 1995 Act a scheme begins to wind up on or after 6th April 2005.

(2) Accordingly, in such a case—

- (a) that section applies for the purpose of determining the time when that scheme winds up for the purposes of—

(i) sections 73 to 74 of the 1995 Act;

(ii) these Regulations; and

(iii) the Occupational Pension Schemes (Winding Up) Regulations 1996; and

- (b) regulation 2 of those Regulations does not apply.

(3) If immediately before 6th April 2005 a scheme was regarded as having begun to be wound up for any purpose by virtue of regulation 2 of the Occupational Pension Schemes (Winding Up) Regulations 1996, paragraphs (1) and (2) do not affect the time when it is to be taken as having begun to be wound up for that purpose.

Multi-employer sectionalised schemes, schemes with partial government guarantee and partly foreign schemes

13. In any case where, by virtue of regulation 12, 12A or 12B of the Occupational Pension Schemes (Winding Up) Regulations 1996^(b) (winding up of sectionalised schemes, schemes with partial government guarantee and partly foreign schemes), sections 73 to 74 of the 1995 Act apply to a scheme as if different parts of the scheme were separate schemes, these Regulations (apart from this regulation) also so apply.

Consequential amendments

14. The Occupational Pension Schemes (Winding Up) Regulations 1996 have effect with the amendments in Part 1 of the Schedule and the Regulations specified in Part 2 of the Schedule have effect with the amendments in that Part.

Transfer values

Amendments of the Occupational Pension Schemes (Transfer Values) Regulations 1996

15.—(1) The Occupational Pension Schemes (Transfer Values) Regulations 1996^(c) are amended as follows.

(a) S.I. 2002/459.

(b) Regulation 12 is amended by S.I. 1997/786 and the Schedule to these Regulations. Regulations 12A and 12B are inserted by the Schedule to these Regulations.

(c) S.I. 1996/1847.

(2) In regulation 7(3)(b)(iv)(a) (manner of calculation and verification of cash equivalents) for the words from “the liabilities” to “winding-up)” substitute “the liabilities for the benefits in respect of which the cash equivalents are being calculated”.

(3) In regulation 8(b) (further provisions as to calculation of cash equivalents and increases and reductions of cash equivalents (other than guaranteed cash equivalents)) for paragraphs (4) and (4A) substitute—

“(4) In the case of a scheme to which section 56 of the 1995 Act (minimum funding requirement) applies, the cash equivalent in respect of a member may be reduced by the trustees of the scheme if the GN11 insufficiency conditions are met.

(4A) The GN11 insufficiency conditions are that the actuary’s last relevant GN11 report (see paragraph (4J)) shows that at the effective date of the report—

- (a) the scheme had assets that were insufficient to pay the full amount of the cash equivalent in respect of all the members, and
- (b) the assets were insufficient to pay in full any category of liabilities that is a category of liabilities for benefits in respect of which the member’s cash equivalent is being calculated.

(4B) If the GN11 insufficiency conditions are met then, subject to paragraph (4D), the trustees may reduce any part of the member’s cash equivalent that is payable in respect of such a category of liabilities as are mentioned in paragraph (4A)(b) by a percentage not exceeding the GN11 deficiency percentage.

(4C) The GN11 deficiency percentage for any such part of a member’s cash equivalent is the percentage by which the actuary’s last relevant GN11 report shows that the assets were insufficient to pay that category of liabilities.

(4D) The total reduction made in a member’s cash equivalent under paragraph (4) must not reduce the member’s cash equivalent below the MFR basis minimum for the member.

(4E) For the purposes of this regulation, the MFR basis minimum for the member is the minimum amount required in accordance with regulation 7(3)(b)(iv) to pay in full the liabilities for the benefits in respect of which the member’s cash equivalent is being calculated, but this is subject to paragraph (4F).

(4F) If the GN11 insufficiency conditions and the MFR insufficiency conditions are both met, the MFR basis minimum for the member for the purposes of paragraph (4D) may be reduced by the trustees of the scheme in accordance with paragraph (4H).

(4G) The MFR insufficiency conditions are that the last relevant MFR valuation statement (see paragraph (4K)) shows that at the effective date of the valuation—

- (a) the scheme had assets that were insufficient to pay in full the liabilities of the scheme in respect of pensions and other benefits towards which the assets would be required by section 73 of the 1995 Act to be applied in the order determined under that section, and
- (b) the assets were insufficient to pay in full any category of liabilities to which that order applies that are liabilities for benefits in respect of which the member’s cash equivalent is being calculated.

(4H) The reduction that may be made under paragraph (4F) is that any part of the MFR basis minimum for the member that relates to that category of liabilities may be reduced by a percentage not exceeding the MFR deficiency percentage.

(4I) The MFR deficiency percentage for any such part of the MFR basis minimum for the member is the percentage by which the last relevant MFR valuation statement shows that the assets were insufficient to pay that category of liabilities.

(a) Regulation 7(3)(b)(iv) is amended by S.I. 1997/786.
(b) Regulation 8 is amended by S.I. 2003/1727.

