

**EXPLANATORY MEMORANDUM TO  
THE OCCUPATIONAL PENSION SCHEMES (WINDING UP PROCEDURE  
REQUIREMENT) REGULATIONS 2006**

**2006 No. 1733**

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 These regulations require the trustees and managers of a defined benefit occupational pension scheme that is in the process of winding up and that has insufficient assets to match its accrued liabilities to:
    - (a) inform the Pensions Regulator;
    - (b) establish a procedure to discharge their liabilities by
      - (i) transfer of assets to another occupational pension scheme or a personal pension scheme;
      - (ii) annuity purchase; or
      - (iii) payment of cash lump sum;
    - (c) disclose the procedure to the Pensions Regulator; and
    - (d) make a general outline of the procedure available to members and, where appropriate, their representatives.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None
4. **Legislative Background**
  - 4.1 These regulations introduce a new section into Part 3 of the Pensions Act 2004. Section 231A, which applies to a scheme that starts to wind up during the recovery period specified in the scheme's recovery plan prepared under section 226 of the 2004 Act:
    - (a) requires trustees or managers to prepare a winding up procedure as soon as practicable;
    - (b) prescribes what must be contained in the winding up procedure;
    - (c) requires trustees to send a copy of the procedure to the Pensions Regulator as soon as practicable; and
    - (d) provides that a civil penalty applies where trustees or managers fail to take reasonable steps to comply with the requirement of new section 231A.
  - 4.2 These regulations also amend the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 by requiring trustees or managers to make

available, on request, an outline of the winding up procedure to members and their representatives.

- 4.3 In addition, these regulations amend the Register of Occupational and Personal Pension Schemes Regulations 2005 by requiring that the date on which winding up began is information that must be provided to be included in the Register.
- 4.4 Further, these regulations repeal regulation 8(8) of the Occupational Pension Schemes (Scheme Funding) Regulations 2005 as it is no longer required when regulation 5 of these regulations comes into effect.

## **5. Extent**

- 5.1 This instrument applies to Great Britain.

## **6. European Convention on Human Rights**

James Purnell, the Minister of State for Pensions Reform has made the following statement regarding Human Rights:

In my view, the provisions of the Occupational Pension Schemes (Winding up Procedure Requirement) Regulations 2006 are compatible with the Convention rights.

## **7. Policy background**

### **Summary of Policy**

- 7.1 The regulations transpose the requirements of Article 16(2)(c) of the European Directive on Institutions for Occupational Retirement Provision (IORP)<sup>1</sup>.
- 7.2 Article 16(2)(c) requires an occupational pension scheme that has started to wind up during a recovery period (the period covered by a ‘recovery plan’, which sets out how a shortfall in the scheme’s funding is to be made good) to:
- (a) inform the “competent authorities in the home Member State”;
  - (b) establish a procedure to transfer the assets and the corresponding liabilities to another financial institution or a similar body;
  - (c) disclose that procedure to the competent authorities; and
  - (d) make available to members and, where appropriate, their representatives, a general outline of the procedure, in accordance with “the principle of confidentiality.”
- 7.3 The vast majority of schemes in the UK are required to inform the Pensions Regulator when they begin to wind up, and thereafter provide the Regulator

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<sup>1</sup> Directive 2003/41/EC. The remainder of Article 16 was implemented by Part 3 of the Pensions Act 2004, the Occupational Pensions Schemes (Scheme Funding) Regulations 2005 (SI 2005/3377) and the Occupational (Cross Border Activities) Regulations 2005 (SI 2005/3381).

with periodic reports. They are also expected to establish procedures of the nature described by Article 16(2)(c) of the IORP Directive. However, as current legislation does not expressly cover all schemes that begin winding-up during a recovery period, the European Commission began infraction proceedings against the UK, and served a reasoned opinion on 10 April 2006.

