

Status: Point in time view as at 01/01/2014.

Changes to legislation: The Occupational Pension Schemes(Winding Up) Regulations 1996 is up to date with all changes known to be in force on or before 23 November 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

STATUTORY INSTRUMENTS

1996 No. 3126

PENSIONS

The Occupational Pension Schemes(Winding Up) Regulations 1996

<i>Made</i>	- - - -	<i>11th December 1996</i>
<i>Laid before Parliament</i>		<i>18th December 1996</i>
<i>Coming into force</i>	- -	<i>6th April 1997</i>

The Secretary of State for Social Security, in exercise of the powers conferred on him by sections 97(1) and (2), 113(1)(d), 168, 181(1) and 182(2) and (3) of the Pension Schemes Act 1993^{M1} and sections 38(3)(b), 49(2)(b), (3) and (4), 68(2)(e), 73(3) and (7) to (9), 74(2), (3)(a) to (d) and (5)(b), 118(1)(a) and (b), 119, 124(1), 125(2) and (3) and 174(2) to (4) of the Pensions Act 1995^{M2} and of all other powers enabling him in that behalf, the Occupational Pensions Board having agreed that the proposals to make these regulations, to the extent that they are made under the Pensions Schemes Act 1993, need not be referred to them^{M3} and the Secretary of State having consulted with such persons as he considered appropriate^{M4}, by this instrument hereby makes the following regulations:—

Marginal Citations

- M1** 1993 c. 48. Section 168 was substituted by section 155 of the Pensions Act 1995. Section 181(1) is cited for the meaning given to “prescribed” and “regulations”.
- M2** 1995 c. 26. Section 124(1) is cited for the meaning given to “prescribed” and “regulations”.
- M3** See section 185(6) of the Pension Schemes Act 1993 and section 173(1)(b) of the [Social Security Administration Act 1992 \(c. 5\)](#).
- M4** See section 120(1) of the Pensions Act 1995.

Preliminary

Citation, commencement and interpretation

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

(2) These Regulations do not apply to any scheme which has begun to be wound up before that date.

(3) Unless the context otherwise requires—

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

[^{F1}(4) In these Regulations—

^{F2} ...

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

“pension credit” means a credit under section 29(1)(b) of the Welfare Reform and Pensions Act 1999;

“transfer credits” has the meaning given by regulation 1(2) of the Pension Sharing (Pension Credit Benefit) Regulations 2000 (citation, commencement and interpretation).]

[^{F3}(5) References in these Regulations to FRC standards are to actuarial standards adopted or prepared, and from time to time revised, by the Financial Reporting Council Limited, which are relevant to the determination, calculation and verification of the amount or value of the liabilities of the scheme to which section 73 applies.]

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| F1 | Reg. 1(4) substituted (1.12.2000) by The Pension Sharing (Consequential and Miscellaneous Amendments) Regulations 2000 (S.I. 2000/2691) , regs. 1, 3(2) |
| F2 | Words in reg. 1(4) omitted (9.8.2012) by virtue of The Occupational and Personal Pension Schemes (Prescribed Bodies) Regulations 2012 (S.I. 2012/1817) , reg. 1, Sch. para. 3(a)(i) |
| F3 | Reg. 1(5) substituted (9.8.2012) by The Occupational and Personal Pension Schemes (Prescribed Bodies) Regulations 2012 (S.I. 2012/1817) , reg. 1, Sch. para. 3(a)(ii) |

Commencement of winding up

2.—[^{F4}(1) The time when a scheme begins to be wound up shall be determined for the purposes of these Regulations in accordance with this regulation—

- (a) if in accordance with section 124(3A) to (3E) the scheme began to wind up before 6th April 2005; or
- (b) if immediately before that date the scheme was treated by virtue of this regulation as having begun to be wound up for those purposes.

(1A) See section 124(3A) to (3E) for the time when a scheme begins to wind up in any other case.]

(2) Subject to paragraphs (3) and (5), where the rules of the scheme require or permit the scheme to be wound up and the scheme is wound up under those rules, the scheme begins to be wound up—

- (a) either—
 - (i) at such time as the rules provide that it does so, or
 - (ii) if the rules make no provision as to that time, at such time as the trustees determine that the scheme shall begin to be wound up; or
- (b) as soon as there are no members who are in pensionable service under the scheme,

whichever is the later.

(3) Where the rules of the scheme require or permit the scheme to be wound up, but the trustees determine in pursuance of section 38 or otherwise that the scheme is not for the time being to be wound up, then for the purposes of paragraph (2), in so far as any provision made by the rules of the scheme as to the time when it begins to be wound up is inconsistent with the trustees’ determination, that provision shall be disregarded.

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(4) Where under the rules of the scheme any person other than the trustees may determine that the scheme is to be wound up, or is not to be wound up for the time being, then the references in paragraphs (2)(a)(ii) and (3) to the trustees’ determination shall be taken, in a case where the winding up begins or is deferred by virtue of that other person’s determination, as a reference to his determination; and this paragraph applies where such a power is vested in the trustees jointly with another person, or in some but not all of the trustees, as it applies where such a power is vested only in a person other than the trustees.

(5) Where—

(a) a scheme is wound up in pursuance—

(i) of an order of the Authority under section 11, or

(ii) of an order of a court; and

(b) the order makes provision as to the time at which the scheme is to begin to be wound up, the scheme begins to be wound up at the time specified in the order or, if none is so specified, the date on which the order takes effect.

