
STATUTORY INSTRUMENTS

1996 No. 3126

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

Preferential liabilities on winding up

Modifications of s. 73(3)

3.—(1) Section 73(3) applies—

- (a) in all cases subject to the modifications mentioned in paragraphs (3) and (4);
- (b) in the case of a scheme which begins to be wound up before the expiry of the transitional period, subject to the modifications mentioned in paragraphs (5) and (6); and
- (c) in the case of a scheme which begins to be wound up after the expiry of that period, subject to the modification mentioned in paragraph (7).

(2) For the purposes of paragraph (1), the transitional period is—

- (a) the period of 10 years beginning with 6th April 1997; or
- (b) in the case of a scheme—
 - (i) to which regulation 16(2) of the MFR Regulations applies (extension of period covered by schedule of contributions where minimum funding valuation shows minimum funding requirement not met), and
 - (ii) the schedule period in relation to which has been extended under regulation 25 or 27 of those Regulations (extension by the Authority),

that extended schedule period;

and in this paragraph “the schedule period” has the same meaning as in the MFR Regulations.

(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)—

- (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”.

- (5) For paragraphs (c) and (d) of section 73(3) there shall be substituted—
- “(c) any liability—
- (i) for equivalent pension benefits (within the meaning of section 57(1) of the National Insurance Act 1965), guaranteed minimum pensions, protected rights or section 9(2B) rights (within the meaning of regulation 1(2) of the Contracting-out (Transfer and Transfer Payments) Regulations 1996(1)) (but excluding increases to pensions), or
 - (ii) in respect of members with less than two years pensionable service who are not entitled to accrued rights under the scheme, for the return of contributions,
- (d) any liability for increases to pensions referred to in paragraphs (aa) and (b),
- (e) any liability for increases to pensions referred to in paragraph (c),
- (f) so far as not included in paragraph (c) or (e), any liability for pensions or other benefits which have accrued to or in respect of any members of the scheme (including increases to pensions).”
- (6) In the words following paragraph (f) of section 73(3) (as inserted by paragraph (5)), for the words “paragraphs (b) to (d)” there shall be substituted the words “paragraphs (aa) to (f)”.
- (7) In the words following paragraph (d) of section 73(3) for the words “paragraphs (b) to (d)” there shall be substituted the words “paragraphs (aa) to (d)”.
- (8) In the case of any scheme to which section 73(3) applies with the modifications mentioned in paragraphs (5) and (6), regulations 7(3)(b)(iv) and 8(4) of the Occupational Pension Schemes (Transfer Values) Regulations 1996(2) have effect with the insertion after “(c)(i)” of “(e)” and with the substitution for “(d)” of “(f)”.

Calculation of amounts of liabilities

- 4.—(1) Subject to paragraphs (4) and (5), for the purposes of section 73(2) the amounts of the liabilities mentioned in section 73(3) shall be calculated and verified by the actuary of the scheme—
- (a) on the assumption that the questions whether or not a person’s entitlement to payment of a pension or other benefit has arisen and whether any amount must be treated as an increase or as part of a pension are to be determined as at the crystallisation date;
 - (b) on the assumption that liabilities in respect of members do not include the expenses involved in meeting them;
 - (c) subject to paragraph (3), in the manner specified in regulations 7(2), (3) and (7) to (10) and 8(2) of the MFR Regulations (so far as they relate to the calculation and verification of liabilities); and
 - (d) otherwise in accordance with the guidance given in GN 19 (so far as it applies for the purposes of these Regulations).
- (2) Such a calculation must be accompanied by a statement that it is in accordance with the guidance mentioned in paragraph (1)(d).
- (3) 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) to the relevant date shall 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)” shall be omitted; and

(1) S.I. 1996/1462.

(2) S.I. 1996/1847.

(c) paragraph (i) of regulation 8(2)(a) shall be omitted.

(4) If, when the assets of the scheme are applied in accordance with section 73(2) towards satisfying any liability of the scheme mentioned in section 73(3), 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), then the amount to be taken as the amount of that liability for the purposes of section 73(2) shall be reduced accordingly.

(5) If, when the assets of the scheme are applied in accordance with section 73(2) towards satisfying the liabilities mentioned in section 73(3)(aa) or (b), those liabilities, 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), then the amount to be taken as the amount of those liabilities for the purposes of section 73(2) shall be increased accordingly.

(6) Subject to paragraph (7), 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 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(3) 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.

(7) 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,

the date when that time occurs is the crystallisation date.

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 section 73(3) into which the liability in respect of any person falls is to be determined for the purposes of section 73(2) and (3) 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.