(4J) The references in this regulation to the actuary’s last relevant GN11 report are to his last report before the guarantee date in accordance with “Retirement Benefit Schemes – Transfer Values (GN11)” published by the Faculty of Actuaries and the Institute of Actuaries and current at the guarantee date^(a).

(4K) The references in this regulation to the last relevant MFR valuation statement are to the statement made by the actuary in accordance with Schedule 1 to the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996 (minimum funding valuation statements) and contained in the last actuarial valuation under section 57 of the 1995 Act (valuation and certification of assets and liabilities) before the guarantee date.

(4L) If the last relevant MFR valuation statement refers to an order for applying assets determined under section 73 that is an order modified by regulations made under that section, then the reduction under paragraph (4F) is to be made by reference to the order as so modified.”.

(4) In regulation 8(5) for “paragraph (4)” and “the reference” substitute “paragraphs (4), (4A) and (4G)” and “the references” respectively.

(5) In regulation 8(12) for “section 73 of the 1995 Act and regulations made under that section” substitute “the winding up provisions (as defined in section 73B(10)(a) of the 1995 Act) and regulations made under those provisions”.

(6) In regulation 8(13) for “under section 73 of the 1995 Act, section 73 of that Act applies” substitute “under section 73B(4)(b)(i) of the 1995 Act by virtue of section 73B(5) of that Act, the winding up provisions (as so defined) apply”.

(7) In regulation 9(3) (increases and reductions of guaranteed cash equivalents) for “section 73 of the 1995 Act and regulations made under that section” substitute “the winding up provisions (as defined in section 73B(10)(a) of the 1995 Act) and regulations made under those provisions”.

(8) In regulation 9(4) for “under section 73 of the 1995 Act, section 73 of that Act applies” substitute “under section 73B(4)(b)(i) of the 1995 Act by virtue of section 73B(5) of that Act, the winding up provisions (as so defined) apply”.

(9) Paragraphs (2) to (4) only apply to the calculation of cash equivalents where the guarantee date is on or after 6th April 2005 and the scheme has not begun to be wound up before that date.

(10) In paragraph (9) “the guarantee date” has the meaning given by subsection (2) of section 93A of the 1993 Act^(b) (salary-related schemes: right to statement of entitlement).

(11) Paragraphs (5) to (8) only apply where the scheme begins to be wound up on or after 6th April 2005.

Pension sharing

Amendments of the Pension Sharing (Valuation) Regulations 2000

16.—(1) The Pension Sharing (Valuation) Regulations 2000^(c) are amended as follows.

(2) In regulation 4(3)(b)(iii) (occupational pension schemes: manner of calculation and verification of cash equivalents) for the words from “the liabilities” to “up)” substitute “liabilities for the benefits in respect of which the cash equivalent is being calculated”.

(3) In regulation 5 (occupational pension schemes: further provisions as to calculation of cash equivalents and increases and reductions of cash equivalents) for paragraphs (3) and (3A) substitute—

(a) The publication GN11 may be obtained from the Institute of Actuaries, Staple Inn Hall, High Holborn, London WC1V 7QJ and from the Faculty of Actuaries, Maclaurin House, 18 Dublin Street, Edinburgh EH1 3PP.

(b) Section 93A is inserted by section 153 of the Pensions Act 1995 and amended by section 84(1) of, and paragraph 34 of Schedule 12 to, the Welfare Reform and Pensions Act 1999.

(c) S.I. 2000/1052 as amended by S.I. 2000/2691 and 2003/1727.

“(3) In the case of a scheme to which section 56 of the 1995 Act applies, the cash equivalent may be reduced by the trustees or managers if the GN11 insufficiency conditions are met.

(3A) The GN11 insufficiency conditions are that the actuary’s last relevant GN11 report (see paragraph (3J)) shows that at the effective date of the report—

- (a) the scheme had assets that were insufficient to pay the full amount of the cash equivalent in respect of all the members, and
- (b) the assets were insufficient to pay in full any category of liabilities that is a category of liabilities for the benefits in respect of which the cash equivalent is being calculated.

(3B) If the GN11 insufficiency conditions are met then, subject to paragraph (3D), the trustees or managers may reduce any part of the cash equivalent that relates to such a category of liabilities as are mentioned in paragraph (3A)(b) by a percentage not exceeding the GN11 deficiency percentage.

(3C) The GN11 deficiency percentage for any such part of the cash equivalent is the percentage by which the actuary’s last relevant GN11 report shows that the assets were insufficient to pay that category of liabilities.

(3D) The total reduction made in the cash equivalent under paragraph (3) must not reduce the cash equivalent below the MFR basis minimum for the transferor.

(3E) For the purposes of this regulation, the MFR basis minimum for the transferor is the minimum amount required in accordance with regulation 4(3)(b)(iii) to pay in full the liabilities for the benefits in respect of which the cash equivalent is being calculated, but this is subject to paragraph (3F).

(3F) If the GN11 insufficiency conditions and the MFR insufficiency conditions are both met, the MFR basis minimum for the transferor for the purposes of paragraph (3D) may be reduced by the trustees or managers in accordance with paragraph (3H).

