

## 1996 No. 3128

### PENSIONS

#### The Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations 1996

*Made - - - - - 11th December 1996*  
*Laid before Parliament 18th December 1996*  
*Coming into force in accordance with regulation 1(2) to (6)*

### ARRANGEMENT OF REGULATIONS

#### *Preliminary*

1. Citation and commencement.
2. Interpretation.

#### *Schemes which are not money purchase schemes*

3. Calculation of the value of scheme liabilities and assets.
- 3A. Valuation of liabilities where employer not insolvent and where winding up commences before 11th June 2003.
- 3B. Valuation of liabilities where employer not insolvent and where winding up commences on or after 11th June 2003.
- 3C. Valuation of liabilities where winding up commences, and date of calculation falls, on or after 15th February 2005.
- 3D. Valuation of liabilities where there is more than one employer.
4. Multi-employer schemes.
5. Former employers.
6. Ceasing to participate: transitional provision.

#### *Money purchase schemes*

7. Money purchase schemes: deficiency owing to fraud etc.
8. Multi-employer money purchase schemes.
9. Former employers of money purchase schemes.

#### *General and supplementary*

10. Disapplication of section 75.
11. Minor modifications.

OCCUPATIONAL PENSION SCHEMES (**DEFICIENCY ON WINDING UP ETC.**) REGULATIONS 1996

12. Modification of schemes: apportionment of section 75 debts.
13. Revocations and savings.

## SCHEDULES

1. Form of actuary's certificate.
2. Minor modifications.

The Secretary of State for Social Security, in exercise of the powers conferred on him by sections 68(2)(e), 75(5), (9) and (10), 89(2), 118(1)(a) and (b), 119, 124(1), 125(2), (3) and (4)(a) and 174(2) and (3) of the Pensions Act 1995(a) and of all other powers enabling him in that behalf, by this instrument, after consultation with such persons as he considered appropriate(b), hereby makes the following regulations:—

*Preliminary***Citation and commencement**

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations 1996.

(2) This regulation shall come into force on 19th December 1996.

(3) Subject to paragraphs (2) and (4) to (6) and regulation 6(1) (in so far as it relates to the period there mentioned), these Regulations shall come into force on 6th April 1997.

(4) Regulations 3 to 6 shall not apply where the applicable time falls before that date.

(5) Regulations 3 to 6 shall not apply to any scheme which began to be wound up earlier than 19th December 1996.

(6) Regulations 7 to 9 shall only apply where the act or omission to which the reduction in value is attributable occurred after 5th April 1997.

**Interpretation**

2.—(1) For the purposes of these Regulations the time when a scheme begins to be wound up shall be determined in accordance with regulation 2 of the Occupational Pension Schemes (Winding Up) Regulations 1996(c).

(2) In these Regulations, unless the context otherwise requires—

▶<sup>1</sup>“the actuary” means the actuary appointed for the scheme in pursuance of section 47(1)(b) or, in the case of a scheme to which that provision does not apply by virtue of regulations made under subsection (5) of that section, an actuary otherwise authorised by the trustees or managers to provide such valuations or certifications as may be required under these regulations; ◀

“the applicable time” has the same meaning as in section 75 (but see the modifications in regulations 4(3), 6(3) and 7(2));

▶<sup>2</sup>◀

“employer” has the same meaning as in section 75 (but see paragraph (4) and regulations 5, 6 and 9);

<sup>1</sup>Definition of “the actuary” inserted in reg. 2(2) by reg. 5 of S.I. 1997/3038 as from 12.1.98.

<sup>2</sup>Defn. of “the Board of Actuarial Standards” is, omitted by Sch. 1, para. 4(a)(i) of S.I. 2012/1817 as from 9.8.12.

(a) 1995 c. 26. Section 124(1) is cited for the meaning given to “prescribed” and “regulations”.

(b) See section 120(1) of the Pensions Act 1995.

(c) S.I. 1996/3126.

“the MFR Regulations” means the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996(a);

“money purchase scheme” <sup>1</sup>means an occupational pension scheme under which all the benefits that may be provided other than death benefits are money purchase benefits

<sup>1</sup>Defn. amended by reg. 19(2) of S.I. 1997/786 as from 6.4.97.

“the Taxes Act” means the Income and Corporation Taxes Act 1988(b).

(3) References in these Regulations to a relevant insolvency event occurring in relation to an employer have the same meaning as in section 75.

(4) In these Regulations “scheme” must be construed in appropriate cases in accordance with subsections (1B) and (1C) of section 75 (as inserted by regulation 4(2) or, as the case may be, regulation 8) and Schedule 2 (and “employer” and “member” must be construed accordingly).

<sup>2</sup>(5) References in these Regulations to the guidance in GN 19 are to the guidelines on winding up and scheme asset deficiency (GN 19), adopted or prepared, and from time to time revised, by <sup>3</sup>the Financial Reporting Council Limited <sup>4</sup>, with any such revisions at the applicable time.