- 7.4 These regulations are designed to implement the requirements of Article 16(2)(c) of the IORP Directive in a way that minimises additional administrative costs and burdens arising in any scheme that might start to wind up at a time when it has a recovery plan in place.
- 7.5 A four-week consultation exercise was carried out that sought comments on the draft regulations. Four responses to the consultation were received. These are discussed in the Government's response to the consultation, attached as an annex to this memorandum.
- 7.6 These Regulations include amendments to:  
(a) the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 (S.I. 1996/1655);  
(b) the Register of Occupational and Personal Pension Schemes Regulations 2005 (S.I. 2005/597); and  
(c) the Occupational Pension Schemes (Scheme Funding) Regulations 2005 (S.I. 2005/3377).
- 7.7 There are no immediate plans for consolidating the changes to these regulations as it is intended that new 'Disclosure of Information' Regulations will come into effect by October 2006, and the 'Register' and 'Scheme Funding' Regulations have not previously been amended. The Statutory Instrument will be available to the public in the loose-leaf work "The Law Relating to Social Security", known as the 'Blue Volumes', when this is updated. The Blue Volumes are available to the public at no cost at:  
[www.dwp.gov.uk/advisers/docs/lawvols/bluevol/](http://www.dwp.gov.uk/advisers/docs/lawvols/bluevol/)

## **8. Impact**

- 8.1 A Regulatory Impact Assessment has not been completed for these regulations, as any impact is considered negligible.
- 8.2 There are no public sector costs.

## **9. Contact**

Alan Napier at the Department for Work and Pensions Tel: 020 7962 8476 or e-mail: alan.napier@dwp.gsi.gov.uk can answer any queries regarding the instrument.

June 2006.

## Transposition Note

### The Occupational Pension Schemes (Winding up Procedure Requirement) Regulations 2006

Transposing that part of the European Union Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision<sup>2</sup> (IORP Directive) which concern the winding up of private sector defined benefit occupational pension schemes that have insufficient assets to meet their accrued liabilities.

| Article  | Requirements   | Implementation   |
|----------|--|--|
| 16(2)(c) | Funding of technical provisions: an institution that has started to wind up during the period covered by a recovery plan prepared in accordance with the requirements of Article 16(2)(a), must:<br>inform the competent authorities in the home Member State;<br>establish a procedure to transfer the assets and the corresponding liabilities to another financial institution or a similar body;<br>disclose that procedure to the competent authorities;<br>and<br>make available to members and, where appropriate, their representatives, a general outline of the procedure. | Section 231A of the Pensions Act 2004 requires the trustees or managers of a scheme that starts to wind up during the period specified in the scheme's recovery plan prepared under section 226 of the Act to prepare a winding up procedure as soon as practicable; prescribes the content of the procedure; requires trustees to send a copy of the procedure to the Pensions Regulator as soon as practicable; and provides that a civil penalty applies where trustees or managers fail to take reasonable steps to comply with the requirements (Regulation 2).<br><br>Regulation 7(1)(e) of the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 (SI 1996/1655). This requires the trustees or managers to make available, on request, an outline of the winding up procedure to scheme members and prospective members; their spouses and civil partners; scheme beneficiaries; and recognised trades union. (Regulation 3)<br><br>Regulation 3(1)(g) of the Register of Occupational and Personal Pension Schemes Regulations 2005 (S.I. 2005/597) requires that where a scheme begins to wind up during the recovery period, the date the winding up of the scheme commenced is registrable information for the purposes of section 60(2)(h) of the 2004 Act. (Regulation 4) |

## Scrutiny history

Doc Ref 13420/00, COM(200)507: *Proposal for a Directive of the European Parliament and of the Council on the coordination of laws, Regulations and administrative provisions relating to institutions for occupational retirement provisions.*

The Government submitted explanatory memoranda to Parliament dated 11 December 2000 and 16 May 2001.

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<sup>2</sup> (OJ No. L 235, 23.9.03, p.10)

The House of Commons European Scrutiny Committee reported on the proposal and the Governments explanatory memoranda in report no.2, Session 00/01 and in report no. 31, Session 01/02.

The proposal and explanatory memoranda were sifted to Sub-Committee A of the House of Lords European Union Committee and were cleared by that committee following correspondence with Ministers on 17 June 2002.

