

2005 No. 695

PENSIONS

The Pensions Act 2004 (Commencement No. 3, Transitional Provisions and Amendment) Order 2005

Made - - - -

14th March 2005)

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 300(2)(a) and (b), 315(5) and 322(1) and (5) of the Pensions Act 2004(a), and of all other powers enabling him in that behalf, hereby makes the following Order:

Citation and interpretation

1.—(1) This Order may be cited as the Pensions Act 2004 (Commencement No.3, Transitional Provisions and Amendment) Order 2005.

(2) In this Order—

“the Act” means the Pensions Act 2004;

“the 1993 Act” means the Pension Schemes Act 1993(b);

“the 1995 Act” means the Pensions Act 1995(c); and

“the Authority” means the Occupational Pensions Regulatory Authority established by section 1 of the 1995 Act.

Appointed days

2.—(1) The day appointed for the coming into force of section 10 of the Act (functions exercisable by the Determinations Panel) in so far as not already brought into force, and of Schedule 2 to the Act (the reserved regulatory functions), is 6th April 2005(d).

(2) The day appointed for the coming into force of section 272 of the Act (debt due from the employer in the case of multi-employer schemes), in so far as not already brought into force, is 15th March 2005.

(3) The day appointed for the coming into force of section 300(1) of the Act (dissolution of the Authority) is 6th April 2005 (“the appointed day”).

(4) The day appointed for the coming into force of sections 278 and 280 for the purpose only of conferring power to make regulations is 15th March 2005.

(5) The day appointed for the coming into force of paragraph 21 of Schedule 1 to the Act (Pensions Regulator - delegation) is 15th March 2005 for the purpose only of conferring power to make regulations, and 6th April 2005 for all other purposes.

(a) 2004 (c. 35).

(b) 1993 (c. 48).

(c) 1995 (c. 26).

(d) Subsection (9)(b) of section 10 of the Pensions Act 2004 (“the Act”) was partially brought into force on 17th December 2004 by the Pensions Act 2004 (Commencement No. 1 and Consequential and Transitional Provisions) Order 2004 (S.I. 2004/3350 (C. 157)), and subsection (5)(a) of section 10 was brought into force on 10th February 2005 for regulation making purposes only and on 6th April 2005 for all other purposes by Part 3 of the Schedule to the Pensions Act 2004 (Commencement No. 2, Transitional Provisions and Consequential Amendments) Order 2005 (S.I. 2005/275 (C. 10)). Section 10(4) of the Act gives effect to Schedule 2 to the Act.

(6) The day appointed for the coming into force of Schedule 13 to the Act in so far as it relates to the repeal of paragraph 1(2)(a) of Schedule 1 to the Welfare Reform and Pensions Act 1999(a), and section 320 of the Act in so far as it relates to that provision, is 1st April 2005.

(7) The day appointed for the coming into force of the provisions set out in Schedule 1 to this Order is 6th April 2005.

Transfer of property, rights and liabilities

3.—(1) Subject to paragraph (2), all property, rights and liabilities to which the Authority is entitled or subject immediately before the appointed day shall, on that day, become the property, rights and liabilities of the Regulator.

(2) All property held by the Authority in relation to the carrying out of its function (as Registrar(b)) under regulation 6(1)(a) of the Register of Occupational and Personal Pension Schemes Regulations 1997(c) (availability of information held on the register) immediately before the appointed day shall, on that day, become the property of the Secretary of State.

Transitional modification of section 10 of the Act

4. Section 10 of the Act (functions exercisable by the Determinations Panel) shall, for the purposes of paragraph (6)(b) and (c) of article 5 of this Order, be modified for so that it shall have effect as if, after subsection (4), there were inserted the following subsection—

“(4A) For the purposes of this Part, a function conferred on the Occupational Pensions Regulatory Authority (“OPRA”) by or by virtue of the Pensions Act 1995 relating to—

- (a) the review, under section 96 of that Act (review of decisions), of a determination made by OPRA before the 6th April 2005 (“the appointed day”) of a question falling within OPRA’s functions, or
- (b) the reference for a decision by the court, under section 97 of that Act (references and appeals from the Authority), of any matter arising for determination by OPRA before the appointed day or of any matter arising before that day on—
 - (i) an application for a review of a determination; or
 - (ii) a review entered upon by OPRA without an application,

shall, where that function falls to be exercised by or in relation to the Regulator on or after the appointed day, also be a reserved regulatory function.”.

