

2002 No. 459

PENSIONS

The Occupational Pension Schemes (Winding Up Notices and Reports etc.) Regulations 2002

<i>Made</i> - - - -	<i>4th March 2002</i>
<i>Laid before Parliament</i>	<i>7th March 2002</i>
<i>Coming into force</i>	<i>1st April 2002</i>

The Secretary of State for Work and Pensions, in exercise of the powers conferred on him by section 113(1) of the Pension Schemes Act 1993(a), sections 10(2)(b) and (3), 23(2), 26B(3)(b), 26C(2) and (3), 49A(2)(b) and (3), 71A(4), 72A(1)(b), (2), (7) and (8)(a), 72B(2)(c)(iii), (3), (5)(c), (6)(c) and (8)(b), 118(2), 124(3E), 174(2) and (3) of the Pensions Act 1995(b), and of all other powers enabling him in that behalf, having consulted such persons as he considers appropriate(c), hereby makes the following Regulations:

Citation and commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Winding Up Notices and Reports etc.) Regulations 2002 and come into force on 1st April 2002.

(2) In these Regulations—

“the 1993 Act” means the Pension Schemes Act 1993,

“the 1995 Act” means the Pensions Act 1995,

“member”, “deferred member” and “pensioner member” have the meanings given in section 124(1) of the 1995 Act(d), subject to the provision made by regulations 6(3) and 11(3), and

“small self-administered scheme” has the meaning given in regulation 2(1) of the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Small Self-administered Schemes) Regulations 1991(e).

(a) 1993 c.48. Section 113(1) was amended by section 52(1) of the Child Support, Pensions and Social Security Act 2000 (c.19).

(b) 1995 c.26. Sections 26A to 26C were inserted by section 47(2) of the Child Support, Pensions and Social Security Act 2000. Section 49A was inserted by section 49(3) of that Act. Section 71A was inserted by section 48 of that Act. Sections 72A and 72B were inserted by sections 49(1) and 50 of that Act. Section 118(2) was amended by section 47(3) of that Act. Section 124(3E) was inserted by section 49(2) of that Act.

(c) See section 185(1) of the Pension Schemes Act 1993 (c.48) and section 120(1) of the Pensions Act 1995 (c.26) for the obligation to consult. Section 185(1) of the Pension Schemes Act 1993 was amended by paragraph 80 of Schedule 5 to the Pensions Act 1995.

(d) The definition of “member” was amended by paragraph 61 of Schedule 12 to the Welfare Reform and Pensions Act 1999 (c.30). The definition of “pensioner member” was amended by paragraph 8 of Schedule 5 to the Child Support, Pensions and Social Security Act 2000.

(e) S.I. 1991/1614, as amended by S.I. 1998/728, regulation 3 and S.I. 2000/1086, regulation 2.

Amendment of the Occupational Pension Schemes (Disclosure of Information) Regulations 1996

2.—(1) The Occupational Pension Schemes (Disclosure of Information) Regulations 1996(a) are amended as follows.

(2) In regulation 5(10)(a), (b) and (d)(b) the words “every person entitled to a pension credit” are omitted.

(3) After regulation 5(12) there is inserted—

“(12AA) If any member or beneficiary of a scheme in respect of which a report has been made to the Regulatory Authority under section 72A of the 1995 Act (reports about winding up) requests a copy of the report, the trustees must provide him with a copy of it within two months of the request being made.”.

(4) In regulation 5(12A)(c) (application of paragraphs (10) and (12) of regulation 5 where only a section of a scheme is being wound up) for the words “and (12)” there are substituted the words “(12) and (12AA)”.

Schemes within section 22 of the 1995 Act: appointment of independent trustee

3.—(1) A person who is subject to the duty under section 23(1)(b) of the 1995 Act (duty of insolvency practitioner or official receiver to appoint an independent trustee of a trust scheme where he is not satisfied that at least one of the scheme’s trustees is an independent person) must perform that duty before the end of the period of three months beginning with—

- (a) the date on which the person first becomes aware that section 22 of that Act applies in relation to the scheme in question, or
- (b) the date on which the duty arises,

whichever is the later.