**The Occupational Pension Schemes  
(Winding up Procedure Requirement)  
Regulations 2006**

**Government response to the consultation**

June 2006

**DWP** Department for  
Work and Pensions

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## INTRODUCTION

1. On 29th March 2006, the Government undertook a consultation exercise on a draft of the Occupational Pension Schemes (Winding Up Procedure Requirement) Regulations. The regulations are required to implement into UK legislation the provisions contained in Article 16(2)(c) of the European Pensions Directive<sup>3</sup>. The consultation ended on 25th April 2006.

2. Four written responses to the consultation were received. A list of respondents is at page 5. The Government is very grateful to all who contributed to the consultation. Their comments have been very helpful in finalising the regulations.

3. The Occupational Pension Schemes (Winding up Procedure Requirement) Regulations 2006 will be laid shortly.

4. The regulations will be available on HMSO's website at <http://www.legislation.hmso.gov.uk/stat.htm#2006>.

5. This document is available on the Department's website at <http://www.dwp.gov.uk/consultations/2006/index.asp>

6. A paper copy of this document can be obtained from:

Alan Napier  
Department for Work and Pensions  
3rd Floor  
Adelphi  
1-11 John Adam Street  
London WC2N 6HT  
Email: alan.napier@dwp.gsi.gov.uk

7. This document describes the policy underpinning the changes being made. Comments on the regulations should not however be taken as an authoritative interpretation of the law. Such an interpretation can only be provided by a court.

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<sup>3</sup>Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision.



## RESPONSES TO CONSULTATION

8. This document sets out the issues raised in response to the consultation exercise and provides the Government's response.

9. This response may be taken as an indication of how the Government plans that the regulations should work in practice.

### Specific comments and the Government's response

#### Regulation 3 – the new Section 231A of the Pensions Act 2004.

10. The view was expressed that, where trustees had prepared a winding-up procedure in advance of a wind-up starting, a strict reading of the draft new section 231A(5) appeared to indicate that this 'optional' or 'notional' procedure should be sent to the Regulator.

*The policy intention is that the new provision would apply only where:*

- *a scheme had a recovery plan pursuant to section 226 of the 2004 Act; and*
- *it began to wind up during the recovery period.*

*The trustees would not be required to disclose any wind up procedure prepared in advance of the scheme beginning to wind up during the recovery period. We have amended the regulations to make this clear.*

11. They also noted the lack of a requirement for the procedure to be revisited subsequently during the wind-up process.

*The Directive is silent on whether the procedure should be revised. We have amended the regulations to include a provision that trustees may revise the procedure if they consider that is warranted.*

12. Respondents had concerns that draft subsections 231A(2)(a) and 231(3)(d) were identical, and that they required schemes to discharge liabilities in accordance with section 74 of the Pensions Act 1995, although that section simply provides a statutory discharge where it is followed.

*The Directive requires institutions to “establish a procedure in order to transfer the assets and the corresponding liabilities to another financial institution or a similar body”. We believe that requiring trustees to discharge their liabilities in one or more of the ways mentioned at section 74(3) of the 1995 Act is a proportionate approach to the transposition of this requirement. We have amended the regulations to make this clear, and have removed the “duplicate provision”.*

13. Respondents considered that (although they recognised that the wording was taken from paragraph 15 of Schedule 2 to the Occupational Pension Schemes (Disclosure) Regulations 1996), the extent of the phrase “recover any assets” in draft subsection 231A(2)(a) was unclear, and the reference to “actuarial value” in draft subsection 231A(2)(c) ambiguous.

*To reassure trustees that these are not new requirements, we think it better to maintain consistency between this and the existing provision.*

14. Respondents also made a number of helpful drafting suggestions. These were considered by our drafting lawyers and were taken on where it was considered the change would be beneficial.

### **Thanks**

15. We are most grateful to everyone who took the time to comment on this consultation document.

16. List of respondents:

Association of Consulting Actuaries  
Association of Pension Lawyers  
Financial Services Authority  
Government Actuary’s Department