

1996 No. 1536

PENSIONS

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

<i>Made</i> - - - -	<i>12th June 1996</i>
<i>Laid before Parliament</i>	<i>18th June 1996</i>
<i>Coming into force</i>	<i>6th April 1997</i>

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The Secretary of State for Social Security, in exercise of the powers conferred on him by sections 41(1), (2)(c), (3)(b) and (6), 49(2) and (3), 56(2)(b) and (3), 57(1)(a) and (b), (2)(b), (4)(b) and (5), 58(2), (3)(a) and (c), (4)(b)(i), (5), (6)(a) and (b) and (7), 59(1) and (3), 60(2)(b), (3)(a) and (b), (4), (5)(b), (6) and (7), 61, 68(2)(e), 75(5), 118(1), 119, 124(1), 125(3) 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 made before the end of the period of 6 months beginning with the coming into force of the provisions of Part I of that Act by virtue of which it is made(b), hereby makes the following regulations:—

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

(b) See section 120 of the Act which provides that the Secretary of State must consult such persons as he considers appropriate before making regulations by virtue of the provisions in Part I of the Act. This duty does not apply where regulations are made before the end of six months from the coming into force of the provisions under which they are made.

Preliminary

Citation and commencement

1. These Regulations may be cited as the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996 and shall come into force on 6th April 1997.

Interpretation

2.—(1) Unless the context otherwise requires, in these Regulations—

“the commencement date” means 6th April 1997;

“disclosure valuation” means an actuarial valuation required by regulation 8 of the Occupational Pension Schemes (Disclosure of Information) Regulations 1986(a);

“the effective date”—

(a) in relation to a minimum funding valuation, has the meaning given in section 56(5);

(b) in relation to a valuation obtained under regulation 30, means the date as at which the assets and liabilities are valued;

(c) in relation to a disclosure valuation, means the date as at which the valuation was made;

▶ “equities” means investments of the following kinds—

(a) shares,

(b) instruments creating or acknowledging indebtedness,

(c) instruments giving entitlements to investments of the kind mentioned in (a) or (b) above,

(d) certificates representing such investments;

“gilt-edged securities” means investments of the following kinds—

(a) government and public securities,

(b) contracts of long term insurance; ◀

“minimum funding valuation” means an actuarial valuation required by section 57(1)(a) or 57(2);

▶ “normal benefit age” has the meaning given by section 101B of the Pension Schemes Act 1993(b);

“pension credit benefit” has the meaning given by section 101B of the Pension Schemes Act 1993;

“pension credit benefit member”, in relation to an occupational pension scheme, means a person who has become entitled, by virtue of having pension credit rights which have come into payment, to the present payment of pension or other benefits;

“pension credit member” has the meaning given by section 124(1) of the Pensions Act 1995;

“pension credit rights” has the meaning given by section 124(1) of the Pensions Act 1995(c); ◀

“the relevant date” means—

(a) in relation to a minimum funding valuation the effective date; and

(b) in relation to a certificate under section 57(1)(b) or a certificate under section 58 of the rates of contributions shown in a schedule of contributions, the date the certificate is signed;

“the schedule period” has the meaning given in regulation 16(3);

“scheme” in the cases mentioned in paragraphs 1 and 4 to 6 of Schedule 5 (sectionised and partly approved or guaranteed schemes) must be construed in accordance with those paragraphs (and “employer” and “member” must be construed accordingly);

“serious shortfall valuation”, in relation to a scheme, means a minimum funding valuation for the scheme as a result of which section 60 (serious under provision) applies;

▶ “transitional period” means the period beginning on the commencement date

Defns. of “equities” & “gilt-edged securities” substituted by art. 525 of S.I. 2001/3649 as from 1.12.01.

Defns. inserted in reg. 2(1) by reg. 4(2) of S.I. 2000/2691 as from 1.12.00.

Defn. of “transitional period” in reg. 2(1) substituted by reg. 2 of S.I. 2004/3031 as from 21.12.04.

(a) S.I. 1986/1046.

(b) Section 101B is inserted by section 37 of the Welfare Reform and Pension Act 1999.

(c) 1995 c. 26. The definition of “pension credit member” is inserted by paragraph 61(3) of Schedule 12 to the Welfare Reform and Pensions Act 1999.

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and ending on—

- (a) for the purposes of regulation 6(2) (excluded assets), 31st December 2004; and
- (b) for all other purposes, 5th April 2006. ◀

Reg. 2(1A) inserted by art. 525(3) of S.I. 2001/3649 as from 1.12.01.

▶(1A) The definitions of “equities” and “gilt-edged securities” in paragraph (1) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act. ◀

(2) 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(a); and
- (b) in these Regulations any reference to a section shall be construed as a reference to a section of that Act.

(3) References in these Regulations to the guidance in GN 27 are to the mandatory guidelines on minimum funding requirement (GN 27), prepared and published by the Institute of Actuaries and the Faculty of Actuaries(b) and approved for the purposes of these Regulations by the Secretary of State, with such revisions as have been so approved—

- (a) in the case of guidance applicable in relation to a minimum funding valuation, as at the date of signing of the valuation; and
- (b) in the case of guidance applicable to a certificate under section 57(1)(b) or a certificate under section 58 of the rates of contributions shown in a schedule of contributions, as at the relevant date.

Words in reg. 2(4) substituted by Sch. 2 1(2) of S.I. 2005/678 as from 6.4.05.

(4) References in these Regulations to a ▶relevant event◀ occurring in relation to the employer have the ▶meaning given in section 75 (6A)◀ (but see paragraph 1(2) of Schedule 4).

(5) In regulations 3 to 28 and in Schedules 1 to 4, the expression “these Regulations” does not include regulation 30.

Valuation of assets and liabilities

Determination, valuation and verification of assets and liabilities: general

3.—(1) The liabilities and assets of a scheme which are to be taken into account for the purposes of sections 56 to 61 (minimum funding etc.) and their amount and value shall be determined, calculated and verified by the actuary—

- (a) in the manner specified in regulations 4 to 9;
- (b) in the case of any valuation for the purpose of forming an opinion as to whether the minimum funding requirement is met on a relevant date, on the general assumptions specified in paragraphs (2) and (3); and
- (c) in accordance with the guidance given in GN 27;

and where in these Regulations 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 provisions in that guidance in making that calculation or verification.

(2) The assumptions mentioned in paragraph (1)(b) are—

- (a) that no contributions will become due to the scheme from the employer or the members on or after the relevant date;
- (b) that all pensionable service under the scheme ceased immediately before that date;
- (c) that liabilities in respect of members will be so secured that—
 - (i) the benefits of pensioner members ▶or pension credit benefit members◀ will be equal in value to those under the scheme; and
 - (ii) the benefits of active members ▶,deferred members and pension credit members◀ will be reasonably likely to be equal in value to those payable

Words inserted and substituted in reg. 3(2) by reg. 4(3) of S.I. 2000/2691 as from 1.12.00.

(a) 1995 c. 26.

(b) Copies of GN 27 may be obtained from the Faculty of Actuaries, 40-44 Thistle Street, Edinburgh EH2 1EN.

in respect of their accrued rights ► and any pension credit rights ◀ under the scheme; and

- (d) that liabilities in respect of members will include such amounts in respect of the expenses involved in meeting them as are indicated by the guidance given in GN 27.

Words inserted and substituted in reg. 3(2) by reg. 4(3) of S.I. 2000/2691 as from 1.12.00.

(3) Where arrangements are being made by the scheme for the transfer to or from it of accrued rights ► and any pension credit right ◀, until such time as the trustees or managers of the scheme to which the transfer is being made (“the receiving scheme”) have received assets of the full amount agreed by them as consideration for the transfer, it shall be assumed—

- (a) that the rights have not been transferred; and
(b) that any assets transferred in respect of the transfer of those rights—
(i) are assets of the scheme making the transfer and not of the receiving scheme, and
(ii) have such a value as is determined in accordance with the guidance given in GN 27.

Determination and valuation of assets

4.—(1) Subject to the following provisions of this regulation and to regulations 3(3), 5, 6 and 9, in determining the value of the assets of a scheme for the purpose of forming an opinion as to whether the minimum funding requirement is met on a relevant date, the actuary shall adopt the value given to the assets of the scheme in the relevant accounts (less the amount of the external liabilities), and that value shall be taken to be the value of those assets on the relevant date.

(2) In this regulation “external liabilities”, in relation to a scheme, means such liabilities of the scheme (other than liabilities within regulation 7(1)(a) or (b)) as are shown in the net assets statement in the relevant accounts, and their amount shall be taken to be the amount shown in that statement in respect of them.

(3) In this regulation “relevant accounts”, in relation to a scheme, means audited accounts for the scheme—

- (a) which comply with the requirements imposed under section 41; and
(b) which are prepared in respect of a period ending with the relevant date or, if none are so prepared—
(i) are the latest such accounts which are available at the relevant date, or
(ii) if in the opinion of the actuary it is practicable for them to be used, the latest such accounts which are available on the date of signing of the valuation.

(4) If—

- (a) the actuary has been given notice that the value of any asset or the amount of external liabilities at the relevant date was substantially different from the value or amount determined in accordance with paragraph (1) or, as the case may be, paragraph (2); or
(b) the relevant accounts are such accounts as are mentioned in paragraph (3)(b)(i) or (ii) and in the opinion of the actuary the valuation of any asset or external liabilities in the accounts was substantially out of date by the relevant date.

then he shall make such adjustment to the value of that asset or, as the case may be, the amount of that external liability as appears to him appropriate to secure that the value or the amount he adopts is the market value of the asset or, as the case may be, the current amount of the liability.

(5) For the purposes of paragraph (4)—

- (a) “market value” means the price which the asset might reasonably be expected to fetch on a sale in the open market, on the assumption that there were available to any prospective purchaser of the asset all the information which a prudent purchaser of it might reasonably require if he were proposing to purchase it from a willing vendor by private treaty and at arm’s length; and

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- (b) the question whether the value of any asset or the amount of any liability is substantially different or out of date shall be determined by comparing the amount of adjustment likely to be required with the value of the asset or, as the case may be, the amount of the liability, that will otherwise be adopted.

(6) No adjustment may be made under paragraph (4) of the value given to any real property or any interest in real property in the relevant accounts, unless the adjustment reflects a more recent valuation given by a chartered surveyor in accordance with any relevant Practice Statements and Guidance Notes issued by the Royal Institution of Chartered Surveyors(a) and current on the date of signing of the valuation.

(7) For the purposes of paragraph (3), accounts are to be taken to comply with the requirements imposed under section 41–

- (a) in a case where they relate to a shorter period than that as to which accounts are required to be obtained under that section, if they comply with those requirements apart from any relating to the length of the period covered; and
- (b) in a case where they relate to a period ending before those requirements applied, if they comply with any requirements as to the form and content of accounts imposed under section 114 of the Pension Schemes Act 1993(b).