(2) Section 26A(1) of that Act (trustees’ obligation to give notice to the Authority as soon as reasonably practicable after it first appears to any of them as mentioned in paragraph (a) and (b) of that subsection) has effect as if for the words “as soon as reasonably practicable” there were substituted the words “within the period of one month”.

(3) Section 26A(2) of that Act (obligation of every person involved in the administration of a scheme to give notice to the Authority as soon as reasonably practicable after it first appears to him that the scheme is without trustees) has effect as if for the words “as soon as reasonably practicable” there were substituted the words “within the period of one month”.

Other schemes: notice to the Authority that section 26B of the 1995 Act applies

4.—(1) Section 26B(1) of the 1995 Act (obligation of every person involved in the administration of a scheme to give notice to the Authority as soon as reasonably practicable after it first appears to him as mentioned in paragraphs (a) and (b) of that subsection) has effect as if for the words “as soon as reasonably practicable” there were substituted the words “within the period of one month”.

(2) The period prescribed for the purposes of section 26B(3)(b) of that Act (the period during which no person is required to give notice to the Authority that a case falls within section 26B(1)(a) to (d)) is the period of three months beginning with the relevant date.

(3) In paragraph (2) “the relevant date” means the date on which the event occurred by virtue of which the scheme in question became a scheme in relation to which section 22 of that Act would apply but for regulations under section 118 of that Act(d).

(a) S.I. 1996/1655.

(b) Regulation 5(10) was amended by S.I. 1997/3038, regulation 6(3) and S.I. 2000/2691, regulation 5.

(c) Regulation 5(12A) was inserted by regulation 10(4)(c) of S.I. 1997/786.

(d) See regulation 5 of the Occupational Pension Schemes (Independent Trustee) Regulations 1997 (S.I. 1997/252).

Persons exempted from obligations to give notices to the Authority under section 26A or section 26B of the 1995 Act

5. In section 26C of the 1995 Act (construction of sections 26A and 26B) references, in relation to a scheme, to a person involved in the administration of the scheme do not include any person whose only involvement with the scheme is in connection with—

- (a) underwriting policies of insurance that are specifically allocated to the provision of benefits for individual members or other persons with rights to benefits under the scheme or annuity contracts, or
- (b) providing advice about the management of investments.

Schemes excluded from sections 26A and 26B of the 1995 Act

6.—(1) Section 26A of the 1995 Act does not apply to any scheme within paragraph (2)(a) or (b) and 26B of that Act does not apply to any scheme within paragraph (2).

(2) A scheme is within this paragraph if it is—

- (a) a scheme of which there is only one member,
- (b) a small self-administered scheme,
- (c) a scheme of which each member is a trustee, or
- (d) a scheme—
 - (i) the only benefits provided by which are death benefits, and
 - (ii) under the provisions of which no member has accrued rights.

(3) In this regulation “member” means a deferred member or a pensioner member.

Penalties for failing to give notice to the Authority under section 26A or section 26B of the 1995 Act

7.—(1) This regulation applies for the purpose of prescribing the meaning of “the maximum amount” in section 10 of the 1995 Act (civil penalties) in cases where that section applies to any person by virtue of section 26A(7) or (8) or 26B(4) of that Act (failure to give certain notices to the Authority).

(2) Where that person is an individual, the maximum amount is £1,000.

(3) Where that person is not an individual, the maximum amount is £10,000.

Applications to the Authority to modify schemes to secure winding up

8.—(1) This regulation applies where an application is made to the Authority under section 71A of the 1995 Act (modification by the Authority to secure winding up) to make an order modifying a scheme with a view to ensuring that it is properly wound up.

