

See reg. 66 of S.I. 2014/1711 at page 5.8951 for modifications that apply in certain circumstances.

## 2005 No. 3377

### PENSIONS

## The Occupational Pension Schemes (Scheme Funding) Regulations 2005

<i>Made</i> - - - -	<i>8th December 2005</i>
<i>Laid before Parliament</i>	<i>9th December 2005</i>
<i>Coming into force</i> -	<i>30th December 2005</i>

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The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by paragraph 5(3C) and (4A) of Schedule 1 to the Pension Schemes (Northern Ireland) Act 1993(a) and now vested in him(b), sections 68(2)(e) and 124(1) and 174(2)(a) of the Pensions Act 1995(c), and sections 69(2)(a), 221(1)(b) and (2), 222(3) and (4)(b) and (c), 223(1)(b) and (3), 224(1)(b), (4) and (6), 226(1) and (3) to (6), 227(3)(a) and (b) and (4), 228(2), 229(2) and (5), 230(2) and (3), 231(4), 232, 315(2), (4), (5) and (6) and 318(1) of the Pensions Act 2004(d).

In accordance with section 120(1) of the Pensions Act 1995 and section 317(1) of the Pensions Act 2004, the Secretary of State has consulted such persons as he considers appropriate before making these Regulations(e).

This instrument is made before the end of the period of six months beginning with the coming into force of the provisions of Part 3 of the Pensions Act 2004 by virtue of which it is made.

#### Citation and commencement

1. These Regulations may be cited as the Occupational Pension Schemes (Scheme Funding) Regulations 2005 and shall come into force on 30th December 2005.

#### Interpretation

2.—(1) In these Regulations—

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

“the 1995 Act” means the Pensions Act 1995;

“the 2004 Act” means the Pensions Act 2004;

“the actuary”, in relation to a scheme, means the actuary appointed under section 47(1)(b) of the 1995 Act (professional advisers) in relation to that scheme;



“the commencement date” means 30th December 2005;

“insurance policy” means an insurance policy which is a contract on human life or a contract of annuity on human life, but excluding a contract which is linked to investment funds;

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

<sup>1</sup>Defn. of “the Board for Actuarial Standards” omitted by para. 8(a) of Sch. to S.I. 2012/1817 as from 9.8.12.

(a) 1993 c. 49; paragraph 5(3C) of Schedule 1 was inserted by Article 138(2) of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)); paragraph 5(4A) of Schedule 1 was added by paragraph 77(5)(d) of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671), and is cited for the definition of “regulations”.

(b) See paragraph 5(4A) of Schedule 1 to the Pension Schemes (Northern Ireland) Act 1993.

(c) 1995 c. 26; section 124(1) is cited for the definitions of “prescribed” and “regulations”.

(d) 2004 c. 35; section 318(1) is cited for the definitions of “modifications”, “prescribed” and “regulations”.

(e) Section 120(1) of the Pensions Act 1995 provides that the Secretary of State must consult such persons as he considers appropriate before making regulations by virtue of Part 1 of that Act. Section 317(1) of the Pensions Act 2004 makes similar provision with respect to regulations under that Act. The duty under the 2004 Act does not apply where regulations are made within six months of the coming into force of the provisions under which they are made.

(f) 1993 c. 48.

(g) The definition of “pension credit rights” was inserted into section 124(1) of the 1995 Act by paragraph 61(3) of Schedule 12 to the Welfare Reform and Pensions Act 1999 (c. 30).

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

- (a) which comply with the requirements imposed under section 41 of the 1995 Act<sup>(a)</sup> (provision of documents for members), and
- (b) which are prepared in respect of a period ending with the effective date of the valuation.

(2) In these Regulations “scheme” must be read in appropriate cases in accordance with the modifications of Part 3 of the 2004 Act made by paragraphs 1, 4, 5 and 7 of Schedule 2 (multi-employer sectionalised schemes, partly foreign schemes and schemes with a partial public authority guarantee), and “employer” and “member” must be construed accordingly.

### **Determination of assets and liabilities**

**3.**—(1) The assets of a scheme to be taken into account for the purposes of Part 3 of the 2004 Act are the assets attributed to the scheme in the relevant accounts, excluding—

- (a) any resources invested (or treated as invested by or under section 40 of the 1995 Act) in contravention of section 40(1) of the 1995 Act (employer-related investments);
- (b) any amounts treated as a debt due to the trustees or managers under section 75(2) or (4) of the 1995 Act<sup>(b)</sup> (deficiencies in the assets) or section 228(3) of the 2004 Act (amounts due in accordance with a schedule of contributions) which are 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.

(2) The liabilities of a scheme to be taken into account for the purposes of Part 3 of the 2004 Act 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
- (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.

(3) For the purposes of paragraph (2)—

“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.

(4) Where rights under an insurance policy are excluded under paragraph (1)(c), the liabilities secured by the policy shall be disregarded for the purposes of paragraph (2).

(5) 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 the rights have not been transferred, and

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(a) Section 41 was amended by paragraph 12 of Schedule 5 to the Child Support, Pensions and Social Security Act 2000 (c. 19) and paragraph 52 of Schedule 12 to the Pensions Act 2004.  
(b) Section 75 was amended by section 271 of the Pensions Act 2004.

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

**Valuation of assets and determination of the amount of liabilities**

**4.**—(1) Subject to paragraph (2), the value to be given to the assets of a scheme for the purposes of Part 3 of the 2004 Act 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 taken into account under regulation 3(1) is the value the actuary considers appropriate in the circumstances of the case.

(3) In paragraph (1), “the external liabilities” of a scheme are such liabilities of the scheme (other than liabilities within regulation 3(2)) 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.

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

**Calculation of technical provisions**

**5.**—(1) Subject to paragraphs (2) and (3), it is for the trustees or managers of a scheme to determine which method and assumptions are to be used in calculating the scheme’s technical provisions.

(2) The method used in calculating a scheme’s technical provisions must be an accrued benefits funding method.

(3) In determining which accrued benefits funding method and which assumptions are to be used, the trustees or managers must—

- (a) follow the principles set out in paragraph (4), and
- (b) in the case of a scheme under which the rates of contributions payable by the employer are determined—
  - (i) by or in accordance with the advice of a person other than the trustees or managers, and
  - (ii) without the employer’s agreement, take account of the recommendations of that person.

(4) The principles to be followed under paragraph (3) are—

- (a) the economic and actuarial assumptions must be chosen prudently, taking account, if applicable, of an appropriate margin for adverse deviation;
- (b) the rates of interest used to discount future payments of benefits must be chosen prudently, taking into account either or both—
  - (i) the yield on assets held by the scheme to fund future benefits and the anticipated future investment returns, and
  - (ii) the market redemption yields on government or other high-quality bonds;
- (c) the mortality tables used and the demographic assumptions made must be based on prudent principles, having regard to the main characteristics of the members as a group and expected changes in the risks to the scheme, and
- (d) any change from the method or assumptions used on the last occasion on which the scheme’s technical provisions were calculated must be justified by a change of legal, demographic or economic circumstances.

**Statement of funding principles**

**6.**—(1) A statement under section 223 of the 2004 Act must include the following matters, in addition to those specified in that section—

- (a) any funding objectives provided for in the rules of the scheme, or which the trustees or managers have adopted, in addition to the statutory funding objective;
- (b) whether there are arrangements for a person other than the employer or a member of the scheme to contribute to the funds held by the scheme, and, if there are such arrangements, the circumstances in which they apply;
- (c) whether there is a power to make payments to the employer out of funds held for the purposes of the scheme and, if there is such a power, the circumstances in which it may be exercised;
- (d) whether there are discretionary powers to provide or increase benefits for, or in respect of, all or any of the members and, if there are such powers, the extent to which they are taken into account in the funding of the scheme;
- (e) the policy of the trustees or managers regarding the reduction of the cash equivalent of benefits which have accrued to or in respect of members on account of the state of the funding of the scheme, and
- (f) the intervals at which the trustees or managers will obtain actuarial valuations in accordance with section 224(1)(a) of the 2004 Act, and the circumstances in which and occasions on which they will, or will consider whether to, obtain actuarial valuations in addition to those obtained at such intervals.

*See reg. 5 of S.I. 2005/3380 at page 5.8311 for modifications to reg. 6(2) & (3)(a) for the purposes of regulatory own funds.*

(2) The first statement under section 223 of the 2004 Act in respect of a scheme must be prepared by the trustees or managers within 15 months after the effective date of the first actuarial valuation obtained by them under section 224 of that Act.