Rights under insurance contracts

5.—(1) Nothing in regulation 4 applies for the purposes of determining the value of any rights under a contract of insurance and that value shall be determined as follows.

(2) Subject to paragraphs (3) and (4), the value of a contract of insurance is to be taken to be the amount (if any) payable on its surrender.

(3) Where, if a contract of insurance were surrendered to the insurer on the relevant date, the amount of the alternative liabilities which the insurer would secure in return for the surrender would be substantially greater than the amount payable on its surrender, then its value is to be taken to be that greater amount.

(4) Where it appears to the actuary that the circumstances are such that, in accordance with the guidance given in GN 27, it is appropriate for him to do so, then he may–

- (a) disregard the value of the rights under a contract of insurance and the amount of the liabilities secured by the contract; or
- (b) adopt a value for those rights which is equal to the amount of those liabilities.

Excluded assets

6.—(1) There shall be excluded from the value of the scheme assets–

- (a) any resources invested (or treated as invested by or under section 40) in contravention of section 40(1) (employer-related investments);
- (b) any amounts treated as a debt due to the trustees or managers under section 59(2), ►or 60(5) or under section 75(1), as it has effect before 6th April 2005, or under section 75(2) or (4), as it has effect on or after that date◀►or under section 144(1) of the Pension Schemes Act 1993◀ which are unlikely to be recovered without disproportionate cost or within a reasonable time;
- (c) except for the purposes of section 60(2) to (7), the amount of any increase in value to which paragraph 6 of Schedule 4 applies;◀
- (d) any assets representing the value of any rights in respect of money purchase benefits under the scheme rules.◀

►(2) At any time after the transitional period, there shall also be excluded any resources which would fall into paragraph (1)(a)–

(a) Copies are available from the Royal Institution of Chartered Surveyors, 12 Great George Street, Parliament Square, London SW1P 3AD.

(b) 1993 c. 48. Section 114 is repealed by Schedule 3 to the Pensions Act 1995 (c. 26).

Words in reg. 6(1)(b) substituted by reg. 6 of S.I. 2005/2224 as from 2.9.05.

Words added to reg. 6(1)(b) by reg. 12(1) of S.I. 1996/3127 as from 6.4.97.

Sub-para 6(1)(c) substituted by reg. 8(2) of S.I. 1997/786 as of 6.4.97.

Para. (d) inserted in reg. 6(1) by reg. 4 of S.I. 2005/2159 as from 31.8.05.

Regs. 6(2) & (3) substituted and 6(4) deleted by reg. 12(2) of S.I. 1996/3127 as from 6.4.97.

- (a) if their retention were not permitted by regulation 7 or 8 of the Occupational Pension Schemes (Investment) Regulations 1996; or
- (b) if regulation 9(3) of those Regulations were omitted.

(3) In determining at any such time whether any resources fall within paragraph (1)(a) or (2), the current market value of the resources of the scheme for the purposes of regulation 5(1)(a) of those Regulations shall be taken not to include the value of any investment—

- (a) which is prohibited by regulation 5(1)(b) or (2) of those Regulations;
- (b) the retention of which is permitted by regulation 7 or 8 of those Regulations; or
- (c) which falls within paragraph (1)(b) or (c).◀

Determination and valuation of liabilities

7.—(1) Subject to the provisions of these Regulations, the liabilities of a scheme which must be taken into account for the purpose of forming an opinion as to whether the minimum funding requirement is met on a relevant date are—

- (a) the liabilities in respect of pensions and benefits mentioned in section ▶73(4)◀ (which lists the liabilities of schemes in the order in which they are to be met on a winding up); and
- (b) in the case of a scheme with members whose employment is contracted-out by reference to the scheme, liability in respect of contributions equivalent premiums for all such members in respect of whom an election to pay such premiums could be made (on the assumption that the scheme were wound up on the relevant date).

Reference in reg. 7(1)(a) substituted by reg. 9(2) of S.I. 2005/706 as from 6.4.05.

(2) ▶Subject to paragraph (8A)◀ the amount of the liabilities of the scheme in respect of pensions and benefits shall be calculated on the assumption that it is equal to the amount required to be invested in investments of an appropriate description in order to meet those liabilities, and that calculation shall be made by reference to the yield on such investments (as indicated in such indices as are specified in the guidance given in GN 27).

Words added to reg. 7(2) by reg. 8(3)(a) of S.I. 1997/786 as from 6.4.97.

(3) For the purpose of making that calculation, it shall be assumed, subject to paragraphs (4) and (5), that all liabilities in respect of the pensions payable to or in respect of members who are pensioner members ▶, or who are pension credit benefit members,◀ on the relevant date are met from investments in gilt-edged securities.

Words inserted in reg. 7(3), 7(4),(5), by reg. 4(4)(a) - (e) of S.I. 2000/2691 as from 1.12.00.

(4) If the amount of the liabilities in respect of pensions payable to or in respect of members, who are pensioner members ▶or pension credit benefit members,◀ on the relevant date, in the period of 12 years beginning with that date (“12 year liabilities”) exceeds £100 million, then it shall be assumed—

- (a) that those 12 year liabilities are met from investments in gilt-edged securities; and
- (b) except in the case of a scheme with a gilts-matching policy for liabilities in respect of pensioner members ▶or pension credit benefit members,◀, that all the liabilities of the scheme in respect of pensions payable to such members after the expiry of the period of 12 years (“long term liabilities”) are met from investments in equities.

(5) Where paragraph (4) does not apply, it shall be assumed—

- (a) that the 12 year liabilities, and so much of the long term liabilities as when aggregated with the 12 year liabilities equals at least £100 million, are met from investments in gilt-edged securities; and
- (b) except in the case of a scheme with a gilts-matching policy for liabilities in respect of pensioner members ▶or pension credit benefit members,◀, that the remainder of the long term liabilities are met from investments in equities;

and, for the purposes of sub-paragraph (a), long term liabilities shall only be included if they are due in the shortest possible period of whole years, beginning 12 years after the relevant date, which requires to be taken into account for that paragraph to be satisfied.

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(6) For the purposes of paragraphs (4) and (5), in calculating the amount of liabilities for the purpose of determining whether the amount exceeds £100 million, the liabilities shall be calculated on the basis that they are met from investments in gilt-edged securities.

Words inserted in reg. 7(7), & (8) by reg. 4(4)(a) - (e) of S.I. 2000/2691 as from 1.12.00.

(7) For the purpose of calculating the liabilities in respect of the members who are not pensioner members ►or who are not pension credit benefit members,◄ on the relevant date, it shall be assumed, subject to paragraph (8), that they are met—

- (a) to the extent that they relate to any time before the switch-over period, from investments in equities;
- (b) to the extent that they relate to the switch-over period, from investments in both gilt-edged securities and equities, in such respective proportions as are indicated by the guidance in GN 27; and
- (c) to the extent that they relate to any time after the switch-over period, from investments in gilt-edged securities.

(8) If the scheme has a gilts-matching policy for liabilities in respect of deferred members ►or pension credit members,◄, it shall be assumed that liabilities in respect of members who are deferred members ►or who are pension credit benefit members,◄ on the relevant date are met from investments in gilt-edged securities.

Sub-para (8A) added by reg. 8(3)(b) of S.I. 1997/786 as from 6.4.97.

►(8A) The amount of the liabilities of the scheme in respect of any money purchase benefits shall be calculated in accordance with the guidance given in GN 27.◄

Reg. 7(9) substituted by reg. 2(3) of S.I. 2002/380 as from 19.3.02.

►(9) For the purposes of this regulation—

- (a) a scheme is only to be taken to have a gilts-matching policy for liabilities in respect of pensioner members, pension credit benefit members, deferred members or pension credit members at any time if the last statement in respect of the scheme under section 35 before that time states that the trustees' policy is to meet all liabilities (excluding liabilities in respect of any money purchase benefits other than underpin benefits) in respect of pensioner members, pension credit benefit members or, as the case may be, deferred members or pension credit members from investments in gilt-edged securities; and
- (b) "underpin benefits" means money purchase benefits which, under the provisions of the scheme, will only be provided in respect of a member if their value exceeds the value of other benefits in respect of him under the scheme which are not money purchase benefits.◄

Reg. 7(10) substituted by reg. 4(4)(f) of S.I. 2000/2691 as from 1.12.00.

►(10) In this regulation "the switch-over period", in relation to a member, means the period of 10 years ending with the age at which the member—

- (a) will first become entitled under the provisions of the scheme to receive a full pension on retirement of an amount determined without a reduction to take account of its payment before a later age (but disregarding any entitlement to pension on retirement in the event of illness, incapacity or redundancy); or
- (b) will reach normal benefit age.◄

Further provisions as to valuation: methodology, assumptions etc.

8.—(1) The assets and liabilities of the scheme shall be valued by reference to the same date.

(2) In calculating the amount of any liability by reference to any date for the purpose of forming an opinion as to whether the minimum funding requirement is met on a relevant date, the actuary shall, in such manner as is indicated in the guidance given in GN27—

- (a) in the case of any scheme where—
 - (i) in accordance with regulation 7(4) and (5), any liabilities in respect of the pensions payable to or in respect of members who are pensioner members ►or who are pension credit benefit members,◄ that date may be assumed to be met from investments in equities, and
 - (ii) in accordance with that guidance it is appropriate to do so, apply such demographic assumptions as are specified by that guidance for the scheme by reference to the members of the scheme; and
- (b) in the case of any other scheme, apply such demographic assumptions as are specified for the scheme in question by reference to such tables as are specified by that guidance for the scheme.

Words inserted in reg. 8(2)(a)(i) by reg. 4(5) of S.I. 2000/2691 as from 1.12.00.

Valuations by reference to future dates and periods

9.—(1) In calculating the value of any asset or the amount of any liability as at any future time, in order to form an opinion as to the adequacy of rates of contributions to a scheme for the purpose of securing that the minimum funding requirement—

- (a) will continue to be met by the scheme throughout any period; or
- (b) will be met by the scheme by the end of any period,

the actuary must take into account (in addition to the matters mentioned in regulations 3 to 8 so far as they are relevant) such assumptions as are specified by the guidance given in GN 27 as appropriate for the purposes of such a calculation.

(2) In forming an opinion as to the adequacy of rates of contributions shown in a schedule of contributions for a scheme for the purpose of securing that the minimum funding requirement will continue to be met throughout or, as the case may be, will be met by the end of the schedule period, the actuary may make such adjustments to the value of the assets of the scheme and the amount of the liabilities of the scheme, as shown in the last minimum funding valuation for the scheme, as are in his opinion, in accordance with the guidance given in GN 27, appropriate to reflect changes in the assets and liabilities of the scheme after the relevant date of that valuation.