F4 Reg. 2(1) - reg. 2(1A) substituted for reg. 2(1) (6.4.2005) by [Occupational Pension Schemes \(Winding Up etc.\) Regulations 2005 \(S.I. 2005/706\)](#), reg. 1(2), **Sch. para. 1**

Modifications etc. (not altering text)

C1 Reg. 2 applied (6.4.1997) by [The Occupational Pension Schemes \(Deficiency on Winding Up etc.\) Regulations 1996 \(S.I. 1996/3128\)](#), regs. 1(3), **2(1)**

Preferential liabilities on winding up

Modifications of s. 73(3) [^{F5}for schemes beginning to be wound up before 6th April 2005]

3.—(1) Section 73(3) applies [^{F6}if the scheme begins to be wound up before 6th April 2005]—

(a) in all cases subject to the modifications mentioned in paragraphs (3) and (4);

[^{F7}(b) in the case of a scheme which begins to be wound up on or after 10 May 2004 ^{F8} ..., subject to the modifications in paragraphs (5A) to (6).]

^{F9}(c)

^{F10}(2)

(3) After paragraph (a) of section 73(3) there shall be inserted—

“(aa) where—

(i) the trustees or managers of the scheme are entitled to benefits under a contract of insurance which was entered into before 6th April 1997 with a view to securing the whole or part of the scheme’s liability for any pension or other benefit payable in respect of one particular person whose entitlement to payment of a pension or other benefit has arisen and for any benefit which will be payable in respect of that person on his death, and

(ii) either that contract may not be surrendered or the amount payable on surrender does not exceed the liability secured by the contract (but excluding liability for increases to pensions),

the liability so secured”.

(4) In section 73(3)(b)—

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- (a) at the beginning there shall be inserted the words “ in a case not falling within paragraph (aa), ”; and
- (b) for the words “to dependants” there shall be substituted the words “ in respect ”.

^{F11}(5)

[^{F12}(5A) In paragraph (d) of section 73(3), for “(b) and (c)” there shall be substituted “(aa) and (b).”

(5B) After that paragraph there is inserted—

“(e) any liability for increases to pensions referred to in paragraph (c).”.]

[^{F13}(6) In the words following paragraph (e) of section 73(3) as inserted by paragraph (5B) for the words “paragraphs (b) to (d)” there shall be substituted the words “paragraphs (aa) to (e).”.]

^{F14}(7)

[^{F15}(8) In the case of any scheme to which section 73(3) applies with the modifications mentioned in paragraphs (5A) to (6), regulation 7(3)(b)(iv) of the Occupational Pension Schemes (Transfer Values) Regulations 1996, has effect with the substitution for “(d)” of “(e).”.]

[^{F16}(9) Paragraph (8) does not apply where regulation 7(3)(b)(iv) of the Occupational Pension Schemes (Transfer Values) Regulations 1996 applies with the amendments in regulation 15 of the Occupational Pension Schemes (Winding up etc.) Regulations 2005.]

F5	Words in reg. 3 added (6.4.2005) by Occupational Pension Schemes (Winding Up etc.) Regulations 2005 (S.I. 2005/706), reg. 1(2), Sch. para. 2(a)
F6	Words in reg. 3(1) inserted (6.4.2005) by Occupational Pension Schemes (Winding Up etc.) Regulations 2005 (S.I. 2005/706), reg. 1(2), Sch. para. 2(b)
F7	Reg. 3(1)(b) substituted (10.5.2004) by Occupational Pension Schemes (Winding Up) (Amendment) Regulations 2004 (S.I. 2004/1140), regs. 1(1), 3(a)
F8	Words in reg. 3(1)(b) omitted (6.4.2005) by virtue of Occupational Pension Schemes (Winding Up etc.) Regulations 2005 (S.I. 2005/706), reg. 1(2), Sch. para. 2(c)
F9	Reg. 3(1)(c) omitted (6.4.2005) by virtue of Occupational Pension Schemes (Winding Up etc.) Regulations 2005 (S.I. 2005/706), reg. 1(2), Sch. para. 2(d)
F10	Reg. 3(2) omitted (6.4.2005) by virtue of Occupational Pension Schemes (Winding Up etc.) Regulations 2005 (S.I. 2005/706), reg. 1(2), Sch. para. 2(d)
F11	Reg. 3(5) revoked (10.5.2004) by Occupational Pension Schemes (Winding Up) (Amendment) Regulations 2004 (S.I. 2004/1140), regs. 1(1), 2(a)
F12	Reg. 3(5A) - Reg. 3(5B) inserted (10.5.2004) by Occupational Pension Schemes (Winding Up) (Amendment) Regulations 2004 (S.I. 2004/1140), regs. 1(1), 3(b)
F13	Reg. 3(6) substituted (10.5.2004) by Occupational Pension Schemes (Winding Up) (Amendment) Regulations 2004 (S.I. 2004/1140), regs. 1(1), 3(c)
F14	Reg. 3(7) omitted (6.4.2005) by virtue of Occupational Pension Schemes (Winding Up etc.) Regulations 2005 (S.I. 2005/706), reg. 1(2), Sch. para. 2(d)
F15	Reg. 3(8) substituted (10.5.2004) by Occupational Pension Schemes (Winding Up) (Amendment) Regulations 2004 (S.I. 2004/1140), regs. 1(1), 3(d)
F16	Reg. 3(9) added (6.4.2005) by Occupational Pension Schemes (Winding Up etc.) Regulations 2005 (S.I. 2005/706), reg. 1(2), Sch. para. 2(f)

[^{F17}Calculation of the value or amount of scheme assets and liabilities

4.—(1) The liabilities of a scheme to which section 73 applies and their amount or value must be determined, calculated and verified by the actuary of the scheme—

