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STATUTORY INSTRUMENTS

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**1996 No. 3128**

**The Occupational Pension Schemes (Deficiency  
on Winding Up etc.) Regulations 1996**

*Schemes which are not money purchase schemes*

**Calculation of the value of scheme liabilities and assets**

3.—(1) [<sup>F1</sup>[<sup>F2</sup>Subject to [<sup>F3</sup>regulations 3A to 3D]], the liabilities] and assets of a scheme which are to be taken into account for the purposes of section 75(1) and their amount or value shall be determined, calculated and verified by the actuary —

- (a) on the general assumptions specified in paragraphs (2) and (3) of regulation 3 of the MFR Regulations;
- (b) subject to paragraphs (3) and (4), in accordance with regulations 4 to 8 of the MFR Regulations;
- (c) subject to sub-paragraph (d), in so far as the guidance given in GN 27 applies as respects regulations 3(2) and (3) and 4 to 8 of the MFR Regulations, in accordance with that guidance; and
- (d) in accordance with the guidance given in GN 19 so far as that guidance applies for the purposes of these Regulations;

and where in these Regulations (or in the MFR Regulations as applied by this paragraph) there is a reference to the value of any asset or the amount of any liability being calculated or verified in accordance with the opinion of the actuary or as he thinks appropriate, he shall comply with any relevant provision in the guidance given in GN 27 or, as the case may be, GN 19 in making that calculation or verification.

(2) The value of the assets and the amount of the liabilities of a scheme which are to be taken into account for the purposes of section 75(1) must be certified by the actuary in the form set out in Schedule 1 to these Regulations, but if the scheme is being wound up on the date as at which the valuation is made, the actuary must modify the note at the end of the certificate by omitting the words from “if the scheme” onwards.

(3) For the purposes of this regulation —

- (a) references in regulations 3(2), 4, 5, 7 and 8 of the MFR Regulations to the relevant date shall be taken as references to the applicable time;
- (b) regulations 4(1), 7(1) and 8(2) of the MFR Regulations shall have effect with the substitution for the words “the minimum funding requirement is met” of the words “the value of the assets of the scheme is less than the amount of the liabilities of the scheme”;
- (c) regulation 6(1)(b) of the MFR Regulations shall have effect with the addition at the end of the words “(and any amount treated as a debt due to the trustees or managers of the scheme under section 75(1) by virtue of the valuation in question)”.

(4) In its application for the purposes of this regulation in a case where the applicable time falls after the scheme has begun to be wound up, regulation 6(1) of the MFR Regulations has effect with the addition after sub-paragraph (c) of the words —

“and for the purposes of sub-paragraph (a), regulation 5(1)(a) of the Occupational Pension Schemes (Investment) Regulations 1996 (exclusion of employer-related investments over 5 per cent. of current market value) shall be disregarded.”.

- F1** Words in reg. 3(1) substituted (19.3.2002) by [The Occupational Pension Schemes \(Minimum Funding Requirement and Miscellaneous Amendments\) Regulations 2002 \(S.I. 2002/380\)](#), regs. 1(1), **4(2)**
- F2** Words in reg. 3 substituted (with application in accordance with reg. 1(4) of the amending S.I.) by [The Occupational Pension Schemes \(Winding Up and Deficiency on Winding Up etc.\) \(Amendment\) Regulations 2004 \(S.I. 2004/403\)](#), regs. 1(1), **3(2)**
- F3** Words in reg. 3(1) substituted (15.2.2005) by [The Occupational Pension Schemes \(Winding Up, Deficiency on Winding Up and Transfer Values\) \(Amendment\) Regulations 2005 \(S.I. 2005/72\)](#), regs. 1(1), **3(2)**

#### Commencement Information

- II** Reg. 3-6 partly in force; reg. 3-6 not in force at Royal Assent see reg. 1; reg. 3-6 in force at (19.12.1996) by [S.I. 1996/3128](#) {reg. 1}; reg. 3-6 in force for certain purposes (19.12.1996) by [S.I. 1996/3128](#), **art. 1**

#### [<sup>F4</sup>Valuation of liabilities where employer not insolvent [<sup>F5</sup>and where winding up commences before 11th June 2003]

