

## 2006 No. 802

### PENSIONS

#### The Occupational Pension Schemes (Payments to Employer) Regulations 2006

<i>Made - - - -</i>	<i>16th March 2006</i>
<i>Laid before Parliament</i>	<i>16th March 2006</i>
<i>Coming into force -</i>	<i>6th April 2006</i>

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## SCHEDULE 1

## SCHEDULE 2

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 37(3)(a), (b) and (g), (4), (5) and (8), 76(2), (3)(d) and (8), 124(1), 125(3) and 174(2) and (3) of the Pensions Act 1995(a) and sections 251(6)(a) and 318(1) of the Pensions Act 2004(b).

In accordance with section 120(1) of the Pensions Act 1995 and section 317(1) of the Pensions Act 2004 the Secretary of State for Work and Pensions has consulted such persons as he considers appropriate.

**PART 1**

## Citation, commencement and interpretation

**Citation and commencement**

1. These Regulations may be cited as the Occupational Pension Schemes (Payments to Employer) Regulations 2006 and shall come into force on 6th April 2006.

**Interpretation**

- 2.—(1) In these Regulations—

“the 1995 Act” means the Pensions Act 1995;

“the 2004 Act” means the Pensions Act 2004;

“earmarked scheme” means a money purchase scheme under which all the benefits are secured by one or more insurance policies specifically allocated to the provision of benefits to or in respect of individual members;

“effective date” means the date by reference to which the scheme’s assets are valued and liabilities calculated by the person specified in Regulation 6;

“excluded person” means a deferred member or pension credit member whose current address is not known to the trustees or managers of the scheme, and in respect of whom correspondence sent to the last known address of such a member, by the trustees or managers, has been returned;

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(a) 1995 c. 26. Section 37 was substituted by section 250 of the Pensions Act 2004 (c. 35). Section 76 was amended by paragraphs 34 and 62 of Schedule 12 and Schedule 13 to the Pensions Act 2004. Section 124(1) is cited for the meaning there given to “prescribed” and “regulations”.

(b) 2004 c. 35. Section 318(1) is cited for the meaning there given to “modifications”, “prescribed” and “regulations”.

“freezing order” has the meaning given in section 23(3) of the 2004 Act (freezing orders);

“insurance policy” means—

- (a) in relation to an earmarked scheme a contract on human life or a contract of annuity on human life; and
- (b) in any other case, a contract on human life or a contract of annuity on human life, but excluding a contract which is linked to investment funds;

▶<sup>1</sup>“money purchase benefits” has the meaning given by section 181(1) of the Pension Schemes Act 1993 (general interpretation)(a); ◀

<sup>1</sup>Defn. of “money purchase benefits” substituted by reg. 39 of S.I. 2014/1711 as from 24.7.14.

“money purchase scheme” means a pension scheme under which all the benefits that may be provided, other than death benefits, are money purchase benefits;

“regulatory own funds scheme” means a scheme in which the scheme, and not any employer in relation to that scheme—

- (a) underwrites any liability to cover against biometric risk;
- (b) guarantees an investment performance; or
- (c) guarantees a level of benefits;

“relevant accounts” for the purposes of identifying and valuing the assets of a scheme are audited accounts for the scheme which—

- (a) comply with the requirements imposed under section 41 of the 1995 Act(b) (provision of documents for members); and
- (b) are prepared in respect of a period ending with the effective date of the valuation; and

“valuation certificate” means a valuation certificate which complies with regulation 7.

(2) In the application of—

- (a) section 37 of the 1995 Act (payment of surplus to employer); and
- (b) these Regulations,

to a scheme which has no active members, references to the employer have effect as if they were references to the person who was the employer immediately before the occurrence of the event after which the scheme ceased to have such members.

## PART 2

### Schemes not in wind up

#### Schemes not in wind up

**3.**—(1) Subject to paragraph (2) and regulations 12 to 14, the prescribed requirements for the purposes of section 37(3)(b) (payment of surplus to employer) are that the scheme is not in wind up, and—

- (a) it is a scheme which—
  - (i) is subject to Part 3 of the 2004 Act (scheme funding); and
  - (ii) is not a regulatory own funds scheme; or
- (b) it is a scheme that is an earmarked scheme.

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(a) Relevant amendments were made to section 181(1) by section 29 of the Pensions Act 2011 (c. 19) (“the Act”).