- (a) on the assumption that any questions relating to any person's entitlement to a pension or other benefit are to be determined as at the crystallisation date;
 - (b) on the assumption that liabilities in respect of pensions or other benefits will be discharged by the purchase of annuities of the kind described in section 74(3)(c) (discharge of liabilities: annuity purchase) and include the expenses involved in discharging them;
 - (c) subject to sub-paragraph (b) and paragraph (4), on the general assumptions specified in regulations 7(2), (3) and (7) to (10) and 8(2) of the MFR Regulations (determination and valuation of liabilities and further provisions as to valuation: methodology, assumptions, etc.) so far as they relate to the calculation and verification of liabilities; and
 - (d) otherwise in accordance with [^{F18} any relevant [^{F19}FRC standards]].
- (2) For the purpose of paragraph (1)(b) the actuary must estimate the cost of purchasing the annuities.
- (3) A calculation of the value or amount of the liabilities of a scheme for the purposes of section 73 must be accompanied by a statement that it is in accordance with the guidance mentioned in paragraph (1)(d).
- (4) For the purposes of this regulation, regulations 7 and 8 of the MFR Regulations are modified as follows—
- (a) references in regulations 7(3), (7) and (8) and 8(2) of the MFR Regulations to the relevant date are to be taken as references to the date as at which the calculation is made (being a date not earlier than the crystallisation date or the commencement of winding up, if later);
 - (b) in regulation 7(3) the words “subject to paragraphs (4) and (5)” are omitted; and
 - (c) paragraph (i) of regulation 8(2)(a) is omitted.
- (5) Paragraph (6) applies if, when the assets of the scheme are applied in accordance with section 73(3) towards satisfying any liability of the scheme mentioned in section 73(4), that liability, as calculated in accordance with the rules of the scheme (without any reduction by reason of its falling within a class of liability which is to be satisfied after another class), is in the opinion of the actuary fully satisfied by applying assets of a value less than the amount of that liability calculated in accordance with paragraph (1).
- (6) If this paragraph applies the amount to be taken as the amount of that liability for the purposes of section 73(3) is to be reduced accordingly.
- (7) Paragraph (8) applies if, when the assets of the scheme are so applied, the liabilities mentioned in section 73(3), as calculated in accordance with the rules of the scheme (without any reduction by reason of their falling within a class of liability which is to be satisfied after another class), cannot in the opinion of the actuary be fully satisfied by applying assets of a value equal to the amount of those liabilities calculated in accordance with paragraph (1).
- (8) If this paragraph applies the amount to be taken as the amount of those liabilities for the purposes of section 73(3) is to be increased accordingly.
- (9) If section 73 does not apply to any liability by virtue of—
- (a) section 73B(6)(d) (which provides that the winding up provisions do not apply to liabilities the discharge of which is validated under section 136 of the Pensions Act 2004); or
 - (b) regulation 10(2) of the Occupational Pension Schemes (Winding up etc.) Regulations 2005 (which makes similar provision as respects liabilities discharged by virtue of regulations under section 135(4) of that Act),
- the value of any corresponding assets is to be deducted from the value of the assets of the scheme for the purposes of section 73.
- (10) For the purposes of paragraph (9), “ the value of any corresponding assets ” means—

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- (a) in a case where assets of the scheme at the crystallisation date are transferred from the scheme in consideration for the discharge, the value of those assets at that date; and
 - (b) in a case where assets that are not assets of the scheme at that date are so transferred, the value of those assets at the date of the discharge.
- (11) Subject to paragraph (12), in this regulation “ the crystallisation date ” means—
- (a) in the case of a scheme where—
 - (i) the trustees or managers determined (whether in pursuance of section 38 (power to defer winding up) or otherwise) that the scheme was not for the time being to be wound up, despite rules otherwise requiring it to be so;
 - (ii) the time when the paragraph of section 73(4) into which the liability in respect of any person falls is determined is fixed under the provisions of the scheme; and
 - (iii) that time falls on or after the date of the determination mentioned in paragraph (i) and before the date on which the scheme begins to be wound up, the date when that time occurs; and
 - (b) otherwise, the date on which the scheme begins to be wound up.
- (12) Where the trustees or managers of a scheme—
- (a) determined before 6th April 1997 that the scheme was not for the time being to be wound up, despite rules otherwise requiring it to be so; and
 - (b) before that date determined a time (being a time before 6th April 1997) when the amounts or descriptions of liabilities of the scheme were to be determined for the purposes of any rule of the scheme requiring the assets of the scheme to be applied on winding up in satisfying the amounts of certain liabilities to or in respect of members before other such liabilities,]

F17	Reg. 4 substituted for reg. 4 - reg. 4C (6.4.2005) by Occupational Pension Schemes (Winding Up etc.) Regulations 2005 (S.I. 2005/706) , regs. 1(2), 9 (with reg. 1(3))
F18	Words in reg. 4(1)(d) substituted (6.4.2010) by The Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2010 (S.I. 2010/499) , regs. 1, 4(3)
F19	Words in reg. 4(1)(d) substituted (9.8.2012) by The Occupational and Personal Pension Schemes (Prescribed Bodies) Regulations 2012 (S.I. 2012/1817) , reg. 1, Sch. para. 3(b)

[^{F20}Calculation of liabilities where employer not insolvent

^{F21}**4A].**

F20	Reg. 4A inserted (19.3.2002) by Occupational Pension Schemes (Minimum Funding Requirement and Miscellaneous Amendments) Regulations 2002 (S.I. 2002/380) , regs. 1(1), 3(3)
F21	Reg. 4 substituted for reg. 4 - reg. 4C (6.4.2005) by Occupational Pension Schemes (Winding Up etc.) Regulations 2005 (S.I. 2005/706) , regs. 1(2), 9 (with reg. 1(3))

[^{F22}Calculation of liabilities where employer not insolvent and where winding up commences on or after 11th June 2003

^{F23}**4B].**

F22	Reg. 4B inserted (15.3.2004) by Occupational Pension Schemes (Winding Up and Deficiency on Winding Up etc.) (Amendment) Regulations 2004 (S.I. 2004/403) , regs. 1(1), 2(5)
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F23 Reg. 4 substituted for reg. 4 - reg. 4C (6.4.2005) by Occupational Pension Schemes (Winding Up etc.) Regulations 2005 (S.I. 2005/706), regs. 1(2), 9 (with reg. 1(3))

[^{F24}Calculation of liabilities where winding up commences, and date of calculation falls, on or after 15 February 2005

^{F25}4C].

