
STATUTORY INSTRUMENTS

1996 No. 1715

PENSIONS

**The Occupational Pension Schemes
(Scheme Administration) Regulations 1996**

<i>Made</i>	- - - -	<i>2nd July 1996</i>
<i>Laid before Parliament</i>		<i>5th July 1996</i>
<i>Coming into force</i>	- -	<i>6th April 1997</i>

The Secretary of State for Social Security in exercise of powers conferred on him by sections 27(3) and (5), 32(2) and (3), 47(3), (5), (6) and (9), 49(1), (2), (4), (5) and (8), 87(1), (2) and (3), 88(1), 124(1) and 174(2) and (3) of the Pensions Act 1995(1), and of all other powers enabling him in that behalf, by this instrument, which is made before the end of the period of six months beginning with the coming into force of the provisions of Part I of that Act by virtue of which they are made(2), hereby makes the following regulations:

**PART I
INTRODUCTION**

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Scheme Administration) Regulations 1996 and shall come into force on 6th April 1997.

(2) In these Regulations—

“the 1995 Act” means the Pensions Act 1995;

“the Taxes Act” means the Income and Corporation Taxes Act 1988(3);

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

“business days” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday, or a bank holiday within the meaning of the Banking and Financial Dealings Act 1971(4);

(1) 1995 c. 26. Section 124(1) is cited because of the meaning ascribed to “prescribed” and “regulations”.
(2) See section 120(2)(c) of the Pensions Act 1995. This provides that the requirement to consult does not apply where regulations are made before the end of six months beginning with the coming into force of the provisions of Part I of the Pensions Act 1995 by virtue of which they are made.
(3) 1988 c. 1.
(4) 1971 c. 80.

“money purchase scheme” has the same meaning as in section 181(1) of the Pension Schemes Act 1993⁽⁵⁾;

“pensioner trustee” has the same meaning as in regulation 2(1) of the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Small Self-administered Schemes) Regulations 1991⁽⁶⁾;

“public service pension scheme” has the same meaning as in section 1 of the Pension Schemes Act 1993;

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

“relevant statutory scheme” has the same meaning as in section 611A of the Taxes Act⁽⁷⁾;

“scheme year” means—

- (a) a year specified for the purposes of the scheme in any document comprising the scheme or, if none, a 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 6 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;

“small self-administered scheme” has the same meaning as in regulation 2(1) of the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Small Self-administered Schemes) Regulations 1991;

“unfunded occupational pension scheme” means an occupational pension scheme under which there is no requirement to set aside in advance resources related to the intended rate or amount of benefits; and

“wholly insured scheme” means an occupational pension scheme under which all the benefits provided are secured by a policy or policies of insurance or an annuity contract or contracts.

(3) In these Regulations, unless the context otherwise requires, a reference—

- (a) to a numbered regulation is to the regulation bearing that number in these Regulations;
- (b) in a regulation to a numbered paragraph is to the paragraph bearing that number in that regulation.

PART II ADVISERS

Appointment of professional advisers by trustees or managers

2. For the purposes of section 47(3) of the 1995 Act (legal advisers, fund managers, and persons exercising prescribed functions in relation to the scheme to be appointed by the trustees or managers) the prescribed functions are—

- (a) the examination of, and the expression of an opinion on, the financial statements and accounts of the scheme and any other matter relating to the audit of the scheme;

⁽⁵⁾ 1993 c. 48.

⁽⁶⁾ S.I.1991/1614.

⁽⁷⁾ Section 611A was inserted by paragraph 15 of Schedule 6 to the Finance Act 1989.

- (b) the provision of advice on financial questions relating to the funding of, and assets of, the scheme and on questions in respect of probabilities relating to mortality and other contingencies, and any other matter relating to the actuarial affairs of the scheme;
- (c) the custody of cash, securities and any other documents of title to scheme assets.

