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STATUTORY INSTRUMENTS

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**1996 No. 3126**

**The Occupational Pension Schemes  
(Winding Up) Regulations 1996**

*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;
- (d) to a section 615(6) scheme;
- (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 relevant insolvency 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) subsection (4) of section 75 (definition of relevant insolvency 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<sup>(1)</sup>;

“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<sup>(2)</sup>;

“the Taxes Act” means the Income and Corporation Taxes Act 1988<sup>(3)</sup>.

### **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 section 73(3) 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,

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.

<sup>(1)</sup> Section 611A was inserted by section 75 of and paragraph 15 of Schedule 6 to the Finance Act 1989 (c. 26).

<sup>(2)</sup> S.I. 1991/1614.

<sup>(3)</sup> 1988 c. 1.