Minimum funding valuations

Time limits for minimum funding valuations

10.—(1) In the case of a scheme—

- (a) which commences on or after the commencement date;
- (b) in relation to which there was no disclosure valuation before that date; or
- (c) to which section 56 (minimum funding requirement) first applies after that date,

the first minimum funding valuation to be obtained in relation to the scheme under section 57(1)(a)—

- (i) shall be by reference to an effective date no later than the first anniversary of the date on which the scheme commences or, as the case may be, section 56 first applies to it; and
- (ii) shall be obtained by the trustees or managers before the end of the period of one year beginning with its effective date.

(2) In the case of any other scheme the first minimum funding valuation to be obtained in relation to the scheme under section 57(1)(a)—

- (a) shall be by reference to an effective date no later than the third anniversary of the effective date of the last disclosure valuation in relation to the scheme before the commencement date; and
- (b) shall be obtained by the trustees or managers before the end of the period of one year beginning with its effective date.

(3) Any subsequent minimum funding valuation in relation to the scheme under section 57(1)(a) shall be obtained by the trustees or managers—

- (a) in a case where the effective date of the valuation is not later than the third anniversary of the effective date of the last minimum funding valuation, before the end of the period of 4 years beginning with ►the effective date of the last minimum funding valuation◄,
- (b) otherwise, before the end of the period of 3 years beginning with the date on which the last minimum funding valuation was signed.

Words substituted in reg. 10(3)(a) by reg. 8(4) of S.I. 1997/786 as from 6.4.97.

(4) A minimum funding valuation must be signed before the end of the period of one year beginning with its effective date.

Duty to obtain minimum funding valuations following events with significant effects on funding

11.—(1) If during any schedule period it appears to the trustees or managers of a scheme, having consulted the actuary and obtained his opinion, that, by reason of any event which has had a significant effect on the value of the scheme's assets or the amount of its liabilities, or of a series of events which together have had such an effect, there is a serious risk—

- (a) that the minimum funding requirement will not continue to be met throughout the schedule period; or

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- (b) in a case where the last minimum funding valuation for the scheme showed that on the effective date of that valuation that requirement was not met, that it will not be met by the end of that period,

then, subject to paragraph (2), they shall obtain a minimum funding valuation before the end of the period of six months beginning with the date on which the actuary gives his opinion.

(2) Paragraph (1) does not apply—

- (a) if before the end of that period of six months the schedule of contributions has been revised under section 58(3)(b) and the revision certified under that section by the actuary; or
- (b) in the case of an opinion given by an actuary during the transitional period.

Duty to obtain minimum funding valuations where new serious underfunding suspected

12.—(1) If, when the actuary is giving a certificate under section 57(1)(b) (occasional and periodic certification of adequacy of contributions) in relation to a scheme, in a case where the latest certificate under section 58 of the rates of contributions whom in the scheme's schedule of contributions—

- (a) was given in the case mentioned in section 58(6)(a) (certificate given when minimum funding requirement appears to be met); or
- (b) was given in the case mentioned in section 58(6)(b) (certificate given when minimum funding requirement appears not to be met), but in respect of rates calculated to secure that the scheme would meet the minimum funding requirement on or before the ►date 7 days before the◄ relevant date of the certificate under section 57(1)(b),

Words in reg. 12(1)(b) inserted by reg. 2(4) of S.I. 2002/380 as from 19.3.02.

the actuary is of the opinion that a minimum funding valuation for the scheme as at that date would be a serious shortfall valuation, then he must include a statement of that opinion in the certificate.

(2) If the actuary does state in such a certificate that he is of that opinion, the trustees or managers must obtain a minimum funding valuation before the end of the period of six months beginning with the relevant date of the certificate.

(3) This regulation does not apply where the relevant date of the certificate falls in the transitional period.

Duty to obtain minimum funding valuations: s.75 debts in multi-employer schemes

13.—(1) If, in the case of a scheme in relation to which there is more than one employer, an event occurs in relating to one or more, but not all, of the employers, by virtue of which a debt may be treated as having arisen under ►section 75(2) or (4)◄ (deficiencies in the assets) from that employer, or those employers, to the trustees or managers of the scheme, and—

Words in reg. 13(1) substituted by Sch. 2 1(3)(a) of S.I. 2005/678 as from 6.4.05.

- (a) the last minimum funding valuation for the scheme before the applicable time showed that on the effective date of that valuation the minimum funding requirement was not met; or
- (b) the last certificate under section 58 before the applicable time of the rates of contributions shown in the scheme's schedule of contributions was given in the case mentioned in section 58(6)(b) (certificate given when minimum funding requirement appears not to be met) in respect of rates which were not calculated to secure that the scheme would meet the minimum funding requirement on or before that time; or
- (c) the last certificate under section 57(1)(b) before the applicable time was such a certificate as is mentioned in section 57(2)(a) (inadequate contributions),

the trustees or managers must obtain a minimum funding valuation.

(2) Such a valuation must be obtained—

- (a) in a case where the effective date of the valuation coincides with the applicable time, before the end of the period of six months beginning with that time; and
- (b) otherwise, before the end of the period of three months beginning with that time.

(3) In this regulation “the applicable time” means the time as at which the value of the assets of a scheme and the amount of its liabilities are to be determined, calculated and verified for the purpose of section 75.

Words in reg 13(3) substituted by Sch. 2 1(3)(b) of S.I. 2005/678 as from 6.4.05.

Minimum funding valuations treatments

14. Schedule 1 shall have effect for the purpose of making provision about minimum funding valuation statements.

Schedule of contributions and certification

Time limits for preparing and revising schedules of contributions

15.—(1) A schedule of contributions for a scheme must be prepared before the end of the period of 12 weeks beginning with the signing of the first minimum funding valuation for the scheme.

(2) The schedule of contributions must be revised before the end of the period of 12 weeks beginning with the signing of each subsequent minimum funding valuation for the scheme.

(3) An agreement for the purposes of section 58(4)(a) as to the matters to be shown in the schedule of contributions must be made before the end of the period of 8 weeks beginning with the signing of the last preceding minimum funding valuation for the scheme.

Periods covered by schedules of contributions

16.—(1) Subject to paragraph (2), a schedule of contributions for a scheme which is prepared under subsection (3)(a) of section 58 or revised under subsection (3)(c) of that section must show the rates of contributions payable towards the scheme during the period of 5 years beginning with the date on which the rates of contributions shown in the schedule are certified; and that is the period by reference to which the actuary must be of the opinion that the rates are adequate as mentioned in subsection (6)(a) or (b) of that section, if he is to certify them.

▶(2) Where, on or after 19th March 2002, a schedule of contributions following a minimum funding valuation is certified by virtue of section 58(3)(a) or (c) and—

- (a) that valuation shows that, on the effective date, the minimum funding requirement was not met; or
- (b) the minimum funding requirement did not appear to the actuary to be met on the date falling 7 days before the date on which the certificate of the rates of contributions shown in the schedule is signed,

Reg. 16(2) substituted by reg. 2(5) of S.I. 2002/380 as from 19.3.02.

the period referred to in paragraph (1) which applies for the schedule which must be prepared following that valuation by virtue of paragraph (a) or (c) of section 58(3) is extended so as to end with the expiry of the period of 10 years beginning with the date on which the rates of contributions shown in the schedule are certified.

(3) The period which is applicable to the schedule of contributions for a scheme by virtue of paragraphs (1) and (2) (subject to any alteration under regulation 25) is in these Regulations referred to as “the schedule period”.

(4) A schedule of contributions which is revised under subsection (3)(b) of section 58 must show the rates of contributions payable towards the scheme during the remainder of the schedule period which is current on the date on which the revised rates are certified; and that is the period by reference to which the actuary must be of the opinion that the rates are adequate as mentioned in subsection (6)(a) or (b) of that section, if he is to certify them.

(5) Where section 58(4)(b) applies (matters to be shown in the schedule of contributions where agreement is not reached about those matters), the period mentioned in paragraph (i) of that section (the period during or at the end of which the minimum funding requirement must be met) is—

- (a) in the cases mentioned in paragraph (1), the schedule period; and
- (b) in the case mentioned in paragraph (4), the remainder of the current period there mentioned.

Content and certification of schedules of contributions

17.—(1) The schedule of contributions must show separately—

- (a) the rates and due dates of all contributions (other than voluntary contributions) payable by or on behalf of active members of the scheme;
- (b) the rates and due dates of the contributions payable by or on behalf of each person who is an employer in relation to the scheme ►(excluding the amount of any contributions required by subparagraph (d) below to be shown separately)◄; ►◄
- (c) if separate contributions to cover expenses which are likely to fall due for payment by the trustees or managers in the schedule period are made to the scheme, the rates and due dates of those contributions ►;and
- (d) in the case only of a Schedule of contributions which is certified on or after 19th March 2002, the due dates and amounts of any payments required by subparagraph (a) of section 60(2) (serious under provision) ◄.

(a) Words in reg. 17(1), (2), (3) and (4) substituted by reg. 2(6) of S.I. 2002/380 as from 19.3.02.

►(1A) For the purposes of section 58(6), the prescribed date is the date 7 days before the date on which the actuary signs the certificate of the rates of contributions shown in the Schedule.◄

(2) In any case where—

- (a) section 58(6)(b) applies; and
- (b) in the actuary's opinion on ►date 7 days before the date on which he signs the certificate◄ of the rates of contributions shown in the schedule the value of the scheme assets ►was◄ less than 100 per cent., but now less than 90 per cent., of the amount of the scheme liabilities◄

Words in reg. 17(2)(b) substituted by reg. 8(5)(a) of S.I. 1997/786 as from 6.4.97.

See note (a) above.

section 58(6)(b) shall have effect with the addition at the end of the words “and are such that the amount by which the value of the scheme assets falls short of the amount of the scheme liabilities will be reduced either—

- (i) by additional contributions of equal or decreasing amounts made at not more than yearly intervals throughout that period, or
- (ii) by increasing some or all of the contribution rates by a percentage which either remains the same throughout or decreases during that period”.

(3) In any case where—

- (a) section 58(6)(b) applies; and
- (b) in the actuary's opinion on the ►date 7 days before the date on which he signs the certificate◄ of the rates of contributions shown in the schedule the value of the scheme assets ►was◄ less than 90 per cent. of the amount of the scheme liabilities,◄

Words in Reg. 17(3)(b) substituted by reg. 8(5)(b) as from 6.4.97. See note (a) above.

section 58(6)(b) shall have effect with the addition at the end of the words “and are such that they meet the uniform funding requirement specified in regulation 17 of the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996”.

(4) For the purposes of section 58(6)(b) as it has effect by virtue of paragraph (3), the uniform funding requirement is that, subject to paragraph (5)—

- (a) during the schedule period there must be made at intervals of not more than one year ►additional◄ contributions of equal or decreasing amounts totalling in aggregate such amount as in the opinion of the actuary is necessary for the purpose of screening that the minimum funding requirement will be met by the end of that period; or

See note (a) above.

