
STATUTORY INSTRUMENTS

1996 No. 3126

The Occupational Pension Schemes(Winding Up) Regulations 1996

Preferential liabilities on winding up

[^{F1}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 [^{F2} any relevant [^{F3}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

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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
 - (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,]

Textual Amendments

- F1** 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))
- F2** 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)**
- F3** 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)**

Changes to legislation:

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Changes and effects yet to be applied to :

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