Transitional provisions

5.—(1) In this article, unless the context otherwise requires, “function of the Authority” means a function of the Authority which is transferred to the Regulator under subsection (1) of section 7 of the Act (transfer of OPRA’s functions to the Regulator) on 6th April 2005 (“the appointed day”)(d).

(a) 1999 c. 30.

(b) Section 6(1)(b) of the Pension Schemes Act 1993 provides for the appointment of a Registrar of Occupational and Personal Pension Schemes (“the Registrar”). Regulation 2(2) of the Register of Occupational and Personal Pension Schemes Regulations 1997 (S.I. 1997/371) appoints the Occupational Pensions Regulatory Authority (“the Authority”) as the Registrar. The function referred to under regulation 6(1)(a) of those Regulations is conferred on the Registrar.

(c) S.I. 1997/371.

(d) Section 7(1) of the Pensions Act 2004 makes provision in respect of the transfer to the Pensions Regulator of the functions of the Occupational Pensions Regulatory Authority which are conferred by or by virtue of the Pension Schemes Act 1993, the Pensions Act 1995 (c. 26) and the Welfare Reform and Pensions Act 1999.

(2) Anything done (or having effect as if done) by or in relation to the Authority before the appointed day pursuant to, or for the purposes of, any function of the Authority shall, so far as is required for continuing its effect, have effect as if done by or in relation to the Regulator pursuant to, or for the purposes of, that function.

(3) Subject to paragraph (5), anything which, immediately before the appointed day, is in the process of being done by or in relation to the Authority pursuant to, or for the purposes of, any function of the Authority shall be continued by or in relation to the Regulator pursuant to, or for the purposes of, that function.

(4) Any reference to the Authority in any document constituting or relating to anything to which paragraph (2) or (3) applies in relation to any function of the Authority shall, so far as is required for giving effect to those provisions, be construed as a reference to the Regulator.

(5) Where any function of the Authority described in paragraph (6) would, but for its dissolution, fall to be exercised on or after the appointed day, or fell to be exercised before the appointed day but has not been exercised, that function shall be exercised by the Regulator as if it were a function of the Regulator conferred on it under or by virtue of the Act.

(6) The functions of the Authority to which paragraph (5) refers are—

- (a) the investigation of any matter falling within the Authority's functions where the matter under investigation occurred, or first occurred, before the appointed day,
- (b) the review, under section 96 of the 1995 Act, of a determination made by the Authority before the appointed day of a question falling within the Authority's functions, and
- (c) the reference for a decision by the court, under section 97 of the 1995 Act, of any matter arising for determination by the Authority before the appointed day or of any matter arising before that day on an application for a review of a determination or on a review entered upon by the Authority without an application.

(7) Where any function under regulation 6(1)(a) of the Register of Occupational and Personal Pension Schemes Regulations 1997 fell to be exercised by the Authority, as Registrar, before the appointed day but has not been exercised, or would have fallen to be exercised by the Authority on or after the appointed day, that function shall be exercised by the Secretary of State (or by a person appointed by him).

(8) Schedule 2, which makes further transitional provision, has effect.

Savings

6. Subject to the transitional provisions in Schedule 2, the provisions of the enactments that are specified in the table in Schedule 3 shall, so far as is required for the purpose of giving effect to paragraph (3) of article 5, continue to have effect as they were in force immediately before their amendment by any of the provisions of Part 1 of, and Schedule 12 to, the Act.

►¹6A.—(1) Notwithstanding the repeals of section 74 of the 1995 Act (discharge of liabilities by insurance, etc.) mentioned in Schedule 1, that section shall continue to have effect as it applied immediately before 6th April 2005 to any scheme which—

- (a) was regarded at that time by virtue of regulation 2 of the Occupational Pension Schemes (Winding Up) Regulations 1996(a) (commencement of winding up) as having begun to be wound up for the purposes of those Regulations; or
- (b) in accordance with section 124(3A) to (3E) of the 1995 Act(b) (interpretation: time at which the winding up of an occupational pension scheme shall be taken to begin) began to wind up before that date.

¹Art. 6A inserted by art. 3(a) of S.I. 2005/1108 as from 5.4.05.

(a) S.I. 1996/3126.

(b) Subsections (3A) to (3E) were inserted by the Child Support, Pensions and Social Security Act 2000 (c. 19). Subsections (3A) and (3E) are amended by section 319(1) of, and paragraph 69 of Schedule 12 to, the Pensions Act 2004.

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(2) In paragraph (1), the reference to a scheme includes a reference to any section of a scheme to which section 74 of the 1995 Act applies as if it were a scheme by virtue of regulation 12 of those Regulations(a) (winding up of sectionalised schemes etc.).◀

[Article 7 amends Part 7 to the Schedule of S.I. 2005/275.]