Exemptions from the professional advisers requirements

3.—(1) Section 47(1)(a) of the 1995 Act (for every occupational pension scheme there shall be an individual, or a firm, appointed by the trustees or managers as auditor) does not apply to—

- (a) any occupational pension scheme in respect of which any Minister of the Crown has given a guarantee or made any other arrangements for the purpose of securing that the assets of the scheme are sufficient to meet its liabilities;
- (b) the scheme established by the Salvation Army Act 1963⁽⁸⁾;
- (c) occupational pension schemes which provide relevant benefits but are neither approved schemes nor relevant statutory schemes;
- (d) public service pension schemes—
 - (i) under the provisions of which there is no requirement for assets related to the intended rate or amount of benefit under the scheme to be set aside in advance (disregarding requirements relating to additional voluntary contributions); or
 - (ii) which are made under section 7 of the Superannuation Act 1972 (superannuation of persons employed in local government service etc.)⁽⁹⁾ or section 2 of the Parliamentary and other Pensions Act 1987 (power to provide for pensions for Members of the House of Commons etc.)⁽¹⁰⁾;
- (e) unfunded occupational pension schemes;
- (f) occupational pension schemes with less than 2 members;
- (g) occupational schemes in which—
 - (i) the only benefits provided are death benefits, and
 - (ii) under the provisions of which no member has accrued rights;
- (h) occupational money purchase small self-administered schemes in which—
 - (i) all members of the scheme are trustees, and
 - (ii) all decisions are made only by the trustees who are members of the scheme by unanimous agreement and for the purpose of this head the participation of a pensioner trustee in the making of a decision may be disregarded;
- (i) occupational pension schemes with a superannuation fund such as is mentioned in section 615(6) of the Taxes Act;
- (j) the Devonport Royal Dockyard Pension Scheme;
- (k) the Rosyth Royal Dockyard Pension Scheme;
- (l) the Rosyth Royal Dockyard Superannuation Scheme for Senior Executives;
- (m) the Atomic Weapons Establishment Scheme; and
- (n) the BR Shared Cost Section of the Railways Pension Scheme made under section 134 of, and Schedule 11 to, the Railways Act 1993⁽¹¹⁾.

⁽⁸⁾ 1963 c. xxxii.

⁽⁹⁾ 1972 c. 11.

⁽¹⁰⁾ 1987 c. 45.

⁽¹¹⁾ 1993 c. 43. See the Railways Pension Scheme Order S.I. 1994/1433.

(2) Section 47(1)(b) of the 1995 Act (for every occupational pension scheme there shall be an individual appointed by the trustees or managers as actuary) does not apply to—

- (a) money purchase schemes;
- (b) approved schemes—
 - (i) which have been categorised by the Commissioners of Inland Revenue for the purpose of their approval as centralised schemes for non-associated employers;
 - (ii) which are not contracted-out; and
 - (iii) under the provisions of which the only benefits which may be provided on or after retirement (other than money purchase benefits derived from the payment of additional contributions by any person) are lump sum benefits (not including benefits paid by way of commuted retirement pension) which are not calculated by reference to any member's salary;
- (c) schemes mentioned in paragraph (1)(a) to (g) and (i) to (n).

(3) Section 47(2) of the 1995 Act (for every occupational pension scheme the assets of which consist of or include investments (within the meaning of the Financial Services Act 1986) there shall be an individual or a firm appointed by or on behalf of the trustees or managers as fund manager) does not apply to—

- (a) relevant schemes of a kind described in article 3(2) of the Financial Services Act 1986 (Occupational Pension Schemes) (No. 2) Order 1988⁽¹²⁾;
- (b) wholly insured schemes; and
- (c) schemes mentioned in paragraph (1)(a) to (g), (i) and (n).

(4) Section 47(3) of the 1995 Act (legal advisers, fund managers, and persons exercising prescribed functions in relation to the scheme to be appointed by the trustees or managers) does not apply to schemes mentioned in paragraph (1)(a) to (g), (i) and (n).

