STATUTORY INSTRUMENTS

2005 No. 2159

PENSIONS

The Occupational Pension Schemes (Winding Up) (Modification for Multi-employer Schemes and Miscellaneous Amendments) Regulations 2005

Made - - - -	*2nd August 2005*
Laid before Parliament	*10th August 2005*
Coming into force	*31st August 2005*

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 56(3), 73(7), 73B(4)(a) and (b)(i) and (ii) and (5), 118(1)(a), 124(1) and 174(2) and (3) of the Pensions Act 1995(**a**) and of all other powers enabling him in that behalf, by this instrument, which is consequential on section 270 of the Pensions Act 2004(**b**) and is made before the end of the period of six months beginning with the coming into force of that section, makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Winding Up) (Modification for Multi-employer Schemes and Miscellaneous Amendments) Regulations 2005.

(2) These Regulations come into force on 31st August 2005.

(3) In these Regulations—

"the 1995 Act" means the Pensions Act 1995;

"the 1996 Regulations" means the Occupational Pension Schemes (Winding Up) Regulations 1996(**c**);

"the 2004 Act" means the Pensions Act 2004(**d**);

"the 2005 Regulations" means the Occupational Pension Schemes (Winding up etc.) Regulations 2005(**e**);

"assessment period" is to be read in accordance with section 132 of the 2004 Act (assessment periods);

(**a**) 1995 c.26. Sections 73 to 73B were substituted by section 270(1) of the Pensions Act 2004 (c.35) and modified by regulations 12 to 12B of S.I. 1996/3126. (Regulation 12 was amended by paragraph 17 of Schedule 1 to S.I. 1997/786 and modified by paragraph 6 of the Schedule to S.I. 2005/706, and regulations 12A and 12B were inserted by paragraph 7 of the Schedule to S.I. 2005/706.) Section 124(1) is cited for the meaning it gives to "prescribed" and "regulations".

(**b**) *See* section 120 of the Pensions Act 1995 which provides 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 on which the regulations are consequential.

(**c**) S.I. 1996/3126. Relevant amending instruments are S.I. 1997/786 and S.I. 2005/706.

(**d**) 2004 c.35.

(**e**) S.I. 2005/706.

"the MFR Regulations" means the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996(**a**).

Modification for multi-employer schemes of rules about reduction of benefits during winding up period

2.—(1) This paragraph applies to an occupational pension scheme at any time ("the relevant time") if—

(a) section 73 of the 1995 Act (preferential liabilities on winding up) applies to the scheme;

(b) the scheme has been a relevant multi-employer scheme at any time after 5th April 2005;

(c) at a time after that date when the scheme was such a scheme an event that is an insolvency event for the purposes of Part 2 of the 2004 Act (see section 121 of that Act: insolvency event, insolvency date and insolvency practitioner) has occurred in relation to a person who immediately before the event was an employer in relation to the scheme; and

(d) the trustees or managers of the scheme have reasonably determined not more than 3 months before the relevant time that it is probable that an assessment period will begin in relation to the scheme not more than 12 months after the time of the determination.

(2) In paragraph (1) "relevant multi-employer scheme" means an occupational pension scheme—

(a) in relation to which there are 2 or more employers; and

(b) the rules of which do not provide for the partial winding up of the scheme if one of the employers ceases to participate in the scheme.

(3) If paragraph (1) applies to a scheme, section 73A(2)(a) of the 1995 Act (which requires the trustees or managers during the winding up period to secure that pensions or other benefits paid in respect of members are reduced so far as is necessary to reflect the liabilities in respect of the members which will be satisfied in accordance with section 73 of that Act) applies to the scheme with the modification specified in paragraph (4).

(4) The modification is that section 73A(2)(a) applies as if the reference to the liabilities in respect of the members which will be satisfied in accordance with section 73 of the 1995 Act were a reference to those liabilities or, if the trustees or managers consider it appropriate, to the liabilities in respect of the members which would be satisfied in accordance with that section on the assumption that—

(a) the liabilities mentioned in paragraphs (a) and (b) of section 73(4) of that Act (liabilities under certain pre-1997 contracts of insurance and liabilities for pensions or other benefits) will be fully satisfied (but in the case of the liabilities mentioned in section 73(4)(b) only to the extent that they do not exceed the corresponding PPF liability, as defined in section 73(5) of that Act); and

(b) the liabilities mentioned in paragraphs (c) and (d) of section 73(4) of that Act will not be satisfied in whole or in part.