(3) A statement under section 223 must be reviewed, and if necessary revised—

- (a) within 15 months after the effective date of each subsequent actuarial valuation, and
- (b) within a reasonable period after any occasion on which the Regulator has exercised any of the powers conferred by section 231(2) of the 2004 Act in relation to the scheme.

(4) A statement under section 223 must specify the date on which it was prepared, or, if it has been revised, the date on which it was last revised.

### **Actuarial valuations and reports**

7.—(1) In addition to the regular valuations provided for in section 224(1)(a) of the 2004 Act, the trustees or managers of a scheme must obtain an actuarial valuation where the Regulator has given directions under section 231(2)(b)(i) of that Act as to the manner in which the scheme's technical provisions are to be calculated.

(2) Where the trustees or managers have obtained an actuarial valuation or an actuarial report, they must ensure that it is received by them—

*See reg. 5 of S.I. 2005/3380 at page 5.8311 for modifications to reg. 7(2)(a) for the purposes of regulatory own funds.*

- (a) in the case of a valuation under section 224(1)(a), within 15 months after its effective date;
- (b) in the case of a valuation where the Regulator has given directions under section 231(2)(b)(i)—
  - (i) within three months after the date of the directions if the effective date of the valuation is before the date of the directions, and
  - (ii) within six months after the effective date of the valuation if that date is the same as or later than the date of the directions;
- (c) in the case of a report, within 12 months after its effective date.

(3) Where the assets taken into account in an actuarial valuation include rights under an insurance policy, the valuation must state the reason why the value given to such rights is considered appropriate in the circumstances of the case.

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- (4) An actuarial valuation must include—
- (a) the actuary's certification of the calculation of the technical provisions, in the relevant form set out in Schedule 1, and
  - (b) the actuary's estimate of the solvency of the scheme.

*See reg. 5 of S.I. 2005/3380 at page 5.8311 for modifications to reg. 7(5) for the purposes of regulatory own funds.*

(5) An actuarial report must include an assessment by the actuary of changes in the value of the scheme's assets since the last actuarial valuation was prepared.

- (6) In paragraph (4), "the actuary's estimate of the solvency of the scheme" means—
- (a) except in the case referred to in sub-paragraph (b), an estimate by the actuary of whether, on the effective date of a valuation, the value of assets of the scheme to be taken into account under paragraph (1) of regulation 3 exceeded or fell short of the sum of—
    - (i) the cost of purchasing annuities, of the type described in section 74(3)(c) of the 1995 Act<sup>(a)</sup> (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 paragraph (2) of regulation 3, and
    - (ii) the other expenses which, in the opinion of the actuary, would be likely to be incurred in connection with a winding up of the scheme,
 and the amount of the excess or, as the case may be, the shortfall;
  - (b) where the actuary considers that it is not practicable to make an estimate in accordance with sub-paragraph (a), an estimate of the solvency of the scheme on the effective date of the valuation made in such manner as the actuary considers appropriate in the circumstances of the case.

(7) Where the actuary's estimate of solvency is made under paragraph (6)(b), the valuation must include a brief account of the principles adopted in making the estimate.

*See reg. 5 of S.I. 2005/3380 at page 5.8311 for modifications to reg. 8 for the purposes of regulatory own funds.*

**Recovery plan**

**8.**—(1) Where section 226(1) of the 2004 Act applies, and the trustees or managers of a scheme are required, following an actuarial valuation, either to prepare a recovery plan or to review and if necessary revise an existing recovery plan, they must do so—

- (a) in the case of the first actuarial valuation obtained by them under section 224 of the Act and each subsequent valuation under section 224(1)(a), within 15 months after the effective date of the valuation;
- (b) in the case of a valuation under section 224(1)(b) and regulation 7(1), within whichever period is applicable under regulation 7(2)(b).

(2) In preparing or revising a recovery plan, the trustees or managers must take account of the following matters—

- (a) the asset and liability structure of the scheme;
- (b) its risk profile;
- (c) its liquidity requirements;
- (d) the age profile of the members, and
- (e) in the case of a scheme under which the rates of contributions payable by the employer are determined—
  - (i) by or in accordance with the advice of a person other than the trustees or managers, and
  - (ii) without the agreement of the employer, the recommendations of that person.

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

(3) A recovery plan must be reviewed, and if necessary revised, where the Regulator has given directions under section 231(2)(b)(ii) of the 2004 Act as to the period within which, and manner in which, a failure to meet the statutory funding objective is to be remedied.

(4) Where paragraph (3) applies, the review and any necessary revision must be completed within a reasonable period after the date of the Regulator's directions.

(5) A recovery plan may be reviewed, and if necessary revised, where the trustees or managers consider that there are reasons that may justify a variation to it.

(6) A recovery plan must specify the date on which it was prepared, or, if it has been revised, the date on which it was last revised.

(7) A copy of any recovery plan sent to the Regulator by the trustees or managers of a scheme must be accompanied—

- (a) in a case where the plan has been prepared or revised following an actuarial valuation, by a summary of the information contained in the valuation, and
- (b) in a case where the plan has been revised in the circumstances described in paragraph (5), by an explanation of the reasons for the revision.



*See reg. 5 of S.I. 2005/3380 at page 5.8311 for modifications to reg. 9(1) & (2)(a) for the purposes of regulatory own funds.*

<sup>1</sup>Reg. 8(8) omitted by reg. 5(2) of S.I. 2005/1733 as from 24.7.06.

### **Schedule of contributions**

**9.—(1)** A schedule of contributions for a scheme must be prepared within 15 months after the effective date of the first actuarial valuation following the establishment of the scheme.

(2) Where a schedule of contributions has been prepared, it must be reviewed, and if necessary revised—

- (a) within 15 months after the effective date of each subsequent actuarial valuation under section 224(1)(a) of the 2004 Act;
- (b) within whichever period is applicable under regulation 7(2)(b) after any valuation under section 224(1)(b) and regulation 7(1), and
- (c) within a reasonable period after any revision of a recovery plan under regulation 8(3) or (5).

### **Content and certification of schedules of contributions**

**10.—(1)** A schedule of contributions must show the rates and due dates of all contributions (other than voluntary contributions) payable towards the scheme by or on behalf of the employer and the active members during the relevant period.

*See reg. 5 of S.I. 2005/3380 at page 5.8311 for modifications to reg. 10(2) & (4) for the purposes of regulatory own funds.*

(2) In this regulation, “the relevant period” means the period of five years after the date on which the schedule is certified, or, in a case where—

- (a) a recovery plan is in force, and
- (b) the period set out in the recovery plan as the period within which the statutory funding objective is to be met is longer than five years after the date on which the schedule is certified,

that longer period.

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- (3) The schedule must show separately—
- (a) the rates and due dates of 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 the employer, and
  - (c) if separate contributions to satisfy liabilities other than those referred to in regulation 3(2) which are likely to fall due for payment by the trustees or managers during the relevant period are made to the scheme, the rates and due dates of those contributions.
- (4) Where additional contributions are required in order to give effect to a recovery plan, the rates and dates of those contributions must be shown separately from the rates and dates of contributions otherwise payable.
- (5) The schedule must be signed by the trustees or managers of the scheme, and make provision for signature by the employer in order to signify his agreement to the matters included in it.
- (6) The schedule must incorporate the actuary's certification, in the relevant form set out in Schedule 1.

**Records**

- 11.**—(1) The trustees or managers of a scheme to which Part 3 of the 2004 Act applies must keep records of all contributions made to the scheme by any person, showing separately—
- (a) the aggregate amounts of contributions paid by or on behalf of active members of the scheme (whether by deductions 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) The 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, and
  - (b) the amount of any debt which has arisen under section 75(2) or (4) of the 1995 Act (deficiencies in the assets).

**Failure to make payments**

- 12.** The trustees or managers of a scheme are not required to give notice, under section 228(2) of the 2004 Act (requirement to notify Regulator of failure likely to be of material significance), of a failure to make a payment in accordance with the schedule of contributions where they have given the Regulator notice of the failure under—
- (a) section 49(9)(b) of the 1995 Act (a) (failure to remit deductions from members' earnings), or
  - (b) section 30(7)(c) of the 2004 Act (failure to pay employer's contributions in accordance with Regulator's order).