Qualifications and experience or approval required for appointment as the auditor or actuary

4.—(1) For the purposes of section 47(5)(b) of the 1995 Act the qualifications and experience or approval required for appointment as—

- (a) the auditor, subject to paragraph (2), are—
 - (i) those specified in section 25 of the Companies Act 1989⁽¹³⁾; or
 - (ii) approval by the Secretary of State;
 - (b) the actuary are—
 - (i) Fellowship of the Institute of Actuaries;
 - (ii) Fellowship of the Faculty of Actuaries; or
 - (iii) approval by the Secretary of State.
- (2) A person shall not be appointed as the auditor where—
- (a) he is a member of the scheme⁽¹⁴⁾;
 - (b) he is employed under a contract of service by the trustees or managers of the scheme;
 - (c) he is an employer in relation to the scheme; or

⁽¹²⁾ S.I. 1988/724.

⁽¹³⁾ 1989 c. 40.

⁽¹⁴⁾ See section 27 of the Pensions Act 1995 which provides that a trustee of a trust scheme, and any person connected with, or associate of such a trustee, is ineligible to act as auditor. See also regulation 7 of these Regulations.

- (d) he is, by virtue of section 27 of the Companies Act 1989, ineligible to audit the accounts of a company which is an employer in relation to the scheme.

Manner and terms of appointment and removal of professional advisers

5.—(1) An appointment of a professional adviser shall be made in writing (“the notice of appointment”) and shall specify—

- (a) the date the appointment is due to take effect;
- (b) to whom the professional adviser is to report; and
- (c) from whom the professional adviser is to take instructions.

(2) A person appointed as a professional adviser shall—

- (a) acknowledge in writing receipt of the notice of appointment within 1 month of receipt; and
- (b) confirm in writing that he will notify the trustees or managers, immediately he becomes aware, of the existence of any conflict of interest to which he is subject in relation to the scheme.

(3) The resignation of a professional adviser shall be made by serving on the trustees or managers a notice of resignation in writing.

(4) The notice of resignation referred to in paragraph (3) shall, in the case of the auditor or actuary, contain either—

- (a) a statement by the auditor or actuary specifying any circumstances connected with the resignation which, in his opinion, significantly affect the interests of the members or prospective members of, or beneficiaries under, the scheme; or
- (b) a declaration by the auditor or actuary that he knows of no such circumstances as are referred to in sub-paragraph (a).

(5) The resignation shall be effective from the date (if any) specified in the notice by the professional adviser as the date from which he wishes his resignation to be effective, or, if no date is specified, the date on which the trustees or managers receive the notice.

(6) Trustees or managers wishing to remove a professional adviser shall do so by serving on him a notice in writing stating the date with effect from which his appointment terminates.

(7) Where the auditor or actuary is removed in accordance with paragraph (6), he shall, within 14 days of receipt of the removal notice referred to in that paragraph, provide the trustees or managers with either—

- (a) a statement specifying any circumstances connected with the removal which, in his opinion, significantly affect the interests of the members or prospective members of, or beneficiaries under, the scheme; or
- (b) a declaration that he knows of no such circumstances as are referred to in sub-paragraph (a).

(8) Where the auditor or actuary—

- (a) is removed by the trustees or managers,
- (b) resigns, or
- (c) dies,

the trustees or managers shall appoint a replacement auditor or actuary (as the case may be) within 3 months from the date of the removal, resignation or death.

(9) In a case where paragraph (8) applies, section 47(1)(a) (where the replacement is to be an auditor) or (b) (where the replacement is to be an actuary) of the 1995 Act shall not apply pending the appointment of the replacement.

(10) Where a statement or declaration is made in accordance with paragraphs (4) or (7) the trustees or managers shall furnish the succeeding auditor or actuary and, whichever the case may be, the remaining auditor or actuary to the scheme, with a copy of the statement or declaration, where it is reasonably practical to do so on or before the day he is appointed, and in any event no later than the fourteenth day after the trustees or managers receive the statement or declaration.

(11) This regulation shall not apply in the case of an appointment of a person as a professional adviser to a scheme which falls within the description referred to in regulation 3(1)(b) to (g) and (i).

