

**EXPLANATORY MEMORANDUM TO THE
OCCUPATIONAL PENSION SCHEMES (EMPLOYER DEBT)
REGULATIONS 2005**

2005 No. 678

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 Section 75 of the Pensions Act 1995 provides that a debt is due from a sponsoring employer if they become insolvent or their scheme starts to wind up, when their pension scheme, which is subject to section 75, is underfunded.
 - 2.2 Section 75 is being amended by section 271 of the Pensions Act 2004 to align it with the legislation on the Pension Protection Fund in that Act, as a result of which the Regulations under section 75 require updating to ensure that they work with the revised section.
 - 2.3 The fundamental changes section 271 makes to section 75 are to change and expand the insolvency events that are regarded by employer debt legislation as insolvency events and to make the debt that arises on the sponsoring employer's insolvency contingent rather than actual. The Regulations cover the same areas of policy as the previous Regulations.
3. **Matter of special interest to the Joint Committee on Statutory Instruments**

None
4. **Legislative Background**
 - 4.1 The Regulations replace the existing Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations 1996 (SI 1996/3128).
 - 4.2 The Regulations cover the same policy areas as the Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations. These include stating the types of schemes that are not subject to section 75 and making provision for multi-employer schemes. The Regulations set out the level of debt due from an employer on insolvency, scheme wind up or withdrawal from a multi-employer scheme. They also state when there is a debt due to a money purchase pension scheme and when schemes are to be treated as being more than one scheme.
5. **Extent**

This instrument applies to Great Britain.
6. **European Convention on Human Rights**

Not applicable.

7. Policy Background

7.1 Section 75 of the Pensions Act 1995 states that any deficiency in a pension scheme becomes a debt on the employer should a salary-related occupational pension scheme wind up or its sponsoring employer become insolvent. This is designed to provide protection to scheme members should these events occur. Section 271 of the Pensions Act 2004 makes amendments to section 75.

7.2 The current Regulations under this section set out some of the detail required for section 75 to work. This includes, for example, the basis for valuing schemes' assets and liabilities and, therefore, the amount of the debt on the employer. They also exempt some schemes from section 75.

7.3 The Regulations replace the current Regulations. They cover the same policy areas, but contain amendments so that they work with the revised section 75. They also include a provision modifying section 75 so as to enable the general levy owed by a money purchase scheme to be recovered from the scheme's employer, which was previously dealt with in the Occupational and Personal Pension Schemes (Levy) Regulations 1997, which are themselves being replaced.

7.4 No consultation was required on these Regulations as they were made before the end of the period of six months beginning with the coming into force of any enactment on which the Regulations are consequential.

8. Impact

8.1 A Regulatory Impact Assessment has not been produced on these regulations as they have no impact on the costs of business, charities or the voluntary sector.

8.2 The Regulations have no impact on the costs of the public sector.

9. Contact

Gabrielle Park at the Department for Work and Pensions Tel.: 020 7712 2122 or email: Gabrielle.Park@dwp.gsi.gov.uk can answer any queries regarding the instrument.

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