(3G) The MFR insufficiency conditions are that the last relevant MFR valuation statement (see paragraph (3K)) shows that at the effective date of the valuation—

- (a) the scheme had assets that were insufficient to pay in full the liabilities of the scheme in respect of pensions and other benefits towards which the assets would be required by section 73 of the 1995 Act to be applied in the order determined under that section, and
- (b) the assets were insufficient to pay in full any category of liabilities to which that order applies that are liabilities for benefits in respect of which the cash equivalent is being calculated.

(3H) The reduction that may be made under paragraph (3F) is that any part of the MFR basis minimum for the transferor that relates to that category of liabilities may be reduced by a percentage not exceeding the MFR deficiency percentage.

(3I) The MFR deficiency percentage for any such part of the MFR basis minimum for the transferor is the percentage by which the last relevant MFR valuation statement shows that the assets were insufficient to pay that category of liabilities.

(3J) The references in this regulation to the actuary’s last relevant GN11 report are to his last report before the valuation day in accordance with “Retirement Benefit Schemes – Transfer Values (GN11)” published by the Faculty of Actuaries and the Institute of Actuaries and current at the valuation day.

(3K) The references in this regulation to the last relevant MFR valuation statement are to the statement made by the actuary in accordance with Schedule 1 to the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996 and contained in the last actuarial valuation under section 57 of the 1995 Act before the valuation day.

(3L) If the last relevant MFR valuation statement refers to an order for applying assets determined under section 73 of the 1995 Act that is an order modified by regulations made

under that section, then the reduction under paragraph (3F) is to be made by reference to the order as so modified.”.

(4) In regulation 5(4) for “paragraph (3)”, “the reference” and “a reference” substitute “paragraphs (3), (3A) and (3G)”, “the references” and “references” respectively.

(5) In regulation 5(5) for “paragraph (3)” substitute “paragraphs (3) and (3F)”.

(6) In regulation 5(6) for the words from “sections 73” onwards substitute “the winding up provisions (as defined in section 73B(10)(a) of the 1995 Act) and regulations made under those provisions”.

(7) In regulation 5(7) for the words from “the Occupational” to “applies” substitute “regulations made under section 73B(4)(b)(i) of the 1995 Act by virtue of section 73B(5) of that Act, the winding up provisions (as so defined) apply”.

(8) Paragraphs (2) to (5) only apply if the relevant proceedings commenced on or after 6th April 2005 and the scheme has not begun to be wound up before that date.

(9) In paragraph (8) “the relevant proceedings” means the proceedings for the dissolution or annulment of marriage in connection with which the relevant order or provision was made; and in this paragraph “the relevant order or provision” means the order or provision mentioned in section 28(1) of the 1999 Act (activation of pension sharing) for the purposes of which the valuation is made.

(10) Paragraphs (6) and (7) only apply where the scheme begins to be wound up on or after 6th April 2005.

Amendments of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000

17.—(1) The Pension Sharing (Implementation and Discharge of Liability) Regulations 2000(a) are amended as follows.

(2) In regulation 16 (adjustments to the amount of the pension credit: occupational pension schemes which are underfunded on the valuation day) for paragraphs (2) and (2A) substitute—

“(2) In the case of a scheme to which section 56 of the 1995 Act applies, the lesser amount referred to in paragraph 8(1) of Schedule 5 to the 1999 Act (adjustments to amount of pension credit) may be determined for the purposes of that paragraph by reducing the pension credit if the GN11 insufficiency conditions are met.

(2A) The GN11 insufficiency conditions are that the actuary’s last relevant GN11 report (see paragraph (2J)) shows that at the effective date of the report—

- (a) the scheme had assets that were insufficient to pay the full amount of the cash equivalent in respect of all the members, and
- (b) the assets were insufficient to pay in full any category of liabilities for benefits to which the pension credit relates.

(2B) If the GN11 insufficiency conditions are met then, subject to paragraph (2D), the trustees or managers may reduce any part of the pension credit that relates to benefits the liabilities for which fall within such a category as is mentioned in paragraph (2A)(b) by a percentage not exceeding the GN11 deficiency percentage.

(2C) The GN11 deficiency percentage for any such part of the pension credit is the percentage by which the actuary’s last relevant GN11 report shows that the assets were insufficient to pay the category of liabilities into which the liabilities for those benefits falls.

(2D) The total reduction made in a pension credit under paragraph (2) must not reduce the cash equivalent in respect of the pension credit below the MFR basis minimum for the person entitled to the credit.

(a) S.I. 2000/1053; the relevant amending instrument is S.I. 2003/1727.

(2E) For the purposes of this regulation, the MFR basis minimum for such a person is the minimum amount required in accordance with regulation 4(3)(b)(iii) of the Pension Sharing (Valuation) Regulations 2000 to pay in full the liabilities for the benefits in respect of which the cash equivalent is being calculated, but this is subject to paragraph (2F).