Duty to disclose information

6.—(1) It shall be the duty of any person—

- (a) who is the employer or has been the employer in relation to an occupational pension scheme and any person who acts as auditor or actuary to such a person, to disclose on request to the trustees or managers such information as is reasonably required for the performance of the duties of trustees or managers or professional advisers;
- (b) who is the employer in relation to an occupational pension scheme within 1 month of the occurrence, to disclose to the trustees or managers the occurrence of any event relating to the employer which there is reasonable cause to believe will be of material significance in the exercise by the trustees or managers or professional advisers of any of their functions.

(2) The information referred to in paragraph (1)(a), in a case where the employer makes provision for the administration of the scheme, includes information in respect of who administers the scheme and the terms on which administrative services are provided.

(3) It shall be the duty of the trustees or managers of an occupational pension scheme—

- (a) to disclose to the professional advisers such information as may reasonably be required for the performance of their duties; and
- (b) to make available to the professional advisers such of the scheme's books, accounts and records, including any books and records which the trustees are required to keep under section 49(2) of the 1995 Act (receipts, payments and records), as may reasonably be required for the performance of their duties.

(4) This regulation shall not apply in relation to an occupational pension scheme which falls within the description referred to in regulation 3(1)(b) to (g) and (i).

PART III

TRUSTEES

CHAPTER I

TRUSTEES: GENERAL

Ineligibility to act as actuary or auditor

7. For the purposes of section 27(3) of the 1995 Act (ineligibility of trustees and connected and associated persons to act as an auditor or actuary of the scheme: exceptions for persons of a prescribed class or description) the prescribed class or description is—

- (a) any person who is a director, partner or employee of a firm which provides, amongst other services, actuarial services and who would be ineligible under section 27(1) of the 1995 Act to be the actuary merely because another director, partner or employee of that firm is a trustee of the scheme;

(b) any person—

- (i) who is a director, partner or employee of a firm which provides, amongst other services, actuarial services; and
- (ii) who is not a director of the company which is a trustee of the scheme,

and who would be ineligible under section 27(1) of the 1995 Act to be the actuary merely because he is an associate of the company which is the trustee of the scheme by virtue of section 435(4), (6) and (7) of the Insolvency Act 1986⁽¹⁵⁾;

- (c) any person who would be ineligible under section 27(1) of the 1995 Act to act as the auditor or the actuary merely because he falls within the description of associate as specified in section 435(3) of the Insolvency Act 1986.

Meaning of trustee of a trust scheme

8. For the purposes of section 27(5) of the 1995 Act (references to sections 27 and 28 of the 1995 Act to a trustee of a trust scheme do not include a trustee, or a trustee of a scheme falling within a prescribed class or description) the prescribed class or description is any pensioner trustee.

CHAPTER II

FUNCTIONS OF TRUSTEES

Exemption from the requirement to give notice of an occasion when a specified number of trustees must be present for a decision

9. For the purposes of section 32(2)(b) of the 1995 Act (notice of any occasion at which decisions may be taken by a majority to be given to each trustee unless the occasion falls within a prescribed class or description) the prescribed class or description is an occasion on which it is necessary as a matter of urgency to make a decision.

Manner of, and time for giving, notice when a specified number of trustees must be present for a decision

10. For the purposes of section 32(3) of the 1995 Act (notice to be given in a prescribed manner and no later than the beginning of a prescribed period) the prescribed manner and period are that the notice of the occasion must, unless the trustees agree otherwise,—

- (a) specify the date, time and place of the occasion; and
- (b) be sent to the last known address of each trustee no later than 10 business days before the occasion.

CHAPTER III

RECEIPTS, PAYMENTS AND RECORDS

Exemption from the requirement for money to be kept by the trustees

11.—(1) For the purposes of section 49(1) of the 1995 Act (trustees of any trust scheme must, except in any prescribed circumstances, keep money received in a separate account at an institution authorised under the Banking Act 1987) the prescribed circumstances are—

- (a) where the trustees have entered into an arrangement or contract with a person to the effect that the money is to be paid into a separate account held by that person; and

(15) 1986 c. 45.