- (b) during that period some or all of the contribution rates must be increased by a percentage which either remains the same throughout or decreases during that period, so as to secure payments totalling in aggregate such an amount as is mentioned in sub-paragraph (a).

(5) In a case where the increase required to be secured by section 60(2) is to be secured by making an appropriate payment under paragraph (a) of that section, ►additional payments and additional contributions◄ of amounts totalling in aggregate an amount equal to that increase, must be made before ►the expiry of the period of three years◄ mentioned in regulation 20(1)(a)►◄.

Words in reg. 17(5) substituted and deleted by reg. 2(6)(f) of S.I. 2002/380 as from 19.3.02.

(6) Schedule 2 makes further provision about schedules of contributions and their certification under section 58.

Occasional and periodic certification of adequacy of contributions

18.—(1) ►Subject to paragraphs (1A) and (1B), the◄ trustees or managers of an occupational pension scheme to which section 56 applies must, not earlier than 21 days before and not later than 21 days after each anniversary of the relevant date of the last certificate under section 58 of the rates of contributions shown in the schedule of contributions for the scheme, obtain a certificate prepared by the actuary of the scheme—

Words in reg. 18(1) substituted and paras. (1A) & (1B) inserted by reg. 2(7) of S.I. 2002/380 as from 19.3.02.

- (a) stating whether or not in his opinion the contributions payable towards the scheme are adequate for the purpose of securing—
 - (i) in a case where it appears to him that the minimum funding requirement is met, that it will continue to be met throughout the remainder of the schedule period which is current on the relevant date of the certificate, or
 - (ii) otherwise, that it will be met by the end of that period; and
- (b) indicating any relevant changes since ►the last minimum funding valuation◄ was prepared.

►(1A) Paragraph (1) shall not apply to any scheme the value whose assets was, or appears to the actuary to have been, not less than 100% of the amount of its liabilities both at the effective date of the last minimum funding valuation obtained by the trustees or managers under section 57 and—

- (a) in any case where the first Schedule of contributions following that valuation was certified before 19th March 2002, at the date on which the schedule was certified; and
- (b) in any case where the first schedule of contributions following that valuation is certified on or after 19th March 2002, at the date 7 days before the date on which that schedule was certified.

(1B) In a case where the trustees or managers of a scheme have obtained a minimum funding valuation since the relevant date of the last certificate under section 58 of the rates of contributions shown in the schedule of contributions, no certificate needs be obtained under paragraph (1) in relation to the anniversary of that date.◄

(2) Schedule 3 makes further provision about certificates under this regulation.

Records

19.—(1) The trustees or managers of an occupational pension scheme to which section 56 applies must keep records of all contributions made to the scheme by any person, showing separately—

- (a) the aggregate amount of contributions paid by or on behalf of active members of the scheme (whether by deduction from their earnings or otherwise) and the dates on which they are paid, distinguishing voluntary contributions from other contributions, and showing the amounts of voluntary contributions paid by each member; and
- (b) the aggregate amounts of contributions paid by or on behalf of each person who is an employer in relation to the scheme and the dates on which they are paid.

(2) Such trustees or managers must also keep a separate record of all contributions and payments made to secure any increase required to be secured by section 60(2).

(3) Such trustees or managers must also keep records of any action taken by them to recover—

- (a) the amount of any contributions which are not paid on the date on which they are due;
- (b) the amount of any debt which has arisen under section 60(5) (employer's failure to secure the increase required as a result of a serious shortfall valuation within the prescribed period); and
- (c) the amount of any debt which has arisen under ►section 75(2) or (4)◄ (deficit on insolvency etc.).

Words substituted in reg. 19 (3)(c) by para. 1(4) to Sch. 2 of S.I. 2005/678 as from 6.4.05.

Inadequate contributions

Minimum funding valuations showing serious underprovision

Words in reg. 20(1) substituted by reg. 2(8) of S.I. 2002/380 as from 19.3.02.

20.—(1) ►Where following a serious shortfall valuation for a scheme a schedule of contributions is certified on or after 19th March 2002,◄ the period before the end of which the employer must secure the increase in the value of the scheme assets mentioned in subsection (2) of section 60 is—

Words in reg. 20(1)(a) deleted and substituted & para. (3) deleted by reg. 2(8)(b) & (c) of S.I. 2002/380 as from 19.3.02.

- (a) ►◄ in so far as the increase is secured as mentioned in subsection (2)(a) of that section (payments to trustees or managers), ►the period of three years◄ beginning of the appropriate date; and
- (b) in so far as the increase is secured as mentioned in subsection (2)(b) of that section (by a method specified in Schedule 4), the period of 12 weeks beginning with the date on which that valuation was signed;

and for the purposes of subsections (4), (5) and (7) of that section the period applicable under subsection (3) of that section shall be taken to be the period mentioned in subparagraph (a).

(2) In paragraph (1)(a) “the appropriate date” means—

- (a) if the serious shortfall valuation was obtained under section 57(2), the date with which the period within which the valuation was required to be obtained began (being the period specified by or under section 57(4)); and
- (b) otherwise, the date on which that valuation was signed.

►◄

(4) Where the increase in the value of the scheme assets required to be secured by section 60(2) is secured as mentioned in paragraph (b) of that section within the period mentioned in paragraph (1)(b) above, nothing in paragraph (1)(a) above is to be taken as preventing the employer from making a payment to the trustees or managers at any time to secure the whole or part of the required increase.

(5) Section 60(4) (which requires the trustees or managers to give notice to the Authority of the employer's failure to secure the required increase within the prescribed period) does not apply in any case where a subsequent minimum funding valuation shows that on the effective date of that valuation there is no longer such a difference between the value of the scheme assets and the amount of its liabilities as is mentioned in section 60(1); and in those circumstances section 60(5) (unpaid shortfall treated as debt from employer to trustees or managers) shall have effect with the addition at the end of the words “until the effective date of a subsequent actuarial valuation which does not show such a difference as is mentioned in subsection (1)”.

►(6) After subsection (7) of section 60 (serious under provision) there shall be inserted—

Sub-para. (6) inserted into reg. 20 by para. 8(6) of Sch. 1 to S.I. 1997/786 as from 6.4.97.

“(7A) In any case where—

- (a) there has been a valuation by virtue of which subsection (2) has applied in relation to a scheme, but
- (b) the actuary of the scheme certifies at the time when he certifies the rates of contributions shown in the schedule of contributions for the scheme which is prepared or revised under section 58(3) following the valuation that in his opinion on the date he signs the certificate—
 - (i) the value of the scheme assets is no longer less than 90 per cent. of the amount of the scheme liabilities, or
 - (ii) the amount by which that value is less than 90 per cent. of the amount of those liabilities (“the difference”) has decreased,

subsection (2) shall cease to apply or, as the case may be, subsections (2) and (5) shall apply as if the shortfall were the difference on that date.◄

Failure reports

21.—(1) If it appears to the trustees or managers of a scheme that the minimum funding requirement is not met—

- (a) at the end of any period—
 - (i) beginning with their receiving a minimum funding valuation in relation to the scheme which shows that on the effective date the minimum funding requirement is met; and
 - (ii) ending with their receiving the next subsequent such valuation (“the second valuation”), being a valuation which shows that on the effective date the minimum funding requirement is not met; or
- (b) at the end of any period—
 - (i) beginning with their receiving a minimum funding valuation in relation to the scheme (“the first valuation”) which shows that on the effective date the minimum funding requirement is not met; and
 - (ii) ending with their receiving the next subsequent such valuation (“the second valuation”), being a valuation which shows that on the effective date—
 - (I) the minimum funding requirement is not met, and
 - (II) the amount by which the value of the scheme assets falls short of the amount of the scheme liabilities is a greater percentage of the liabilities than was shown in the first valuation,

they shall ►before the end of the period of 3 months beginning with the end of any such period◄ prepare a report stating the reasons for the failure to meet that requirement on the effective date of the second valuation and for the deterioration in the funding of the scheme.

Words in reg. 20(1) inserted by reg. 2(a) of S.I. 2002/380 as from 19.3.02.

(2) If the trustees or managers receive a request in writing from any such person as is mentioned in section 41(4) (which lists the persons to whom copies of documents are to be made available) for a copy of a report prepared by them under paragraph (1), they shall make a copy of the report available to him before the expiry of the period of one month beginning with the date on which they receive the request.

Methods of securing shortfall in cases of serious underprovision

22. Schedule 4 shall have effect as respects the methods by which the employer may secure the increase in the value of the scheme assets required by section 60(2) (instead of or in addition to making an appropriate payment to the trustees or managers).

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(a) Words substituted in reg. 23(1) and para. (4) inserted by reg. 3 of S.I. 2000/679 as from 3.4.00.

Words in reg. 23 (1)(a) and para. (1A) inserted and words substituted by reg. 8(3)(a) to (c) of S.I. 1999/3198 as from 30.12.99.

See note (a) above.

Failure to pay contributions due under schedule of contributions

23.—(1) ► Subject to paragraph (4), a notice◄ under section 59(1) that any amount payable in accordance with a schedule of contributions has not been paid on or before the due date—

- (a) ► subject to paragraph (1A),◄ must be given to the Authority before the end of the period of 30 days beginning with that date; and
- (b) subject to paragraph (2), must be given to the members before the end of the period of 90 days beginning with that date.

►(1A) No notice need be given under paragraph (1)(a) if—

- (a) payment has been made before the end of the period of 10 days beginning with the due date and
- (b) the default is only the first or second such default in the period of twelve months ending on and including the due date.◄

(2) No notice need be given under paragraph (1)(b) if payment has been made before the end of the period of 60 days beginning with the due date.

(3) Where a schedule of contributions provides for payments to be made by any date or within a period after that date, ►for the purposes of paragraphs (1) to (2)◄ the due date shall be taken to be the last day of that period.

►(4) Where, under section 49(9)(b) there is a requirement on the trustees or managers to give notice of a failure to pay within a prescribed time an amount corresponding to any contribution payable on behalf of an active member which has been deducted from the member's earnings, the trustees or managers shall not be required to give notice of a failure to pay such amount by the due date for the purposes of subsection (1) section 59 of that Act, in a case to which that subsection would otherwise apply.◄

Modification of shared cost schemes

24.—(1) The trustees of a shared cost scheme to which section 56 applies may by resolution modify the scheme with a view to making such provision that, if there is a serious shortfall valuation for the scheme, then the cost of any payments which the employer is obliged to make under section 60 as a result of that valuation is borne by the employer and the members in the appropriate proportions (in the case of the members, either by provision for them to make payments or for their rights to benefits under the scheme to be modified or both), unless the employer and the trustees or managers agree—

- (a) that the cost of the payments resulting from that valuation is to be borne by the employer alone; or

- (b) that he should bear a greater proportion of it than would otherwise fall to be borne by him.