(2F) If the GN11 insufficiency conditions and the MFR insufficiency conditions are both met, the MFR basis minimum for the person for the purposes of paragraph (2D) may be reduced in accordance with paragraph (2H).

(2G) The MFR insufficiency conditions are that the last relevant MFR valuation statement (see paragraph (2K)) shows that at the effective date of the valuation—

- (a) the scheme had assets that were insufficient to pay in full the liabilities of the scheme in respect of pensions and other benefits towards which the assets would be required by section 73 of the 1995 Act to be applied in the order determined under that section, and
- (b) the assets were insufficient to pay in full any category of liabilities to which that order applies that are liabilities for benefits to which the pension credit relates.

(2H) The reduction that may be made under paragraph (2F) is that any part of the MFR basis minimum for the person that relates to that category of liabilities may be reduced by a percentage not exceeding the MFR deficiency percentage.

(2I) The MFR deficiency percentage for any such part of the MFR basis minimum for the person is the percentage by which the last relevant MFR valuation statement shows that the assets were insufficient to pay that category of liabilities.

(2J) The references in this regulation to the actuary's last relevant GN11 report are to his last report before the valuation day in accordance with "Retirement Benefit Schemes – Transfer Values (GN11)" published by the Faculty of Actuaries and the Institute of Actuaries and current at the valuation day.

(2K) The references in this regulation to the last relevant MFR valuation statement are to the statement made by the actuary in accordance with Schedule 1 to the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996 and contained in the last actuarial valuation under section 57 of the 1995 Act before the valuation day.

(2L) If the last relevant MFR valuation statement refers to an order for applying assets determined under section 73 of the 1995 Act that is an order modified by regulations made under that section, then the reduction under paragraph (2F) is to be made by reference to the order as so modified."

(3) In regulation 16(3) for "paragraph (2)", "the reference" and "a reference" substitute "paragraphs (2), (2A) and (2G)", "the references" and "references" respectively.

(4) This regulation only applies if the relevant proceedings commenced on or after 6th April 2005 and the scheme has not begun to be wound up before that date.

(5) In paragraph (4) "the relevant proceedings" means the proceedings for the dissolution or annulment of marriage in connection with which the order or provision mentioned in section 28(1) of the 1999 Act that resulted in entitlement to the pension credit in question was made.

Amendments of the Pension Sharing (Pension Credit Benefit) Regulations 2000

18.—(1) The Pension Sharing (Pension Credit Benefit) Regulations 2000^(a) are amended as follows.

(2) In regulation 15(4) (further conditions on which liability for pension credit benefit may be discharged) for sub-paragraph (b) substitute—

- "(b) the winding up provisions (as defined in section 73B(10)(a) of the 1995 Act) and regulations made under those provisions do not apply;"

^(a) S.I. 2000/1054; the relevant amending instruments are S.I. 2000/2691 and 2003/1727.

(3) In regulation 24(3)(b)(iv) (manner of calculation and verification of cash equivalents) for the words from “the liabilities” to “that Act” substitute “liabilities for the benefits in respect of which the cash equivalent is being calculated”.

(4) In regulation 27 (increases and reductions of cash equivalents before a statement of entitlement has been sent to the eligible member) for paragraphs (4) and (4A) substitute—

“(4) In the case of a scheme to which section 56 of the 1995 Act applies, the cash equivalent in respect of an eligible member may be reduced by the trustees or managers of the scheme if the GN11 insufficiency conditions are met.

(4A) The GN11 insufficiency conditions are that the actuary’s last relevant GN11 report (see paragraph (4J)) shows that at the effective date of the report—

- (a) the scheme had assets that were insufficient to pay the full amount of the cash equivalent in respect of all the members, and
- (b) the assets were insufficient to pay in full any category of liabilities that is a category of liabilities for benefits in respect of which the eligible member’s cash equivalent is being calculated.

(4B) If the GN11 insufficiency conditions are met then, subject to paragraph (4D), the trustees or managers may reduce any part of the eligible member’s cash equivalent that is payable in respect of such a category of liabilities as are mentioned in paragraph (4A)(b) by a percentage not exceeding the GN11 deficiency percentage.

(4C) The GN11 deficiency percentage for any such part of an eligible member’s cash equivalent is the percentage by which the actuary’s last relevant GN11 report shows that the assets were insufficient to pay that category of liabilities.

(4D) The total reduction made in an eligible member’s cash equivalent under paragraph (4) must not reduce the member’s cash equivalent below the MFR basis minimum for the member.

(4E) For the purposes of this regulation, the MFR basis minimum for the eligible member is the minimum amount required in accordance with regulation 24(3)(b)(iv) to pay in full the liabilities for the benefits in respect of which the member’s cash equivalent is being calculated, but this is subject to paragraph (4F).

(4F) If the GN11 insufficiency conditions and the MFR insufficiency conditions are both met, the MFR basis minimum for the eligible member for the purposes of paragraph (4D) may be reduced by the trustees or managers in accordance with paragraph (4H).

