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STATUTORY INSTRUMENTS

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**2006 No. 802**

**The Occupational Pension Schemes  
(Payments to Employer) Regulations 2006**

**PART 4**

Schemes in wind up

**Notice of proposal to distribute excess assets to the employer**

**15.**—(1) The prescribed requirements for the notice specified in section 76(3)(d) (excess assets on winding up) are set out in paragraphs (2) to (5).

(2) Where the trustees or the employer propose to exercise the power in section 76(1)(c) of the 1995 Act, the trustees or, as the case may be, the employer, must take all reasonable steps to ensure that each member, except any excluded person, is sent a written notice divided into two parts, of the proposal in accordance with the following provisions of this regulation.

(3) The first part must—

(a) inform the member as to—

(i) the trustees' estimate of the value of the assets remaining after the liabilities of the scheme have been fully discharged and the persons or class of person to whom, and in what proportions, it is proposed that they should be distributed; and

(ii) whether the requirements of section 76(3) of the 1995 Act are satisfied;

(b) invite the member, if he wishes, to make written representations in relation to the proposal to the trustees or, as the case may be, to the employer, before a specified date (which is not earlier than two months after the date on which the first part is given); and

(c) advise the member—

(i) that the second part of the notice will be sent to him if the trustees or, as the case may be, the employer intend to proceed with the proposal to exercise that power; and

(ii) that no excess assets may be distributed to the employer in accordance with the proposal until at least three months after the date on which the second part is sent to him.

(4) The second part of the notice must be given after the date specified in accordance with paragraph (3)(b) and at least three months before the power is exercised and must—

(a) contain the information referred to in paragraph (3)(a), including any modifications to the proposal; and

(b) advise the member that he may make written representations to the Regulator before a specified date (which is not earlier than three months after the date on which the second part of the notice is sent to him) if he considers that any of the requirements of section 76(3) of the 1995 Act are not satisfied.

(5) The parts of the notice under paragraphs (3) or (4) shall be treated as having been given to a member where it has been sent by post to either—

- (a) the address at which he was last known to be living; or
- (b) in the case of a person who was an active member, immediately before the commencement of the winding up of the scheme, an address at which he is currently known to be employed.

[<sup>F1</sup>(6) A notice under this regulation may be sent in accordance with regulations 26 to 28 (giving information and documents) of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013.]

**F1** Reg. 15(6) added (6.4.2014) by The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (S.I. 2013/2734), reg. 1(1), **Sch. 9 para. 16(3)**

### **Circumstances in which the Regulator must be satisfied that requirements of section 76 of the 1995 Act are met**

**16.—**(1) For the purposes of section 76(2) of the 1995 Act the prescribed circumstances are that—

- (a) subject to paragraph (2), in relation to any proposal to which that section applies, the Regulator receives—
  - (i) written representations from a member to the effect that any requirements of section 76(3) of the 1995 Act are not satisfied; or
  - (ii) information from any source sufficient to raise a doubt as to whether all the requirements are satisfied; and
- (b) the Regulator notifies the trustees or, as the case may be, the employer in writing that the power should not be exercised until the Regulator has confirmed in writing that it is satisfied that those requirements are satisfied.

(2) Where notice has been given to a member in accordance with regulation 15(3), paragraph (1)(a)(i) shall only apply in the case of representations received by the Regulator from the member before the date specified in accordance with regulation 15(4)(b) (expiry date of the second part of notice).

### **Additional requirement for purposes of section 76 of the 1995 Act**

**17.** Where—

- (a) the date specified in accordance with regulation 15(4)(b) (expiry date of the second part of the notice) has passed; and
- (b) the trustees or, as the case may be, the employer have not received notification from the Regulator in accordance with regulation 16(1)(b),

the trustees or, as the case may be, the employer shall obtain written confirmation from the Regulator that it has not received any representations or information referred to in regulation 16(1)(a) and that section 76(4) of the 1995 Act accordingly, does not apply.

**Changes to legislation:**

There are currently no known outstanding effects for the The Occupational Pension Schemes (Payments to Employer) Regulations 2006, PART 4.