- (i) it is a condition of that arrangement or contract that a record by that person shall be kept of the information referred to in paragraph (2) and such records should be retained for a period of at least 6 years; and
- (ii) any interest earned on the account shall be credited to the scheme in respect of which the money is deposited;
- (b) where the trustees have a separate account kept by them at any of the institutions specified in paragraphs (1) to (6) of Schedule 2 to the Banking Act 1987⁽¹⁶⁾ and money received by them is to be held in that account.
- (2) The information referred to in paragraph (1)(a)(i) is the—
 - (a) amount of money paid into the account, the date of payment and from whom it was received;
 - (b) amount of money paid out of the account, the date of withdrawal and to whom payment was made; and
 - (c) interest earned on the account of each scheme in respect of which money is deposited.

Requirement for trustees to keep books and records

- 12.**—(1) Trustees of any trust scheme shall keep—
- (a) records of their meetings (including meetings of any of their number) in accordance with regulation 13; and
 - (b) books and records relating to any of the following transactions—
 - (i) any amount received in respect of any contribution payable in respect of an active member of the scheme;
 - (ii) the date on which a member joins the scheme;
 - (iii) payments of pensions and benefits;
 - (iv) payments made by or on behalf of the trustees to any person including a professional adviser and such records to include the name and address of the person to whom payment was made and the reason for that payment;
 - (v) any movement or transfer of assets from the trustees to any person including a professional adviser and such records to include the name and address of the person to whom the assets were moved or transferred and the reason for that transaction;
 - (vi) the receipt or payment of money or assets in respect of the transfer of members into or out of the scheme and such records to include, in the case of a member who has transferred into the scheme, the name of that member, the terms of the transfer, the name of the transferring scheme, the date of the transfer and date of receipt or payment of money or assets, and, in the case of a member who has transferred out of the scheme, the name of that member, the terms of the transfer, the name of the scheme transferred to, the date of the transfer, and the date of receipt or payment of money or assets;
 - (vii) in a case where an appropriate policy of insurance is taken out by virtue of section 32A of the Pension Schemes Act 1993 (discharge of protected rights on winding up: insurance policies)⁽¹⁷⁾, the name of the insurance company, the name of members in respect of which the appropriate policy of insurance is taken out, the payment of money or assets and the date of such payments;

⁽¹⁶⁾ 1987 c. 22.

⁽¹⁷⁾ 1993 c. 48. Section 32A was inserted by section 146 of the Pensions Act 1995.

- (viii) payments made to a member who leaves the scheme, other than on a transfer, and such records to include the name of that member, the date of leaving, the member's entitlement at that date, the method used for calculating any entitlement under the scheme and how that entitlement was discharged;
- (ix) payments made to the employer; and
- (x) other payments to, and withdrawals from, the scheme, including the name and address of the person the payment was made to or from whom it was received.

(2) This regulation shall not apply in the case of a trust scheme which falls within the descriptions referred to in regulation 3(1)(c), (f), (g) and (i).

Records of trustees' meetings

13.—(1) For the purposes of section 49(4) of the 1995 Act (books and records to be kept in a prescribed form and manner) the prescribed form and manner in the case of records of the meetings of trustees of any trust scheme, is that the record must be in writing and state—

- (a) the date, time and place of the meeting;
- (b) the names of all the trustees invited to the meeting;
- (c) the names of the trustees who attended the meetings and those who did not attend;
- (d) the names of any professional advisers or any other person who attended the meeting;
- (e) any decisions made at the meeting; and
- (f) whether since the previous meeting there has been any occasion when a decision has been made by the trustees and if so the time, place and date of such a decision, and the names of the trustees who participated in the decision.

(2) This regulation shall not apply in the case of a trust scheme which falls within the description referred to in regulation 3(1)(c), (f), and (i).

Period for which books and records must be kept

14. The books and records referred to in regulations 12 and 13 shall be kept by the trustees for at least 6 years from the end of the scheme year to which they relate.

Employer to make payments of benefits into a separate account

15. An employer is required, in cases where payments of benefits to members of trust schemes are made by him, to make into a separate account kept by him at an institution authorised under the Banking Act 1987, any payment of benefit which has not been made to a member within 2 business days from the date of receipt by the employer.