*See reg. 5 of S.I. 2005/3380 at page 5.8311 for modifications to reg. 13 for the purposes of regulatory own funds.*

**Period for obtaining employer's agreement**

- 13.** Where, following an actuarial valuation, the trustees or managers of a scheme are required under section 229(1) of the 2004 Act to obtain the agreement of the

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(a) Section 49(9)(b) of the 1995 Act was inserted by section 10(1) of the Welfare Reform and Pensions Act 1999.

employer to any of the matters mentioned in paragraphs (a) to (d) of that provision, they must do so within 15 months after the effective date of the valuation.

### Powers of the Regulator

**14.—**(1) In exercising any of the powers conferred by section 231 of the 2004 Act in the case of a scheme of the kind referred to in regulations 5(3)(b) and 8(2)(e), the Regulator must take into account any relevant recommendations made to the trustees or managers under those regulations.

(2) In exercising the power in section 231(2)(b)(i) to give directions as to the manner in which a scheme's technical provisions are to be calculated, the Regulator must include a direction specifying the effective date by reference to which assets are valued and the amount of liabilities is determined.

### ►<sup>1</sup>Guidance relating to actuarial advice

**15.** When advising the trustees or managers of a scheme on any of the matters specified in section 230(1) of the 2004 Act, the actuary shall have regard to any guidance or standards adopted or prepared, and from time to time revised, by ►<sup>2</sup>the Financial Reporting Council Limited◄ which are relevant to the matters specified in that section.◄

<sup>1</sup>Reg. 15 substituted by reg. 6(2) of S.I. 2010/499 as from 6.4.10.

<sup>2</sup>Words in reg. 15 substituted by para. 8(b) of Sch. to S.I. 2012/1817 as from 9.8.12.

### Modification of shared cost schemes

**16.—**(1) The trustees of a shared cost scheme to which Part 3 of the 2004 Act applies may by resolution modify the scheme with a view to making such provision that, where any additional contributions are required to give effect to a recovery plan, those contributions are payable by the employer and the members in the appropriate proportions, unless the employer and the trustees or managers agree—

- (a) that the additional contributions should be payable by the employer alone, or
- (b) that he should pay a greater proportion than would otherwise fall to be paid 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 its technical provisions, the rates of contributions payable by both the active members and the employer may be increased in 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.

*See reg. 5 of S.I. 2005/3380 at page 5.8311 for modifications to reg. 17 for the purposes of regulatory own funds.*

### Exemptions - general

**17.—**(1) Part 3 of the 2004 Act does not apply to—

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- (a) a scheme which–
  - (i) is established by or under an enactment (including a local Act), and
  - (ii) is guaranteed by a public authority;
- (b) a pay-as-you-go scheme;
- (c) a scheme which is made under section 2 of the Parliamentary and other Pensions Act 1987<sup>(a)</sup> (power to provide for pensions for Members of the House of Commons etc.);
- ▶<sup>1</sup>(ca) a scheme, provision for which is made by virtue of section 81(3) of the Scotland Act 1998 (remuneration of members of the Parliament and Executive);◀
- (d) a scheme which is treated as such by virtue of paragraph 4 or 5 of Schedule 2 to these Regulations and–
  - (i) in the cases described in paragraphs 4(2) and 5(2)(a) of that Schedule, applies to members in employment outside the ▶<sup>2</sup>EEA states◀, and
  - (ii) in the cases described in paragraphs 4(3) and 5(2)(b) of that Schedule, applies to members in employment outside the United Kingdom;
- (e) a scheme which–
  - (i) provides relevant benefits;
  - (ii) is neither a relevant statutory scheme nor a tax approved scheme, or, from 6th April 2006, is not a tax registered scheme, and
  - (iii) has fewer than 100 members;
- (f) a section 615(6) scheme which has fewer than 100 members;
- (g) a scheme which has fewer than two members;
- (h) ▶<sup>3</sup>a scheme with◀ fewer than 12 members, where all the members are trustees of the scheme and either–
  - (i) the provisions of the scheme provide that ▶<sup>3</sup>any decision made by the trustee is◀ made by the unanimous agreement of the trustees who are members of the scheme, or
  - (ii) the scheme has a trustee ▶<sup>3</sup>who is independent◀ in relation to the scheme for the purposes of section 23 of the 1995 Act<sup>(b)</sup> (power to appoint independent trustees) and is registered in the register maintained by the Authority in accordance with regulations made under subsection (4) of that section;
- (i) ▶<sup>3</sup>a scheme with◀ fewer than 12 members, ▶<sup>3</sup>where a company is the sole trustee◀ of the scheme and all the members of the scheme are directors of the company and either–
  - (i) the provisions of the scheme provide that any decision made by the company in its capacity as trustee ▶<sup>3</sup>is made by the unanimous agreement◀ of the directors who are members of the scheme, or
  - (ii) ▶<sup>3</sup>one of the directors of the company◀ is independent in relation to the scheme for the purposes of section 23 of the 1995 Act and is registered in the register maintained by the Authority in accordance with regulations made under subsection (4) of that section;
- (j) a scheme under which the only benefits provided for (other than money purchase benefits) are death benefits, if the death benefits are secured by insurance policies or annuity contracts;
- (k) a scheme which is the subject of a scheme failure notice under section 122 or 130 of the 2004 Act;
- (l) ▶<sup>4</sup>subject to paragraph (1A) and regulation 18◀, a scheme ▶<sup>5</sup>or a section of a scheme◀ which is being wound up, or
- (m) the Chatsworth Settlement Estate Pension Scheme.

<sup>1</sup>Para. (ca) inserted to reg. 17 by reg. 7 of S.I. 2009/1906 as from 1.9.09.

<sup>2</sup>Words in reg. 17(1)(d) (i) substituted by Sch. to S.I. 2007/3014 as from 26.11.07.

<sup>3</sup>Words substituted in reg. 17(h)(i) & (ii) and (i)(i) & (ii) by reg. 15(2)(a) & (b) of S.I. 2007/814 as from 6.4.07.

<sup>4</sup>Words substituted in reg. 17(1)(l) by reg. 5(3)(a) of S.I. 2006/1733 as from 24.7.06.

<sup>5</sup>Words inserted in reg. 17(1)(l) by reg. 18(2)(a) of S.I. 2009/615 as from 6.4.09.

(a) 1987 c. 45.

(b) Section 23 was substituted by the Pensions Act 2004, section 36(3).

- <sup>1</sup>(1A) section 231A of the 2004 Act applies to a scheme where—
- (a) a recovery plan has been prepared under section 226 of the 2004 Act, and
  - (b) the scheme begins to wind up during the recovery period.◄

<sup>1</sup>Paras. (1A) & (2A) inserted in reg. 17 by reg. 5(3)(b) & (4) of S.I. 2006/1733 as from 24.7.06.

- (2) In paragraph (1)—

“enactment” includes an enactment comprised in, or in an instrument under, an Act of the Scottish Parliament;

“pay-as-you-go scheme” means an occupational pension scheme under which there is no requirement for assets to be set aside in advance for the purpose of providing benefits under the scheme (disregarding any requirements relating to additional voluntary contributions);

“public authority” means—

- (a) a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975)(a);
- (b) a government department (including any body or authority exercising statutory functions on behalf of the Crown);
- (c) the Scottish Ministers;
- (d) the National Assembly for Wales, or
- (e) a local authority;

“relevant benefits” has the meaning given in section 612(1) of the Income and Corporation Taxes Act 1988(b) (interpretation) or, from 6th April 2006, section 393B of the Income Tax (Earnings and Pensions) Act 2003(c) (relevant benefits);

“relevant statutory scheme” has the meaning given in section 611A(1) of the Income and Corporation Taxes Act 1988(d) (definition of relevant statutory scheme);

“section 615(6) scheme” means a scheme with such a superannuation fund as is mentioned in section 615(6) of the Income and Corporation Taxes Act 1988(e) (funds for the provision of benefits in respect of employment outside the United Kingdom);

►<sup>2</sup>“a section of a scheme” means a section of a multi-employer scheme where a specified part or proportion of the assets of the scheme is attributable to that section and cannot be used for the purposes of any other section of the scheme;◄

“a tax 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(f) (approval of retirement benefit schemes) or in respect of which an application for such approval has been duly made but has not been determined;

“a tax registered scheme” means a scheme which is, or is treated as, registered under Chapter 2 of Part 4 of the Finance Act 2004 (registration of pension schemes).