(5) If—

(a) the trustees or managers of a scheme have made payments in accordance with the requirement in section 73A(2)(a) of the 1995 Act on the assumption mentioned in paragraph (4); and

(b) subsequently paragraph (1) ceases to apply to the scheme because the condition in paragraph (1)(d) ceases to be met,

section 73A(2)(b) (which for the purposes of section 73A(2)(a) permits the recovery of overpayments and payment of shortfalls) applies as if the reference to the purposes of section 73A(2)(a) included a reference to the purpose of recovering any overpayment or paying any shortfall that has occurred as a result of payments having been made on that assumption.

(**a**) S.I. 1996/1536.

(6) In any case where, by virtue of regulation 12, 12A or 12B of the 1996 Regulations (winding up of sectionalised schemes, schemes with partial government guarantee and partly foreign schemes), sections 73 to 74 of the 1995 Act (winding up provisions) apply to a scheme as if different parts of the scheme were separate schemes—

(a) this regulation (apart from this paragraph) also so applies; and

(b) references to schemes, employers and members must be read accordingly.

Amendments of the 2005 Regulations

3.—(1) The 2005 Regulations are amended as follows.

(2) Regulation 4(5) (under which in the case of a scheme in relation to which there is no assessment period during the winding up period section 73(4)(b) of the 1995 Act applies as if the liabilities for pensions and other benefits referred to in the category of preferred liabilities on winding up mentioned there were not restricted to the corresponding PPF liability) is revoked.

(3) In regulation 9 (which substitutes a new regulation for regulation 4 of the 1996 Regulations: calculation of the value or amount of scheme assets and liabilities) for the words "For regulation 4" substitute "For regulations 4 to 4C".

Amendment of the MFR Regulations

4. In regulation 6(1) of the MFR Regulations(**a**) (excluded assets) at the end add—

"(d) any assets representing the value of any rights in respect of money purchase benefits under the scheme rules.".

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

Stephen C. Timms
Minister of State,
Department for Work and Pensions

2nd August 2005

(**a**) Regulation 6(1) was amended by regulation 12(1) of S.I. 1996/3127 and paragraph 8(2) of Schedule 1 to S.I. 1997/786.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations modify the position under the Pensions Act 1995 (c.26) ("the 1995 Act") where an occupational pension scheme that has more than one employer or has had more than one employer at any time since 6th April 2005 and whose rules do not provide for the partial winding up of the scheme if it is being wound up. They also amend the Occupational Pension Schemes (Winding up etc.) Regulations 2005 (S.I. 2005/706) ("the 2005 Regulations") and the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996 (S.I. 1996/1536) ("the MFR Regulations").

Regulation 2 provides for cases where an insolvency event has occurred in relation to one of the persons who is an employer in relation to an occupational pension scheme since 6th April 2005 and the trustees or managers of the scheme have determined in the last 3 months that it is probable that the scheme will enter an assessment period in the next 12 months (that is, a period when the Board of the Pension Protection Fund ("the Board") determine whether to assume responsibility for the scheme for the purposes of pension protection). In such cases the normal obligation of the trustees or managers under section 73A of the 1995 Act to reduce the benefits that they pay out in respect of a member during the winding up period so that members do not receive more than they should according to the priority rules in section 73 of the 1995 Act is modified. The modification enables the trustees, if they wish, to pay in full the level of benefits that would be payable if the Board were to assume responsibility for the scheme. Regulation 2 also modifies section 73A of the 1995 Act so that if the trustees cease to expect the scheme to enter an assessment period in the next 12 months, they may recover any overpayments made as a result of exercising the power to pay greater amounts. Where sections 73 to 74 of the 1995 Act apply as if a part of a scheme were a scheme, regulation 2 applies in the same way.

Regulation 3 revokes regulation 4(5) of the 2005 Regulations with the result that the order of priority to be given to scheme liabilities being paid out during the winding up period of an occupational pension scheme under section 73(4) of the 1995 Act is the same whether or not during the winding up period there is an assessment period. (Regulation 4(5) modified section 73(4) where there was no assessment period.) Regulation 3 also makes it clear that the new regulation 4 substituted by regulation 9 of the 2005 Regulations supersedes regulations 4A to 4C of the Occupational Pension Schemes (Winding Up) Regulations 1996 (S.I. 1996/3126).

Regulation 4 amends regulation 6(1) of the MFR Regulations so that assets representing the value of any rights in respect of money purchase benefits under an occupational pension scheme are excluded from minimum funding valuations for the purposes of section 56 of the 1995 Act. This is consequential on the exclusion by section 73(10) of the 1995 Act of a scheme's money purchase liabilities from the liabilities mentioned in section 73(4) of that Act, because it is those liabilities that are valued for the purposes of those valuations and the valuation would be misleading if the corresponding assets were not also excluded.

As these Regulations are made before the expiry of the period of six months beginning with the coming into force of section 270 of the Pensions Act 2004 (c. 35) on which they are consequential, the requirement for the Secretary of State to consult such persons as he considers appropriate does not apply.

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

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