(b) Section 41 was amended by section 1(2)(a) of the Employment Rights (Dispute Resolution) Act 1998 (c. 8), paragraph 12(1) of Part I to Schedule 5 of the Child Support, Pensions and Social Security Act 2000 (c. 19), paragraphs 34 and 52 of Schedule 12, and Part I of Schedule 13 to the Pensions Act 2004 and S.I. 2005/2053 and 3331.

- (2) A scheme to which—
- (a) paragraph (1)(a) applies must also comply with regulations 4 to 7 and 9 to 11; or
  - (b) paragraph (1)(b) applies must also comply with regulation 8.

**Schemes that are subject to Part 3 of the 2004 Act – determination of assets and liabilities**

**4.**—(1) In the case of a scheme to which regulation 3(1)(a) applies, where the trustees propose to make a payment to the employer, either—

- (a) the written valuation of the scheme’s assets and liabilities required under section 37(3)(a) of the 1995 Act shall be prepared in accordance with this regulation and regulations 5 and 6; or
- (b) where—
  - (i) an actuarial valuation has been prepared for the purposes of Part 3 of the 2004 Act<sup>(a)</sup>; and
  - (ii) this valuation is valid for the purposes of regulation 9,the trustees may use this valuation for the purposes of regulation 7(1) and section 37(3)(a), (“a Part 3 valuation”).

(2) Where trustees use a Part 3 valuation—

- (a) the value to be placed on the scheme’s liabilities shall be the value placed by the actuary on the scheme’s liabilities for the purposes of the actuary’s estimate of the solvency of the scheme included in that valuation, in accordance with—
  - (i) regulation 7(6)(a)(i) and (ii); or
  - (ii) regulation 7(6)(b),as the case may be, of the Occupational Pension Schemes (Scheme Funding) Regulations 2005<sup>(b)</sup> (actuarial valuations and reports); and
- (b) the value to be placed on the scheme’s assets shall be the value placed by the actuary on the scheme’s assets for the purposes of the actuary’s estimate of the solvency of the scheme included in that valuation.

(3) Subject to paragraph (7), the assets of the scheme to be taken into account for the purposes of the written valuation specified in paragraph (1)(a) are the assets attributed to the scheme in the relevant accounts, excluding—

- (a) any resources invested (or treated as invested by section 40 of the 1995 Act) in contravention of section 40(1) of the 1995 Act (restriction on employer-related investments);
- (b) any amount treated as a debt under section 228(3) of the 2004 Act (failure to make payments) which is unlikely to be recovered without disproportionate cost or within a reasonable time; and
- (c) where it appears to the actuary that the circumstances are such that it is appropriate to exclude them, any rights under an insurance policy.

(4) Subject to paragraph (6), the liabilities of the scheme to be taken into account for the purposes of the actuarial valuation specified in paragraph (1)(a) are any liabilities—

- (a) in relation to a member of the scheme by virtue of—
  - (i) any right that has accrued to or in respect of him to future benefits under the scheme rules; or
  - (ii) any entitlement to the present payment of a pension or other benefit which he has under the scheme rules; and

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<sup>(a)</sup> See section 224(2)(a) of the Pensions Act 2004. Part 3 of the Pensions Act 2004 is modified by S.I. 2005/3377 and 3380.

<sup>(b)</sup> S.I. 2005/3377.

(b) in relation to the survivor of a member of the scheme, by virtue of any entitlement to benefits, or right to future benefits which he has under the scheme rules in respect of the member.

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

“right” includes a pension credit right; and

“the survivor” of a member is a person who–

(a) is the widow, widower or surviving civil partner of the member; or

(b) has survived the member and has any entitlement to benefit, or right to future benefits, under the scheme in respect of the member.

(6) Where rights under an insurance policy are excluded under paragraph (3)(c), the liabilities secured by the policy shall be disregarded for the purposes of paragraph (4).

(7) Where arrangements are being made by the scheme for the transfer to or from it of accrued rights and any pension credit rights, 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 those rights have not been transferred; and

(b) that any assets transferred in respect of the transfer of those rights are assets of the scheme making the transfer, and not the receiving scheme.

#### **Schemes that are subject to Part 3 of the 2004 Act – valuation of assets and liabilities**

5.—(1) In the case of a valuation specified in regulation 4(1)(a) and subject to paragraph (2), the value to be given to the assets of a scheme for the purposes of section 37(3)(a) of the 1995 Act (payment of surplus to employer) is the value given to those assets in the relevant accounts, less the amount of the external liabilities.