<sup>2</sup>Defn. of “a section of a scheme” inserted in para. (2) by reg. 18(2)(b) of S.I. 2009/615 as from 6.4.09.

- <sup>1</sup>(2A) In paragraph (1A) “recovery period” means the period specified in the scheme’s recovery plan in accordance with section 226(2)(b) of the 2004 Act;◄

- (3) In paragraph (2), “local authority” means—

- (a) in relation to England, a county council, a district council, a London borough council, the Greater London Authority, the Common Council of the City of London in its capacity as a local authority or the Council of the Isles of Scilly;

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(a) 1975 c. 26.

(b) 1988 c. 1; the definition of “relevant benefits” was amended by paragraph 10(1) of Schedule 10 to the Finance Act 1999 (c. 16). Section 612(1) is repealed by Part 3 of Schedule 42 to the Finance Act 2004 (c. 12) with effect from 6th April 2006.

(c) 2003 c. 1; section 393B is inserted by section 249(3) of the Finance Act 2004 with effect from 6th April 2006.

(d) Section 611A was inserted by paragraph 15 of Schedule 6 to the Finance Act 1989 (c. 26) and amended by paragraph 5 of Schedule 5 to the Finance Act 1999. The section is repealed by Part 3 of Schedule 42 to the Finance Act 2004 with effect from 6th April 2006.

(e) Section 615(6) was amended by paragraph 11 of Schedule 10 to the Finance Act 1999.

(f) Section 590 is amended by paragraph 3 of Schedule 6 to the Finance Act 1989.

- (b) in relation to Wales, a county council or county borough council;
- (c) in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(a) (constitution of councils);
- (d) an administering authority as defined in Schedule 1 to the Local Government Pension Scheme Regulations 1997(b).

(4) Where Part 3 of the 2004 Act ceases to apply to a scheme to which it previously applied, because the scheme satisfies any of the criteria for exemption in paragraph (1), that does not affect any rights or obligations arising before Part 3 ceased to apply.

*See reg. 5 of S.I. 2005/3380 at page 5.8311 for modifications to reg. 18 for the purposes of regulatory own funds.*

### **Exemption connected with winding up**

**18.**—(1) Where the winding up of a scheme begins on or after the commencement date, the exemption provided for in regulation 17(1)(1) is subject to the condition set out in paragraph (2).

(2) The condition referred to in paragraph (1) is that the trustees or managers of the scheme ensure that they receive, before the end of each scheme year following the scheme year in which the winding up of the scheme begins, the actuary's estimate of the solvency of the scheme as at the end of the preceding scheme year.

(3) In paragraph (2)—

“the actuary's estimate of the solvency of the scheme” means—

- (a) except in the case referred to in sub-paragraph (b), an estimate by the actuary of whether, at the end of the relevant scheme year, the value of assets of the scheme to be taken into account under paragraph (1) of regulation 3 exceeded or fell short of the sum of—
  - (i) the cost of purchasing annuities, of the type described in section 74(3)(c) of the 1995 Act(c) and on terms consistent with those in the available market, which would be sufficient to satisfy the liabilities to be taken into account under paragraph (2) of regulation 3, and
  - (ii) the other expenses which, in the opinion of the actuary, would be likely to be incurred in connection with the winding up of the scheme, and the amount of the excess or, as the case may be, the shortfall;
- (b) where the actuary considers that it is not practicable to make an estimate in accordance with sub-paragraph (a), an estimate of the solvency of the scheme at the end of the relevant scheme year made in such manner as the actuary considers appropriate in the circumstances of the case;

“scheme year” means—

- (a) either—
  - (i) a year specified for the purposes of the scheme rules in any document which contains those rules, or
  - (ii) if no such year is specified, the period of 12 months commencing on 1st April or on such date as the trustees or managers select, or
- (b) such other period (if any) exceeding six months but not exceeding 18 months as is selected by the trustees or managers in connection with—
  - (i) the commencement or termination of the scheme, or
  - (ii) a variation of the date on which the year or period referred to in paragraph (a) is to commence.

### **Modification of provisions of the 2004 Act**

**19.** Schedule 2 has effect for the purpose of modifying Part 3 of the 2004 Act and these Regulations as they apply in the circumstances specified there.

(a) 1994 c. 39.

(b) S.I. 1997/1612.

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

**Supplementary and consequential provisions, transitional provisions and savings**

**20.**—(1) Schedule 3 has effect for the purpose of making supplementary provisions and consequential amendments connected with the commencement of Part 3 of the 2004 Act and Part IV of the Pensions (Northern Ireland) Order 2005(a) and the coming into force of these Regulations.

(2) Schedule 4 has effect for the purpose of making transitional modifications of the 2004 Act and these Regulations, and saving the effect of repealed provisions of the 1995 Act and provisions revoked by these Regulations.

**Revocations**

**21.** The enactments mentioned in Schedule 5 are revoked to the extent specified, subject to the savings in Schedule 4.

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

8th December 2005

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

**SCHEDULE 1** Regulations 7(4)(a) and 10(6)

**ACTUARY'S CERTIFICATES**

**Form of actuary's certification of the calculation of technical provisions**

*Name of scheme*

Calculation of technical provisions

I certify that, in my opinion, the calculation of the scheme's technical provisions as at [*insert effective date of valuation on which the calculation is based*] is made in accordance with regulations under section 222 of the Pensions Act 2004. The calculation uses a method and assumptions determined by the [trustees] [managers] [*delete whichever does not apply*] of the scheme and set out in the Statement of Funding Principles dated [*dd/mm/yyyy*].

Signature:

Date:

Name:

Qualification:

Address:

Name of employer (if applicable):

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(a) S.I. 2005/255 (N.I. 1).

**Form of actuary's certification of schedule of contributions**

*Name of scheme*

Adequacy of rates of contributions

1. I certify that, in my opinion, the rates of contributions shown in this scheme of contributions are such that—
- the statutory funding objective can be expected to be met by the end of the period specified in the recovery plan dated [dd/mm/yyyy](a)
  - the statutory funding objective can be expected to continue to be met for the period for which the schedule is to be in force(b).
- [delete whichever alternative does not apply]

Adherence to statement of funding principles

2. I hereby certify that, in my opinion, this schedule of contributions is consistent with the Statement of Funding Principles dated [dd/mm/yyyy].

The certification of the adequacy of the rates of contributions for the purpose of securing that the statutory funding objective can be expected to be met 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 to be wound up.

Signature:

Date:

Name:

Qualification:

Address:

Name of employer (if applicable)

- (a) This applies where the statutory funding objective was not met on the effective date of the last actuarial valuation.
- (b) This applies where the statutory funding objective was met on the effective date of the last actuarial valuation.

**SCHEDULE 2**

Regulation 19

**MODIFICATIONS OF THE ACT AND REGULATIONS**

*Multi-employer schemes*

1.—(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,

Part 3 of the 2004 Act and 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 sub-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,

Part 3 of the 2004 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 sub-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 sub-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 Part 3 of the 2004 Act and these Regulations.

(7) For the purpose of this paragraph, 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 their application in a case of the kind described in sub-paragraph (1) or (4), the forms set out in Schedule 1 are modified as follows—

- (a) after “*Name of scheme*”, there is inserted “*and name of section*”, and
- (b) for “scheme” and “scheme’s”, wherever else they occur, there is substituted “section” and “section’s”.

2. In the application of section 229 of the 2004 Act to a scheme in relation to which there is more than one employer, references to the employer have effect as if they were references to a person nominated by the employers, or by the rules of the scheme, to act as the employers’ representative for the purposes of the section or, if no such nomination is made—

- (a) for the purposes of agreement to any of the matters mentioned in subsection (1) of that section, to all of the employers other than any employer who has waived his rights under that sub-section, and
- (b) for the purposes of agreement to a modification of the scheme under subsection (2) of that section, to all of the employers.

*Frozen or paid-up schemes*

▶<sup>1</sup>3.—(1) In the application of Part 3 of the 2004 Act and 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 any active members (“the freezing event”).

<sup>1</sup>Para. 3 of Sch. 2 substituted by reg. 20 of S.I. 2008/731 as from 6.4.08.