F24 Reg. 4C inserted (15.2.2005) by Occupational Pension Schemes (Winding Up, Deficiency on Winding Up and Transfer Values) (Amendment) Regulations 2005 (S.I. 2005/72), regs. 1(1), 2(4)
F25 Reg. 4 substituted for reg. 4 - reg. 4C (6.4.2005) by Occupational Pension Schemes (Winding Up etc.) Regulations 2005 (S.I. 2005/706), regs. 1(2), 9 (with reg. 1(3))

Modification of schemes to fix time for settling priority of liabilities on winding up

5.—(1) The trustees of a trust scheme may by resolution modify the scheme with a view to fixing or providing for the fixing of the time when the paragraph of [^{F26}section 73(4)] into which the liability in respect of any person falls is to be determined for the purposes of [^{F27}section 73(3) and (4)] or of any priority rule of the scheme, in the event of a determination (whether in pursuance of section 38 or otherwise) that the scheme is not for the time being to be wound up, despite rules otherwise requiring it to be so.

(2) That time must be—

- (a) on or after the date of the resolution and of any such determination to defer winding up, and
- (b) before the date on which the scheme begins to be wound up.

(3) In paragraph (1) “priority rule” means a rule of the scheme requiring the trustees to apply the assets of the scheme on a winding up in satisfying the amounts of certain liabilities to or in respect of members before other such liabilities.

F26 Words in reg. 5 substituted (6.4.2005) by Occupational Pension Schemes (Winding Up etc.) Regulations 2005 (S.I. 2005/706), reg. 1(2), Sch. para. 3(a) (with Sch. para. 3)
F27 Words in reg. 5 substituted (6.4.2005) by Occupational Pension Schemes (Winding Up etc.) Regulations 2005 (S.I. 2005/706), reg. 1(2), Sch. para. 3(b) (with Sch. para. 3)

Discharge of liabilities by insurance etc.

Arrangements for discharge of liabilities under s. 74

6.—(1) For the purposes of section 74(2), the arrangements with which the trustees or managers of a scheme must comply in providing for the discharge of a liability under that section are as follows.

(2) Where the trustees or managers of a scheme propose to discharge a liability of the scheme to or in respect of a member—

- (a) they must give him or, if he has died, each beneficiary who is entitled to benefits in respect of him, notice in writing of that fact;
- (b) if they propose to discharge the liability wholly or partly—
 - (i) in the way mentioned in section 74(3)(a) or (b), or
 - (ii) in the way mentioned in regulation 8(5) in a case where sub-paragraph (a) of that regulation applies, then, subject to paragraph (4), they must obtain the written

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consent of the member or, as the case may be, the beneficiary to discharging the liability in that way; and

- (c) in the case of discharge in the way mentioned in regulation 8(5), any other requirements which apply to the making of a payment so mentioned must have been met.

(3) A notice under paragraph (2)(a) must comply with the requirements of regulation 7.

(4) In a case where regulation [F²⁸11B or] 12 of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 ^{M5} (transfer of member's accrued rights without consent) applies, no consent need be obtained to a discharge of liability in the way mentioned in section 74(3)(a).

(5) Where—

- (a) the trustees or managers have complied with paragraphs (2) and (3); and
 (b) an election has been made under regulation 7(3)(a),

they may discharge the liability in pursuance of the election without complying with those paragraphs again.

F28 Words in reg. 6(4) inserted (6.4.2013) by [The Occupational and Stakeholder Pension Schemes \(Miscellaneous Amendments\) Regulations 2013 \(S.I. 2013/459\)](#), regs. 1, 5

Marginal Citations

M5 [S.I. 1991/167](#). Regulation 12 has been amended by [S.I. 1992/1531](#), [regulation 35](#); [S.I. 1993/1822](#), [regulation 2](#); [S.I. 1994/1062](#), [paragraph 30\(15\)](#) of Schedule 2; [S.I. 1995/3067](#), [regulation 2\(4\)](#); [S.I. 1996/2131](#), [regulation 2\(7\)](#).

Requirements applicable to notices of discharge under regulation 6

7.—(1) A notice under regulation 6(2)(a) (“a discharge notice”) must specify—

- (a) the sum which is available to be used to discharge the liability of the scheme to the member or, as the case may be, the beneficiary in respect of his rights under the scheme; and
 (b) if the full amount of that liability, as calculated in accordance with regulation 4, is greater than that sum, that amount and the reason for the difference.

(2) A discharge notice must—

- (a) specify the way or ways in which it is proposed to discharge the liability;
 (b) if the proposed way or any of the proposed ways requires the consent of the member or, as the case may be, the beneficiary, state—
 (i) that his consent is so required,
 (ii) the period within which his consent must be given, being at least three months beginning with the date on which the notice is given, and
 (iii) the way or ways in which it is proposed to discharge the liability if he does not give his consent; and
 (c) if the proposed way is that mentioned in regulation 8(5), state any further requirements which must be met before discharge may be made in that way.

(3) If there are any options available to the member or beneficiary, the discharge notice must specify them and state—

- (a) that if he wishes to elect that, instead of the liability being discharged in the proposed way, it should be discharged in one or more of the other ways mentioned in section 74(3) which are available in his case (or partly in the proposed way and partly in another such way), then he must give notice to that effect in writing to the trustees or managers, specifying—