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

14th March 2005

Malcolm Wicks
Minister of State,
Department for Work and Pensions

SCHEDULE 1

Article 2(7)

PROVISIONS OF THE ACT COMING INTO FORCE ON 6TH APRIL
2005

<i>Provisions of the Act</i>	<i>Subject Matter</i>
Schedule 12, paragraphs 7, 35 to 43, 47, 66, 68, 70, 73, 77(1) and (3), 78, and 80, and section 319(1) in so far as it relates to those paragraphs	consequential amendments
Schedule 13, in so far as it relates to specified repeals in relation to— the Pension Schemes Act 1993, sections 6, 99(6), 101J(3), 129, 168A, 181 except the definition of “voluntary contributions requirements” in subsection (1), and 192(2); the Pensions Act 1995, sections 1, 2, 5, 7(1) and (4), 10(5)(a), 11(3), 13, 22(1)(b), 25(2), 26A to 26C, 28(4), 29, 30, 30A, 31, 48, 72A(9), 72C(2), 74, 75(9) and 96 to 114, and Schedule 1, paragraph 23 of Schedule 3, and paragraph 20 of Schedule 5; the Welfare Reform and Pensions Act 1999, sections 2(5) and (6), 4, 5 and 38(1), and paragraphs 1(2)(b)(i) and (xi) to (xiii), 2 and 3 of Schedule 1, paragraph 9 of Schedule 2, and paragraph 55 of Schedule 12; the Anti-terrorism, Crime and Security Act 2001, paragraph 37 of Part 1 of Schedule 4; and section 320 in so far as it relates to those provisions.	repeals

(a) Regulation 12(1) was substituted and regulation 12(2) was deleted by regulation 17 of S.I. 1997/786.

SCHEDULE 2

Article 5(8)

FURTHER TRANSITIONAL PROVISIONS

Transitional provisions relating to the 1993 Act

1. Section 175 of the 1993 Act (levies towards certain expenditure) shall be modified so that it shall have effect as if, for the words “be recoverable by the Registrar” in subsection (8), there were substituted the words “be recoverable by the Regulatory Authority”.

Transitional provisions relating to section 2 of the 1995 Act

2. Section 2 of the 1995 Act (reports to the Secretary of State) shall be modified so that it shall have effect as if, after subsection (1), there were inserted the following subsection—

“(1A) The Regulatory Authority must prepare a report for the period commencing 1st April 2004 and ending 5th April 2005 and must send the report to the Secretary of State as soon as practicable after the end of that period.”.

Transitional provisions relating to section 96 of 1995 Act

3. Section 96 of the 1995 Act (review of decisions) shall be modified so that it shall have effect as if—

- (a) for the words “any determination of theirs” in subsection (2), there were substituted the words “any determination of the Occupational Pensions Regulatory Authority”; and
- (b) for the words “any other such determination of theirs” in paragraph (a) of subsection (3), there were substituted the words “any other such determination of the Occupational Pensions Regulatory Authority”.

Transitional provisions relating to section 97 of the 1995 Act

4. Section 97 of the 1995 Act (references and appeals from the Authority) shall be modified so that it shall have effect as if, for the words “the Authority” in each place where they appear in subsections (1) to (4) and (7), there were substituted the words “the Determinations Panel of the Pensions Regulator”.

Transitional provisions relating to section 103 of the 1995 Act

5. Section 103 of the 1995 Act (publishing reports) shall be modified so that it shall have effect as if, for the words “any investigation under this Part”, there were substituted the words “any investigation by the Occupational Pensions Regulatory Authority under this Part”.

Transitional provisions relating to paragraph 16 of Schedule 1 to the 1995 Act

6. Paragraph 16 of Schedule 1 to the 1995 Act (accounts) shall be modified so that it shall have effect as if—

- (a) at the beginning of sub-paragraph (1), for the word “It” there were substituted the words “Subject to paragraph (1A), it”; and
- (b) after sub-paragraph (1), there were inserted the following sub-paragraph—

“(1A) The statement of accounts which the Authority is required to prepare in respect of the financial year commencing 1st April 2004 shall also include its accounts for the period commencing on 1st April 2005 and ending on 5th April 2005.”.

SCHEDULE 3

Article 6

Provisions referred to in article 6 which are to continue to have effect as they were in force immediately before their amendment or repeal by the Act.