(2) A person shall cease to be treated as an employer under ▶<sup>2</sup>sub-paragraph (1)◀ if after the freezing event he ceases to be treated as a former employer under regulation 9 of the Occupational Pension Schemes (Employer Debt) Regulations 2005.◀

<sup>2</sup>Words in para. 3(2) of Sch. 2 substituted by reg. 21 of S.I. 2010/725 as from 6.4.10.

*Employers in periods of grace*

<sup>1</sup>Para. 3A inserted in Sch. 2 by reg. 15 of S.I. 2011/2973 as from 27.1.12.

▶<sup>1</sup>3A.—(1) This paragraph applies where an employer is treated under regulation 6A(1) of the Occupational Pension Schemes (Employer Debt) Regulations 2005 (employment-cessation events: periods of grace) as if it employed at least one person who is an active member of a scheme.

(2) Where this paragraph applies, Part 3 of the 2004 Act (scheme funding) and these Regulations are modified so that references to “employer” include a reference to the employer referred to in sub-paragraph (1).

(3) This paragraph ceases to apply where the period of grace referred to in regulation 6A of the Occupational Pension Schemes (Employer Debt) Regulations 2005 in respect of the employer comes to an end in accordance with that regulation.◀

*Schemes covering United Kingdom and foreign employment*

4.—(1) This paragraph applies in the cases described in sub-paragraphs (2) and (3).

(2) The first case referred to in sub-paragraph (1) is where a scheme—

- (a) has its main administration in the United Kingdom;
- (b) applies to members in employment in the ▶<sup>2</sup>EEA states◀ and members in employment outside the member States;
- (c) is divided into two or more sections, and
- (d) makes provision whereby—
  - (i) different sections of the scheme apply to members in employment in the ▶<sup>2</sup>EEA states◀ and to members in employment outside the member States;
  - (ii) contributions payable to the scheme in respect of a member are allocated to the section applying to that member’s employment, and
  - (iii) 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.

(3) The second case referred to in sub-paragraph (1) is where a scheme—

- (a) has its main administration outside the ▶<sup>2</sup>EEA states◀;
- (b) applies to members in employment in the United Kingdom and members in employment outside the United Kingdom;
- (c) is divided into two or more sections, and
- (d) makes provision whereby—
  - (i) different sections of the scheme apply to members in employment in the United Kingdom and to members in employment outside the United Kingdom;
  - (ii) contributions payable to the scheme in respect of a member are allocated to the section applying to that member’s employment, and
  - (iii) 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) Where this paragraph applies, Part 3 of the 2004 Act and these Regulations shall apply as if each section of the scheme were a separate scheme.

5.—(1) This paragraph applies in the case described in sub-paragraph (2).

(2) The case referred to in sub-paragraph (1) is where a scheme either—

- (a) satisfies the criteria in sub-paragraphs (a) and (b) of paragraph 4(2), but is not divided into sections in the manner described in sub-paragraphs (c) and (d) of that paragraph, or
- (b) satisfies the criteria in sub-paragraphs (a) and (b) of paragraph 4(3), but is not divided into sections in the manner described in sub-paragraphs (c) and (d) of that paragraph,

<sup>2</sup>Words in paras. 4(2)(b), (d)(i) & (3)(a) substituted by reg. 2 & Sch. to S.I. 2007/3014 as from 26.11.07.

and part of the scheme is or was treated as a separate scheme under section 611(3) of the Income and Corporation Taxes Act 1988(a).

(3) Where this paragraph applies, Part 3 of the 2004 Act and these Regulations shall apply as if the separated parts of the scheme were separate schemes.

*Schemes undertaking cross-border activities*

6.—(1) This paragraph applies where the trustees or managers of a scheme are authorised under section 288 of the 2004 Act to accept contributions from European employers or approved under section 289 of that Act to accept contributions from a particular European employer.

(2) Where this paragraph applies, and subject to sub-paragraphs (3) and (4), Part 3 of the 2004 Act and these Regulations shall apply as if they were subject to the following modifications—

- (a) in section 224 of the Act—
  - (i) in subsection (1)(a), the words from “or,” to the end of the subsection are omitted;
  - (ii) paragraphs (c) and (d) of subsection (2) are omitted;
  - (iii) the word “and” at the end of paragraph (a) of subsection (3) and paragraph (b) of that subsection are omitted;
  - (iv) the words “or report” in subsections (4), (6) and (7) and the words “or reports” in subsection (5) are omitted;
- (b) in section 226—
  - (i) in subsection (1), for the words from “within the prescribed time” to the end of the subsection there is substituted—
    - “(a) send a summary of the valuation to the Regulator within a reasonable period, and
    - (b) take such steps as are necessary to ensure that the statutory funding objective is met within two years after that date.”, and
  - (ii) subsections (2) to (6) are omitted;
- (c) in section 227, for the words “by the end of the period specified in the recovery plan” in subsection (6)(b)(i) there is substituted “within two years after that date”;
- (d) in section 231, the words from “with respect to” in paragraph (d) of subsection (1) to the end of that paragraph are omitted;
- (e) in regulations 6(2) and (3)(a), 7(2)(a), 9(1) and (2)(a) and 13 of these Regulations, for “15 months” there is substituted “12 months”;
- (f) in regulation 7(2), the words “or an actuarial report” are omitted;
- (g) regulations 7(2)(c) and (5), 8, 9(2)(c) and 17(1)(a) and (e) to (i) are omitted;
- (h) in regulation 10—
  - (i) in paragraph (2), for “five years”, where those words first appear, there is substituted “two years”, and the words from “or, in a case where” to the end of that paragraph are omitted;
  - (ii) in paragraph (4), for “give effect to a recovery plan”, there is substituted “comply with section 226”, and
- (i) in Schedule 1, in the first of the alternative statements in the form of certification of the adequacy of the rates of contributions, for “by the end of the period specified in the recovery plan dated [dd/mm/yyyy]” there is substituted “within two years after the effective date of the last actuarial valuation”.

(3) In the case of a pre-23rd September 2005 scheme—

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(a) 1988 c. 1; section 611 is repealed by Part 3 of Schedule 42 to the Finance Act 2004 with effect from 6th April 2006.

- (a) section 226 of the 2004 Act applies as if it were subject to the following modifications in place of the modifications in sub-paragraph (2)(b)–
- (i) for the words from “they must, within the prescribed time” in subsection (1) to the end of that subsection there is substituted–
- “they must–
- (a) send a summary of the valuation to the Regulator within a reasonable period, and
- (b) take such steps as are necessary to ensure that the statutory funding objective is met–
- (i) if the valuation is the first valuation the trustees or managers have obtained under section 224, by 22nd September 2008, and
- (ii) in any other case, within two years after that date.”, and
- (ii) subsections (2) to (6) are omitted;
- (b) these Regulations apply as if, in addition to the modifications in sub-paragraph (2)(e) to (i), paragraph 2(a)(i) of Schedule 4 is modified so that, after “this Schedule” there is inserted “and, without prejudice to any of those requirements, by reference to an effective date which is no later than 22nd September 2006”.
- (4) In sub-paragraph (3), “pre-23rd September 2005 scheme” has the meaning given by article 3 of the Pensions Act 2004 (Commencement No. 8) Order 2005(a).

*Schemes with a partial guarantee by a public authority*

7. Where such a guarantee has been given as is mentioned in regulation 17(1)(a)(ii) in respect of only part of a scheme, Part 3 of the 2004 Act and these Regulations shall apply as if that part and the other part of the scheme were separate schemes.

*Schemes relating to certain defence contractors*

8.—(1) This paragraph applies in the case of a scheme under which variations to the rate of contributions payable towards the scheme by the employer are subject, either in particular cases or generally, to the consent of–

- (a) the Secretary of State for Defence;
- (b) a person duly authorised by him, or
- (c) a company of which the Secretary of State for Defence or a nominee of his is a shareholder, or a subsidiary (within the meaning of section 736 of the Companies Act 1985(b)) of such a company.

(2) Where this paragraph applies, sections 224(7) and 229 of the 2004 Act shall apply as if references to the employer were both to the employer and the Secretary of State for Defence or, in a case where the consent of a company is required, both to the employer and that company.

*Schemes under which the rates of contributions are determined by the trustees or managers or by the actuary*

9.—(1) In the case of a scheme under which–

- (a) the rates of contributions payable by the employer are determined by the trustees or managers without the agreement of the employer, and
- (b) no person other than the trustees or managers is permitted to reduce those rates or to suspend payment of contributions,

(a) S.I. 2005/3331 (C. 141).

