
STATUTORY INSTRUMENTS

1996 No. 3126

The Occupational Pension Schemes(Winding Up) Regulations 1996

Preferential liabilities on winding up

Modifications of s. 73(3) [^{F1}for schemes beginning to be wound up before 6th April 2005]

3.—(1) Section 73(3) applies [^{F2}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);

[^{F3}(b) in the case of a scheme which begins to be wound up on or after 10 May 2004 ^{F4} ..., subject to the modifications in paragraphs (5A) to (6).]

^{F5}(c)

^{F6}(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)—

(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 ”.

^{F7}(5)

[^{F8}(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).”.]

[^{F9}(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).”]

^{F10}(7)

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[^{F11}(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)”.]

[^{F12}(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.]

- F1** 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)**
- F2** 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)**
- F3** 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)**
- F4** 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)**
- F5** 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)**
- F6** 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)**
- F7** 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)**
- F8** 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)**
- F9** 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)**
- F10** 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)**
- F11** 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)**
- F12** 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)**

[^{F13}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 [^{F14} any relevant [^{F15}FRC standards]].

(2) For the purpose of paragraph (1)(b) the actuary must estimate the cost of purchasing the annuities.

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(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—

- (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

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- (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,]

- F13** 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))
- F14** 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)**
- F15** 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)**

[^{F16}Calculation of liabilities where employer not insolvent

^{F17}**4A].**

- F16** 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)**
- 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}Calculation of liabilities where employer not insolvent and where winding up commences on or after 11th June 2003

^{F19}**4B].**

- F18** 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)**
- F19** 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))

[^{F20}Calculation of liabilities where winding up commences, and date of calculation falls, on or after 15 February 2005

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

- F20** 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)**

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F21 Reg. 4 substituted for reg. 4 - reg. 4C (6.4.2005) by [Occupational Pension Schemes \(Winding Up etc.\) Regulations 2005 \(S.I. 2005/706\)](#), reg. 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 [^{F22}section 73(4)] into which the liability in respect of any person falls is to be determined for the purposes of [^{F23}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.

F22 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)

F23 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)

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Changes and effects yet to be applied to :

- Instrument saved by [S.I. 1997/784 reg.8](#)