Provisions of the enactments	Subject Matter
The Pensions Act 1993	
Section 175	Levies towards certain expenditure
The Pensions Act 1995	
Section 2	Reports to Secretary of State
Section 3	Prohibition orders
Section 4	Suspension orders
Section 8	Appointment of trustees: consequences
Section 11	Powers to wind up schemes
Section 72B	Directions to facilitate winding up
Section 96	Review of decisions
Section 97	References and appeals from the authority
Section 98	Provision of information
Section 99	Inspection of premises
Section 100	Warrants
Section 101	Information and inspection: penalties
Section 102	Savings for certain privileges etc.
Section 103	Publishing reports
¹ Section 124(1)	Interpretation of Part I◀
Schedule 1, paragraph 16	Accounts

¹Words inserted in Sch. 3 by art. 3(b) of S.I. 2005/1108 as from 5.4.05.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes further provision for the coming into force of the Pensions Act 2004. In particular, it makes provision in connection with the coming into force of section 300(1) of the Pensions Act 2004 (c. 35) (“the Act”) which provides for the dissolution of the Occupational Pensions Regulatory Authority (“the Authority”) and under section 300(2) of the Act for the transfer of property, rights and liabilities of the Authority to the Pensions Regulator (“the Regulator”) on that day.

Article 1 provides for citation and interpretation.

Article 2 provides that the day appointed for the coming into force of section 10 of the Act is 6th April 2005 except in so far as any part of that provision has already been brought into force before that day. It further provides that the day appointed for the coming into force of section 272 of the Act, in so far as that section is not already in force, is 15th March 2005. Article 2 also provides that the day appointed for the coming into force of subsection (1) of section 300 of, and Schedule 2 to the Act, is 6th April 2005 (“the appointed day”). It also provides that the day appointed for the coming into force of sections 278 and 280 of the Act for the purposes of conferring power to make regulations is 15th March 2005, the day appointed for the coming into force of paragraph 21 of Schedule 1 to the Act is 15th March 2005 for the purposes of conferring power to make regulations, and 6th April 2005 for all other purposes. Article 2 also brings a repeal into force on 1st April, and gives effect to Schedule 1 which sets out various consequential amendments and repeals coming into force on 6th April 2005.

Article 3 makes provision for all property, rights and liabilities to which the Authority is entitled or subject immediately before the appointed day to transfer to the Regulator on that day, apart from property relating to the carrying out of the pension tracing service by the Authority, which transfers to the Secretary of State on the appointed day.

Article 4 modifies section 10 of the Act (functions exercisable by the Determinations Panel) by inserting a new subsection (4A) into that section. The new subsection (4A) provides that any function conferred on the Authority by section 96 or 97 of the Pensions Act 1995 (c. 26) (“the 1995 Act”) which is exercised by the Regulator on or after the appointed day is also a reserved regulatory function for the purposes of Part 1 of the Act. Section 96 of the 1995 Act makes provision in respect of the review of decisions of the Authority. Section 97 of the 1995 Act makes provision for the reference by the Authority to the court of questions of fact arising in connection with any matter under Part 1 of the 1995 Act or on an application to the Authority for a review of a determination or on a review entered into by it without an application.

Article 5 makes various transitional provisions the purpose of which is to enable the Regulator to continue dealing with any matters that were being dealt with by the Authority before the appointed day but which have not been concluded by the Authority before that day. It also enables the effect of anything done by or in relation to the Authority before the appointed day to continue on or after that day. Article 5 also provides that certain specified functions of the Authority which fall to be exercised by the Authority on or after the appointed day, or which fell to be exercised by the Authority before that day but have not been exercised, shall be exercised by the Regulator as if they were functions conferred on the Regulator under, or by virtue of, the Act. It similarly provides that in relation to one function (that of carrying out what is known as the pension tracing service) which fell to be exercised by the Authority before the appointed day but has not been exercised, or would have fallen to be exercised by it on or after the appointed day, that function shall be exercised by the Secretary of State (or a person appointed by him). Article 5 also enacts Schedule 2 which makes further transitional provisions.

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Article 6 provides that the provisions of the enactments that are specified in the table in Schedule 3 shall continue to have effect for particular purposes as in force immediately before the appointed day.

Article 7 amends the Pensions Act 2004 (Commencement No.2, Transitional Provisions and Consequential Amendments) Order 2005 (S.I. 2005/275 (C.10)), to remove an incorrect reference.

[The note as to earlier commencement orders is not reproduced here. A full list of commencement dates is given at Annex 2 to the Pensions Act 2004 in Part I of this volume.]