(b) 1985 c. 6; section 736 was substituted by section 144(1) of the Companies Act 1989 (c. 40).

section 229 of the 2004 Act and regulation 13 shall apply as if they were subject to the modifications set out in sub-paragraphs (2) and (3), and the reference to section 229 in paragraph 8(2) above shall be read as a reference to that section as modified by sub-paragraph (2).

- (2) The modifications of section 229 of the 2004 Act are as follows—
- (a) in the heading, for “**agreement of the employer**” there is substituted “**consultation or agreement**”;
  - (b) in subsection (1), for “obtain the agreement of the employer to” there is substituted “consult the employer regarding”;
  - (c) in subsection (2), for the words before “(if the employer agrees)” there is substituted “After consulting the employer regarding any such matter, the trustees or managers may”;
  - (d) subsection (5) is omitted, and
  - (e) in subsection (6), for “(1), (4) or (5)” there is substituted “(1) or (4)”.

- (3) The modifications of regulation 13 are as follows—
- (a) in the heading, for “**obtaining employer’s agreement**” there is substituted “**consulting employer**”, and
  - (b) in the text, for “obtain the agreement of the employer to” there is substituted “consult the employer regarding”.

(4) Where the power of the trustees or managers to determine the rates of contributions payable by the employer without the employer’s agreement is subject to conditions, the modifications provided for in sub-paragraphs (2) and (3) have effect only in circumstances where the conditions are satisfied.

(5) In the case of a scheme under which ►<sup>1</sup>any of◄ the rates of contributions payable by the employer are determined by the actuary without the agreement of the employer, section 227(6) of the 2004 Act shall apply as if it required that, in addition to the matters specified there, the actuary’s certificate must state that ►<sup>1</sup>any such rates forming part of◄ the schedule of contributions are not lower than the rates he would have provided for if he, rather than the trustees or managers of the scheme, had the responsibility of preparing or revising the schedule, the statement of funding principles and any recovery plan.

<sup>1</sup>Words in paras. (5)-(7) of Sch. 2 inserted and substituted by reg. 18(3)(a)-(c) of S.I. 2009/615 as from 6.4.09.

(6) In the case to which sub-paragraph (5) applies, regulation 10(6) and Schedule 1 apply as if the form of certification of the adequacy of the rates of contributions shown in the schedule of contributions included an additional statement that—

“I also certify that ►<sup>1</sup>any rates of contributions forming part of this schedule which the scheme requires me to determine◄ are not lower than I would have provided for had I had responsibility for preparing or revising the schedule, the statement of funding principles and any recovery plan”.

(7) Where the power of the actuary to determine ►<sup>1</sup>any of◄ the rates of contributions payable by the employer without the employer’s agreement is subject to conditions, the modifications provided for in sub-paragraphs (5) and (6) have effect only in circumstances where the conditions are satisfied.

(8) In the case of a scheme to which paragraph 8 applies, the references to the employer’s agreement in sub-paragraphs (4), (5) and (7) of this paragraph shall be read as if the extended meaning of “employer” given by paragraph 8(2) applied.

*Schemes which are not required to appoint an actuary*

**10.** Where a scheme is exempt from the application of section 47(1)(b) of the 1995 Act (requirement to appoint a scheme actuary) by virtue of regulations made under subsection (5) of that section, Part 3 of the 2004 Act 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 and certifications as may be required under that Part and these Regulations.

*Schemes with fewer than 100 members*

**11.—**(1) This paragraph applies in the case of a scheme which—

- (a) had fewer than 100 members on the effective date of its last actuarial valuation;
- (b) is not exempted from the application of Part 3 of the 2004 Act by regulation 17(1), and
- (c) is not a scheme in relation to which the application of that Part of the Act is modified by paragraph 6 of this Schedule.

(2) Where this paragraph applies—

- (a) section 224(1)(a) of the 2004 Act shall apply as if it required the trustees or managers of the scheme to obtain an actuarial valuation the effective date of which is not more than three years after that of the last such valuation, and an actuarial report for any intervening year at any time in which the scheme had 100 or more members, and
- (b) section 224(3) of that Act shall apply as if—
  - (i) all but paragraph (b) were omitted, and
  - (ii) that paragraph required that the effective date of any actuarial report must be an anniversary of the effective date of the last actuarial valuation.

*Schemes subject to a change of circumstances affecting the certification of the schedule of contributions*

**12.—**(1) In circumstances where the actuary considers that, because of the possibility of significant changes in the value of the assets of the scheme or in the scheme's technical provisions since the effective date of the last actuarial valuation, he is unable to certify the schedule of contributions in the terms set out in paragraph (b) of section 227(6) of the 2004 Act, that paragraph applies as if it provided for a statement that the rates shown in that schedule are such that

- (a) where the statutory funding objective was not met on the effective date of the last actuarial valuation, the statutory funding objective could have been expected on that date to be met by the end of the period specified in the recovery plan, or
- (b) where the statutory funding objective was met on the effective date of the last actuarial valuation, the statutory funding objective could have been expected on that date to continue to be met for the period for which the schedule is to be in force.

(2) In circumstances where the statutory funding objective was met on the effective date of the last actuarial valuation but the actuary considers that, having regard to—

- (a) the rates of contributions payable towards the scheme since that date, or
- (b) the rates of contributions payable since that date taken together with the possibility of significant changes in the value of the assets of the scheme or in the scheme's technical provisions,

he is unable to certify the schedule of contributions in the terms set out in paragraph (b)(ii) of section 227(6) of the 2004 Act, that paragraph applies as if it provided for a statement that the rates shown in that schedule are such that the statutory funding objective could have been expected on that date to be met by the end of the period for which the schedule is to be in force.

(3) In the case to which sub-paragraph (1) applies, regulation 10(6) and Schedule 1 apply as if the alternative statements in the form of certification of the adequacy of the rates of contributions shown in the schedule of contributions were as follows—

“the statutory funding objective could have been expected on [*effective date of valuation on which the schedule is based*] to be met by the end of the period specified in the recovery plan.

the statutory funding objective could have been expected on [*effective date of valuation on which the schedule is based*] to continue to be met for the period for which the schedule is to be in force.”.

(4) In the case to which sub-paragraph (2) applies, regulation 10(6) and Schedule 1 apply as if the alternative statements in the form of certification of the adequacy of the rates of contributions shown in the schedule of contributions were replaced by the following statement—

“ “the statutory funding objective could have been expected on [*effective date of valuation on which the schedule is based*] to be met by the end of the period for which the schedule is to be in force.”.

(5) Where paragraph 6 of this Schedule applies, sub-paragraphs (1) and (3) of this paragraph apply as if the references to the period specified in the recovery plan were to the period of two years from the effective date of the last actuarial valuation.

[Schedule 3 makes various amendments to S.I. 1996/1172, 1996/1715, 1996/1847, 1996/2475, 1996/3126, 2000/1053, 2000/1052, 2000/1054, 2000/1403 and 2000/3198.]

3. ▶<sup>1</sup>◀

<sup>1</sup>Paras. 2 & 3 omitted by para. 14 of Sch. 9 to S.I. 2013/2734 as from 6.4.14.