**3A.**—(1) Where a scheme (including a section of a scheme in relation to which there is more than one employer which is treated as a separate scheme for the purposes of section 75) is being wound up and the employer was not insolvent immediately before the winding up of the scheme commenced, regulation 3 shall have effect as if—

- (a) in paragraph (1)—
- (i) at the beginning of subparagraph (a), there were inserted the words “except to the extent that the liabilities are in respect of any entitlement to a pension or other benefit that has arisen under the scheme and in respect of which paragraph (1B) below applies,”;
  - (ii) for the words “paragraphs (2) and (3)” in subparagraph (a), there were substituted the words “paragraphs (2)(a) to (c) and (3)”;
  - (iii) for the words “paragraphs (3) and (4)” in subparagraph (b), there were substituted the words “paragraphs (1B), (3) and (4)”;
  - (iv) for the words “regulations 3(2) and (3)” in subparagraph (c), there were substituted the words “regulations 3(2)(a) to (c) and (3)”;
  - (v) after the words “and 4 to 8 of the MFR Regulations” in subparagraph (c), there were inserted the words “or as respects paragraphs (1A) and (1B) below”; and
- (b) after paragraph (1) there were inserted the following paragraphs:
- “(1A) The liabilities of a scheme which are to be taken into account under paragraph (1) above shall include all expenses (except the cost of annuities taken into account by virtue of paragraph (1B) below) which, in the opinion of the trustees or managers of the scheme, are likely to be incurred in connection with the winding up of the scheme.”; and
- “(1B) When calculating the liabilities of the scheme in respect of any entitlement to the payment of any pension or other benefit (including any increase in a pension) that has arisen under the scheme on or before the applicable time, it shall be assumed that

all such liabilities will be discharged by the purchase of annuities of a kind described in section 74(3)(c) (discharge of liabilities by insurance—annuity purchase) and, for the purposes of the calculation, the actuary shall estimate the cost of purchasing any such annuities.”.

(2) Where a scheme to which regulation 4 (multi-employer schemes) applies (including a section of a scheme in relation to which there is more than one employer which is treated as a separate scheme for the purposes of section 75) is being wound up in circumstances where—

- (a) an employer in relation to the scheme ceases to employ persons in the description or category of employment to which the scheme relates at a time when there are no other employers in relation to the scheme continuing to employ such persons; and
- (b) that employer was not insolvent immediately before the winding up commenced,

regulation 3 shall have effect with the modifications set out in paragraph (1)(a) and (b) of this regulation.

(3) For the purposes of paragraphs (1) and (2) above, an employer is insolvent if a relevant insolvency event has occurred in relation to that employer.

(4) In the Note at the end of the form of certificate set out in Schedule 1 (form of actuary’s certificate), after the word “securing” there shall be inserted the words “all of”.]

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| <p><b>F4</b> Reg. 3A inserted (19.3.2002) by <a href="#">The Occupational Pension Schemes (Minimum Funding Requirement and Miscellaneous Amendments) Regulations 2002 (S.I. 2002/380)</a>, regs. 1(1), <b>4(3)</b></p> <p><b>F5</b> Words in reg. 3A heading added (with application in accordance with reg. 1(4) of the amending S.I.) by <a href="#">The Occupational Pension Schemes (Winding Up and Deficiency on Winding Up etc.) (Amendment) Regulations 2004 (S.I. 2004/403)</a>, regs. 1(1), <b>3(3)</b></p> |
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### **[<sup>F6</sup>Valuation of liabilities where employer not insolvent and where winding up commences on or after 11th June 2003**

**3B.**—(1) [<sup>F7</sup>Subject to regulation 3C.] this regulation shall apply in the case of a scheme to which regulation 4B of the Occupational Pension Schemes (Winding Up) Regulations 1996 (calculation of liabilities where employer not insolvent and where winding up commences on or after 11th June 2003) applies.