<sup>2</sup>Reg. 2(5) substituted in reg. 2 by reg. 8 of S.I. 2007/60 as from 6.4.07.

<sup>3</sup>In reg. 2(5), substituted by Sch. 1 para. 4(a)(ii) of S.I. 1817/2012 as from 9.8.12.

(6) References in these Regulations to the guidance in GN 27 are to the guidelines on minimum funding requirement (GN 27), <sup>5</sup>published by the Institute and Faculty of Actuaries (c) and approved for the purposes of the MFR Regulations by the Secretary of State, with such revisions as have been so approved at the applicable time.

<sup>4</sup>Words substituted in reg. 2(5) by Sch. to S.I. 2008/2301 as from 1.10.08.

<sup>5</sup>Words in reg. 2(6) substituted by reg. 6(a) of S.I. 2012/692 as from 6.4.12.

(7) Subject to the previous provisions of this regulation and unless the context otherwise requires—

- (a) expressions used in these Regulations have the same meaning as if they were used in Part I of the Pensions Act 1995; and
- (b) in these Regulations any reference to a section shall be construed as a reference to a section of that Act.

*Schemes which are not money purchase schemes*

**Calculation of the value of the scheme liabilities and assets**

3.—(1) <sup>6</sup><sup>7</sup>Subject to <sup>8</sup>regulations 3A to 3D the liabilities and assets of a scheme which are to be taken into account for the purposes of section 75(1) and their amount or value shall be determined, calculated and verified by the actuary—

<sup>6</sup>Words in reg. 3(1) substituted by reg. 4(2) of S.I. 2002/380 as from 19.3.02.

<sup>7</sup>Words substituted in reg. 3(1) by reg. 3 of S.I. 2004/403 as from 15.3.04.

<sup>8</sup>Words in reg. 3(1) substituted by reg. 3(2) of S.I. 2005/72 as from 15.2.05.

- (a) on the general assumptions specified in paragraphs (2) and (3) of regulation 3 of the MFR Regulations;
- (b) subject to paragraphs (3) and (4), in accordance with regulations 4 to 8 of the MFR Regulations;
- (c) subject to sub-paragraph (d), in so far as the guidance given in GN 27 applies as respects regulations 3(2) and (3) and 4 to 8 of the MFR Regulations, in accordance with that guidance; and
- (d) in accordance with the guidance given in GN 19 so far as that guidance applies for the purpose of these Regulations;

and where in these Regulations (or in the MFR Regulations as applied by this paragraph) there is a reference to the value of any asset or the amount of any liability being calculated or verified in accordance with the opinion of the actuary or as he thinks appropriate, he shall comply with any relevant provision in the guidance given in GN 27 or, as the case may be, GN 19 in making that calculation or verification.

(a) S.I. 1996/1536.

(b) 1988 c. 1.

(c) Copies of GN 19 and GN 27 may be obtained from the Faculty of Actuaries, 17 Thistle Street, Edinburgh, EH2 1DF.

## OCCUPATIONAL PENSION SCHEMES (DEFICIENCY ON WINDING UP ETC.) REGULATIONS 1996

(2) The value of the assets and the amount of the liabilities of a scheme which are to be taken into account for the purposes of section 75(1) must be certified by the actuary in the form set out in Schedule 1 to these Regulations, but if the scheme is being wound up on the date as at which the valuation is made, the actuary must modify the note at the end of the certificate by omitting the words from “if the scheme” onwards.

(3) For the purposes of this regulation—

- (a) references in regulations 3(2), 4, 5, 7 and 8 of the MFR Regulations to the relevant date shall be taken as references to the applicable time;
- (b) regulations 4(1), 7(1) and 8(2) of the MFR Regulations shall have effect with the substitution for the words “the minimum funding requirement is met” of the words “the value of the assets of the scheme is less than the amount of the liabilities of the scheme”;
- (c) regulation 6(1)(b) of the MFR Regulations shall have effect with the addition at the end of the words “(and any amount treated as a debt due to the trustees or managers of the scheme under section 75(1) by virtue of the valuation in question)”.

(4) In its application for the purposes of this regulation in a case where the applicable time falls after the scheme has begun to be wound up, regulation 6(1) of the MFR Regulations has effect with the addition after sub-paragraph (c) of the words—

“and for the purposes of sub-paragraph (a), regulation 5(1)(a) of the Occupational Pension Schemes (Investment) Regulations 1996 (exclusion of employer-related investments over 5 per cent. of current market value) shall be disregarded.”.

<sup>1</sup>Reg. 3A inserted by reg. 4(3) of S.I. 2002/380 as from 19.3.02.

<sup>2</sup>Words added to reg. head of reg. 3A by reg. 3(3) of S.I. 2004/403 as from 15.3.04.

<sup>3</sup>Words inserted in reg. 3A(1) by reg. 3(3) of S.I. 2005/72 as from 15.2.05.