(2) In paragraph (1) “shared cost scheme” means a scheme under the provisions of which—

- (a) the level of benefits expected to be provided is defined;
- (b) contributions are payable by the employer and the active members in specified proportions; and
- (c) if—
 - (i) it appears to the trustees or managers, or
 - (ii) an actuarial valuation shows,

that otherwise the assets of the scheme will (or are likely to) fall short of the liabilities of the scheme, the rates of contributions payable by both the active members and the employer may be increased in those specified proportions;

and “the appropriate proportions” means those specified proportions.

(3) For the purposes of paragraph (2) there shall be disregarded—

- (a) voluntary contributions by members and any associated contributions by the employer; and
- (b) any temporary suspension of the liability to make contributions or alteration in the proportions in which the contributions are payable under any provision of the scheme allowing such a suspension or alteration in any circumstances.

Authority’s powers to extend periods for making payments

Extension of contribution period

25.—(1) The Authority may extend (or further extend) the schedule period which would otherwise apply by virtue of regulation 16 if, on an application duly made to the Authority in that behalf by the trustees or managers of a scheme or the employer, the Authority are satisfied—

- (a) that one of the conditions mentioned in paragraph (2); and
- (b) all the conditions mentioned in paragraph (3),

are met.

(2) The conditions referred to in paragraph (1)(a) are—

- (a) that there has been a substantial decrease in the value of the scheme assets which is attributable to any act or omission constituting 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, would constitute such an offence if it had occurred in England and Wales);
- (b) that—
 - (i) by reason of exceptional general economic or financial circumstances there has been such a substantial decrease in the value of the scheme assets, or
 - (ii) there has been such a decrease in the value of a substantial proportion of the scheme assets in comparison with the relevant index assets, that, if the period in question were not extended, the level of contributions required to be made by or on behalf of the employer would be such that—
 - (I) in the case of a scheme which relates to employment in a business, the profitability of the business would be seriously affected, or
 - (II) in any other case, the financial position of the employer would be so affected;
- (c) that the employer proposes to make a contribution to the scheme in cash, to be obtained by him by the sale of assets, and completion of the formalities connected with the sale has been delayed;
- (d) that there has been a substantial increase in the amount of the liabilities of the scheme.

(3) The conditions referred to in paragraph (1)(b) are—

- (a) that the application has not been made as a result of an increase in the liabilities of the scheme since the beginning of the schedule period, arising—
 - (i) from the inclusion of, or of an increased amount in respect of, a liability the whole or part of which was not taken into account at the beginning of that period, by virtue of an act or omission which constituted a breach of a requirement imposed under section 47(9) (disclosure), or

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- (ii) from a change in circumstances which, in the opinion of the Authority, was within the control of the employer;
- (b) that—
- (i) the employer has made proposals for securing that the minimum funding requirement will be met before the time when the proposed extended period will expire, and
- (ii) except in a case where those proposals include his making a lump sum payment to the trustees or managers, pending the determination of the application contributions are being paid to the scheme by or on behalf of the employer at or above the rate certified by the actuary as the rate which would be required for securing that that requirement will be met before that time;
- (c) in the case of a scheme which relates to employment in a business, that the business is likely to continue to operate; and
- (d) that the trustees or managers and employer have agreed to provide the Authority during the extended period with all information requested by them for monitoring the factors relevant to the exercise of their powers under this regulation.
- (4) An application under paragraph (1) must be made in writing and be accompanied—
- (a) by a statement by the applicant specifying—
- (i) the general circumstances of the scheme,
- (ii) his proposals for securing that the minimum funding requirement will be met within a specified period, and
- (iii) his reasons for making those proposals;
- (b) by a statement as to the financial position of the employer including—
- (i) his ability to make adequate contributions to the scheme,
- (ii) the effect on his financial position if the contributions payable by him or on his behalf were reduced to the rates proposed in the application, and
- (iii) the likelihood of his financial position being seriously affected if the application were not granted;
- (c) ►by◀ the last actuarial valuation for the scheme;
- (d) ►by◀ the last statement in respect of the scheme under section 35 (investment principles);
- (e) ►by◀ a statement by the actuary as to the rates of contributions that are in his opinion required for securing that the minimum funding requirement will be met by the end of the period which would be applicable if the application were not granted;
- (f) in the case of an application made by the employer, ►by◀ a statement by the trustees or managers setting out their views as to the application; and
- (g) ►by◀ such other information and evidence as the Authority may require in support of the application.
- (5) Where the employer is a company, the statement required under paragraph (4)(b)(i) must—
- (a) be made by its directors; and
- (b) be accompanied by a statement by the auditor of the company that in his opinion the directors' statement has been made with due care.
- (6) Where the Authority exercise their power under paragraph (1), the schedule period applicable to the scheme in accordance with regulation 16 shall be altered accordingly.
- (7) In paragraph (2)(b)(ii) "the relevant index assets" means the assets the average yield from investment in which is, in accordance with regulation 7(2), used in the valuation of the liabilities of the scheme.

Word "by" inserted by reg. 8(7) by S.I. 1997/786 as from 6.4.97.

Extension of period for meeting serious shortfalls

26.—(1) The Authority may extend (or further extend) the period which by virtue of regulation 20 would otherwise be the period within which the increase required to be secured under section 60(2) must be secured, if it is to be secured as mentioned in paragraph (a) of that section, if, on an application duly made to the Authority in that behalf by the trustees or managers of a scheme or the employer, they are satisfied, subject to paragraph (2), that—

- (a) one of the conditions mentioned in paragraph (2) of regulation 25; and
- (b) all the conditions mentioned in paragraph (3) of that regulation, are met.

(2) For the purposes of this regulation, paragraphs (2) to (5) of regulation 25 apply to an application under paragraph (1) above as they apply to an application under that regulation, but subject to the following modifications—

- (a) in paragraph (2)(b) for the reference to the level of contributions required to be made by or on behalf of the employer there shall be substituted a reference to the amount of the appropriate payment required to be made by the employer under section 60(2)(a);
- (b) in paragraphs (3)(b) and (4)(a)(ii) for the references to securing that the minimum funding requirement will be met there shall be substituted references to securing that the required increase in value is secured;
- (c) in a case where it is proposed to make a single payment under section 60(2)(a), paragraph (4)(b)(ii) and (e) shall be omitted;
- (d) in a case where it is proposed to make two or more payments under section 60(2)(a), paragraph (4)(b)(ii) shall have effect with the substitution for the reference to contributions of a reference to those payments and paragraph (4)(e) shall be omitted.

General extensions in exceptional circumstances

27.—(1) Where, by reason of exceptional general economic or financial circumstances, it is likely that a large number of applications will be made—

- (a) under regulation 25, or
- (b) under regulation 26,

the Authority may exercise the powers of extension mentioned in paragraph (1) of that regulation in the case of all schemes in respect of which an application is made to them under that regulation, by extending (or further extending) the period to which the application relates, unconditionally or subject to any conditions.

(2) Extensions given generally under paragraph (1) may extend the applicable period for schemes of different descriptions by different periods.

(3) Paragraph (6) of regulation 25 applies to an extension given by virtue of paragraph (1)(a) as it applies in the case of an extension by virtue of paragraph (1) of that regulation.

(4) Extensions under paragraph (1) may apply to applications made under regulation 25 or, as the case may be, 26, notwithstanding that they are not accompanied by the documents, information and evidence required in their case by paragraph (4) of regulation 25.

Exemptions

Exemptions

28.—(1) Section 56 (minimum funding requirement) 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(a) (superannuation of persons employed in local government service etc.) or section 2 of the Parliamentary and other Pensions Act 1987(b) (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;

(a) 1972 c. 11.

(b) 1987 c. 45.

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- (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 (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);
- (g) to a relevant lump sum retirement benefits scheme; or
- (h) to the scheme established by the Salvation Army Act 1963(a) ►; or
- (i) to the Chatsworth Settlement Estate Pension Scheme◄.

Sub para (i) inserted by reg. 4(2) of S.I. 1997/3038 as from 12.1.98.

(2) In this regulation—

“approved scheme” means a scheme which is approved or was formerly approved under section 590 or 591 of the Income and Corporation Taxes Act 1988(b) or in respect of which an application for such approval has been duly made but 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 that 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 that Act(c);

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

(3) Where a debt under section 75 arises ► in the case of a scheme to which section 56 applies◄ immediately before an insolvency event occurs in relation—

- (a) to a person who is at that time the sole employer in relation to the scheme; or
- (b) to persons who are at that time the only employers in relation to the scheme;

►sections 57 to 60◄ shall not apply to the scheme.

►(3A) Paragraph (3) shall apply in the case of a debt which has arisen under section 144 of the Pension Schemes Act 1993(d) (deficiencies in the assets of a scheme on winding up) as if it were a debt arising under section 75◄.

(4) Where a scheme to which section 56 applies is being wound up, sections 57(1)(b) and (2) to (4) and 58 to 60 do not apply to it.

(5) Nothing in paragraph (3) or (4) shall affect any rights or obligations arising under section 56 to 61 before the time mentioned in paragraph (3) or, as the case may be, the time when the scheme begins to be wound up, and—

- (a) if section 60(2) has applied in relation to the scheme; and
- (b) the employer has secured the increase required by that section by a method specified in Schedule 4,

those paragraphs do not affect the operation of that Schedule or anything done under it.

(a) 1963 c. xxxii.

(b) 1988 c. 1.

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

(d) 1996/1655; relevant amending instruments are S.I. 1997/786 and 1997/819.

Words added to reg. 28(3) by reg. 8(8) of S.I. 1997/786 as from 6.4.97.

Words deleted from reg. 28(3) and sub-para. (3A) inserted by reg. 4 of S.I. 1997/3038 as from 12.1.98.

Modifications for special cases

Modifications

29. Schedule 5 has effect for the purpose of modifying sections 56 to 60 and these Regulations as they apply in the circumstances there specified, including—

- (a) schemes with members in employments under different employers;
- (b) scheme without active members;
- (c) schemes with foreign elements;
- (d) schemes which are partially guaranteed by Ministers of the Crown.
- ▶(e) schemes which are exempt from the requirement to appoint an actuary.◀

Sub para. 29(e) inserted by reg. 4(5) of S.I. 1997/3038 as from 12.1.98.

Ongoing actuarial valuations

Ongoing actuarial valuations and statements

30.—(1) Subject to paragraph (2), the trustees or managers of any scheme to which section 56 applies ▶(other than a scheme which is being wound up)◀ shall obtain a valuation prepared and signed by the actuary of the assets and liabilities of the scheme as at a date (“the effective date”) specified in the valuation.

Words inserted into reg. 30(1) by reg. 8(9) of S.I. 1997/786 as from 6.4.97.