(2) The value to be given to any rights under an insurance policy not excluded under regulation 4(3) is the value the actuary considers appropriate in the circumstances of the case on the effective date.

(3) The value to be placed on the liabilities of the scheme shall be the actuary’s estimate of the value of the liabilities of the scheme on the effective date.

(4) In paragraph (3), “estimate of the value of the liabilities of the scheme” means–

(a) an estimate by the actuary of the cost of purchasing annuities, of the type described in section 74(3)(c) of the 1995 Act (a) (discharge of liabilities by purchase of annuities satisfying prescribed requirements) and on terms consistent with those in the available market, which would be sufficient to satisfy the liabilities taken into account under regulation 4(4); and

(b) other expenses which, in the opinion of the actuary, would be likely to be incurred in connection with the winding up of the scheme.

(5) Where the actuary considers that it is not practicable to make an estimate in accordance with paragraph (4)(a), he shall make an estimate of the value of the liabilities of the scheme on the effective date, in such manner as the actuary considers appropriate in the circumstances of the case.

(6) Where the actuary’s estimate of the liabilities of the scheme is made under paragraph (5), the valuation must include a brief account of the principles adopted in making the estimate.

(7) In paragraph (1), “the external liabilities” of a scheme are such liabilities of the scheme (other than liabilities within regulation 4(4)) 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.

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

(8) The assets of the scheme shall be valued, and the amount of the liabilities determined, by reference to the effective date.

**Prescribed persons for the purposes of section 37(3)(a) of the 1995 Act**

6. The classes of prescribed person for the purposes of section 37(3)(a) of the 1995 Act are in the case of a scheme that is subject to Part 3 of the 2004 Act (scheme funding)–

- (a) where the scheme is a scheme for which an actuary is required to be appointed under section 47(1)(b) of the 1995 Act (professional advisers), the actuary appointed under that section; or
- (b) where it is a scheme which is exempt from the application of section 47(1)(b) of the 1995 Act by virtue of regulations made under subsection (5) <sup>1</sup>of that section, a Fellow of the Institute and Faculty of Actuaries. ◀

<sup>1</sup>Words in reg. 6(b) substituted by reg. 16 of S.I. 2012/692 as from 6.4.12.

**Schemes that are subject to Part 3 of the 2004 Act – valuation certificate and amount of payment to employer**

7.—(1) Where a written valuation prepared in accordance with regulation 4(1) shows that the value of the assets of the scheme is greater than the value of the scheme's liabilities, the prescribed person shall prepare a valuation certificate in the form prescribed in Schedule 1.

(2) Where paragraph (1) applies, the maximum payment that may be made to the employer is, in the case of a valuation prepared in accordance with–

- (a) regulation 4(1)(a), the amount by which the value of the scheme's assets exceeds the value of the scheme's liabilities at the effective date of the valuation; or
- (b) regulation 4(1)(b), the amount of the excess of the scheme's assets over its liabilities specified in the actuary's estimate of the solvency of the scheme prepared in accordance with regulation 7(4)(b) of the Occupational Pension Schemes (Scheme Funding) Regulations 2005.

**Earmarked schemes**

8.—(1) In the case of a scheme to which regulation 3(1)(b) applies, a payment may only be made to the employer where all liabilities accruing in respect of a member, beneficiary or his estate have been–

- (a) secured by the purchase of one or more insurance policies; or
- (b) paid in full.

(2) Where paragraph (1) applies, the maximum payment that may be made to the employer is a payment no greater than the excess of the scheme assets in relation to that member after all the liabilities accruing in respect of that member have been secured or paid in full.

**Period for which a valuation certificate is to remain in force**

9. A valuation certificate shall remain in force–

- (a) in the case of a scheme that falls within regulation 3(1)(a) for fifteen months where the valuation is prepared pursuant to Part 3 of the 2004 Act; or
- (b) twelve months in all other cases,

from the effective date of the valuation.

### Notification to members

**10.**—(1) Where the trustees of a scheme to which regulation 3(1)(a) applies propose to make a payment under section 37(1)(a) of the 1995 Act, the prescribed requirements in accordance with which the notice referred to in section 37(3)(g) of the 1995 Act must be given are—

- (a) that the trustees of the scheme must make a written statement that they have decided to make such a payment;
- (b) that the amount of the proposed payment must be stated;
- (c) that the date that the payment is to be made which is—
  - (i) not later than the last day on which the valuation certificate is valid for the purposes of section 37(4)(e) of the 1995 Act; and
  - (ii) at least three months after the day the information is sent to the members or survivors,  
must be stated; and
- (d) that the notice must provide that the member may, within one month of the date of the notice, request a copy of the relevant valuation certificate prepared in accordance with regulation 7(1).