**►<sup>1</sup>Valuation of liabilities where employer not insolvent ►<sup>2</sup>and where winding up commences before 11th June 2003◄**

**3A.—**(1) ►<sup>3</sup>Subject to regulation 3C,◄ where a scheme (including a section of a scheme in relation to which there is more than one employer which is treated as a separate scheme for the purposes of section 75) is being wound up and the employer was not insolvent immediately before the winding up of the scheme commenced, regulation 3 shall have effect as if—

- (a) in paragraph (1)—
  - (i) at the beginning of subparagraph (a), there were inserted the words “except to the extent that the liabilities are in respect of any entitlement to a pension or other benefit that has arisen under the scheme and in respect of which paragraph (1B) below applies,”;
  - (ii) for the words “paragraphs (2) and (3)” in subparagraph (a), there were substituted the words “paragraphs (2)(a) to (c) and (3)”;
  - (iii) for the words “paragraphs (3) and (4)” in subparagraph (b), there were substituted the words “paragraphs (1B), (3) and (4)”;
  - (iv) for the words “regulations 3(2) and (3)” in subparagraph (c), there were substituted the words “regulations 3(2)(a) to (c) and (3)”;
  - (v) after the words “and 4 to 8 of the MFR Regulations” in subparagraph (c), there were inserted the words “or as respects paragraphs (1A) and (1B) below”; and

(b) after paragraph (1) there were inserted the following paragraphs:

“(1A) The liabilities of a scheme which are to be taken into account under paragraph (1) above shall include all expenses (except the cost of annuities taken into account by virtue of paragraph (1B) below) which, in the opinion of the trustees or managers of the scheme, are likely to be incurred in connection with the winding up of the scheme.”; and

“(1B) When calculating the liabilities of the scheme in respect of any entitlement to the payment of any pension or other benefit (including any increase in a pension) that has arisen under the scheme on or before the applicable time, it shall be assumed that all such liabilities will be discharged by the purchase of annuities of a kind described in section 74(3)(c) (discharge of liabilities by insurance - annuity purchase) and, for the purposes of the calculation, the actuary shall estimate the

cost of purchasing any such annuities.”.

(2) Where a scheme to which regulation 4 (multi-employer schemes) applies (including a section of a scheme in relation to which there is more than one employer which is treated as a separate scheme for the purposes of section 75) is being wound up in circumstances where—

- (a) an employer in relation to the scheme ceases to employ persons in the description or category of employment to which the scheme relates at a time when there are no other employers in relation to the scheme continuing to employ such persons; and
- (b) that employer was not insolvent immediately before the winding up commenced,

regulation 3 shall have effect with the modifications set out in paragraph (1)(a) and (b) of this regulation.

(3) For the purposes of paragraphs (1) and (2) above, an employer is insolvent if a relevant insolvency event has occurred in relation to that employer.

(4) In the Note at the end of the form of certificate set out in Schedule 1 (form of actuary’s certificate), after the word “securing” there shall be inserted the words “all of”. ◀

**▶<sup>1</sup>Valuation of liabilities where employer not insolvent and where winding up commences on or after 11th June 2003**

<sup>1</sup>Reg. 3B inserted by reg. 3(4) of S.I. 2004/403 as from 15.3.04.

**3B.—**(1) This regulation shall apply in the case of a scheme to which regulation 4B of the Occupational Pension Schemes (Winding Up) Regulations 1996 (calculation of liabilities where employer not insolvent and where winding up commences on or after 11th June 2003) applies.

(2) In the case of a scheme to which this regulation applies, paragraph (1)(b) of regulation 3A (valuation of the liabilities where employer not insolvent) shall have effect as if for paragraph (1B) in quotation marks there were substituted the following paragraph—

“(1B) When calculating the liabilities of the scheme for any—

- (a) accrued rights that exist on or before the applicable time to the payment of any pension or other benefit under the scheme (including any increase to a pension);
- (b) future pensions, or other future benefits, attributable (directly or indirectly to pension credits (including any increase to a pension) which have arisen on or before the applicable time; and
- (c) entitlement to the payment of a pension or other benefit (including any increase in a pension) that has arisen on or before the applicable time,

it shall be assumed that all such liabilities will be discharged by the purchase of annuities of the type described in section 74(3)(c)(discharge of liabilities by insurance - annuity purchase) and, a for the purposes of the calculation, the actuary shall estimate the costs of purchasing any such annuities.” ◀

**▶<sup>2</sup>Valuation of liabilities where winding up commences, and date of calculation falls, on or after 15 February 2005**

<sup>2</sup>Regulations 3C & 3D inserted by reg. 3(4) of S.I. 2005/72 as from 15.2.05.

**3C.—**(1) This regulation shall apply in the case of a scheme which begins to wind up on or after 15 February 2005 (“the commencement date”), and the date by reference to which the liabilities and assets of the scheme are determined, calculated and verified for the purposes of section 75 is a date falling on or after the commencement date.