(2) Such a valuation shall—

- (a) be so expressed as to enable the expected future course of the scheme’s contribution rates and funding level to be understood;
- (b) state whether it has been prepared in accordance with the guidelines “Retirement Benefit Schemes—Actuarial Reports (GN 9)” published by the Institute of Actuaries and the Faculty of Actuaries^(a) and current on the date of signature of the evaluation; and
- (c) if it has not been so prepared, indicate where there are any material departures from those guidelines.

(3) In the case of a scheme—

- (a) which commences on or after the commencement date;
- (b) in relation to which there was no disclosure valuation before that date; or
- (c) to which section 56 first applies after that date,

the first such valuation to be obtained in relation to the scheme under this regulation—

- (i) shall be by reference to an effective date no later than the first anniversary of the date on which the scheme commences or, as the case may be, section 56 first applies to it; and
- (ii) shall be obtained by the trustees or managers before the end of the period of one year beginning with its effective date.

(4) In the case of any other scheme the first such valuation to be obtained in relation to the scheme under this regulation—

- (a) shall be by reference to an effective date no later than the third anniversary of the effective date of the last disclosure valuation in relation to the scheme before the commencement date; and
- (b) shall be obtained by the trustees or managers before the end of the period of one year beginning with its effective date.

(5) Any subsequent valuation under this regulation shall be obtained by the trustees or managers—

- (a) in a case where the effective date of the valuation is not later than the third anniversary of the effective date of the last such valuation, before the end of the period of 4 years beginning with ▶the effective date of the last such valuation; and◀
- (b) otherwise, before the end of the period of 3 years beginning with the date on which the last such valuation was signed.

Words substituted in reg. 30(5) by reg. 8(9) of S.I. 1997/786 as from 6.4.97.

(a) Copies of the guidelines “Retirement Benefit Schemes—Actuarial Reports (GN 9)” may be obtained from the Faculty of Actuaries, 40-44 Thistle Street, Edinburgh EH2 1EN.

OCCUPATIONAL PENSION SCHEMES (**MINIMUM FUNDING
REQUIREMENT** AND ACTUARIAL VALUATIONS) REGULATIONS 1996

(6) A valuation under this regulation must be signed before the end of the period of one year beginning with its effective date.

(7) Each such valuation must be accompanied by a statement made by the actuary, and he may issue a revised statement at any time before the next such valuation is made.

(8) Any such statement or revised statement shall be in the form set out in Schedule 6, except that—

- (a) if paragraph 1 of the statement does not correctly set out the actuary's opinion, he must substitute a negative or qualified opinion, giving reasons; and
- (b) in the case of revised statement, the line which begins with the words "Effective date of valuation" may be omitted.

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

12th June 1996

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

SCHEDULE 1

Regulation 14

MINIMUM FUNDING VALUATION STATEMENTS

PART I

THE ACTUARY'S STATEMENT

1. Each minimum funding valuation must contain a statement made by the actuary.
2. Subject to the following paragraphs, such a statement must be in the form set out in Part II.
3. If the actuary is of the opinion that on the effective date the value of the scheme assets is at least 105 per cent. of the amount of the scheme liabilities on that date, he may modify paragraph 1 of the statement by substituting for the words "is per cent." words indicating that the amount of those assets is not more than a specified percentage nor less than another specified percentage of those liabilities, where the latter percentage is at least 105 and the difference between those percentages does not exceed 5.
4. If the actuary is of the opinion that on the effective date the value of the scheme assets exceeds 120 per cent. of the amount of the scheme liabilities on that date, in paragraph 1 of the statement for the words "is per cent." there may be substituted the words "exceeds 120 per cent."
5. If the actuary is of the opinion that on the effective date the assets of the scheme were sufficient fully to satisfy the liabilities mentioned in section 73(4), paragraph 2 of the statement must be omitted and paragraph 3 renumbered as paragraph 2.
- ▶6. References to section 73(4) (a) in paragraph 5 above and in paragraph 2 of the actuary's statement as set out in Part II are references to that section as modified—
 - (a) where that section has effect in relation to the scheme on the effective date; or
 - (b) where sub-paragraph (a) does not apply in relation to a scheme, as if that scheme had commenced winding up on the effective date,

(a) References in para. 5 & 6 substituted by reg. 9(3) of S.I. 2005/706 as from 6.4.05.
Para. 6 of Sch. 1 substituted by reg. 3 of S.I. 2004/3031 as from 21.12.04.
See note (a) above.

and the actuary may modify the description of liabilities in paragraph 2 of that statement accordingly.◀

(a) Section 73(3) was amended by section 38(1) of the Welfare Reform and Pensions Bill 1999 (c. 30) and modified by S.I. 1996/3126 and 2004/1140.

PART II

FORM OF ACTUARY'S STATEMENT: MINIMUM FUNDING VALUATIONS

ACTUARIAL STATEMENT MADE FOR THE PURPOSES OF REGULATION 14 OF THE OCCUPATIONAL PENSION SCHEMES (MINIMUM FUNDING REQUIREMENT AND ACTUARIAL VALUATIONS) REGULATIONS 1996

Name of scheme

Effective date of valuation

1. Compliance with minimum funding requirement

In my opinion, on the effective date the value of the assets of the scheme is per cent. of the amount of the liabilities of the scheme.

2. Security of preferential liabilities

In my opinion, on the effective date the assets of the scheme were sufficient to satisfy the liabilities of the scheme mentioned in section 73(4) of the Pensions Act 1995 (which lists the liabilities of schemes in the order in which they are to be met on a winding up) to the following extent-

References in para. 2 substituted by reg. 9(3) of S.I. 2005/706 as from 6.4.05.

Table with 2 columns: Description of liability within section 73(4), Percentage satisfied. Includes dotted lines for entries.

3. Valuation principles

The scheme's assets and liabilities are valued in accordance with section 56(3) of the Pensions Act 1995, the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulation 1996 and the mandatory guidelines on minimum funding requirement (GN 27), prepared and published by the Institute of Actuaries and the Faculty of Actuaries.

Signature Date
Name Qualification
Address Name of employer (if applicable)

Note:

The valuation of the amount of the liabilities of the scheme does not reflect the cost of securing those liabilities by the purchase of annuities, if the scheme were to have been wound up on the effective date of the valuation.

SCHEDULE 2

Regulation 17(6)

CERTIFICATION OF SCHEDULES OF CONTRIBUTIONS

PART I

CERTIFICATION

1. A certificate given in the case mentioned in section 58(6)(a) ►(minimum funding requirement met on date 7 days before date certificate signed)◄ must be in the form set out in Part II.

Words in paras. 1 and 2 substituted by reg. 2(10) of S.I. 2002/380 as from 19.3.02.

2. A certificate given in the case mentioned in section 58(6)(b) ►(minimum funding requirement not met on date 7 days before date certificate signed)◄ must be in that form, but with the substitution for the word “throughout” in paragraph 1 of the words “by the end of”.

3. Where a certificate is given in a case where section 58(6)(b) has effect with the words added by regulation 17(2), there must be added at the end of paragraph 1 of the certificate either—

- (a) the words “and are such that the amount by which the value of the scheme assets falls short of the amount of the scheme liabilities will be reduced by additional contributions of equal or decreasing amounts made at not more than yearly intervals throughout that period”; or
- (b) the words “and are such that the amount by which the value of the scheme assets falls short of the amount of the scheme liabilities will be reduced by increasing some or all of the contribution rates by a percentage which either remains the same or decreases during that period”,

as appropriate.

4. Where a certificate is given in a case where section 58(6)(b) has effect with the words added by regulation 17(3), there must be added at the end of paragraph 1 of the certificate the words “and are such that they meet the uniform funding requirement specified in regulation 17 of the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996”.

►5. If, in a case where there has been a serious shortfall valuation, the actuary is of the opinion that on the date 7 days before the date on which he signs the certificate there was no longer such a difference as is mentioned in section 60(1), he must insert the following statement after paragraph 1 of the certificate—

Paras. 5 & 6 substituted by reg. 2(10)(c) & (d) of S.I. 2002/380 as from 19.3.02.

“1A. Cessation of serious shortfall in assets

In my opinion an actuarial valuation, for the scheme as at the date of this certificate would not show such a shortfall as is mentioned in section 60(1) of the Pensions Act 1995 (value of scheme assets less than 90 percent. of amount of scheme liabilities).◄

►6. If, in a case where there has been a serious shortfall valuation, the actuary is of the opinion that on the date 7 days before the date on which he signs the certificate the difference mentioned in section 60(1) has decreased, he must insert the following statement after paragraph 1 of the certificate—

►“1A. Decrease in serious shortfall in assets

In my opinion an actuarial valuation for the scheme as at the date 7 days before the date of this certificate would show that the shortfall mentioned in section 60(1) of the Pensions Act 1995 (value of scheme assets less than 90 per cent. of amount of scheme liabilities) has decreased since the last actuarial valuation for the purposes of section 57 and is now”.◄◄

PART II

FORM OF ACTUARY'S CERTIFICATE

ACTUARIAL CERTIFICATE GIVEN FOR THE PURPOSES OF SECTION 58 OF THE PENSIONS ACT 1995 (CERTIFICATION OF SCHEDULE OF CONTRIBUTIONS)

Name of scheme

Adequacy of rates of contributions

Words in para. of form substituted by reg. (11) of S.I. 2002/380 as from 19.3.02.

►1. I hereby certify that, in my opinion, the rates of the contributions payable in accordance with the schedule of contributions dated are adequate for the purpose of securing that throughout the period it covers the scheme will meet the minimum funding requirement imposed by section 56(1) of the Pensions Act 1995.”◄

2. In forming this opinion I have complied with the requirements imposed by sections 56(3) and 58 of the Pensions Act 1995, the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996 and the mandatory guidelines on minimum funding requirement (GN 27), prepared and published by the Institute of Actuaries and the Faculty of Actuaries, and have made the assumptions prescribed by them.

Signature Date
Name Qualification
Address Name of employer
(if applicable)

Note:

The certification of the adequacy of rates of contributions for the purpose of securing the meeting of the minimum funding requirement is not a certification of their adequacy for the purpose of securing the scheme's liabilities by the purchase of annuities, if the scheme were wound up.

SCHEDULE 3

Regulation 18(2)

PERIODICAL CERTIFICATION OF CONTRIBUTIONS

PART I

CERTIFICATION

1. A certificate given under regulation 18(1)(a)(i) in a case where the actuary is of the opinion that contributions are adequate for the purpose of securing that the minimum funding requirement will continue to be met must be in the form set out in Part II.

2. A certificate given under regulation 18(1)(a)(ii) in a case where the actuary is of the opinion that contributions are adequate for the purpose of securing that the minimum funding requirement will be met by the end of a period must also be in that form, but with the substitution for the words “will continue to be met throughout the remainder” in paragraph 1 of the words “will be met by the end”.