(2) Where a member requests a copy of the relevant valuation certificate under paragraph (1)(d), the trustees of the scheme shall provide this information within one month from the date that the request is received by them.

(3) A notice under section 37(3)(g) of the 1995 Act does not have to be given to any excluded person.

▶<sup>1</sup>(4) The trustees of the scheme may give the notice mentioned in paragraph (1) and provide a copy of the relevant valuation certificate mentioned in paragraph (2) in accordance with regulations 26 to 28 of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (giving information and documents).◀

<sup>1</sup>Reg. 10(4) inserted by para. 16(2) of Sch. 9 to S.I. 2013/2734 as from 6.4.14.

### Notification to the Regulator

**11.** Where the trustees of a scheme to which regulation 3(1)(a) applies have made a payment in accordance with section 37(1)(a) of the 1995 Act, they shall notify the Regulator that the payment has been made by no later than one week after the day on which the payment was made.

## PART 3

### Exemptions, transitional provisions and modifications

#### Exemptions

**12.**—(1) Sections 37 and 76 (excess assets on winding up) of the 1995 Act shall not apply to a scheme where—

- (a) a 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;
- (b) arrangements for the payment of any surplus or for the distribution of any excess assets on the winding up of the scheme are subject to the approval of a Minister of the Crown; or
- (c) the scheme does not fall within the description of schemes prescribed in regulation 3(1).

(2) Where such a guarantee has been given as is mentioned in paragraph (1)(a) or (b) in respect of only part of a scheme, sections 37 and 76 of the 1995 Act, shall apply as if that part and the other part of the scheme were separate schemes.

**Transitional**

**13.** The prescribed requirements for the notice specified in section 251(6)(a) of the 2004 Act (payment of surplus to employer: transitional power to amend scheme), are that the notice shall—

- (a) be in writing; and
- (b) contain the following information—
  - (i) that the trustees have decided to exercise their power under section 251(3) or (4), as the case may be; and
  - (ii) the date, being a date which is at least three months after the date that the information is sent to the employer and members, from which the trustees' proposed exercise of the power is to take effect.

**Modifications in relation to earmarked schemes**

**14.** In relation to a scheme to which regulation 3(1)(b) applies, section 37 of the 1995 Act is modified as if in subsection (3) paragraphs (a) to (c), (f) and (g) were omitted.

**PART 4**

Schemes in wind up

**Notice of proposal to distribute excess assets to the employer**

**15.—**(1) The prescribed requirements for the notice specified in section 76(3)(d) (excess assets on winding up) are set out in paragraphs (2) to (5).

(2) Where the trustees or the employer propose to exercise the power in section 76(1)(c) of the 1995 Act, the trustees or, as the case may be, the employer, must take all reasonable steps to ensure that each member, except any excluded person, is sent a written notice divided into two parts, of the proposal in accordance with the following provisions of this regulation.

- (3) The first part must—
  - (a) inform the member as to—
    - (i) the trustees' estimate of the value of the assets remaining after the liabilities of the scheme have been fully discharged and the persons or class of person to whom, and in what proportions, it is proposed that they should be distributed; and
    - (ii) whether the requirements of section 76(3) of the 1995 Act are satisfied;
  - (b) invite the member, if he wishes, to make written representations in relation to the proposal to the trustees or, as the case may be, to the employer, before a specified date (which is not earlier than two months after the date on which the first part is given); and
  - (c) advise the member—
    - (i) that the second part of the notice will be sent to him if the trustees or, as the case may be, the employer intend to proceed with the proposal to exercise that power; and
    - (ii) that no excess assets may be distributed to the employer in accordance with the proposal until at least three months after the date on which the second part is sent to him.

(4) The second part of the notice must be given after the date specified in accordance with paragraph (3)(b) and at least three months before the power is exercised and must—

- (a) contain the information referred to in paragraph (3)(a), including any modifications to the proposal; and

- (b) advise the member that he may make written representations to the Regulator before a specified date (which is not earlier than three months after the date on which the second part of the notice is sent to him) if he considers that any of the requirements of section 76(3) of the 1995 Act are not satisfied.