- (i) the way or ways in which he wishes the liability to be discharged, and
 - (ii) the name of the relevant provider;
- (b) that such a notice must be given by him before the expiry of the period of three months beginning with the date on which the discharge notice is given to him; and
- (c) that it would be advisable for him to obtain independent financial advice before deciding whether to make such an election.
- (4) The statement mentioned in paragraph (3)(c) must also be included in any case where the consent of the member or the beneficiary is required.
- (5) Where it is proposed to discharge the liability in the way mentioned in section 74(3)(a), the discharge notice must specify the name of the relevant provider and the scheme address.
- (6) Where it is proposed to discharge the liability in the way mentioned in section 74(3)(b), the discharge notice must specify the name of the relevant provider and (if different) of the person who is the scheme administrator and the scheme address.
- (7) Where it is proposed to discharge the liability in the way mentioned in section 74(3)(c) or in regulation 8(4), the discharge notice must specify—
- (a) the name and address of the relevant provider;
 - (b) if different, the name and address of the person from whom information about the terms of the contract for the provision of the annuity which is to be purchased or, as the case may be, the benefit of which is to be transferred can be obtained; and
 - (c) in a case where the contract for the provision of the annuity has not been made at the time the notice is given, whether information about its terms will be given on the assumption that they will coincide with the terms of a quotation.
- (8) In this regulation—
- “the relevant provider” means—
- (a) in the case of the acquisition of transfer credits under another occupational pension scheme, the trustees or managers of the scheme;
 - (b) in the case of the acquisition of rights under a personal pension scheme, the person who is responsible for the provision of pensions and other benefits under the scheme; and
 - (c) in the case of the purchase or transfer of the benefit of an annuity, the insurance company or companies from which the annuity is to be or, as the case may be, has been purchased;
- “the scheme address”, in relation to a scheme, means the place in the United Kingdom where the management of the scheme is conducted or, if there is more than one such place, the principal place;
- “scheme administrator” has the meaning given in [^{F29}section 270 of the Finance Act 2004] .
- (9) A discharge notice and any notice under paragraph (3) shall be treated as having been given to a person if it has been sent to him by post at the address at which he was last known by the trustees or managers of the scheme to be living.
- (10) Discharge notices and notices under paragraph (3) are not required to be given to a person if—
- (a) the trustees or managers know no such address as is mentioned in paragraph (9) for him, or
 - (b) correspondence sent to the address at which he was last known by them to be living has been returned.

F29 Words in reg. 7(8) substituted (6.4.2006) by [Occupational Pension Schemes \(Winding Up etc.\) Regulations 2005 \(S.I. 2005/706\)](#), reg. 1(2), [Sch. para. 4](#)

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Requirements to be satisfied by transferee schemes, annuities etc.

8.—^{F30}(1) For the purpose of section 74(3)(a) (discharge of liability to or in respect of a member by the acquisition of transfer credits under another occupational pension scheme), the requirements to be satisfied by the other occupational pension scheme are the same as those which would apply by virtue of—

- (a) section 95(2)(a) of the Pension Schemes Act 1993 (ways of taking right to cash equivalent) if—
 - (i) the member were entitled to a cash equivalent under Chapter IV of Part IV of that Act in respect of the rights liability in respect of which is being discharged, and
 - (ii) he required his cash equivalent to be used to acquire transfer credits allowed under the rules of the scheme; or
- (b) section 101F(2)(a) of that Act (power to give transfer notice).

(2) For the purpose of section 74(3)(b) (discharge of liability to or in respect of a member by the acquisition of rights under a personal pension scheme), the requirements to be satisfied by the personal pension scheme are the same as those which would apply by virtue of—

- (a) section 95(2)(b) of the Pension Schemes Act 1993 if the member were so entitled and he required his cash equivalent to be used to acquire rights allowed under the rules of the scheme; or
- (b) section 101F(2)(a) of that Act.

(3) For the purpose of section 74(3)(c) (discharge of liability to or in respect of a member by the purchase of one or more annuities) the requirements to be satisfied by the annuities are the same as those which would apply by virtue of—

- (a) section 95(2)(c) of the Pension Schemes Act 1993 if the member were so entitled and he required his cash equivalent to be used to purchase annuities from such insurance companies as are mentioned in that section; or
- (b) section 101F(2)(b) of that Act, other than the requirement that an insurance company must be chosen by the member.]

(4) For the purpose of section 74(3)(d) (discharge of liability to or in respect of a member by subscribing to other pension arrangements satisfying prescribed requirements) the discharge of a liability to or in respect of a member may be provided for by transferring to him, or to any person who is entitled to benefits in respect of him, the benefit—

- (a) of one or more contracts to provide annuities which—
 - (i) satisfy the requirements mentioned in paragraph (3); and
 - (ii) are provided by insurance companies which consent to the transfer; or
- (b) of one or more policies of insurance which satisfy the requirements mentioned in section 19(4) of the Pension Schemes Act 1993 ^{M6} (appropriate policies and annuity contracts).

(5) For the purpose of section 74(3)(d), the discharge of a liability to or in respect of a member of a contracted-out scheme may also be provided for in a case where sub-paragraph (3B) of paragraph 5 of Schedule 2 to the Pension Schemes Act 1993 ^{M7} applies by a payment to the Secretary of State of the amount mentioned in paragraph (b) of that sub-paragraph (amount required for restoring the member's State scheme rights) if—

- (a) the member has duly made such an application as is required for the restoration of his State scheme rights in accordance with that provision, or
- (b) in a case where such an application may be made by the trustees or managers, they have duly made such an application;

and in this paragraph “State scheme rights” has the same meaning as in that sub-paragraph.

[^{F31}(6) For the purposes of section 74(3)(e) (liabilities treated as discharged where the trustees have provided for them to be discharged by the payment of a cash sum in circumstances where prescribed requirements are met), the circumstances which are prescribed are—

- (a) where the payment is a contribution refund under Chapter 5 of Part 4 of the 1993 Act; or
- (b) where the payment—

[^{F32}(i) of a lump sum—

- (aa) that is a trivial commutation lump sum or a winding up lump sum for the purposes of Part 1 of Schedule 29 to the Finance Act 2004 is made to a member; or
- (bb) is made by a registered pension scheme (within the meaning given in section 150(2) of the Finance Act 2004 (meaning of “pension scheme”)), is a payment that is described in Part 2 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 and is made to or in respect of a member; and]

(ii) does not contravene any trivial commutation restriction that applies in the circumstances in question.