(4G) The MFR insufficiency conditions are that the last relevant MFR valuation statement (see paragraph (4K)) shows that at the effective date of the valuation—

- (a) the scheme had assets that were insufficient to pay in full the liabilities of the scheme in respect of pensions and other benefits towards which the assets would be required by section 73 of the 1995 Act to be applied in the order determined under that section, and
- (b) the assets were insufficient to pay in full any category of liabilities to which that order applies that are liabilities for benefits in respect of which the eligible member’s cash equivalent is being calculated.

(4H) The reduction that may be made under paragraph (4F) is that any part of the MFR basis minimum for the eligible member that relates to that category of liabilities may be reduced by a percentage not exceeding the MFR deficiency percentage.

(4I) The MFR deficiency percentage for any such part of the MFR basis minimum for the eligible member is the percentage by which the last relevant MFR valuation statement shows that the assets were insufficient to pay that category of liabilities.

(4J) The references in this regulation to the actuary’s last relevant GN11 report are to his last report before the reference date in accordance with “Retirement Benefit Schemes – Transfer Values (GN11)” published by the Faculty of Actuaries and the Institute of Actuaries and current at the reference date.

(4K) The references in this regulation to the last relevant MFR valuation statement are to the statement made by the actuary in accordance with Schedule 1 to the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996 and contained in the last actuarial valuation under section 57 of the 1995 Act before the reference date.

(4L) If the last relevant MFR valuation statement refers to an order for applying assets determined under section 73 of the 1995 Act that is an order modified by regulations made under that section, then the reduction under paragraph (4F) is to be made by reference to the order as so modified.

(4M) In paragraphs (4J) and (4K) “the reference date” means the date by reference to which the cash equivalent is determined.”.

(5) In regulation 27(5) for “paragraph (4)”, “the reference” and “a reference” substitute “paragraphs (4), (4A) and (4G)”, “the references” and “references” respectively.

(6) In regulation 27(9) for “section 73 of the 1995 Act and the Occupational Pension Schemes (Winding Up) Regulations 1996” substitute “the winding up provisions and regulations made under those provisions”.

(7) In regulation 27(10) for “under section 73 of the 1995 Act, section 73 of that Act applies” substitute “under section 73B(4)(b)(i) of the 1995 Act by virtue of section 73B(5) of that Act, the winding up provisions apply”.

(8) In regulation 27(13) at the end insert—

“; and

“the winding up provisions” means sections 73 to 74 of the 1995 Act.”.

(9) In regulation 28(3) (increases and reductions of cash equivalents once the statement of entitlement has been sent to the eligible member) for “sections 73 and 74 of the 1995 Act and the Occupational Pension Schemes (Winding Up) Regulations 1996” substitute “the winding up provisions (as defined in regulation 27(13)) and regulations made under those provisions”.

(10) In regulation 28(4) for “the Occupational Pension Schemes (Winding Up) Regulations 1996, section 73 of the 1995 Act applies” substitute “regulations made under section 73B(4)(b)(i) of the 1995 Act by virtue of section 73B(5) of that Act, the winding up provisions (as so defined) apply”.

(11) This regulation only applies if the relevant proceedings commenced on or after 6th April 2005 and the scheme has not begun to be wound up before that date.

(12) In paragraph (11) “the relevant proceedings” means the proceedings for the dissolution or annulment of marriage in connection with which the order or provision mentioned in section 28(1) of the 1999 Act that resulted in entitlement to the pension credit in question was made.

Signed by authority of the Secretary of State for Work and Pensions.

Malcolm Wicks
Minister of State,
Department for Work and Pensions

22nd March 2005

Consequential amendments

PART 1

THE OCCUPATIONAL PENSION SCHEMES (WINDING UP) REGULATIONS
1996**1.** In regulation 2 for paragraph (1) substitute—

“(1) The time when a scheme begins to be wound up shall be determined for the purposes of these Regulations in accordance with this regulation—

- (a) if in accordance with section 124(3A) to (3E) the scheme began to wind up before 6th April 2005; or
- (b) if immediately before that date the scheme was treated by virtue of this regulation as having begun to be wound up for those purposes.

(1A) See section 124(3A) to (3E) for the time when a scheme begins to wind up in any other case.”.

2. In regulation 3(a) (modifications of s.73(3) etc.)—

- (a) in the heading, at the end add “for schemes beginning to be wound up before 6th April 2005”;
- (b) in paragraph (1) after “Section 73(3) applies” insert “if the scheme begins to be wound up before 6th April 2005”;
- (c) in paragraph (1)(b) omit “and before the expiry of the transitional period”;
- (d) omit paragraphs (1)(c), (2) and (7);
- (e) in paragraph (8), as it applies where regulation 3(d) of the Occupational Pension Schemes (Winding Up) (Amendment) Regulations 2004(b) (which substitutes a new paragraph (8) in regulation 3) does not apply, omit “and 8(4)”;
- (f) after paragraph (8) add—

“(9) Paragraph (8) does not apply where regulation 7(3)(b)(iv) of the Occupational Pension Schemes (Transfer Values) Regulations 1996 applies with the amendments in regulation 15 of the Occupational Pension Schemes (Winding up etc.) Regulations 2005.”.