## SCHEDULE 4

Regulation 20(2)

## TRANSITIONAL PROVISIONS AND SAVINGS

## PART 1

## Transitional provisions

1. Paragraphs 2 to 7 of this Schedule apply to a scheme which—
  - (a) is either—
    - (i) subject to section 56 of the 1995 Act (minimum funding requirement), or
    - (ii) exempted from the application of that section by regulation 28 of the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996(a) (“the 1996 Regulations”), immediately before the commencement date, and
  - (b) becomes subject to Part 3 of the 2004 Act (scheme funding) on that date.
2. Section 224 of the 2004 Act (actuarial valuations and reports) applies to the scheme as if—
  - (a) it included a requirement for the trustees or managers of the scheme—
    - (i) to obtain an actuarial valuation (“the first valuation under the 2004 Act”), in accordance with the requirements specified in paragraph 3 of this Schedule, and
    - (ii) to ensure that the first valuation under the 2004 Act is received by them within the relevant period specified in paragraph 4 of this Schedule;
  - (b) neither paragraph (a) of subsection (1) nor subsection (4) applied in relation to the first valuation under the 2004 Act, and
  - (c) paragraph (a) of subsection (3) were omitted.
- 3.—(1) Except where sub-paragraph (3), (5) or (7) applies, the trustees or managers of the scheme must obtain the first valuation under the 2004 Act by reference to an effective date not more than one year after the commencement date.
  - (2) Sub-paragraph (3) applies where—
    - (a) the trustees or managers received, before the commencement date, in accordance with any provisions of section 57 of the 1995 Act (valuation and certification of assets and liabilities) and the 1996 Regulations, or receive—
      - (i) on or after the commencement date, and
      - (ii) within one year of its effective date,
 in accordance with any such provisions which continue in force under Part 2 of this Schedule, an actuarial valuation by reference to an effective date on or after 21st September 2002, and
    - (b) neither sub-paragraph (5) nor sub-paragraph (7) applies.
  - (3) Where this sub-paragraph applies, the trustees or managers must obtain the first actuarial valuation under the 2004 Act by reference to an effective date which is—
    - (a) no earlier than 22nd September 2005, and
    - (b) not more than three years after the effective date of the last valuation they received under the 1995 Act.
  - (4) Subject to sub-paragraph (8), sub-paragraph (5) applies where—
    - (a) immediately before the commencement date, the trustees or managers were required under section 57(2)(a) of the 1995 Act to obtain an actuarial valuation by virtue of a certificate in the terms set out in that provision, or

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(a) S.I. 1996/1536; relevant amending instruments are S.I. 1997/786 and 1997/3038.

- (b) on or after the commencement date, the trustees or managers receive a certificate in the terms set out in section 57(2)(a) of the 1995 Act in consequence of the requirements saved by paragraph 15 of this Schedule,



(5) Where this sub-paragraph applies, the trustees or managers must obtain the first valuation under the 2004 Act by reference to ▶<sup>1</sup>an effective date which is no earlier than 22nd September 2005 and not more than three years after the effective date of the last valuation they received under the 1995 Act.◀

<sup>1</sup>Words omitted in sub-para. (4) and substituted in sub-para. (5) by reg. 15(4)(a) & (b) of S.I. 2007/814 as from 6.4.07.

(6) Subject to sub-paragraph (8), sub-paragraph (7) applies where—

- (a) immediately before the commencement date, the trustees or managers were required under section 57(2)(b) of the 1995 Act to obtain an actuarial valuation by virtue of the occurrence of an event of the kind described in regulation 13 of the 1996 Regulations (section 75 debts in multi-employer schemes), and
- (b) they have determined before that date, or determine subsequently, that the valuation should be obtained by reference to an effective date which is no earlier than 22nd September 2005 and not more than three years after the effective date of the last valuation they received under the 1995 Act.

(7) Where this sub-paragraph applies, the trustees or managers must obtain the first valuation under the 2004 Act by reference to the effective date they have determined.

(8) In a case where, but for this provision, sub-paragraph (5) would apply, by virtue of the receipt by the trustees or managers of a certificate in the terms set out in section 57(2)(a) of the 1995 Act, and sub-paragraph (7) would also apply, by virtue of the occurrence of an event of the kind described in regulation 13 of the 1996 Regulations, sub-paragraph (5) applies only if the certificate was received before the event occurred and sub-paragraph (7) applies only if the event occurred before the certificate was received.

4. The trustees or managers must ensure that the first valuation under the 2004 Act is received by them—

- (a) where paragraph 3(1) applies, or where paragraph 3(3) applies and the trustees or managers obtained that valuation by reference to an effective date which is after 29th December 2005, within 15 months after its effective date;
- (b) where paragraph 3(3) applies and the trustees or managers obtained that valuation by reference to an effective date between 22nd September and 29th December 2005, within 18 months after its effective date;
- (c) where paragraph 3(5) applies, within 18 months after the date on which the certificate referred to in paragraph 3(4) is signed, and
- (d) where paragraph 3(7) applies, within 18 months after the date on which the event referred to in paragraph 3(6) occurred.

5. Section 227 of the 2004 Act (schedule of contributions) applies to the scheme as if it included a requirement for the trustees or managers of the scheme to prepare a schedule of contributions (“the first schedule of contributions under the 2004 Act”) within the same period as that within which they are required by paragraph 4 to ensure that they receive the first valuation under the 2004 Act.

6. In the circumstances described in paragraph 4(b), (c), and (d), regulation 6(2) of these Regulations (first statement of funding principles) applies to the scheme, and regulations 8(1)(a) and 13 apply in relation to the first valuation under the 2004 Act, as if the period there referred to were the same period as that within which the trustees or managers are required by paragraph 4 to ensure that they receive the first valuation under the 2004 Act.

7. References in sections 224 to 231 of the 2004 Act to actuarial valuations or schedules of contributions shall be taken to exclude any such valuation or schedule of contributions under the 1995 Act as in force before the commencement date or as continued in force by paragraphs 9 to 16 of this Schedule.

## PART 2

## Savings

**8.** Paragraphs 9 to 19 of this Schedule apply to a scheme which—

- (a) is subject to section 56 of the 1995 Act immediately before the commencement date, and
- (b) becomes subject to Part 3 of the 2004 Act on that date.

**9.** Sections 56 and 58 to 60 of the 1995 Act, regulations 15 to 17 and 19 to 27 of the 1996 Regulations and Schedules 2 and 4 to those Regulations continue to apply to the scheme from the commencement date until the date on which the first schedule of contributions under the 2004 Act comes into force.

**10.** Where—

- (a) immediately before the commencement date, the trustees or managers of the scheme were required under section 57(1)(a) of the 1995 Act and regulation 10 of the 1996 Regulations (time limits for minimum funding valuations) to obtain an actuarial valuation within a period ending on or after the commencement date, and
- (b) they have determined before that date, or determine subsequently, that the valuation should be obtained by reference to an effective date before 22nd September 2005,

those provisions apply to the scheme on and after the commencement date in respect of that valuation.

**11.** Where—

- (a) immediately before the commencement date, the trustees or managers of the scheme were required under section 57(2)(a) of the 1995 Act to obtain an actuarial valuation within the period specified in section 57(4)(a) of that Act, and
- (b) they have determined before that date, or determine subsequently, that the valuation should be obtained by reference to an effective date before 22nd September 2005,

those provisions apply to the scheme on and after the commencement date in respect of that valuation.

**12.** Where—

- (a) immediately before the commencement date, the trustees or managers of the scheme were required under section 57(2)(b) of the 1995 Act to obtain an actuarial valuation by virtue of the occurrence of an event of the kind described in regulation 13 of the 1996 Regulations, and
- (b) they have determined before that date, or determine subsequently, that the valuation should be obtained by reference to an effective date before 22nd September 2005,

those provisions apply to the scheme on and after the commencement date in respect of that valuation, subject to the modification that the valuation must be obtained within the period of six months beginning with the date on which the relevant event occurred.

**13.** Where—

- (a) immediately before the commencement date, the trustees or managers of the scheme were required under section 41(1)(a) and (2)(c) of the 1995 Act and regulation 30 of the 1996 Regulations (ongoing actuarial valuations and statements) to obtain an actuarial valuation within a period ending on or after the commencement date, and an accompanying statement in the form set out in Schedule 6 to those Regulations, and

- (b) they have determined before that date, or determine subsequently, that the valuation should be obtained by reference to an effective date before 22nd September 2005,

those provisions apply to the scheme on and after the commencement date in respect of that valuation and statement.

**14.** Where a requirement to obtain a valuation is preserved by any of paragraphs 10 to 13 of this Schedule, section 57(5) to (7) of the 1995 Act, regulations 3 to 9 of the 1996 Regulations and (except in the case to which paragraph 13 applies) regulation 14 of and Schedule 1 to those Regulations apply in respect of that valuation.

**15.** Where, immediately before the commencement date, the trustees or managers of the scheme were required under section 57(1)(b) of the 1995 Act and regulation 18 of the 1996 Regulations (occasional and periodic certification of adequacy of contributions) to obtain annual certificates as to the adequacy of contributions payable towards the scheme, those provisions, sections 57(5) to (7) of that Act and Schedule 3 to the 1996 Regulations apply to the scheme until the effective date of the first valuation under the 2004 Act relating to the scheme.

**16.** Section 61 of the 1995 Act (supplementary), regulation 2 of the 1996 Regulations (interpretation) and regulation 29 of, and Schedule 5 to, those Regulations (modifications) apply, so far as material, on and after the commencement date in relation to the provisions of the Act and Regulations saved by paragraphs 9 to 15 of this Schedule.