(7) In this regulation “trivial commutation restriction” means a restriction imposed by—

- (a) regulation 19, 20 or 60 of the Occupational Pension Schemes (Contracting-out) Regulations 1996 (lump sum benefits and salary related contracted-out schemes, trivial commutation of benefits derived from section 9(2B) rights and trivial commutation of guaranteed minimum pensions); [^{F33}or]
- (b) regulation 2 of the Occupational Pension Scheme (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997 (commutation of a pension under an occupational pension scheme); ^{F34} ...
- (c) ^{F34}

(8) Before 6th April 2006 this regulation applies with the modification in paragraph (9).

(9) For paragraph (6)(b)(i) substitute—

“(i) extinguishes the whole or part of the person’s entitlement to benefits under the scheme; (ia) does not contravene Revenue restrictions; and”.

(10) For the purposes of this regulation a payment does not contravene Revenue restrictions if—

- (a) in the case of a scheme that is an approved scheme for the purposes of Chapter 1 of Part 14 of the Income and Corporation Taxes Act 1988 (see section 612(1) of that Act), it is permitted under the scheme rules in accordance with its approval for those purposes; and
- (b) in the case of a scheme that is a relevant statutory scheme for those purposes (see section 611A of that Act), it is permitted under the regulations or rules governing the scheme as such a scheme.]

F30 Regs. 8(1)-(3) substituted (1.12.2000) by [The Pension Sharing \(Consequential and Miscellaneous Amendments\) Regulations 2000 \(S.I. 2000/2691\)](#), regs. 1, **3(4)**

F31 Reg. 8(6) to (10) added (6.4.2005) by [Occupational Pension Schemes \(Winding Up etc.\) Regulations 2005 \(S.I. 2005/706\)](#), regs. 1(2), **11** (with reg. 1(3))

F32 Reg. 8(6)(b)(i) substituted (1.12.2009) by [Occupational and Personal Pension Schemes \(Authorised Payments\) Amendment Regulations 2009 \(S.I. 2009/2930\)](#), regs. 1, **6**

F33 Word in reg. 8(7)(a) inserted (6.4.2009) by [Occupational, Personal and Stakeholder Pensions \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/615\)](#), regs. 1(2), **9(2)(a)**

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F34 Reg. 8(7)(c) and preceding word omitted (6.4.2009) by virtue of [Occupational, Personal and Stakeholder Pensions \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/615\)](#), regs. 1(2), **9(2)(b)**

Marginal Citations

M6 1993 c. 48.

M7 Sub-paragraphs (3A) to (3E) were inserted in paragraph 5 of Schedule 2 by section 141(2) of the [Pensions Act 1995 \(c. 26\)](#).

Relationship of these Regulations and requirements under s. 32A of the Pension Schemes Act 1993

^{F35}9.

F35 Reg. 9 omitted (6.4.2012) by virtue of [The Pensions Act 2008 \(Abolition of Protected Rights\) \(Consequential Amendments\) Order 2011 \(S.I. 2011/1246\)](#), arts. 1(2)(a), **16**

Power to defer winding up

Disapplication of s. 38

10.—(1) Section 38 does not apply—

- (a) to any scheme in relation to which no relevant employer debt event has occurred;
- (b) to a scheme in respect of which any Minister of the Crown has given a guarantee or made any other arrangements for the purpose of securing that the assets of the scheme are sufficient to meet its liabilities;
- (c) to a scheme which provides relevant benefits, but is neither an approved scheme nor a relevant statutory scheme;

[^{F36}(d) to a scheme—

- (i) which is a section 615(6) scheme; and
- (ii) in relation to which the trustees or managers are not—
 - (aa) authorised under section 288 of the Pensions Act 2004 (general authorisation to accept contributions from European employers); or
 - (bb) approved under section 289 of that Act (approval in relation to particular European employer) in relation to a European employer;]

- (e) to a scheme with less than two members;
- (f) to a small self-administered scheme which is an approved scheme;
- (g) to a scheme the only benefits provided by which (other than money purchase benefits) are death benefits; or
- (h) to a relevant lump sum retirement benefits scheme.

(2) For the purposes of paragraph (1)(a), a relevant employer debt event has only occurred in relation to a scheme if (apart from section 38 or any other power to defer winding up the scheme) the rules of the scheme require the scheme to be wound up as a result of a [^{F37}relevant event] having occurred in relation to any person who immediately before the event occurred was an employer in relation to the scheme; and for the purposes of this paragraph—

- (a) [^{F37}subsection (6A) of section 75 (definition of relevant events)] applies as it applies for the purposes of section 75 (disregarding any modifications of that section); and

- (b) in the case of a scheme which has no active members, the reference to an employer is to the person who was the employer immediately before the occurrence of the event after which the scheme ceased to have any active members.

(3) In this regulation—

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

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

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

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

- (a) which has been categorised by the Commissioners of Inland Revenue for the purposes of its approval as a centralised scheme for non-associated employers;
- (b) which is not contracted-out; and
- (c) under the provisions of which the only benefits which may be provided on or after retirement (other than money purchase benefits derived from the payment of additional contributions by any person) are lump sum benefits which are not calculated by reference to any member’s salary;

“relevant statutory scheme” has the meaning given in section 611A of the Taxes Act ^{M8};

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

“small self-administered scheme” has the meaning given in regulation 2(1) of the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Small Self-administered Schemes) Regulations 1991 ^{M9};

“the Taxes Act” means the Income and Corporation Taxes Act 1988 ^{M10}.

F36 Reg. 10(1)(d) substituted (30.3.2006) by [Occupational Pension Schemes \(Republic of Ireland Schemes Exemption \(Revocation\) and Tax Exempt Schemes \(Miscellaneous Amendments\)\) Regulations 2006 \(S.I. 2006/467\)](#), regs. 1(2), **3(2)**

F37 Words in reg. 10(2) substituted (6.4.2005) by [Occupational Pension Schemes \(Employer Debt\) Regulations 2005 \(S.I. 2005/678\)](#), reg. 1(2), **Sch. 2 para. 2** (with reg. 1(3))

Marginal Citations

M8 Section 611A was inserted by section 75 of and paragraph 15 of Schedule 6 to the [Finance Act 1989](#) (c. 26).