3. In regulation 5 (modification of schemes to fix time for settling priority of liabilities on winding up), as it applies to schemes beginning to be wound up on or after 6th April 2005—

- (a) for “section 73(3)” substitute “section 73(4)”;
- (b) for “section 73(2) and (3)” substitute “section 73(3) and (4)”.

4. In regulation 7 (requirements applicable to notices of discharge under regulation 6) in the definition of “scheme administrator” in paragraph (8), for “section 630(1) of the Income and Corporation Taxes Act 1988” substitute “section 270 of the Finance Act 2004”.

5. In regulation 11(1)(b) (records and information), as it applies to schemes beginning to be wound up on or after 6th April 2005, for “section 73(3)” substitute “section 73(4)”.

6. For paragraph (1) of regulation 12(c) (winding up of sectionalised schemes), as it applies to schemes beginning to be wound up on or after 6th April 2005, substitute—

(a) Regulation 3 was amended by S.I. 1999/3198 and 2004/1140.

(b) S.I. 2004/1140.

(c) Regulation 12 was amended by S.I. 1997/786.

“(1) If—

- (a) a scheme in relation to which there is more than one employer is divided into two or more sections; and
- (b) the provisions of the scheme are such that they meet conditions A and B,

sections 73 to 74 apply as if each section of the scheme were a separate scheme.

(1A) Condition A is that contributions payable to the scheme by an employer, or by a member in employment under that employer, are allocated to that employer’s section (or, if more than one section applies to the employer, to the section which is appropriate in respect of the employment in question).

(1B) Condition B is that a specified part or proportion of the assets of the scheme is attributable to each section and cannot be used for the purposes of any other section.

(1C) In their application to a scheme—

- (a) which has been such a scheme as is mentioned in paragraph (1);
- (b) which is divided into two or more sections, some or all of which apply only to members who are not in pensionable service under the section;
- (c) the provisions of which have not been amended so as to prevent conditions A and B being met in relation to two or more sections; and
- (d) in relation to one or more sections of which those conditions have ceased to be met at any time by reason only of there being no members in pensionable service under the section and no contributions which are to be allocated to it,

sections 73 to 74 apply as if the section in relation to which those conditions have ceased to be met were a separate scheme.

(1D) For the purposes of paragraphs (1) to (1C), any provisions of the scheme by virtue of which contributions or transfers of assets may be made to make provision for death benefits are disregarded.

(1E) But if paragraph (1) or (1C) applies and, by virtue of any provisions of the scheme, contributions or transfers of assets to make provision for death benefits are made to a section (“the death benefits section”) the assets of which may only be applied for the provision of death benefits, the death benefits section is also to be treated as a separate scheme.

(1F) For the purpose of this regulation, any provisions of a scheme by virtue of which assets attributable to one section may on the winding up of the scheme or a section be used for the purposes of another section are disregarded.”.

7. After regulation 12 insert—

“Schemes with partial government guarantee

12A.—(1) This regulation applies if a relevant public authority has—

- (a) given a guarantee in relation to any part of a scheme, any benefits payable under the scheme or any member of the scheme; or
- (b) made any other arrangements for the purposes of securing that the assets of the scheme are sufficient to meet any part of its liabilities.

(2) Where this regulation applies, sections 73 to 74 and the provisions of these Regulations (apart from this regulation) apply as if the guaranteed part of the scheme and the other part of the scheme were separate schemes.

(3) In this regulation—

“the guaranteed part of the scheme” means the part of the scheme—

- (a) in relation to which the guarantee has been given;

- (b) which relates to benefits payable under the scheme in relation to which the guarantee has been given; or
 - (c) which relates to benefits payable under the scheme in relation to the liabilities for which those other arrangements have been made; and
- “relevant public authority” has the meaning given in subsection (4) of section 307 of the Pensions Act 2004 (modification of that Act in relation to certain categories of schemes).

Schemes covering United Kingdom and foreign employment

12B.—(1) Paragraph (2) applies where a scheme which applies to members in employment in the United Kingdom and members in employment outside the United Kingdom is divided into two or more sections and the provisions of the scheme are such that—

- (a) different sections of the scheme apply to members in employment in the United Kingdom and to members in employment outside the United Kingdom (“the United Kingdom section” and “the foreign section”);
- (b) contributions payable to the scheme in respect of a member are allocated to the section applying to that member’s employment;
- (c) a specified part or proportion of the assets of the scheme is attributable to each section and cannot be used for the purposes of any other section; and
- (d) the United Kingdom section meets the tax condition (as defined in regulation 2(1) of the Occupational Pension Schemes (Winding up etc.) Regulations 2005) and the foreign section does not do so.

(2) If this paragraph applies sections 73 to 74 and the provisions of these Regulations (apart from this regulation) apply as if each section of the scheme were a separate scheme.