**17.** Where any provision of the 1995 Act or the 1996 Regulations applies to the scheme on or after the commencement date by virtue of this Schedule, any reference to that provision in the Occupational Pension Schemes (Contracting-out) Regulations 1996(a) (“the Contracting-out Regulations”) applies in relation to the scheme on and after the commencement date as if—

- (a) in the case of a provision of the 1995 Act, the repeal of that provision by the 2004 Act had not come into force on that date in accordance with the Pensions Act 2004 (Commencement No. 8) Order 2005(b) (“the Commencement Order”);
- (b) in the case of a provision in the 1996 Regulations, those Regulations had not been revoked by regulation 21, and
- (c) the amendments of the Contracting-out Regulations in paragraph 1 of Schedule 3 to these Regulations had not come into force.

**18.** Where any provision of the 1995 Act or the 1996 Regulations applies to the scheme on or after the commencement date by virtue of this Schedule, regulation 4(2) of the Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996(c) shall be taken to include a reference to that provision notwithstanding its repeal by the 2004 Act in accordance with the Commencement Order or the revocation of the 1996 Regulation by regulation 21.

**19.** Any reference to the 1995 Act or the 1996 Regulations in—

- (a) the Occupational Pension Schemes (Winding Up) Regulations 1996(d);
- (b) the Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations 1996(e), or
- (c) the Occupational Pension Schemes (Employer Debt) Regulations 2005(f),

applies to the scheme on and after the commencement date as if, where the reference is to a provision of the Act, the repeal of that provision by the 2004 Act had not come

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(a) S.I. 1996/1172; relevant amending instruments are S.I. 1997/786 and 2002/681.

(b) S.I. 2005/3331.

(c) S.I. 1996/2475, to which there are amendments not relevant to these Regulations.

(d) S.I. 1996/3126, to which there are amendments not relevant to these Regulations.

(e) S.I. 1996/3128, amended by S.I. 1997/786 and 3038, 1999/3198, 2002/380, 2004/403, 2005/72 and 678.

(f) S.I. 2005/678, amended by S.I. 2005/2224.

into force on that date in accordance with the Commencement Order, and, where the reference is to a provision in the 1996 Regulations, those Regulations had not been revoked by regulation 21.

## SCHEDULE 5

Regulation 21

## REVOCATIONS

(1) Regulations revoked	(2) References	(3) Extent of revocation
The Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996	S.I. 1996/1536	The whole Regulations
The Occupational Pension Schemes (Investment) Regulations 1996	S.I. 1996/3127	Regulation 12
The Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1997	S.I. 1997/786	Paragraph 8 of Schedule 1 and the entry relating to SI 1996/1536 in Schedule 2
The Personal and Occupational Pension Schemes (Miscellaneous Amendments) (No. 2) Regulations 1997	S.I. 1997/3038	Regulation 4
The Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1999	S.I. 1999/3198	Regulation 8
The Occupational Pension Schemes (Miscellaneous Amendments) Regulations 2000	SI 2000/679	Regulation 3
The Pension Sharing (Consequential and Miscellaneous Amendments) Regulations 2000	S.I. 2000/2691	Regulation 4
The Occupational Pension Schemes (Minimum Funding Requirement and Miscellaneous Amendments) Regulations 2002	S.I. 2002/380	Regulation 2
The Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Amendment Regulations 2004	S.I. 2004/3031	The whole Regulations
The Occupational Pension Schemes (Employer Debt) Regulations 2005	S.I. 2005/678	Paragraph 1 of Schedule 2
The Occupational Pension Schemes (Winding up etc.) Regulations 2005	S.I. 2005/706	Paragraph 9 of the Schedule
The Occupational Pension Schemes (Employer Debt etc.) (Amendment) Regulations 2005	SI 2005/2224	Regulation 6

## EXPLANATORY NOTE

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

These Regulations are made primarily under Part 3 of the Pensions Act 2004 (c. 35) (“the Act”). Together with provisions in that Part, they implement article 15 and the funding requirements in article 16 of European Union Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision (OJ No. L 235, 23.9.03, p.10) (“the Directive”). They replace the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996 (S.I. 1996/1536), which are revoked together with provisions that amend those Regulations.

Section 222 of the Act imposes on every occupational pension scheme a requirement, derived from article 16 of the Directive, to hold sufficient and appropriate assets to cover the scheme’s “technical provisions” — the amount required, on an actuarial calculation, to make provision for its liabilities. Regulation 3 of these Regulations identifies the assets and liabilities to be taken into account in determining whether this requirement (“the statutory funding objective”) is met; regulation 4 makes provision in respect of the valuation of the assets and the determination of the amount of the liabilities, and regulation 5 prescribes matters to be taken into account and principles to be followed in calculating a scheme’s technical provisions.

Section 223 of the Act requires the trustees or managers of a scheme to maintain a statement of their policy for securing that the statutory funding objective is met. Regulation 6 prescribes other matters to be covered in the statement. Sections 224 and 225 provide for actuarial valuations calculating a scheme’s technical provisions, actuarial reports at intervals between valuations, and for the calculation of technical provisions to be certified by the scheme actuary. Regulation 7 includes provision about the circumstances in which “out-of-cycle” valuations are required, the content of valuations and reports, and the form of the actuary’s certification.

Section 226 of the Act and regulation 8 implement provisions in article 16 of the Directive for schemes to adopt a recovery plan where a valuation indicates that the statutory funding objective has not been met. Section 227 provides for trustees or managers to maintain a schedule of contributions payable towards a scheme; regulation 9 imposes time limits in respect of the preparation and review of such schedules and regulation 10 requirements as to their content and certification. Regulation 11 requires trustees or managers to keep records of contributions made to a scheme. Regulation 12 sets out exceptions to the requirement in section 228 of the Act that any failure to pay contributions due which is likely to be of material significance must be reported to the Pensions Regulator (“the Regulator”).

Under section 229 of the Act, trustees or managers are required to obtain the agreement of the employer contributing towards a scheme with regard to the calculation of technical provisions, the statement of funding principles, the recovery plan and the schedule of contributions; regulation 13 imposes a time limit for this. Section 231 sets out powers relating to the funding of a scheme which are exercisable by the Regulator in particular circumstances; regulation 14 provides that, where the contribution rate is set by someone other than the trustees or managers – such as the scheme actuary – the Regulator must take account of that person’s recommendations in determining whether to exercise any of these powers.

Regulation 15 requires scheme actuaries to take account of professional guidance approved for the purposes of these Regulations. Regulation 16 enables the trustees of certain schemes to modify the terms of the scheme where additional contributions are required in order to give effect to a recovery plan. Regulation 17 exempts certain schemes from Part 3 of the Act; these are either schemes to which the Directive does not apply, or schemes that may be exempted from the requirements of the Directive under article 5 because they are guaranteed statutory schemes or because they have fewer than 100 members. The schemes exempted include schemes in the course of winding up; where the

winding up begins after the Regulations come into force, regulation 18 makes the exemption conditional upon annual estimates of solvency. The remaining regulations give effect to Schedules.

Schedule 1 to the Regulations prescribes the form in which a scheme actuary is required to certify the calculation of technical provisions in respect of the scheme and its schedule of contributions. The terms in which the certification of a schedule of contributions is given, set out in section 227(6) of the Act, are modified in particular circumstances by paragraphs 6 and 12 of Schedule 2. Schedule 2 contains other modifications of provisions in Part 3 of the 2004 Act and provisions in these Regulations which apply in relation to particular kinds of scheme.

Schedule 3 to the Regulations makes consequential amendments to other secondary legislation. It also includes, in paragraphs 2 and 3, provisions which supplement the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 (S.I. 1996/1655) by requiring that scheme members and beneficiaries receive a summary funding statement following actuarial valuations and reports. The statement must include specified information relating to the funding of the scheme and, where applicable, information about its recovery plan, interventions by the Regulator and the payment of surplus funds to the employer.

Schedule 4 contains transitional provisions, which determine the period within which the trustees or managers of a scheme have to obtain the first actuarial valuation under the Act and to prepare the first schedule of contributions. It also contains savings, which preserve the application of provisions of the Pensions Act 1995 (c. 26) and subordinate regulations during the transitional period.

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. Copies of a transposition note concerning the implementation of the Directive by these Regulations may be obtained from Private Pensions, Department for Work and Pensions, 3rd floor, at the same address.