(2) In the case of a scheme to which this regulation applies, regulation 3 shall have effect as if—

- (a) in paragraph (1)—
  - (i) at the beginning of sub-paragraph (a), there were inserted the words

OCCUPATIONAL PENSION SCHEMES (**DEFICIENCY ON WINDING UP ETC.**) REGULATIONS 1996

“except to the extent that the liabilities are in respect of any entitlement to a pension or other benefit that has arisen under the scheme and in respect of which paragraph (1B) applies,”;

- (ii) for the words “paragraphs (2) and (3)” in sub-paragraph (a), there were substituted the words “paragraphs (2)(a) to (c) and (3)”;
  - (iii) for the words “paragraphs (3) and (4)” in sub-paragraph (b), there were substituted the words “paragraphs (1B), (3) and (4)”;
  - (iv) for the words “regulations 3(2) and (3)” in sub-paragraph (c), there were substituted the words “regulations 3(2)(a) to (c) and (3)”;
  - (v) after the words “and 4 to 8 of the MFR Regulations” in sub-paragraph (c), there were inserted the words “or as respects paragraphs (1A) and (1B)”;
- (b) after paragraph (1) there were inserted the following paragraphs:  
 “(1A) The liabilities of a scheme which are to be taken into account under paragraph (1) above shall include all expenses (except the cost of annuities taken into account by virtue of paragraph (1B)) which, in the opinion of the trustees or managers of the scheme, are likely to be incurred in connection with the winding up of the scheme.

(1B) When calculating the liabilities of the scheme for any—

- (a) accrued rights that exist on or before the applicable time to the payment of any pension or other benefit under the scheme (including any increase to a pension);
  - (b) future pensions, or other future benefits, attributable (directly or indirectly) to pension credits (including any increase to a pension) which have arisen on or before the applicable time; and
  - (c) entitlement to the payment of a pension or other benefit (including any increase in a pension) that has arisen on or before the applicable time,
- it shall be assumed that all such liabilities will be discharged by the purchase of annuities of the type described in section 74(3)(c) and, for the purposes of the calculation, the actuary shall estimate the costs of purchasing any such annuities.

**Valuation of liabilities where there is more than one employer**

**3D.**—(1) This regulation shall apply where there is a scheme to which regulation 4 (multi-employer schemes) applies (including a section of a scheme in relation to which there is more than one employer which is treated as a separate scheme for the purposes of section 75) and the circumstances described in paragraph (2) apply.

(2) The circumstances are that—

- (a) the scheme is not being wound up;
- (b) a relevant insolvency event occurs in relation to an employer in relation to the scheme; and
- (c) the applicable time is on or after 15 February 2005.

(3) In the case of a scheme to which this regulation applies, regulation 3 shall have effect with the modifications set out in regulation 3C(2)(a) and (b). ◀

**Multi-employer schemes**

**4.**—(1) In its application to a scheme in relation to which there is more than one employer, section 75 has effect with the following modifications.

(2) After subsection (1) insert—

“(1A) In the case of a scheme in relation to which there is more than one employer, the amount of the debt due from each employer shall, unless the scheme provides for the total amount of the debt due under subsection (1) to be otherwise apportioned amongst the employers, be such proportion of that total amount as, in the opinion of the actuary after consultation with the trustees or managers, the

amount of the schemes's liabilities attributable to employment with that employer bears to the total amount of the schemes's liabilities attributable to employment with any of the employers.

(1B) Where a scheme in relation to which there is more than one employer is divided into two or more sections and the provisions of the scheme are such that—

- (a) different sections of the scheme apply to different employers or groups of employers (whether or not more than one section applies to any particular employer or groups including any particular employer);
- (b) 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); and
- (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, each section of the scheme shall be treated as a separate scheme for the purposes of this section.

(1C) Where—

- (a) a scheme which has been such a scheme as is mentioned in subsection (1B) 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; and
- (b) the provisions of the scheme have not been amended so as to prevent the conditions mentioned in subsection (1B)(a) to (c) being satisfied in relation to two or more sections; but
- (c) those conditions have ceased to be satisfied in relation to one or more sections (whether before or after this section came into force) by reason only of there being no members in pensionable service under the section and no contributions which are to be allocated to it,

the section in relation to which those conditions have ceased to be satisfied shall be treated as a separate scheme for the purposes of this section.”

►<sup>1</sup>(1D) For the purposes of subsections (1B) and (1C), there shall be disregarded any provisions of the scheme by virtue of which contributions or transfers of assets may be made to make provision for death benefits; and where subsection (1B) or (1C) applies and contributions or transfers are so 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 shall also be treated as if it were a separate scheme for the purposes of this section.

<sup>1</sup>Sub-paras. (1D) & (1E) inserted by reg. 19(3) of S.I. 1997/786 as from 6.4.97.