(3) Paragraph (4) applies where—

- (a) a scheme applies to members in employment in the United Kingdom and members in employment outside the United Kingdom;
- (b) paragraph (2) does not apply to the scheme; and
- (c) part of the scheme is registered under section 153 of the Finance Act 2004 (registration of pension schemes) by virtue of that part having been treated as a separate scheme under section 611(3) of the Income and Corporation Taxes Act 1988 that is treated as becoming a registered pension scheme under paragraph 1(1) of Schedule 36 to the Finance Act 2004 by virtue of paragraph 1(2) of that Schedule.

(4) If this paragraph applies, sections 73 to 74 and the provisions of these Regulations (apart from this regulation) apply as if the approved and unapproved parts of the scheme were separate schemes.

(5) In their application to a scheme—

- (a) which has been such a scheme as is mentioned in paragraph (1) or (3);
- (b) which is divided into two or more sections, some or all of which apply only to members who are not in pensionable service under the section;
- (c) the provisions of which have not been amended so as to prevent the conditions in paragraph (1) or, as the case may be, paragraph (3) being met in relation to two or more sections; and
- (d) in relation to one or more sections of which those conditions have ceased to be met at any time by reason only of there being no members in pensionable service under the section and, in the case of paragraph (1), no contributions which are to be allocated to it,

sections 73 to 74 apply and the provisions of these Regulations (apart from this regulation) apply as if any section in relation to which those conditions have ceased to be met were a separate scheme.

(6) Before 6th April 2006 paragraph (3) applies with the substitution for sub-paragraph (c) of the following paragraph—

“(c) part of the scheme has been approved by the Commissioners of the Board of Inland Revenue for the purposes of section 590 or 591 of the Income and Corporation Taxes Act 1988 by virtue of section 611(3) of that Act;”.

PART 2

OTHER REGULATIONS

Occupational Pension Schemes (Contracting-out) Regulations 1996

8.—(1) The Occupational Pension Schemes (Contracting-out) Regulations 1996(a) are amended as follows.

(2) In regulation 48 (special provision for overseas schemes)—

(a) in paragraph (5)(c) for “paragraphs (a) to (e) of section 73(3)” substitute “section 73(4)”;

(b) in paragraph (5)(ca)—

(i) for “in those paragraphs” substitute “in section 73(4)”; and

(ii) after “earlier paragraphs” insert “of that section”;

(c) paragraph (5A) is omitted.

(3) In regulation 72(2) (transitional requirements as to sufficiency of resources of salary-related schemes) for the words from “paragraphs (a) to (e)” to the end substitute “section 73(4) of the 1995 Act (liabilities towards which scheme assets must be applied first on winding up).”.

Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996

9.—(1) The Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996(b) are amended as follows.

(2) In regulation 7(1)(a) (determination and valuation of liabilities) for “section 73(3)” substitute “section 73(4)”.

(3) In Schedule 1 (minimum funding valuation statements) for “section 73(3)”, in each place where it occurs, substitute “section 73(4)”.

Occupational Pension Schemes (Disclosure of Information) Regulations 1996

10. In regulation 5(15) of the Occupational Pension Schemes (Disclosure of Information) Regulations 1996(c) (time when a scheme begins to be wound up for the purposes of regulation 5 of those Regulations) for the words “in accordance” onwards substitute—

“(a) in a case where regulation 2 of the Occupational Pension Schemes (Winding Up) Regulations 1996 applies, in accordance with that regulation, and

(b) in any other case, in accordance with section 124(3A) and (3B) of the 1995 Act (but subject to section 124(3C) and (3E)).”.

(a) S.I. 1996/1172; the relevant amending instrument is S.I. 1997/786.

(b) S.I. 1996/1536; the relevant amending instrument is S.I. 2004/3031.

(c) S.I. 1996/1655; the relevant amending instrument is S.I. 1997/786.

Occupational Pension Schemes (Payments to Employers) Regulations 1996

11. In regulation 15(3) of the Occupational Pension Schemes (Payments to Employers) Regulations 1996^(a) (which makes provision about when a scheme begins to be wound up for the purposes of the saving in regulation 15(2) relating to the revocation of regulations mentioned in regulation 15(1)) for “any regulations made under section 73 of the 1995 Act” substitute “the Occupational Pension Schemes (Winding Up) Regulations 1996 (see both regulation 2 of those Regulations, as amended by paragraph 1 of the Schedule to the Occupational Pension Schemes (Winding Up) Regulations 2005, and also regulation 12 of those Regulations of 2005)”.

Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997

12. In regulation 2(3) of the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997^(b) (circumstances when a scheme is being wound up for the purposes of regulation 2(1)) for “regulation 2 of the Occupational Pension Schemes (Winding Up) Regulations 1996 apply” substitute “section 124(3A) and (3B) of the 1995 Act apply (but subject to section 124(3C) and (3E))”.

^(a) S.I. 1996/2156, to which there are amendments not relevant to these Regulations.

^(b) S.I. 1997/785, to which there are amendments not relevant to these Regulations.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made as a consequence of provisions in the Pensions Act 2004 (c.35) (“the 2004 Act”) and relate to the winding up of occupational pension schemes.

These Regulations come into force on 6th April 2005 (except for paragraph 4 of the Schedule which comes into force a year later), but regulations 3 to 13 and most of the amendments made by the other provisions do not apply in the case of schemes that have begun to wind up before that date.

