
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the circumstances in which, and the extent to which, payments may be made from certain pension schemes to the employer in relation to that scheme (“the relevant employer”) of the scheme.

Regulation 3 prescribes that no payment may be made under section 37 of the Pensions Act 1995 (c. 26) (“the 1995 Act”) except in the case of the types of scheme specified in that regulation.

Regulation 4 prescribes that in the case of a scheme which is subject to the requirements of Part 3 of the Pensions Act 2004 (c. 35) (scheme funding), which is not a regulatory own funds scheme and which is not winding up, prior to a payment to the relevant employer being made the scheme shall conduct an actuarial valuation of its assets and liabilities and prescribes the assets and liabilities that shall be taken into account when making this valuation.

Regulation 5 prescribes the manner in which the actuary shall value the assets and estimate the value of the liabilities of the scheme.

Regulation 6 prescribes the qualifications required for a person to prepare and sign a written valuation under section 37(3)(a) of the 1995 Act.

Regulation 7 prescribes that where a valuation shows that the assets of the scheme exceed the liabilities of the scheme, then the maximum payment that may be made to the employer is the amount of that excess, and that where this is the case the actuary shall certify this on a form set out in Schedule 1.

Regulation 8 prescribes that in the case of a money purchase scheme that holds each member's fund under a separate insurance policy a scheme may consider making a payment to the relevant employer where the liabilities in relation to any particular member have been paid in full, and the payment to the employer represents the excess of the assets produced by the insurance policy, over and above the member's entitlement to scheme benefits.

Regulation 9 provides that a valuation certificate shall be valid for a maximum period of either 12 or 15 months from the date it is prepared.

Regulation 10 prescribes the information that the trustees of the scheme must provide to the scheme members where the trustees propose to exercise a power to make a payment to the relevant employer.

Regulation 11 prescribes the information that the trustees of the scheme must provide to the Regulator where a payment to the relevant employer is to be made.

Regulation 12 provides for exceptions to the requirements contained in these Regulations in respect of schemes which are not prescribed in regulation 3 and Crown guaranteed and partially guaranteed schemes.

Regulation 13 provides for transitional provisions in relation to schemes with existing powers to make payments to employers.

Regulation 14 modifies section 37 of the 1995 Act in the case of an earmarked scheme.

Regulation 15 prescribes requirements in accordance with which notice must be given to scheme members where the trustees plan to distribute a scheme surplus when a scheme is winding up.

Regulation 16 provides for circumstances where the Regulator must be satisfied that the provisions of section 76 of the 1995 Act are satisfied.

Regulation 17 provides that where they have not received notification from the Regulator that the power to pay excess assets to the employer should not be exercised, then the trustees or employers in relation to the scheme should obtain written confirmation from the Regulator that it has not received any representations or information that could impact on payment of a surplus assets upon wind up.

Changes to legislation: *There are currently no known outstanding effects for the The Occupational Pension Schemes (Payments to Employer) Regulations 2006. (See end of Document for details)*

Regulation 18 provides for the application of sections 37 and 76 of the Pensions Act 1995 in relation to a scheme with more than one employer.

Regulation 19 specifies that certain enactments are revoked to the extent stated in Schedule 2 to the Regulations.

Schedule 1 prescribes the form required for an actuarial certificate under regulation 7.

Schedule 2 specifies the Regulations that are revoked. These are the Occupational Pension Schemes (Payments to Employers) Regulations 1996 (S.I. 1996/2156) and all amending regulations.

An assessment of the impact on business, charities and the voluntary sector of the provisions of these Regulations was included in the Regulatory Impact Assessment that accompanied the Pensions Act 2004. A copy of the assessment has been placed in the libraries of both Houses of Parliament. Copies may also be obtained from the Better Regulation Unit, Department for Work and Pensions, 4th floor, Adelphi, 1-11 John Adam Street, London WC2N 6HT.

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