(1E) For the purposes of subsections (1B), (1C) and (1D), there shall be disregarded any provisions of the scheme by virtue of which on the winding up of the scheme assets attributable to one section may be used for the purposes of another section. ◀

(3) For subsection (3) substitute—

“(3) In this section “the applicable time” means—

- (a) in relation to a scheme which is being wound up, any time—
  - (i) after the commencement of the winding up, and
  - (ii) before a relevant insolvency event has occurred in relation to each of the employers to whom the scheme relates; and
- (b) in relation to a scheme which is not being wound up—
  - (i) in relation only to any employer who ceases to be a person employing persons in the description or category of employment to which the scheme relates at a time when at least one other person continues to employ such persons, immediately before he so ceases, and
  - (ii) in relation only to any employer in relation to whom a relevant insolvency event occurs, immediately before that event occurs.”.

OCCUPATIONAL PENSION SCHEMES (**DEFICIENCY ON WINDING UP ETC.**) REGULATIONS 1996

(4) Where (apart from this paragraph) paragraph (1) does not apply to a scheme by reason of its not being a scheme in relation to which there is more than one employer but, if it did so, subsection (1C) of section 75 (as inserted by paragraph (2)) would apply to the scheme, that section shall have effect with the modifications made by paragraphs (2) and (3).

(5) For the purposes of section 75(1A) (as inserted by paragraph (2))–

- (a) the total amount of the scheme's liabilities which are attributable to employment with any of the employers; and
- (b) the amount of the liabilities attributable to employment with any one employer,

shall be such amount as is determined, calculated and verified by the actuary in accordance with the guidance given in GN 19; and a determination under this paragraph must be certified by the actuary as being in accordance with that guidance.

**Former employers**

5.—(1) In the application of section 75 and these Regulations to a scheme which has no active members, “the employer” includes every person who employed persons in the description or category of employment to which the scheme relates immediately before the occurrence of the event after which the scheme ceased to have any active members.

(2) In the application of section 75 and these Regulations to a scheme, “the employer” includes any person who has ceased on or after 6th April 1997 and before the applicable time to be a person employing persons in the description or category of employment to which the scheme relates, unless–

- (a) when he so ceased the scheme was not being wound up and continued to have active members, and
- (b) one of the conditions in paragraph (3) is met.

(3) Those conditions are–

- (a) that no debt was treated as becoming due from him under section 75(1) by virtue of his so ceasing;
- (b) that such a debt was treated as becoming due from him <sup>1</sup>and–
  - (i) has been paid before the applicable time, or
  - (ii) if not so paid, was not so paid solely because he was not notified of the debt, and of the amount of it, sufficiently in advance of the applicable time for it to be paid before the applicable time; <sup>4</sup>
- (c) that such a debt was treated as becoming due from him but at the applicable time it is excluded from the value of the assets of the scheme by virtue of regulation 6(1)(b) of the MFR Regulations (exclusion of debts unlikely to be recovered).

<sup>1</sup>Words substituted in regs. 5(3)(b) & 6(2)(b) by reg. 4(2) & (3) of S.I. 1999/3198 as from 30.12.99.

**Ceasing to participate: transitional provision**

6.—(1) This regulation applies to a scheme if a person ceased to be a person employing persons in the description or category of employment to which the scheme relates during the period beginning with 19th December 1996 and ending with 5th April 1997 and at a time when the scheme was not being wound up and continued to have active members; and in this regulation “former participator” means a person who so ceased.

(2) In the application of section 75 and these Regulations to a scheme to which this regulation applies, “employer” includes a former participator, unless before the applicable time a time which was the applicable time in relation to the former participator by virtue of paragraph (3) below has occurred and–

- (a) no debt was then treated as due from him under section 75(1), or
- (b) such a debt was then treated as becoming due from him <sup>1</sup>and–

- (i) has been paid before the applicable time, or
- (ii) if not so paid, was not so paid solely because he was not notified of the debt, and of the amount of it, sufficiently in advance of the applicable time for it to be paid before the applicable time; ◀ or
- (c) such a debt was then treated as becoming due from him but at the applicable time it is excluded from the value of the assets of the scheme by virtue of regulation 6(1)(b) of the MFR Regulations (exclusion of debts unlikely to be recovered).

(3) In the application of section 75 and these Regulations to a scheme to which this regulation applies which is not being wound up, “the applicable time”, in relation to a former participator only, includes—

- (a) the date by reference to which the earliest minimum funding valuation required by section 57(1)(a) for the scheme is made, or
- (b) the earliest time when a debt is treated under section 75(1) as becoming due from another person by virtue of section 75(3)(b)(i) or (ii) (as substituted by regulation 4(3)),

whichever is the earlier.

**Money purchase schemes: deficiency owing to fraud etc.**

7.—(1) Subject to regulation 10, section 75 shall apply to money purchase schemes with the following modifications.