(5) The parts of the notice under paragraphs (3) or (4) shall be treated as having been given to a member where it has been sent by post to either—

- (a) the address at which he was last known to be living; or
- (b) in the case of a person who was an active member, immediately before the commencement of the winding up of the scheme, an address at which he is currently known to be employed.

▶<sup>1</sup>(6) A notice under this regulation may be sent in accordance with regulations 26 to 28 (giving information and documents) of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013. ◀

<sup>1</sup>Reg. 15(6) inserted by para. 16(3) of Sch. 9 to S.I. 2013/2734 as from 6.4.14.

### **Circumstances in which the Regulator must be satisfied that requirements of section 76 of the 1995 Act are met**

**16.—**(1) For the purposes of section 76(2) of the 1995 Act the prescribed circumstances are that—

- (a) subject to paragraph (2), in relation to any proposal to which that section applies, the Regulator receives—
  - (i) written representations from a member to the effect that any requirements of section 76(3) of the 1995 Act are not satisfied; or
  - (ii) information from any source sufficient to raise a doubt as to whether all the requirements are satisfied; and
- (b) the Regulator notifies the trustees or, as the case may be, the employer in writing that the power should not be exercised until the Regulator has confirmed in writing that it is satisfied that those requirements are satisfied.

(2) Where notice has been given to a member in accordance with regulation 15(3), paragraph (1)(a)(i) shall only apply in the case of representations received by the Regulator from the member before the date specified in accordance with regulation 15(4)(b) (expiry date of the second part of notice).

### **Additional requirement for purposes of section 76 of the 1995 Act**

**17.** Where—

- (a) the date specified in accordance with regulation 15(4)(b) (expiry date of the second part of the notice) has passed; and
- (b) the trustees or, as the case may be, the employer have not received notification from the Regulator in accordance with regulation 16(1)(b),

the trustees or, as the case may be, the employer shall obtain written confirmation from the Regulator that it has not received any representations or information referred to in regulation 16(1)(a) and that section 76(4) of the 1995 Act accordingly, does not apply.

## **PART 5**

### **Multi-employer schemes**

#### **Schemes with more than one employer**

**18.—**(1) Where—

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

these Regulations shall apply as if each section of the scheme were a separate scheme.

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

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

(4) In their application to a scheme—

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

sections 37 and 76 of the 1995 Act and these Regulations apply as if the section in relation to which those conditions have ceased to be satisfied were a separate scheme.

(5) For the purposes of paragraphs (1) to (4), any provisions of the scheme by virtue of which contributions or transfers of assets may be made to make provision for death benefits are disregarded.

(6) But if paragraph (1) or (4) applies and, by virtue of any provisions of the scheme, contributions or transfers of assets to make provision for death benefits are made to a section ("the death benefits section") the assets of which may only be applied for the provision of death benefits, the death benefits section is also to be treated as if it were a separate scheme for the purpose of sections 37 and 76 of the 1995 Act and these Regulations.

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

(8) In the application of section 37(3) of the 1995 Act to a scheme in relation to which there is more than one employer, paragraph (e) of that subsection has effect as if for the words "employer has asked", there were substituted the words "person whom the employers nominate to act as their representative for the purposes of this paragraph has asked, or, if no such nomination is made, all the employers have asked".

## PART 6

### Revocations

#### Revocations

**19.** The Regulations specified in column 1 of Schedule 2 to these Regulations are revoked to the extent specified in column 3.

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

16th March 2006

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

**SCHEDULE 1**

Regulation 7

**ACTUARY'S CERTIFICATE – VALUATION OF ASSETS AND LIABILITIES**

Actuarial Certificate Given for the Purposes of Regulation 7 of the Occupational Pension Schemes (Payments to Employer) Regulations 2006

Name of Scheme

Date on which valuation is made

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

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

The value of the assets of the scheme was

The amount of the liabilities was

The amount of the difference (being the maximum amount of payment that may be made to the employer) was

**2 Valuation principles**

The scheme's assets and liabilities are valued in accordance with section 37 of the Pensions Act 1995 and the Occupational Pension Schemes (Payments of Employer) Regulations 2006