3. A certificate given under regulation 18(1)(a) in a case where the actuary is of the opinion that contributions are not adequate as there mentioned must be in the form which would be appropriate if he were of the opinion that they were adequate but with the substitution for the words “are adequate” in paragraph 1 of the words “are not adequate”.

4. If the actuary is of the opinion that no changes which are relevant have occurred since the last minimum funding valuation, he may substitute for the words “the following changes” in paragraph 2 of the certificate the words “no changes”.

5. The statement mentioned in regulation 12(1) (duty to obtain minimum funding valuations where actuary suspects new serious underfunding) is as follows—

►“3. *Serious shortfall in assets*

In my opinion an actuarial valuation for the scheme as at the date 7 days before the date of this certificate would show such a shortfall as is mentioned in section 60(1) of the Pensions Act 1995 (value of scheme assets less than 90 per cent. of amount of scheme liabilities).”◄

Words in para. 5 of form substituted by reg. 2(12) of S.I. 2002/380 as from 19.3.02.

PART II

FORM OF ACTUARY'S CERTIFICATE

ACTUARIAL CERTIFICATE GIVEN FOR THE PURPOSES OF SECTION 57(1)(B) OF THE PENSIONS ACT 1995 (OCCASIONAL OR PERIODICAL CERTIFICATION OF CONTRIBUTIONS)

Name of scheme

1. Adequacy of rates of contributions

I hereby certify that, in my opinion, the rates of the contributions payable in accordance with the schedule of contributions dated are adequate for the purpose of securing that the minimum funding requirement imposed by section 56(1) of the Pensions Act 1995 will continue to be met throughout the remainder of the period covered by the schedule of contributions.

In forming this opinion I have complied with the requirements imposed by sections 56(3) and 57 of the Pensions Act 1995, the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996 and the mandatory guidelines on minimum funding requirement (GN 27), prepared and published by the Institute of Actuaries and the Faculty of Actuaries, and have made the assumptions prescribed by them.

2. Relevant changes since last actuarial valuation

Since the last actuarial valuation of the scheme was prepared under section 57 of the Pensions Act 1995 the following changes which are relevant have occurred:-

.....

Signature Date
Name Qualification
Address Name of employer
(if applicable)

Note:

The certification of the adequacy of rates of contributions for the purpose of securing the meeting of the minimum funding requirement is not a certification of their adequacy for the purpose of securing the scheme's liabilities by the purchase of annuities, if the scheme were wound up.

SCHEDULE 4

Regulation 22

METHODS OF SECURING SHORTFALL IN CASES OF
SERIOUS UNDERPROVISION

Preliminary

1.—(1) In this Schedule—

▶“relevant institution” means—

- (a) a person with permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits, or
- (b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule) to accept deposits;◀

(a) Defn. of “relevant institution” substituted and para. 1(1A) inserted by art. 525(4) & (5) of S.I. 2001/3649 as from 1.12.01.

“section 60 shortfall”, in relation to a scheme, means the increase in the value of the scheme assets required by section 60(2) as the result of a serious shortfall valuation ▶(after taking section 60(7A) into account in any case where it applies)◀, less any payment made to the trustees or managers by or on behalf of the employer since the valuation ▶(or, in a case where section 60(7A) applies the date 7 days before the date on which the actuary signed the certificate)◀ to secure the whole or part of that increase;

Words added to defn. of “section 60 shortfall in” para. 1(1) by reg. 8(11) of S.I. 1997/786 as from 6.4.97.

▶“section 75 shortfall”, in relation to a scheme, means so much of the amount treated by section 75(2) or (4) as a debt due from the employer to the trustees or managers at the applicable time (as defined in regulation 2(1) of the Occupational Pension Schemes (Employer Debt) Regulations 2005), as is attributable to the value of the scheme assets falling short of the amount of the scheme liabilities by more than 10 per cent;◀

Words in defn. of “section 60 shortfall” substituted by reg. 2(13) of S.I. 2002/380 as from 19.3.02.

“the shortfall period”, in relation to a scheme, means the period beginning with the signing of a serious shortfall valuation for the scheme and ending with the signing of a minimum funding valuation which is not a serious shortfall valuation.

Defn. of “section 75(1) shortfall” and words in para. 2(2)(i) (II) substituted by reg. 1(5)(a) & (b) to Sch. 2 of S.I. 2005/678 as from 6.4.05.

▶(1A) The definition of “relevant institution” in sub-paragraph (1) must be read with—

See note (a) above.

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.◀

(2) If, in the case of a scheme in relation to which there is more than one employer, an amount is secured by one of the employers, or by two or more acting jointly (but not by all of the employers), in a manner specified in paragraph 2, 3 or 4 of this Schedule, references in this Schedule to a ▶relevant event◀ occurring in relation to the employer are references to such an event occurring in relation to that employer, or, as the case may be, to one of the employers who are acting jointly, and not to such an event occurring in relation to any of the other employers.

Words in paras 1(2) & 2(2)(a) substituted by reg. 1(5)(c) of Sch. 2 to S.I. 2005/678 as from 6.4.05.

Appropriate letters of credit

2.—(1) The employer may secure the whole or part of the section 60 shortfall by arranging, with the agreement of the trustees or managers of the scheme, for an appropriate letter of credit to be given to the trustees or managers which satisfies the requirements of this paragraph.

(2) In sub-paragraph (1) “appropriate letter of credit” means a guarantee in writing from a relevant institution that—

- (a) if a ▶relevant event◀ occurs in relation to the employer during the relevant period;
- (b) if the scheme begins to be wound up; or
- (c) in the case of a guarantee which terminates before the end of the relevant period, if the employer fails to secure a renewal of the guarantee before it expires,

then the institution will pay the trustees or managers a sum of an amount equal—

- (i) in the cases mentioned in paragraphs (a) and (b)—
 - (I) to the amount specified in the letter as the maximum amount that the institution guarantees (“the specified maximum”), or

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Words in para. 2(2)
(i)(II) substituted by
reg. 1(5)(b) to Sch. 2 of
S.I. 2005/678 as from
6.4.05.

(II) to the ►section 75 shortfall◄

whichever is less; and

(ii) in the case mentioned in paragraphs (c), to the specified maximum.

(3) In paragraph (2) “the relevant period” means the period beginning with the date on which the appropriate letter of credit is given and ending with—

(a) the time it ceases to be in force,

(b) the shortfall period,

(c) the time when the section 60 shortfall is first extinguished,
whichever occurs first.

(4) The appropriate letter of credit must be given on terms under which—

(a) it is to remain in force for a period of not less than 18 months; and

(b) it may be renewed on an application made by the employer before the end of that period.

(5) Where an appropriate letter of credit has been given under sub-paragraph (1) to secure an amount following a serious shortfall valuation, the trustees or managers may accept a fresh appropriate letter of credit in substitution for it (or for any such letter previously accepted by them in substitution for it under this sub-paragraph) to secure that amount, notwithstanding that the period within which that amount may be secured in that manner has expired.

(6) Except as provided in this paragraph, an appropriate letter of credit must not be capable of revocation or amendment during the shortfall period.

Designated deposit accounts

3.—(1) The employer may secure the whole or part of the section 60 shortfall by arranging, with the agreement of the trustees or managers of the scheme, for the payment of a sum into a deposit account with a relevant institution on the terms mentioned in the following provisions of this paragraph.

(2) The account shall be held in the name of the trustees or managers and designated as an account to which the provisions of this paragraph apply.

(3) The trustees or managers shall hold the amount for the time being standing to the credit of the account on trust—

(a) if during the shortfall period a ►relevant event◄ occurs in relation to the employer or the scheme begins to be wound up, to pay to the scheme a sum equal to—

(i) the sum standing to the credit of the account at that time, or

(ii) the ►section 75 shortfall◄
whichever is less; and

(b) subject to paragraph (a), for the benefit of the employer absolutely.

(4) Where a sum has been paid into a deposit account with a relevant institution under sub-paragraph (1) to secure any amount following a serious shortfall valuation—

(a) the trustees or managers may agree to the sum standing to the credit of the account being transferred to another account with the same or another relevant institution on the terms mentioned in sub-paragraphs (2) and (3) to secure that amount, notwithstanding that the period within which that amount may be secured in that manner has expired; and

(b) if—

(i) a fresh obligation arises under section 60(2) as a result of a further serious shortfall valuation, and

(ii) the trustees or managers agree that the account shall continue as a method of securing the amount required to be secured in pursuance of the further valuation on the terms mentioned in sub-paragraph (3),

then, for the purposes of section 56 to 61 and these Regulations (but not for any other purposes), such a payment as is mentioned in sub-paragraph (1) shall be deemed to have been made on the date of that agreement.

(5) An account held for the purposes of this paragraph may be held on terms allowing repayment to the employer of any amount by which the amount standing to the credit of the account at any time exceeds the section 60 shortfall at that time.

Words in para. 3(3)(a)
and (ii) substituted by
para. 1(5)(b) & (c) of
Sch. 2 to S.I. 2005/678
as from 6.4.05.

(6) Except as provided in sub-paragraph (4), the terms of the trust on which the account is held must not be capable of amendment during the shortfall period.

Charges over unencumbered assets

4.—(1) The employer may secure the whole or part of the section 60 shortfall by arranging, with the agreement of the trustees or managers of the scheme, for the trustees or managers to be given a charge over assets, which are otherwise free from encumbrances, being a charge in respect of which the requirements of this paragraph are satisfied.

(2) The charge must be made on the following terms—

- (a) that, subject to paragraph (b), during the shortfall period the assets stand charged with the payment of a debt from the employer to the trustees or managers of the sum specified in the charge as the maximum amount that is secured by it;
- (b) that, if during that period a ►relevant event◄ occurs in relation to the employer or the scheme begins to be wound up, the assets stand charged with a debt from the employer to the trustees or managers of a sum equal to—
 - (i) the amount mentioned in paragraph (a), or
 - (ii) the ►section 75 shortfall◄
whichever is less;
- (c) that at no time during the shortfall period the employer will take or omit to take any steps the taking or omission of which results or may result in a reduction in the value of the assets to an amount less than the section 60 shortfall at that time.

Words in paras. 4(2)(b) & (ii) & 4(4) substituted by para. 1(5)(b) & (c) of Sch. 2 to S.I. 2005/678 as from 6.4.05.

(3) The charge must be registerable—

- (a) in a case where the employer is a company, under Part XII of the Companies Act 1985(a); and
- (b) in any other case, in a register maintained under an enactment;

and the section 60 shortfall shall not be treated for the purposes of section 60 as having been secured by the charge unless a legal adviser appointed by the trustees or managers has certified in writing to them that all such steps have been taken as are necessary for the purpose of protecting their interests in the charge.