(2) For subsections (1) and (2) substitute—

“(1) If, in the case of an occupational pension scheme which is a money purchase scheme, the value at the applicable time of the unallocated assets of the scheme is less than the amount of any criminal reduction in the aggregate value of the allocated assets of the scheme, then an amount equal to the difference shall be treated as a debt due from the employer to the trustees or managers of the scheme.

(2) In this section—

“allocated assets”, in relation to a scheme, means assets which have been specifically allocated for the provision of benefits to or in respect of members (whether generally or individually) or for the payment of the scheme’s expenses (and “unallocated” shall be construed accordingly);

“the applicable time” means the time immediately after the act or omission to which the criminal reduction is attributable occurs or, if that time cannot be determined, the earliest time when the auditor of the scheme knows that the reduction has occurred;

“criminal reduction” means a reduction which is attributable to an act or omission which constitutes an offence prescribed for the purposes of section 81(1)(c) (or, in the case of an act or omission which occurred outside England and Wales or Scotland, would constitute such an offence if it occurred in England and Wales or in Scotland).”.

(3) Omit subsections (3), (4) and (6).

(4) For the purpose of section 75(1) (as substituted by paragraph (2)), paragraphs (5) to (9) apply instead of regulation 3.

(5) In the case of a scheme other than an ear-marked scheme—

- (a) the value at the applicable time of the unallocated assets of the scheme shall be taken to be the value of those assets as certified in a statement by the scheme’s auditor; and
- (b) the amount of the criminal reduction in the aggregate value of the allocated assets of the scheme is to be calculated by subtracting the actual aggregate value of those assets at the applicable time from the notional aggregate value of those assets.

(6) The notional aggregate value mentioned in paragraph (5)(b) shall be taken to be the sum of the values of the assets—

- (a) as stated in the audited accounts which most immediately precede the relevant act or omission, or
- (b) if there are none, as certified in a statement by the scheme’s auditor, adjusted appropriately to take account of any alteration in their values (other than any alteration attributable to that act or omission) between the date as at which those accounts are prepared or, as the case may be, as at which that statement is given and the applicable time.

(7) The actual aggregate value mentioned in paragraph (5)(b) shall be calculated in the same manner as it was calculated for the purposes of the accounts mentioned in paragraph (6)(a) or, as the case may be, the statement mentioned in paragraph (6)(b).

(8) In the case of an ear-marked scheme, the value at the applicable time of the unallocated assets of the scheme and the amount of the criminal reduction in the aggregate value of the allocated assets of the scheme are the amounts certified in a statement by the relevant insurer.

(9) In this regulation—

“ear-marked scheme” means a scheme under which all the benefits are secured by one or more policies of insurance or annuity contracts, being policies or contracts specifically allocated to the provision of benefits for individual members or any other person who has a right to benefits under the scheme; and

“the relevant insurer”, in relation to such a scheme, is the insurer with whom the insurance contract or annuity contract is made.

### **Multi-employer money purchase schemes**

**8.**—(1) Regulation 4(1) and (3) to (5) does not apply to a money purchase scheme, but in its application to such a scheme in relation to which there is more than one employer, section 75 (as modified by regulation 7) applies with the insertion after subsection (1) of the same subsections as are inserted by regulation 4(2), omitting from subsection (1A) the words “in the opinion of the actuary after consultation with the trustees or managers”.

(2) Where (apart from this paragraph) section 75 does not apply to a money purchase scheme with the modification made by paragraph (1) but, if it did so, subsection (1C) of that section would apply to the scheme, that section shall have effect with the modification made by paragraph (1).

### **Former employers of money purchase schemes**

**9.** Regulations 5 and 6 shall not apply to a money purchase scheme, but in the application of section 75 and these regulations to such a scheme which has no active members at the applicable time “the employer” includes every person who employed persons in the description or category of employment to which the scheme relates immediately before the occurrence of the event after which the scheme ceased to have any active members.

### *General and supplementary*

### **Disapplication of section 75**

**10.**—(1) Section 75 does not apply—

- (a) to a public service pension scheme—
  - (i) 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 additional voluntary contributions); or
  - (ii) which is made under section 7 of the Superannuation Act 1972<sup>(a)</sup> (superannuation of persons employed in local government service etc.) or section 2 of the Parliamentary and other Pensions Act 1987<sup>(b)</sup> (power to provide for pensions for Members of the House of Commons etc.);
- (b) to any occupational pension scheme in respect of which any Minister of the Crown has given a guarantee or made any other arrangements for the purpose of securing that the assets of the scheme are sufficient to meet its liabilities;
- (c) to an occupational pension scheme which provides relevant benefits, but is neither an approved scheme nor a relevant statutory scheme;
- (d) to a section 615(6) scheme;
- (e) to a scheme with less than two members;
- (f) to a scheme—
  - (i) the only benefits provided by which are death benefits, and
  - (ii) under the provisions of which no member has accrued rights;
- (g) to a relevant lump sum retirement benefits scheme; or

---

<sup>(a)</sup> 1972 c. 11.