M9 [S.I. 1991/1614](#).

M10 1988 c. 1.

Records and information

11.—(1) The trustees of any trust scheme or any other persons with power in respect of any such scheme to make a determination—

- (a) to defer winding up the scheme;
- (b) as to the time when the paragraph of [^{F38}section 73(4)] into which the liability in respect of any person falls is fixed; or
- (c) as to the time when the amounts or descriptions of liabilities of the scheme are to be determined for the purposes of any rule of the scheme requiring the assets of the scheme to be applied on winding up in satisfying the amounts of certain liabilities to or in respect of members before other such liabilities,

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must keep a written record of any such determination made by them.

(2) Where any such determination is made, before the expiry of the period of one month beginning with the date on which it is made the person who has made it shall inform—

- (a) the members of the scheme, and
- (b) any other persons whose entitlement to payment of a pension or any other benefit under the scheme has arisen,

in writing that it has been made.

(3) If any person fails to comply with paragraph (2), the Authority may require him by notice in writing to pay a penalty—

- (a) in the case of a contravention by an individual, not exceeding £1,000; and
- (b) otherwise, not exceeding £10,000,

before the expiry of the period of 28 days beginning with the date on which the notice is given.

F38 Words in reg. 11(1)(b) substituted (6.4.2005) by [Occupational Pension Schemes \(Winding Up etc.\) Regulations 2005 \(S.I. 2005/706\)](#), reg. 1(2), **Sch. para. 5** (with Sch. para. 5)

Modifications affecting certain schemes

Winding up of sectionalised schemes etc.

12.—^{F39}(1) If—

- (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,

sections 73 to 74 apply as if each section of the scheme were a separate scheme.

(1A) 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).

(1B) 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.

(1C) In their application to a scheme—

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

sections 73 to 74 apply as if the section in relation to which those conditions have ceased to be met were a separate scheme.

(1D) For the purposes of paragraphs (1) to (1C), 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.

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(1E) But if paragraph (1) or (1C) 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 a separate scheme.

(1F) For the purpose of this regulation, any provisions of a scheme by virtue of which assets attributable to one section may on the winding up of the scheme or a section be used for the purposes of another section are disregarded.]

(3) Where by virtue of paragraph 1 of [^{F40}Schedule 2 to the Occupational Pension Schemes (Scheme Funding) Regulations 2005] (sectionalised multi-employer schemes) [^{F41}Part 3 of the Pensions Act 2004] applies to a trust scheme as if different parts of the scheme were separate schemes, section 38 and regulation 10 (except paragraph (1)(e) of that regulation) shall also so apply.

(4) Where any provision of this regulation applies in relation to a scheme, then references to the scheme and its members in the provisions of other regulations shall be construed accordingly.

F39 Reg. 12(1) - reg. 12(1F) substituted for reg. 12 (1) (6.4.2005) by [Occupational Pension Schemes \(Winding Up etc.\) Regulations 2005 \(S.I. 2005/706\)](#), reg. 1(2), **Sch. para. 6** (with Sch. para. 6)

F40 Words in reg. 12(3) substituted (30.12.2005) by [The Occupational Pension Schemes \(Scheme Funding\) Regulations 2005 \(S.I. 2005/3377\)](#), reg. 1, **Sch. 3 para. 7(2)(a)**

F41 Words in reg. 12(3) substituted (30.12.2005) by [The Occupational Pension Schemes \(Scheme Funding\) Regulations 2005 \(S.I. 2005/3377\)](#), reg. 1, **Sch. 3 para. 7(2)(b)**

[^{F42}Schemes with partial government guarantee

12A.—(1) This regulation applies if a relevant public authority has—

- (a) given a guarantee in relation to any part of a scheme, any benefits payable under the scheme or any member of the scheme; or
- (b) made any other arrangements for the purposes of securing that the assets of the scheme are sufficient to meet any part of its liabilities.

(2) Where this regulation applies, sections 73 to 74 and the provisions of these Regulations (apart from this regulation) apply as if the guaranteed part of the scheme and the other part of the scheme were separate schemes.

(3) In this regulation—

“the guaranteed part of the scheme” means the part of the scheme—

- (a) in relation to which the guarantee has been given;
- (b) which relates to benefits payable under the scheme in relation to which the guarantee has been given; or
- (c) which relates to benefits payable under the scheme in relation to the liabilities for which those other arrangements have been made; and

“relevant public authority” has the meaning given in subsection (4) of section 307 of the Pensions Act 2004 (modification of that Act in relation to certain categories of schemes).

F42 Reg. 12A - Reg. 12B inserted (6.4.2005) by [Occupational Pension Schemes \(Winding Up etc.\) Regulations 2005 \(S.I. 2005/706\)](#), reg. 1(2), **Sch. para. 7**

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Schemes covering United Kingdom and foreign employment

12B.—(1) Paragraph (2) applies where a scheme which applies to members in employment in the United Kingdom and members in employment outside the United Kingdom is divided into two or more sections and the provisions of the scheme are such that—

- (a) different sections of the scheme apply to members in employment in the United Kingdom and to members in employment outside the United Kingdom (“the United Kingdom section” and “the foreign section”);
- (b) contributions payable to the scheme in respect of a member are allocated to the section applying to that member’s employment;
- (c) a specified part or proportion of the assets of the scheme is attributable to each section and cannot be used for the purposes of any other section; and
- (d) the United Kingdom section meets the tax condition (as defined in regulation 2(1) of the Occupational Pension Schemes (Winding up etc.) Regulations 2005) and the foreign section does not do so.

(2) If this paragraph applies sections 73 to 74 and the provisions of these Regulations (apart from this regulation) apply as if each section of the scheme were a separate scheme.