Prescribed time in which an employer must make payments to trustees or managers

16. For the purposes of section 49(8)(b) of the 1995 Act (amount deducted from earnings to be paid to the trustees or managers of the scheme within a prescribed period) the prescribed period is 14 days commencing from the end of the month in which the amount is deducted from the earnings in question.

PART IV

MONEY PURCHASE SCHEMES

Exemption from requirement to secure a payment schedule

17. For the purposes of section 87(1) of the 1995 Act (requirement for occupational pension schemes which are money purchase schemes to secure and maintain a payment schedule unless the scheme falls within a prescribed class or description) the prescribed class or description is a money purchase scheme which falls within the description referred to in regulation 3(1)(c), (d) and (f) to (h).

Amounts to be shown in a payment schedule

18. For the purposes of section 87(2)(b) of the 1995 Act (payment schedule to show other amounts payable towards the scheme as may be prescribed) the prescribed amounts are amounts payable towards the scheme by the employer in respect of expenses likely to be incurred in the scheme year.

Requirements which a payment schedule must satisfy

19.—(1) For the purposes of section 87(3) of the 1995 Act (payment schedule for a scheme must satisfy prescribed requirements) the prescribed requirements are that—

- (a) the payment schedule shows amounts payable in the scheme year;
- (b) subject to paragraph (2), the payment schedule contains separate entries for the rates and due dates of contributions (other than voluntary contributions) payable towards the scheme by or on behalf of—
 - (i) the employer, and in the case of a scheme in relation to which there is more than one employer, each employer;
 - (ii) the active members of the scheme.

(2) In the case where an insurance premium is payable, the payment schedule need not contain separate entries for identifying the contributions payable by or on behalf of the employer and the active members of the scheme in respect of that premium.

Period within which notice must be given

20. For the purposes of section 88(1) of the 1995 Act (trustees or managers must give notice, where any amounts payable in accordance with the payment schedule have not been paid, within a prescribed period) the prescribed period is, in the case where—

- (a) notice is to be given to the Authority, 30 days from the due date;
- (b) notice is to be given to a member, 90 days from the due date.

Circumstances where notice of non-payment of any amount payable to a scheme need not be given

21.—(1) Where an amount, payable in accordance with the payment schedule, has been paid no later than 60 days after the due date, notice of non-payment in respect of that amount on or before the due date need not be given to the members of the scheme.

(2) In the case of a scheme in relation to which there is more than one employer, notice of non-payment in respect of an amount payable in accordance with the payment schedule need not be given to members where their pensionable service is not with the employer who has not paid any amount in accordance with that payment schedule.

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

2nd July 1996

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Occupational Pension Schemes (Scheme Administration) Regulations 1996 (“the Regulations”) are the first regulations to be made in respect of the administration of occupational pension schemes under the Pensions Act 1995 (“the Act”).

The Regulations are made before the end of the period of six months beginning with the coming into force of the provisions of Part I of the Act by virtue of which they are made and therefore the requirement to consult does not apply.

Part I of the Regulations relates to citation, commencement and interpretation.

Part II makes provision relating to the appointment of professional advisers (regulations 2 and 3); qualification and experience of the auditor or actuary (regulation 4); manner and terms of appointment and removal (regulation 5); duty to disclose information (regulation 6).

Part III makes provision relating to the ineligibility to act as actuary or auditor and the meaning of trustee (regulations 7 and 8); manner and time of notice of occasion and circumstances in which no notice is required (regulations 9 and 10); exemption from the requirement for money to be kept by trustees (regulation 11); requirement to keep records and books and form of those records (regulations 12 and 13); period for which books and records must be kept (regulation 14); requirement of employers to make payments into separate accounts and time in which employers must make payments to trustees or managers (regulations 15 and 16).

Part IV makes provision requiring money purchase occupational pension schemes to show amounts in a payment schedule and the requirements which a payment schedule must satisfy (regulations 18 and 19); exemptions from the requirement to secure a payment schedule (regulation 17); period within which notice where amounts payable have not been paid and circumstances where notice need not be given (regulations 20 and 21).

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