(2) The application must—

- (a) set out the modification requested,
- (b) specify the effects, if any, which the modification would or might have—
 - (i) on benefits under the scheme that are in payment at the time of the application, and
 - (ii) on benefits under it which are or may be payable at a later time,
- (c) specify the reason for requesting the modification,
- (d) specify whether any previous application has been made to the court or to the Authority for an order to make the modification requested by the application or any similar modification,
- (e) confirm that at the time the application is made the employer in relation to the scheme is subject to an insolvency procedure (within the meaning given by section 71A(8) of the 1995 Act),
- (f) specify whether the modification would reduce the value of the assets, if any, which might otherwise be distributed to that employer on the winding up, and
- (g) contain a statement that the notices required by paragraph (3) have been given.

(3) Before making the application the trustees or managers of the scheme must give notice in writing that the application is being made—

- (a) to all members of the scheme in respect of whom they have a current address, and
- (b) if the modification would reduce the value of the assets which might otherwise be distributed to the employer on the winding up, to the person acting as an insolvency practitioner in relation to the employer or, as the case may be, the official receiver;

and the references in sub-paragraph (b) to “acting as an insolvency practitioner” and “official receiver” are to be construed in accordance with sections 388 and 399 of the Insolvency Act 1986(a).

(4) A notice under paragraph (3) must—

- (a) in the case of a notice under paragraph (3)(a), specify the information referred to in paragraph (2)(a), (b), (c) and (f),
- (b) in the case of a notice under paragraph (3)(b), specify the information referred to in paragraph (2)(a) to (d) and (f),
- (c) specify the date on which it is given, and
- (d) contain a statement about the recipient’s rights under paragraph (5).

(5) A member of the scheme in respect of which the application is made or a person to whom a notice is to be given under paragraph (3)(b) may make representations to the Authority about the modification requested by the application during the period of one month beginning with the date specified under paragraph (4)(c).

(6) Before determining the application, the Authority must consider any representations duly made to them under paragraph (5).

(7) The application must be accompanied by the following documents—

- (a) a copy of—
 - (i) the documents constituting the scheme or, if any of those documents have been consolidated, the consolidated version of them,
 - (ii) if the documents mentioned in sub-paragraph (a)(i) do not set out the rules of the scheme, those rules, and
 - (iii) any document which amends or supplements or wholly or partly supersedes any document within sub-paragraph (a)(i) or (ii),
- (b) if an actuary is required to be appointed under section 47(1)(b) of the 1995 Act, a copy of any advice given by the actuary so appointed to the trustees or managers concerning the effects, if any, that the modification requested by the application would or might have on the assets of, or the benefits provided by, the scheme,
- (c) subject to paragraph (9), a copy of any legal advice given to the trustees or managers in relation to the modification requested by the application,
- (d) a copy of any determination by a court concerning the modification requested or any similar modification, and
- (e) if a record is required to be kept under section 49A(1) of the 1995 Act of the trustees’ or managers’ determination that the scheme be wound up, a copy of that record.

(8) Subject to paragraph (9), if in dealing with the application it appears to the Authority necessary or desirable that any information or document which is not required to be given to them under paragraph (2) or (7) be given to them before they determine the application, they may require the trustees or managers to provide it.

(9) Nothing in paragraph (7)(c) or (8) requires a person to produce a document if he would be entitled to refuse to produce it in any proceedings in any court on the grounds that it was the subject of legal professional privilege or, in Scotland, that it contained a confidential communication made by or to an advocate or solicitor in that capacity.

Reports to the Authority about winding up: time limits

9.—(1) Section 72A of the 1995 Act (reports to Authority while schemes are being wound up) applies to a winding up beginning on or after 1st April 1973.

(a) 1986 c.45.

(2) In the case of a winding up which began before 1st April 2002, the first report to be made under section 72A must be made before the relevant date.