<sup>(b)</sup> 1987 c. 45.

OCCUPATIONAL PENSION SCHEMES (**DEFICIENCY ON WINDING UP ETC.**) REGULATIONS 1996

(h) to the scheme established by the Salvation Army Act 1963(a).

(2) In this regulation—

“approved scheme” means a scheme which is approved or was formerly approved under section 590 or 591 of the Taxes Act or in respect of which an application for such approval has been duly made which has not been determined;

“lump sum benefits” does not include benefits paid by way of commuted retirement pension;

“relevant benefits” has the meaning given in section 612(1) of the Taxes Act;

“relevant lump sum retirement benefits scheme” means an approved scheme—

(a) which has been categorised by the Commissioners of Inland Revenue for the purposes of its approval as a centralised scheme for non-associated employers;

(b) which is not contracted-out; and

(c) under the provisions of which the only benefits which may be provided on or after retirement (other than money purchase benefits derived from the payment of additional contributions by any person) are lump sum benefits which are not calculated by reference to any member’s salary;

“relevant statutory scheme” has the meaning given in section 611A of the Taxes Act (b);

“section 615(6) scheme” means a scheme with such a superannuation fund as is mentioned in section 615(6) of the Taxes Act.

(3) For the purposes of paragraph (1)(e) “scheme” shall be construed as if subsections (1B) and (1C) of section 75 (as inserted by regulation 4(2) or, as the case may be, regulation 8) were omitted.

#### Minor modifications

11. Schedule 2 to these Regulations shall have effect for the purpose of modifying section 75 and these Regulations.

#### Modification of schemes: apportionment of section 75 debts

12. In the case of a trust scheme (whether or not a money purchase scheme) which apart from this regulation could not be modified for the purpose of making provision for the total amount of a debt due under section 75(1) to be apportioned amongst the employers in different proportions from those which would otherwise apply by virtue of section 75(1A) (as inserted by regulation 4(2) or, as the case may be, regulation 8), for the purposes of section 68(2)(e), such a modification of the scheme is a modification for a prescribed purpose.

#### Revocations and savings

13.—(1) The Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations 1994(c) are hereby revoked, except in their application in any case in which section 144 of the Pension Schemes Act 1993(d) continues to apply (schemes which began winding up before 19th December 1996 and debts treated as due by virtue of valuations as at applicable times falling before 6th April 1997.)

(2) Where before 6th April 1997 such arrangements have been made as are mentioned in subsection (1C) of section 144 of the Pension Schemes Act 1993 (as inserted by regulation 4 of those Regulations), then—

(a) the revocation of those Regulations shall not affect—

(a) 1963 c. xxxii.

(b) Section 611A was inserted by Schedule 6 to the Finance Act 1989 (c. 26).

(c) S.I. 1994/895.

(d) 1993 c. 48.

- (i) the recoverability of any debt or part of a debt, the recoverability of which is affected by subsections (1C) to (1G) of that section immediately before that date, or
  - (ii) the power of assignment conferred by subsection (1G) of that section; and
- (b) the making of, or failure to make, contributions in accordance with the arrangements, and any relevant insolvency event occurring on or after that date shall have the same effect as they would have had before that date.
- (3) Paragraph (2) is without prejudice to the generality of paragraph (1).

Signed by authority of the Secretary of State for Social Security.

11th December 1996

*Oliver Heald*  
Parliamentary Under-Secretary of State,  
Department of Social Security

SCHEDULE 1

Regulation 3

FORM OF ACTUARY'S CERTIFICATE

ACTUARIAL CERTIFICATE GIVEN FOR THE PURPOSES OF REGULATION 3 OF THE OCCUPATION PENSION SCHEMES (DEFICIENCY ON WINDING UP ETC.) REGULATIONS 1996

Name of scheme .....

Date as at which valuation is made .....

1. Comparison of value of scheme assets with amount of scheme liabilities

In my opinion, at the above date the value of the assets of the scheme was less than the amount of the liabilities of the scheme.

The value of the assets of the scheme was .....

The amount of the liabilities was .....

The amount of the difference was .....

2. Valuation principles

The scheme's assets and liabilities are valued in accordance with section 75(5) of the Pensions Act 1995, the Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations 1996 and the guidelines on winding up and scheme asset deficiency (GN 19) adopted or prepared, and from time to time revised by the Financial Reporting Council Limited and on minimum funding requirement (GN 27) published by the Institute and Faculty of Actuaries (so far as those guidelines are applicable).

<sup>1</sup>Words inserted by reg. 8 of S.I. 2007/60 as from 6.4.07.

<sup>2</sup>Defn. in Sch. 1, para. 2 of the Actuary's certificate substituted by reg. 4(b) of S.I. 2012/1817 as from 9.8.12.

<sup>3</sup>Words in para. 2 of certificate substituted by reg. 6(b) of S.I. 2012/692 as from 30.3.12.

Signature .....