(2) In the case of a scheme to which this regulation applies, paragraph (1)(b) of regulation 3A (valuation of the liabilities where employer not insolvent) shall have effect as if for paragraph (1B) in quotation marks there were substituted the following paragraph—

“(1B) When calculating the liabilities of the scheme for any—

- (a) accrued rights that exist on or before the applicable time to the payment of any pension or other benefit under the scheme (including any increase to a pension);
- (b) future pensions, or other future benefits, attributable (directly or indirectly) to pension credits (including any increase to a pension) which have arisen on or before the applicable time; and
- (c) entitlement to the payment of a pension or other benefit (including any increase in a pension) that has arisen on or before the applicable time,

it shall be assumed that all such liabilities will be discharged by the purchase of annuities of the type described in section 74(3)(c) (discharge of liabilities by insurance – annuity purchase) and, for the purposes of the calculation, the actuary shall estimate the costs of purchasing any such annuities.”]

- F6** Reg. 3B inserted (with application in accordance with reg. 1(4) of the amending S.I.) by [The Occupational Pension Schemes \(Winding Up and Deficiency on Winding Up etc.\) \(Amendment\) Regulations 2004 \(S.I. 2004/403\)](#), regs. 1(1), **3(4)**
- F7** Words in reg. 3B(1) inserted (15.2.2005) by [The Occupational Pension Schemes \(Winding Up, Deficiency on Winding Up and Transfer Values\) \(Amendment\) Regulations 2005 \(S.I. 2005/72\)](#), regs. 1(1), **3(3)**

**[F8] Valuation of liabilities where winding up commences, and date of calculation falls, on or after 15 February 2005**

**3C.**—(1) This regulation shall apply in the case of a scheme which begins to wind up on or after 15 February 2005 (“the commencement date”), and the date by reference to which the liabilities and assets of the scheme are determined, calculated and verified for the purposes of section 75 is a date falling on or after the commencement date.

(2) In the case of a scheme to which this regulation applies, regulation 3 shall have effect as if—

(a) in paragraph (1)—

- (i) at the beginning of sub-paragraph (a), there were inserted the words “except to the extent that the liabilities are in respect of any entitlement to a pension or other benefit that has arisen under the scheme and in respect of which paragraph (1B) applies,”;
- (ii) for the words “paragraphs (2) and (3)” in sub-paragraph (a), there were substituted the words “paragraphs (2)(a) to (c) and (3)”;
- (iii) for the words “paragraphs (3) and (4)” in sub-paragraph (b), there were substituted the words “paragraphs (1B), (3) and (4)”;
- (iv) for the words “regulations 3(2) and (3)” in sub-paragraph (c), there were substituted the words “regulations 3(2)(a) to (c) and (3)”;
- (v) after the words “and 4 to 8 of the MFR Regulations” in sub-paragraph (c), there were inserted the words “or as respects paragraphs (1A) and (1B)”;

(b) after paragraph (1) there were inserted the following paragraphs:

“(1A) The liabilities of a scheme which are to be taken into account under paragraph (1) above shall include all expenses (except the cost of annuities taken into account by virtue of paragraph (1B)) which, in the opinion of the trustees or managers of the scheme, are likely to be incurred in connection with the winding up of the scheme.

(1B) When calculating the liabilities of the scheme for any—

- (a) accrued rights that exist on or before the applicable time to the payment of any pension or other benefit under the scheme (including any increase to a pension);
- (b) future pensions, or other future benefits, attributable (directly or indirectly) to pension credits (including any increase to a pension) which have arisen on or before the applicable time; and
- (c) entitlement to the payment of a pension or other benefit (including any increase in a pension) that has arisen on or before the applicable time,

it shall be assumed that all such liabilities will be discharged by the purchase of annuities of the type described in section 74(3)(c) and, for the purposes of the calculation, the actuary shall estimate the costs of purchasing any such annuities.

### Valuation of liabilities where there is more than one employer

**3D.**—(1) This regulation shall apply where there is a scheme to which regulation 4 (multi-employer schemes) applies (including a section of a scheme in relation to which there is more than one employer which is treated as a separate scheme for the purposes of section 75) and the circumstances described in paragraph (2) apply.

(2) The circumstances are that—

- (a) the scheme is not being wound up;
- (b) a relevant insolvency event occurs in relation to an employer in relation to the scheme; and
- (c) the applicable time is on or after 15 February 2005.

(3) In the case of a scheme to which this regulation applies, regulation 3 shall have effect with the modifications set out in regulation 3C(2)(a) and (b).”.]