(3) Paragraph (4) applies where—

- (a) a scheme applies to members in employment in the United Kingdom and members in employment outside the United Kingdom;
- (b) paragraph (2) does not apply to the scheme; and
- (c) part of the scheme is registered under section 153 of the Finance Act 2004 (registration of pension schemes) by virtue of that part having been treated as a separate scheme under section 611(3) of the Income and Corporation Taxes Act 1988 that is treated as becoming a registered pension scheme under paragraph 1(1) of Schedule 36 to the Finance Act 2004 by virtue of paragraph 1(2) of that Schedule.

(4) If this paragraph applies, sections 73 to 74 and the provisions of these Regulations (apart from this regulation) apply as if the approved and unapproved parts of the scheme were separate schemes.

(5) In their application to a scheme—

- (a) which has been such a scheme as is mentioned in paragraph (1) or (3);
- (b) which is divided into two or more sections, some or all of which apply only to members who are not in pensionable service under the section;
- (c) the provisions of which have not been amended so as to prevent the conditions in paragraph (1) or, as the case may be, paragraph (3) 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, in the case of paragraph (1), no contributions which are to be allocated to it,

sections 73 to 74 apply and the provisions of these Regulations (apart from this regulation) apply as if any section in relation to which those conditions have ceased to be met were a separate scheme.

(6) Before 6th April 2006 paragraph (3) applies with the substitution for sub-paragraph (c) of the following paragraph—

- “(c) part of the scheme has been approved by the Commissioners of the Board of Inland Revenue for the purposes of section 590 or 591 of the Income and Corporation Taxes Act 1988 by virtue of section 611(3) of that Act;”.]

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F42 Reg. 12A - Reg. 12B inserted (6.4.2005) by Occupational Pension Schemes (Winding Up etc.) Regulations 2005 (S.I. 2005/706), reg. 1(2), Sch. para. 7

Hybrid schemes

- 13.—(1) In relation to any scheme—
 - (a) which is not a money purchase scheme, but
 - (b) where some of the benefits that may be provided are relevant money purchase benefits, section 73 applies as if—
 - (i) the liabilities of the scheme did not include liabilities in respect of those benefits, and
 - (ii) the assets of the scheme did not include the assets by reference to which the rate or amount of those benefits is calculated.
- (2) In paragraph (1) “relevant money purchase benefits” means money purchase benefits other than—
 - (a) benefits derived from the payment by any member of voluntary contributions, or
 - (b) underpin benefits.
- (3) In this regulation “underpin benefits” means money purchase benefits which under the provisions of the scheme will only be provided in respect of a member if their value exceeds the value of other benefits in respect of him under the scheme which are not money purchase benefits.
- (4) Where a scheme which is not a money purchase scheme may provide underpin benefits, the amount of the liability for those benefits shall be calculated in accordance with regulation 4 (but omitting paragraphs (1)(c) and (3) to (5) of that regulation)^{F43}, but regulation 4A shall not apply for that purpose].
- (5) If in the case of a scheme to which paragraph (1) applies—
 - (a) the aggregate value of the assets of the scheme has been reduced, and
 - (b) there are reasonable grounds for believing that the reduction is attributable to an act or omission constituting an offence prescribed for the purposes of section 81(1)(c),
 then, for the purposes of section 73 as it applies by virtue of paragraph (1), the values of the assets excluded by paragraph (1)(ii) and of the other assets shall be taken to be equal to their values apart from the reduction, less in the case of each asset so much of the reduction as its value bears to the aggregate value of the assets of the scheme apart from the reduction.

^{F44}(6)

^{F44}(7)

F43 Words in reg. 13(4) inserted (19.3.2002) by Occupational Pension Schemes (Minimum Funding Requirement and Miscellaneous Amendments) Regulations 2002 (S.I. 2002/380), regs. 1(1), 3(4)

F44 Reg. 13(6)(7) omitted (30.12.2005) by virtue of The Occupational Pension Schemes (Scheme Funding) Regulations 2005 (S.I. 2005/3377), reg. 1, Sch. 3 para. 7(3)

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

Department of Social Security
11th December 1996

Oliver Heald
Parliamentary Under-Secretary of State,

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EXPLANATORY NOTE

(This note is not part of the Regulations)

These regulations concern the application of the statutory priority order set out in section 73 of the Pensions Act 1995 ("the Act"); the ways in which the trustees can be treated as having discharged their liabilities in respect of scheme members under section 74 of the Act and the cases in which the statutory power to defer winding up under section 38 of the Act is not to apply. The Occupational Pensions Board have agreed that the regulations, to the extent that they are made under the Pensions Schemes Act 1993, need not be referred to them and the Secretary of State has consulted such persons as he considers appropriate.

Regulation 1 provides for citation, commencement and interpretation of the regulations.

Regulation 2 makes provision as to when the winding up of a scheme starts for the purpose of the regulations.

Regulation 3 makes provision for modifications to the statutory priority order.

Regulation 4 makes provision for the calculation of the preferential liabilities.

Regulation 5 makes provision for trust scheme rules to be modified to fix the liabilities of the scheme at a date earlier than the commencement of winding up.

Regulation 6 sets out the arrangements which have to be followed by the trustees in order for them to be treated as having discharged the scheme's liabilities in respect of scheme members.

Regulation 7 sets out the requirements which have to be met by the notices of discharge issued under regulation 6.

Regulation 8 sets out the requirements which apply to methods of discharge under section 74(3) of the Act.

Regulation 9 provides that the requirements under section 32A of the Pensions Schemes Act 1993 are unaffected by regulations 6 to 8.

Regulation 10 disapplies the statutory power to defer winding up under section 38 of the Act in certain cases.

Regulation 11 sets out the records required to be kept and the information to be disclosed to members concerning determinations about deferring winding up or the timing of the crystallisation of preferential liabilities.

Regulation 12 makes provision for where the minimum funding requirement applies separately to different parts of a scheme.

Regulation 13 makes provision for modifications of the amounts of assets and liabilities to be taken into account where some of the benefits provided by the scheme are money purchase benefits or calculated on a money purchase basis.

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

Status:

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