Date .....

Name .....

Qualification .....

Address .....

Name of employer .....

.....

(if applicable)

Note:

<sup>4</sup>Words substituted in sch. 1 by reg. 3(5) of S.I. 2005/72 as from 15.2.05.

The valuation of the amount of the liabilities of the scheme may not reflect the actual cost of securing those liabilities by the purchase of annuities, if the scheme were to have been wound up on the date as at which the valuation is made.

SCHEDULE 2

Regulation 11

MINOR MODIFICATIONS

**Schemes covering United Kingdom and foreign employment**

1.—(1) This paragraph applies where a scheme which applies to members in employment in the 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,
- (d) the United Kingdom section is approved and the foreign section is not approved.

(2) In sub-paragraph (1)(d) “approved” means approved or formerly approved under section 590 or 591 of the Taxes Act.

(3) Where this paragraph applies, section 75 and these Regulations shall apply as if each section of the scheme were a separate scheme, and the reference to the scheme in the form set out in Schedule 1 may be modified appropriately.

2.—(1) This paragraph applies in any case where a scheme which applies to members in employment in the United Kingdom and members in employment outside the United Kingdom does not fall within paragraph 1 and part of the scheme is approved under section 590 or 591 of the Taxes Act by virtue of section 611(3) of that Act.

(2) Where this paragraph applies, section 75 and these Regulations shall apply as if the approved and unapproved parts of the scheme were separate schemes, and the reference to the scheme in the form set out in Schedule 1 may be modified appropriately.

**Schemes with partial government guarantee**

3. Where such a guarantee has been given or such arrangements have been made as are mentioned in regulation 10(1)(b) in respect of part only of a scheme, section 75 and these Regulations shall apply as if that part and the other part of the scheme were separate schemes, and the reference to the scheme in the form set out in Schedule 1 may be modified appropriately.

4. ▶<sup>1</sup>◀

<sup>1</sup>Para. 4 deleted by reg. 19(4) of S.I. 1997/786 as from 6.4.97.

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations concern the treatment under section 75 of the Pensions Act 1995 (c. 26) (“the Act”) of a deficit in the assets of occupational pension schemes as a debt owed by the employer to the trustees or managers of the scheme. Section 75 replaces section 144 of the Pension Schemes Act 1993 (c. 48) and these Regulations replace the Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations 1994 (S.I. 1994/895) (“the former Regulations”).

Regulation 1 deals with citation and commencement. Generally, the Regulations take effect from 6th April 1997, although regulation 1 applies from 19th December 1996 and regulation 6 applies as respects the intervening period. The regulations will not apply where an employer became insolvent or, in the case of money purchase schemes, criminal loss took place before 6th April 1997. They will not apply to any schemes that began to wind up earlier than 19th December 1996.

Regulation 2 describes the terms used in the Regulations and identifies the two Actuarial Guidance Notes (GNs) that will be used in connection with the calculation of any debt.

Regulations 3 to 6 apply to schemes which are not money purchase schemes. Regulation 3 provides for the calculation of liabilities and assets of schemes to be on the same basis as for the Minimum Funding Requirement and provides that where a valuation reveals a deficit, the actuary should complete a certificate as set out in Schedule 1 to the Regulations. Regulation 4 modifies section 75 for schemes with more than one employer. It modifies the time when a debt arises under section 75 and requires the whole of any deficiency to be divided up amongst the employers. Where a multi-employer scheme is divided up into separate sections, each section is to be treated as a separate scheme. Regulation 5 modifies section 75 and the Regulations for schemes that have no active members so that former employers are treated as employers in certain circumstances. Regulation 6 modifies the application of section 75 in respect of employers who ceased to participate in the scheme between 19th December 1996 and 6th April 1997.

Regulations 7 to 9 apply section 75 to money purchase schemes with modifications. Regulation 7 makes provision so that where any money purchase scheme has suffered a reduction in its assets through an offence prescribed for the purposes of section 81(1)(c) of the Act and unallocated assets are insufficient to bear the loss, it is treated as a debt from the employer or no active members to that made by regulation 4 and 5.

Regulation 10 exempts certain schemes from section 75.

Regulation 11 and Schedule 2 make special provision for schemes that have members in United Kingdom and non United Kingdom employment or have a partial government guarantee or schemes all the benefits provided by which (other than salary-related death benefits) are money purchase benefits.

Regulation 12 enables trustees of trust schemes to modify them so as to apportion deficit in a multi-employer scheme in different proportions from those which otherwise apply under the Regulations.

Regulation 13 revokes the former Regulations in respect of cases covered by these Regulations and saves arrangements under regulation 4 of the former Regulations.

An assessment of the compliance cost for employers of the measures arising from the Pensions Act 1995, including Regulations, has been placed in the libraries of both Houses of Parliament. Copies can be obtained by post from the Department of Social Security, the Adelphi, 1-11 John Adam Street, London WC2N 6HT.