Signature

Date

Name

Qualification

Address

Name of Employer

Note

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

SCHEDULE 2

Regulation 19

Revocations for the purposes of Regulation 19

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Regulations revoked</i>	<i>References</i>	<i>Extent of revocation</i>
The Occupational Pension Schemes (Payments to Employers) Regulations 1996	S.I. 1996/2156	The whole of the Regulations
The Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1997	S.I. 1997/786	Paragraph 14 of Schedule 1 and Schedule 2 to the Regulations (in so far as it relates to the Occupational Pension Schemes (Payments to Employers) Regulations 1996)
The Occupational Pension Schemes (Payments to Employers) Amendment Regulations 1997	S.I. 1997/2559	The whole of the Regulations
The Occupational Pension Schemes (Winding up etc) Regulations 2005	S.I. 2005/706	Regulation 14 (in so far as it relates to the Occupational Pension Schemes (Payments to Employers) Regulations 1996) and Paragraph 11 of the Schedule to the Regulations

**EXPLANATORY NOTE**

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

These Regulations prescribe the circumstances in which, and the extent to which, payments may be made from certain pension schemes to the employer in relation to that scheme (“the relevant employer”) of the scheme.

Regulation 3 prescribes that no payment may be made under section 37 of the Pensions Act 1995 (c. 26) (“the 1995 Act”) except in the case of the types of scheme specified in that regulation.

Regulation 4 prescribes that in the case of a scheme which is subject to the requirements of Part 3 of the Pensions Act 2004 (c. 35) (scheme funding), which is not a regulatory own funds scheme and which is not winding up, prior to a payment to the relevant employer being made the scheme shall conduct an actuarial valuation of its assets and liabilities and prescribes the assets and liabilities that shall be taken into account when making this valuation.

Regulation 5 prescribes the manner in which the actuary shall value the assets and estimate the value of the liabilities of the scheme.

Regulation 6 prescribes the qualifications required for a person to prepare and sign a written valuation under section 37(3)(a) of the 1995 Act.

Regulation 7 prescribes that where a valuation shows that the assets of the scheme exceed the liabilities of the scheme, then the maximum payment that may be made to the employer is the amount of that excess, and that where this is the case the actuary shall certify this on a form set out in Schedule 1.

Regulation 8 prescribes that in the case of a money purchase scheme that holds each member’s fund under a separate insurance policy a scheme may consider making a payment to the relevant employer where the liabilities in relation to any particular member have been paid in full, and the payment to the employer represents the excess of the assets produced by the insurance policy, over and above the member’s entitlement to scheme benefits.

Regulation 9 provides that a valuation certificate shall be valid for a maximum period of either 12 or 15 months from the date it is prepared.

Regulation 10 prescribes the information that the trustees of the scheme must provide to the scheme members where the trustees propose to exercise a power to make a payment to the relevant employer.

Regulation 11 prescribes the information that the trustees of the scheme must provide to the Regulator where a payment to the relevant employer is to be made.

Regulation 12 provides for exceptions to the requirements contained in these Regulations in respect of schemes which are not prescribed in regulation 3 and Crown guaranteed and partially guaranteed schemes.

Regulation 13 provides for transitional provisions in relation to schemes with existing powers to make payments to employers.

Regulation 14 modifies section 37 of the 1995 Act in the case of an earmarked scheme.

Regulation 15 prescribes requirements in accordance with which notice must be given to scheme members where the trustees plan to distribute a scheme surplus when a scheme is winding up.

Regulation 16 provides for circumstances where the Regulator must be satisfied that the provisions of section 76 of the 1995 Act are satisfied.

Regulation 17 provides that where they have not received notification from the Regulator that the power to pay excess assets to the employer should not be exercised, then the trustees or employers in relation to the scheme should obtain written confirmation from the Regulator that it has not received any representations or information that could impact on payment of a surplus assets upon wind up.

Regulation 18 provides for the application of sections 37 and 76 of the Pensions Act 1995 in relation to a scheme with more than one employer.

Regulation 19 specifies that certain enactments are revoked to the extent stated in Schedule 2 to the Regulations.

Schedule 1 prescribes the form required for an actuarial certificate under regulation 7.

Schedule 2 specifies the Regulations that are revoked. These are the Occupational Pension Schemes (Payments to Employers) Regulations 1996 (S.I. 1996/2156) and all amending regulations.

An assessment of the impact on business, charities and the voluntary sector of the provisions of these Regulations was included in the Regulatory Impact Assessment that accompanied the Pensions Act 2004. A copy of the assessment has been placed in the libraries of both Houses of Parliament. Copies may also be obtained from the Better Regulation Unit, Department for Work and Pensions, 4th floor, Adelphi, 1-11 John Adam Street, London WC2N 6HT.