(3) The “relevant date” in relation to a winding up, means—

- (a) if the winding up began before 1st January 1990, 1st June 2002,
- (b) if the winding up began on or after 1st January 1990 but before 1st January 1993, 1st April 2003,
- (c) if the winding up began on or after 1st January 1993 but before 1st January 1996, 1st April 2004,
- (d) if the winding up began on or after 1st January 1996 but before 1st January 1999, 1st April 2005,
- (e) if the winding up began on or after 1st January 1999 but before 1st April 2002, 1st April 2006.

(4) In the case of a winding up which begins on or after 1st April 2002 but before 1st April 2003, the first report to be made under section 72A must be made—

- (a) after the end of the period of three years beginning with the day on which the winding up begins, and
- (b) before the end of the period of one year beginning with the end of the period that applies under sub-paragraph (a).

(5) In the case of a winding up which begins on or after 1st April 2003, the first report to be made under section 72A must be made—

- (a) after the end of the period of three years beginning with the day on which the winding up begins, and
- (b) before the end of the period of three months beginning with the end of the period that applies under sub-paragraph (a).

Contents of reports to the Authority about winding up

10.—(1) In the case of each winding up, the first report to the Authority under section 72A(1) of the 1995 Act must contain—

- (a) the name by which the scheme is known,
- (b) the date on which the winding up began,
- (c) the number allotted to the scheme by the Registrar of Occupational and Personal Pension Schemes for the purposes of the register kept under section 6 of the 1993 Act,
- (d) a statement as to the nature of the benefits provided by the scheme,
- (e) a statement as to whether an appointment has been made under section 23(1)(b) of the 1995 Act (appointment of independent trustee by insolvency practitioner or official receiver), and if such an appointment has been made and the report is not being made by the person appointed, that person’s name and address,
- (f) if an actuary is required to be appointed under section 47(1)(b) of the 1995 Act, his name and address,
- (g) a statement as to whether any of the administration of the scheme is being carried out by a person other than the trustees or managers and, if so, the person’s name and address,
- (h) a statement as to when the person making the report estimates that the winding up will be completed,
- (i) a statement as to—
 - (i) what steps in the winding up have been completed,
 - (ii) what steps remain to be completed, and
 - (iii) when the person making the report estimates that each of those steps will be completed, and
- (j) a statement as to whether any particular difficulties are hindering or delaying completion of the winding up.

(2) In the case of each winding up, a second or subsequent report to the Authority under section 72A(1) of the 1995 Act (“the later report”) must contain—

- (a) the name by which the scheme is known,
- (b) the date on which the winding up began,
- (c) a statement as to whether any of the administration of the scheme is being carried out by a person other than the trustees or managers and, if so, the person’s name and address,
- (d) if the person making the later report estimates that the winding up will be completed at a different time from that stated in the previous report under section 72A(1), a statement as to that time,
- (e) a statement as to—
 - (i) the steps in the winding up that have been completed since the previous report was made,
 - (ii) if steps stated in that report to be due for completion before the date when the later report is made have not been so completed, the reasons why they have not,
 - (iii) what steps remain to be completed, and
 - (iv) when the person making the later report estimates that each of those steps will be completed, and
- (f) a statement as to whether any particular difficulties are hindering or delaying completion of the winding up.

Exemption from requirement to make reports to the Authority about winding up

11.—(1) There is no obligation to make a report to the Authority under section 72A(1) of the 1995 Act if on the latest date for the making of the report the scheme is within paragraph (2).

(2) A scheme is within this paragraph if it is—

- (a) a scheme of which there is only one member,
- (b) a small self-administered scheme,
- (c) a scheme of which each member is a trustee, or
- (d) a scheme—
 - (i) the only benefits provided by which are death benefits, and
 - (ii) under the provisions of which no member has accrued rights.

(3) In this regulation “member” means a deferred member or a pensioner member.

Time when winding up taken to begin

12. Section 124(3A) to (3D) of the 1995 Act **(a)** (time when winding up of a scheme is to be taken to begin) does not apply for the purposes of—

- (a) sections 73 and 74 of that Act (preferential liabilities on winding up and discharge of liabilities by insurance, etc.) **(b)**, or
- (b) the Occupational Pension Schemes (Winding Up) Regulations 1996 **(c)**.