Regulation 3 provides that section 73 does not apply to certain schemes that are excluded from being eligible schemes for the purposes of Part 2 of the 2004 Act. Before the amendments of section 73 by the 2004 Act that section applied only to schemes to which section 56 of the Pensions Act 1995 (c.26) (“the 1995 Act”) applied (which relates to minimum funding). This disapplication will have a similar effect.

Regulation 4 modifies provisions relating to pension compensation so that when they apply for determining the corresponding PPF liability by reference to which the liabilities within section 73(4)(b) of the 1995 Act are capped, they apply differently from the way in which they apply for determining compensation from the Pension Protection Fund.

Regulation 5 provides that where a person’s pensionable service ceases when the scheme begins to be wound up, he is treated as having opted for a contribution refund under Chapter 5 of Part 4 of the Pension Schemes Act 1993 (c.48) (“the 1993 Act”).

Regulations 6 and 7 prescribe when trustees or managers of schemes are required to adjust entitlements to discretionary awards and to survivors’ benefits when schemes are winding up. If winding up is backdated, affected adjustments must also take effect from the earlier date.

Regulation 8 makes provision where a scheme to which section 73 of the 1995 Act applies is being wound up, and after the winding up begins someone becomes entitled to payment of benefits in respect of the member. It excludes from the effects of the winding up provisions the liability for the benefits which would have been paid before the winding up began if they had been paid without delay on the member’s death.

Regulation 9 substitutes a new regulation for regulation 4 of the Occupational Pension Schemes (Winding Up) Regulations 1996 (S.I. 1996/3126) (“the Winding Up Regulations”) which contains provisions about the calculation of the value or amount of scheme assets and liabilities.

Regulation 10 modifies sections 73 to 74 of the 1995 Act where liabilities of a scheme are discharged during an assessment period by virtue of regulations under section 135(4) of the 2004 Act. (An assessment period is defined in section 132 of that Act as the period beginning with an insolvency event occurring in relation to a scheme’s employer and ending with either the Board of the Pension Protection Fund assuming responsibility for the scheme or ceasing to be involved with it). Regulation 10 ensures that sections 73 to 73B of the 1995 Act do not apply to such discharged liabilities, but that they are treated as fully discharged under section 74 of the 1995 Act.

Regulation 11 prescribes the circumstances in which liabilities are treated as discharged under section 74 of the 1995 Act where a scheme is winding up and the trustees have provided for the discharge by payment of a cash sum. The circumstances prescribed are where the payment is a contribution refund paid to an early leaver under Chapter 5 of Part 4 of the 1993 Act or the payment of a trivial commutation lump sum or a winding up lump sum.

Regulation 12 ensures that the rules in section 124 of the 1995 Act will apply in future to determine when a scheme begins to be wound up, instead of the slightly different rules in regulation 2 of the Winding Up Regulations.

Regulation 13 provides that the same rules apply for the purposes of these Regulations as apply for the Winding Up Regulations for treating as separate schemes sections of multi-employer

schemes, the guaranteed and unguaranteed parts of partially government guaranteed schemes and sections of schemes that only apply to members in employment inside or, as the case may be, outside the United Kingdom.

Regulation 14 introduces the Schedule, Part 1 of which contains amendments of the Winding Up Regulations, and Part 2 of which contains amendments of other Regulations. These amendments are consequential on the changes made by section 270 of the 2004 Act, the provisions of these Regulations or the Finance Act 2004 (c.12).

Regulation 15 amends provisions in the Occupational Pension Schemes (Transfer Values) Regulations 1996 (S.I. 1996/1847) which relate to the valuation of the cash equivalent of a member's benefits and the circumstances in which a scheme may reduce that cash equivalent. The amendments are made as a consequence of the need to amend references to provisions relating to winding up because of their amendment by the 2004 Act. However, because the drafting of these provisions had become so complex as a result of previous amendments, the amendments made by regulation 15 rewrite them in order to incorporate the changes.

Regulations 16 to 18 make amendments in the Pension Sharing (Valuation) Regulations 2000 (S.I. 2000/1052), the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 (S.I. 2000/1053) and the Pension Sharing (Pension Credit Benefit) Regulations 2000 (S.I. 2000/1054) which correspond to those made by regulation 15. These amendments affect the valuation of the pension rights of a party to a marriage that is dissolved or annulled for the purpose of transferring a part of their value to the other party as a pension credit, the valuation of a pension credit for the purposes of the scheme obliged to give effect to it as benefits under the scheme or wishing to discharge its liability for it, and the valuation of the pension credit where the person entitled to it wishes to have it transferred to another scheme.

As these Regulations are made before the expiry of the period of six months beginning with the coming into force of the provisions on which they are consequential, the requirement for the Secretary of State to consult such persons as he considers appropriate only applies as respects regulations 16 and 17.

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business, charities or the voluntary sector.

STATUTORY INSTRUMENTS

2005 No. 706

PENSIONS

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Regulations 2005

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ISBN 0-11-072672-3



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