(4) Before agreeing to an amount required to be secured by section 60(2) being secured by a charge over assets, the trustees or managers must be satisfied that the assets proposed to be charged are suitable as security for payment of that amount and, in particular, that, if a ►relevant event◄ occurs in relation to the employer—

- (a) the value of the assets will not be substantially reduced; and
- (b) the assets may be converted into cash without undue difficulty and within a reasonable period.

(5) Where a section 60 shortfall has been secured by a charge under this paragraph, the trustees or managers may accept a fresh charge over different assets in substitution for the original charge, notwithstanding that the period within which that shortfall may be secured in that manner has expired, if they are satisfied that the requirements of this paragraph are satisfied.

(6) Where an amount required to be secured by virtue of a serious shortfall valuation has been secured by a charge under this paragraph, if—

- (a) a fresh obligation arises under section 60(2) as a result of a further such valuation; and
- (b) the trustees or managers are satisfied that, if the charge were being taken by them as a result of that further valuation, the requirements of this paragraph would be satisfied,

then—

- (i) they may agree to accept the charge as security under this paragraph in respect of the amount required by section 60(2) to be secured by virtue of the further valuation (so far as that amount does not exceed the sum specified in the charge as the maximum amount that is secured by it); and

(a) 1985 c. 6.

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(ii) if they do so, then for the purposes of sections 56 to 61 and these Regulations (but not for any other purposes) the charge shall be deemed to have been given on the date of that agreement.

(7) A charge given for the purposes of this paragraph may allow the release of assets from the charge where—

- (a) there has been a reduction in the section 60 shortfall; and
- (b) the trustees or managers are satisfied that the assets which will be subject to the charge after the release would be accepted by them to secure an amount equal to the section 60 shortfall at the time of the release if the charge were given at that time.

(8) Except as provided by this paragraph, a charge given under this paragraph must be given on terms under which it may not be amended or revoked during the shortfall period.

Expenses

5. Expenses incurred by the trustees or managers in connection with securing any arrangement under this Schedule may not be paid out of the assets of the scheme.

Valuation of increases secured as mentioned in this Schedule

6.—(1) An increase in value secured by the method specified in paragraph 2 shall at any time be treated for the purposes of section 60 as being of an amount equal to—

- (a) the amount specified in the appropriate letter of credit as the maximum amount the institution guarantees; or
- (b) the section 60 shortfall at that time,

whichever is less.

(2) An increase in value secured by the method specified in paragraph 3 shall at any time be treated for the purposes of section 60 as being of an amount equal to—

- (a) the amount standing to the credit of the account at that time; or
- (b) the section 60 shortfall at that time,

whichever is less.

(3) An increase in value secured by the method specified in paragraph 4 shall at any time be treated for the purposes of section 60 as being of an amount equal to—

- (a) the amount specified in the charge as the maximum amount to be secured by it; or
- (b) the section 60 shortfall at that time,

whichever is less.

SCHEDULE 5

Regulation 29

MODIFICATIONS

Multi-employer schemes

1.—(1) 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,

sections 56 to 60 and these Regulations (except regulation 28(1)(e)) shall apply as if each section of the scheme were a separate scheme.

(2) Where—

- (a) a scheme which has been such a scheme as is mentioned in sub-paragraph (1) 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;◀
- (b) the provisions of the scheme have not been amended so as to prevent the conditions mentioned in sub-paragraph (1)(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 the commencement date) by reason only of there being no members in pensionable service under the section and no contributions which are to be allocated to it,

Words added by reg. 8(12) of S.I. 1997/786 as from 6.4.97.

sections 56 to 60 and these Regulations (except regulation 28(1)(e)) shall apply as if the section in relation to which those conditions have ceased to be satisfied were a separate scheme.

►(2A) For the purposes of sub-paragraphs (1) and (2), 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 those sub-paragraphs apply 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 purpose of sections 56 to 60 and these Regulations.

Sub-para (2A) & (2B) added by reg. 8(13) of S.I. 1997/786 as from 6.4.97.

(2B) For the purposes of sub-paragraphs (1), (2) and (2A), 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) In their application in any such case as is mentioned in sub-paragraph (1) or (2), the forms set out in Part II of Schedules 1, 2 and 3 and in Schedule 6 have effect with the following modifications—

- (a) after “Name of scheme” insert “and name of section”; and
- (b) for “scheme” and “scheme’s”, wherever else they occur, substitute “section” and “section’s”.

2.—(1) In the application of section 58(4) to a scheme in relation to which there is more than one employer ►◀, paragraph (a) of that section has effect with the substitution for the word “employer” of the words “the person whom the employers nominate to act as their representative for the purposes of this paragraph or, if no such nomination is made, all the employers”.

Words deleted by reg. 8(14) of S.I. 1997/786 as from 6.4.97.

(2) In the application of regulation 23 to such a scheme the reference to members in paragraph (1)(b) only includes the members whose pensionable service under the scheme is with the employer whose default is being notified.

(3) Subject to sub-paragraphs (4) and (5), in the application of regulations 25 and 26 to such a scheme, references to the employer are to be taken as references to all the employers.

(4) In the case of a scheme where the employers are not all persons who are associated or connected (within the meaning of section 123), an application under regulation 25(1) or 26(1) may be made—

- (a) by the trustees or managers;
- (b) by all the employers; or
- (c) by the employers of at least two-thirds of the active members of the scheme.

(5) In the case of an application by virtue of sub-paragraph (4)(c), regulation 25(2) to (5) and regulation 26(2) shall apply as if there were no employers other than the applicant or applicants.

Frozen or paid-up schemes

3. In the application of sections 56 to 60 and these Regulations to a scheme which has no active members, references to the employer are references to the person who was the employer immediately before the occurrence of the event after which the scheme ceased to have any such members.

Schemes covering United Kingdom and foreign employment

4.—(1) This paragraph 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 the other members (“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”, in relation to a section, means approved or formerly approved under section 590 or 591 of the Income and Corporation Taxes Act 1988(a).

(3) Where this paragraph applies—

- (a) section 56 to 60 and these Regulations shall apply as if each section of the scheme were a separate scheme; and
- (b) the forms set out in Part II of Schedules 1, 2 and 3 and Schedule 6 apply with the following modifications—
 - (i) after “Name of scheme” insert “and name of section”,
 - (ii) for “scheme” and “scheme’s”, wherever else they occur, substitute “section” and “section’s”.

5.—(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 4 and part of the scheme is approved under section 590 or 591 of the Income and Corporation Taxes Act 1988 by virtue of section 611(3) of that Act.

(2) Where this paragraph applies—

- (a) sections 56 to 60 and these Regulations shall apply as if the approved and unapproved parts of the scheme were separate schemes; and
- (b) the references to the scheme in the forms set out in Part II of Schedules 1, 2 and 3 and Schedule 6 may be modified appropriately.

Schemes with partial government guarantee

6. Where such a guarantee has been given or such arrangements have been made as are mentioned in regulation 28(1)(b) in respect of part only of a scheme—

(a) 1988 c. 1.

- (a) sections 56 to 60 and these Regulations shall apply as if that part and the other part of the scheme were separate schemes; and
- (b) the references to the scheme in the forms set out in Part II of Schedules 1, 2 and 3 and Schedule 6 may be modified appropriately.

►¹*Schemes which are not required to appoint an actuary*

¹Para. 7 inserted by reg. 4(b) of S.I. 1997/3038 as from 12.1.98.

7. Where a scheme is exempt from the application of section 47(1)(b) (requirement to appoint a scheme actuary) by virtue of regulations made under subsection (5) of that section(a), sections 56 to 60 and these Regulations shall apply as if references to the actuary were to an actuary authorised by the trustees or managers to provide such valuations or certifications as may be required under those sections and these Regulations. ◀

SCHEDULE 6

Regulation 30

FORM OF ACTUARY'S STATEMENT: ONGOING VALUATIONS

ACTUARIAL STATEMENT MADE FOR THE PURPOSES OF REGULATION 30 OF THE OCCUPATIONAL PENSION SCHEMES (MINIMUM FUNDING REQUIREMENT AND ACTUARIAL VALUATIONS) REGULATIONS 1996

Name of scheme

Effective date of valuation

1. *Security of prospective rights*

In my opinion, the resources of the scheme are likely in the normal course of events to meet in full the liabilities of the scheme as they fall due. In giving this opinion, I have assumed that the following amounts will be paid to the scheme:

Description of contributions

.....
.....

subject to review at future actuarial valuations.

2. *Summary of methods and assumptions used*

.....

Further details of the methods and assumptions used are set out in my actuarial valuation addressed to the trustees or managers dated

.....

Signature Date

Name Qualification

Address Name of employer
(if applicable)

(a) See regulation 3(2) of the Occupational Pension Schemes (Scheme Administration) Regulations 1996 (S.I. 1996/1715).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations concern the minimum funding requirement for occupational pension schemes under sections 56 to 61 of the Pensions Act 1995 (c. 26) (“the Act”) and ongoing actuarial valuations under section 41. They are made before the expiry of the period of six months beginning with the coming into force of the provisions of Part I of the Act by virtue of which they are made. They are accordingly exempt from the requirement in section 120 of the Act for the Secretary of State to consult such persons as he considers appropriate.

Regulations 1 and 2 provide for the citation, commencement and interpretation of the Regulations.

Regulations 3 to 9 make provision as to the method and assumptions to be adopted in determining the value of scheme liabilities and assets.

Regulation 10 specifies time limits within which minimum funding valuations must be obtained. Regulation 11 imposes a duty to obtain minimum funding valuations following events with significant effects on funding. Regulation 12 imposes a duty on trustees to obtain minimum funding valuations where new serious underfunding is reported by the actuary. Regulation 13 imposes a duty on trustees or managers to obtain a minimum funding valuation in a multi-employer scheme where debt may have arisen under section 75 of the Act. Regulation 14 and Schedule 1 make provision as to the contents of the actuary’s report of such a valuation.

Regulations 15 to 19 and Schedules 2 and 3 make provision in relation to schedules of contributions and as to the certification of the adequacy of contributions and the keeping of records of contributions.

Regulations 20 and 21 make provision in relation to schedules of contributions and the requirement on trustees to report in relation to inadequate funding. Regulation 22 and Schedule 4 make provision as to the permitted methods for securing the shortfall in a case of serious UNDER PROVISION. Regulation 23 makes provision as to the notification of failure to make contributions to the Occupational Pensions Regulatory Authority and to members. Regulations 25 to 27 make provision in relation to the power of the Authority to extend the period for making payments.

Regulation 28 provides for exemptions to the minimum funding requirement.

Regulation 29 and Schedule 5 provide for modification of the requirements in the case of multi-employer schemes, frozen or paid-up schemes, schemes covering United Kingdom and foreign employment and schemes with a partial government guarantee.

Regulation 30 and Schedule 6 make provision for trustees to obtain an ongoing actuarial valuation and for its format, content and frequency.

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, 11th Floor, the Adelphi, 1-11 John Adam Street, London WC2N 6HT.