**F8** Reg. 3C - Reg. 3D added (15.2.2005) by [The Occupational Pension Schemes \(Winding Up, Deficiency on Winding Up and Transfer Values\) \(Amendment\) Regulations 2005 \(S.I. 2005/72\)](#), regs. 1(1), **3(4)**

### Multi-employer schemes

**4.**—(1) In its application to a scheme in relation to which there is more than one employer, section 75 has effect with the following modifications.

(2) After subsection (1) insert —

“(1A) In the case of a scheme in relation to which there is more than one employer, the amount of the debt due from each employer shall, unless the scheme provides for the total amount of the debt due under subsection (1) to be otherwise apportioned amongst the employers, be such proportion of that total amount as, in the opinion of the actuary after consultation with the trustees or managers, the amount of the scheme’s liabilities attributable to employment with that employer bears to the total amount of the scheme’s liabilities attributable to employment with any of the employers.

(1B) Where a scheme in relation to which there is more than one employer is divided into two or more sections and the provisions of the scheme are such that —

- (a) different sections of the scheme apply to different employers or groups of employers (whether or not more than one section applies to any particular employer or groups including any particular employer);
- (b) 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); and
- (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,

each section of the scheme shall be treated as a separate scheme for the purposes of this section.

(1C) Where —

- (a) a scheme which has been such a scheme as is mentioned in subsection (1B) 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; and

- (b) the provisions of the scheme have not been amended so as to prevent the conditions mentioned in subsection (1B)(a) to (c) being satisfied in relation to two or more sections; but
- (c) those conditions have ceased to be satisfied in relation to one or more sections (whether before or after this section came into force) by reason only of there being no members in pensionable service under the section and no contributions which are to be allocated to it,

the section in relation to which those conditions have ceased to be satisfied shall be treated as a separate scheme for the purposes of this section.

[<sup>F9</sup>(1D) For the purposes of subsections (1B) and (1C), there shall be disregarded any provisions of the scheme by virtue of which contributions or transfers of assets may be made to make provision for death benefits; and where subsection (1B) or (1C) applies and contributions or transfers are so 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 shall also be treated as if it were a separate scheme for the purposes of this section.

(1E) For the purposes of subsections (1B), (1C) and (1D), there shall be disregarded any provisions of the scheme by virtue of which on the winding up of the scheme assets attributable to one section may be used for the purposes of another section.”].

(3) For subsection (3) substitute —

“(3) In this section “the applicable time” means —

- (a) in relation to a scheme which is being wound up, any time —
  - (i) after the commencement of the winding up, and
  - (ii) before a relevant insolvency event has occurred in relation to each of the employers to whom the scheme relates; and
- (b) in relation to a scheme which is not being wound up —
  - (i) in relation only to any employer who ceases to be a person employing persons in the description or category of employment to which the scheme relates at a time when at least one other person continues to employ such persons, immediately before he so ceases, and
  - (ii) in relation only to any employer in relation to whom a relevant insolvency event occurs, immediately before that event occurs.”.

(4) Where (apart from this paragraph) paragraph (1) does not apply to a scheme by reason of its not being a scheme in relation to which there is more than one employer but, if it did so, subsection (1C) of section 75 (as inserted by paragraph (2)) would apply to the scheme, that section shall have effect with the modifications made by paragraphs (2) and (3).

(5) For the purposes of section 75(1A) (as inserted by paragraph (2)) —

- (a) the total amount of the scheme’s liabilities which are attributable to employment with any of the employers; and
- (b) the amount of the liabilities attributable to employment with any one employer,

shall be such amount as is determined, calculated and verified by the actuary in accordance with the guidance given in GN 19; and a determination under this paragraph must be certified by the actuary as being in accordance with that guidance.

**F9** Words in reg. 4(2) inserted (6.4.1997) by [The Personal and Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 1997 \(S.I. 1997/786\)](#), reg. 1, [Sch. 1 para. 19\(3\)](#)

**Commencement Information**

**I2** Reg. 3-6 partly in force; reg. 3-6 not in force at Royal Assent see reg. 1; reg. 3-6 in force at (19.12.1996) by [S.I. 1996/3128](#) {reg. 1}; reg. 3-6 in force for certain purposes (19.12.1996) by [S.I. 1996/3128](#), [art. 1](#)

**Former employers**

**5.—(1)** In the application of section 75 and these Regulations to a scheme which has no active members, “the employer” includes every person who employed persons in the description or category of employment to which the scheme relates immediately before the occurrence of the event after which the scheme ceased to have any active members.