Records of decisions about winding up

13.—(1) The obligations imposed on trustees, managers and other persons by section 49A of the 1995 Act and this regulation do not apply in relation to determinations and decisions made before 1st April 2002.

(a) Section 124(3A) to (3D) were inserted by section 49(2) of the Child Support, Pensions and Social Security Act 2000.
(b) Section 73 was amended by section 38(1) of and paragraph 55 of Schedule 12 to the Welfare Reform and Pensions Act 1999. Section 74 was amended by paragraph 56 of Schedule 12 to that Act.
(c) S.I. 1996/3126, as amended by S.I. 1997/786, Schedule 1, paragraph 17, S.I. 1999/3198, regulation 11 and S.I. 2000/2691, regulation 3.

(2) A record of a determination for the winding up of a scheme that is required to be kept under section 49A(1)(a) of the 1995 Act must specify—

- (a) the names of the persons making the determination, and
- (b) the date on which it is made.

(3) A record of a decision as to the time from which steps for the purposes of the winding up of the scheme are to be taken that is required to be kept under section 49A(1)(b) of that Act must specify the date on which the first steps for winding it up are to be taken.

(4) A record of a determination that is required to be kept under section 49A(1)(c) or (d) of that Act (determinations to defer winding up) must—

- (a) if a date on which it is proposed to wind up the scheme is determined, specify that date, and
- (b) if no such date is determined but a date on which the determination of that date will be considered is determined, specify that date.

(5) Where such a determination or decision as is mentioned in paragraph (a), (b), (c) or (d) of section 49A(1) of that Act is made by persons who—

- (a) are not trustees or managers of the scheme, but
- (b) are entitled in accordance with the scheme's rules to make a determination for its winding up,

the obligation under that section applies to those persons.

(6) Paragraph (5) applies whether or not the determination or decision in question is also made by persons who are trustees or managers of the scheme, and—

- (a) in a case where it is also made by the trustees or managers, the obligation under section 49A(1) applies to the persons on whom it is imposed by paragraph (5) as well as the trustees or managers, but
- (b) in a case where it is not also made by the trustees or managers, the obligation under section 49A(1) applies to the persons on whom it is imposed by paragraph (5) instead of the trustees or managers.

(7) A person who fails to take all such steps as are reasonable to comply with an obligation imposed by paragraph (5) is liable to pay a penalty under section 10 of that Act of such amount not exceeding—

- (a) £5,000 in the case of an individual, and
- (b) £50,000 in any other case,

as is specified in a notice in writing from the Authority requiring him to pay the penalty under that section.

(8) Such a penalty must be paid within 28 days beginning with the date on which the notice is given.

Directions by the Authority for facilitating winding up

14.—(1) For the purposes of section 72B(2)(c)(iii) of the 1995 Act (by virtue of which the Authority may give directions during the winding up of a scheme if they consider that it is being obstructed or delayed by the failure of any person to provide information to a person of a prescribed description), the following persons are prescribed.

(2) They are—

- (a) any person who has exercised or is exercising functions in relation to the scheme by or under an enactment,
- (b) any person acting as the custodian of any investments on behalf of the trustees or managers of the scheme,

- (c) any person holding—
 - (i) documents relating to the payroll for pensions payable under the scheme or their payment,
 - (ii) payroll records relating to employment to which the scheme relates,
 - (iii) personnel pension records in respect of those who are or have been in such employment, or
 - (iv) other information relating to the past or present membership of the scheme,
- (d) any person holding, or involved in the production or issue of, scheme documentation, announcements or written materials,
- (e) any person who is obliged under a contract with a person falling within any of sub-paragraphs (a) to (d) above to carry out on his behalf any function by virtue of the performance of which the other person falls or would fall within the sub-paragraph in question, and
- (f) any person appearing to the Authority to hold information or documents relating to the functioning of the scheme.