(2) In the application of section 75 and these Regulations to a scheme, “the employer” includes any person who has ceased on or after 6th April 1997 and before the applicable time to be a person employing persons in the description or category of employment to which the scheme relates, unless —

- (a) when he so ceased the scheme was not being wound up and continued to have active members, and
  - (b) one of the conditions in paragraph (3) is met.
- (3) Those conditions are —
- (a) that no debt was treated as becoming due from him under section 75(1) by virtue of his so ceasing;
  - (b) that such a debt was treated as becoming due from him <sup>F10</sup>and—
    - (i) has been paid before the applicable time, or
    - (ii) if not so paid, was not so paid solely because he was not notified of the debt, and of the amount of it, sufficiently in advance of the applicable time for it to be paid before the applicable time;
  - (c) that such a debt was treated as becoming due from him but at the applicable time it is excluded from the value of the assets of the scheme by virtue of regulation 6(1)(b) of the MFR Regulations (exclusion of debts unlikely to be recovered).

**F10** Reg. 5(3)(b)(i)(ii) substituted (30.12.1999) by [The Personal and Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 1999 \(S.I. 1999/3198\)](#), regs. 1(1), [4\(2\)](#)

**Commencement Information**

**I3** Reg. 3-6 partly in force; reg. 3-6 not in force at Royal Assent see reg. 1; reg. 3-6 in force at (19.12.1996) by [S.I. 1996/3128](#) {reg. 1}; reg. 3-6 in force for certain purposes (19.12.1996) by [S.I. 1996/3128](#), [art. 1](#)

**Ceasing to participate: transitional provision**

**6.—(1)** This regulation applies to a scheme if a person ceased to be a person employing persons in the description or category of employment to which the scheme relates during the period beginning with 19th December 1996 and ending with 5th April 1997 and at a time when the scheme was not being wound up and continued to have active members; and in this regulation “former participant” means a person who so ceased.

(2) In the application of section 75 and these Regulations to a scheme to which this regulation applies, “employer” includes a former participant, unless before the applicable time a time which was the applicable time in relation to the former participant by virtue of paragraph (3) below has occurred and —

**Changes to legislation:** There are currently no known outstanding effects for the The Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations 1996, Cross Heading: Schemes which are not money purchase schemes. (See end of Document for details)

- (a) no debt was then treated as due from him under section 75(1), or
  - (b) such a debt was then treated as becoming due from him <sup>F11</sup>and—
  - (i) has been paid before the applicable time, or
  - (ii) if not so paid, was not so paid solely because he was not notified of the debt, and of the amount of it, sufficiently in advance of the applicable time for it to be paid before the applicable time;]
  - (c) such a debt was then treated as becoming due from him but at the applicable time it is excluded from the value of the assets of the scheme by virtue of regulation 6(1)(b) of the MFR Regulations (exclusion of debts unlikely to be recovered).
- (3) In the application of section 75 and these Regulations to a scheme to which this regulation applies which is not being wound up, “the applicable time”, in relation to a former participator only, includes —
- (a) the date by reference to which the earliest minimum funding valuation required by section 57(1)(a) for the scheme is made, or
  - (b) the earliest time when a debt is treated under section 75(1) as becoming due from another person by virtue of section 75(3)(b)(i) or (ii) (as substituted by regulation 4(3)),
- whichever is the earlier.

**F11** Reg. 6(2)(b)(i)(ii) substituted (30.12.1999) by [The Personal and Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 1999 \(S.I. 1999/3198\)](#), regs. 1(1), **4(3)**

#### **Commencement Information**

**I4** Reg. 3-6 partly in force; reg. 3-6 not in force at Royal Assent see reg. 1; reg. 3-6 in force at (19.12.1996) by [S.I. 1996/3128](#) {reg. 1}; reg. 3-6 in force for certain purposes (19.12.1996) by [S.I. 1996/3128](#), **art. 1**



**Changes to legislation:**

There are currently no known outstanding effects for the The Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations 1996, Cross Heading: Schemes which are not money purchase schemes.