(3) For the purposes of section 72B(3) of that Act (under which, except in prescribed circumstances, the Authority's power to give directions under section 72B is limited to cases where periodic reports are required to be made under section 72A of that Act and the first report has been made or is due), the following circumstances are prescribed.

- (4) They are that—
 - (a) the trustees or managers of the scheme have applied for the Authority to give directions under section 72B of that Act, or
 - (b) the circumstances of the scheme are such that its winding up is unlikely to be completed within a reasonable period unless the Authority give such directions, or
 - (c) the winding up began before 1st April 2006.

(5) For the purposes of section 72B(5)(c) of that Act (by virtue of which a direction under section 72B may impose a requirement on a person of a prescribed description), any person formerly involved in the administration of the scheme is prescribed.

(6) For the purposes of section 72B(6)(c) of that Act (by virtue of which a direction under section 72B may impose a requirement to provide information to a person of a prescribed description), any person exercising functions in relation to the scheme by or under an enactment is prescribed.

(7) An application under section 72B(7) of that Act for the extension (or further extension) of a period within which steps required by a direction under section 72B are to be taken must be made in writing no later than two months before the date on which, apart from any extension (or further extension) as a result of the application, the period would end.

Signed by authority of the Secretary of State for Work and Pensions.

4th March 2002

Ian McCartney
Minister of State
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations largely supplement amendments of the Pensions Act 1995 (“the 1995 Act”) made by the Child Support, Pensions and Social Security Act 2000 and designed to speed up the winding up of occupational pension schemes.

Regulation 1 relates to the citation, commencement and interpretation of these Regulations.

Regulation 2 amends regulation 5 of the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 so as to require the trustees of a scheme which is being wound up to give members copies of reports given to the Occupational Pensions Regulatory Authority (“the Authority”) about winding up if they request them.

Regulation 3(1) prescribes the period within which insolvency practitioners must appoint independent trustees of trust schemes where the employer is insolvent.

Regulations 3(2) and (3), and 4 to 7 relate to the obligations to give notices connected with insolvency of employers to the Authority under sections 26A to 26C of the 1995 Act. Regulations 3(2) and (3) and 4 make provision about the period for giving the notices. Regulation 5 prescribes the underwriters of certain scheme policies and contracts and investment management advisers as persons who are exempted from obligations to give notices. Regulation 6 prescribes the kinds of schemes which are excluded from the obligations. Regulation 7 prescribes the maximum civil penalties for failure to give notices.

Regulation 8 prescribes matters connected with applications to the Authority under section 71A of the 1995 Act to modify schemes to secure their winding up, including the content of the applications and the notices to be given in connection with them.

Regulations 9 to 11 relate to reports to the Authority under section 72A of the 1995 Act where winding up has not been completed. Regulation 9 prescribes time limits for making the first reports. It provides that the obligation to make the reports applies to schemes that started winding up on or after 1st April 1973, and sets out a series of time limits within which schemes beginning to wind up at different times must make their first reports. Regulation 10 prescribes what the reports must contain, and regulation 11 exempts certain schemes from the requirement to make the reports.

Regulation 12 prescribes the purposes for which the general interpretation provisions in section 124(3A) to (3D) of the 1995 Act about when schemes begin winding up do not apply.

Regulation 13 sets out what records about decisions concerning winding up must contain and extends the obligations to keep records to persons other than trustees or managers where they make determinations about winding up. It also makes provision for the imposition of civil penalties on such persons if they contravene those obligations.

Regulation 14 relates to the directions the Authority may give to facilitate the winding up of schemes. It sets out the persons failure to give information to whom enables the Authority to give the directions, the circumstances in which directions may be given before the first report is due to be made to the Authority about the winding up, and the persons on whom requirements may be imposed and to whom information may be required to be given. It also prescribes the time limit for applying for an extension of the period within which steps required by directions must be taken.

An assessment of the cost to business of the provisions in these Regulations was included in the Regulatory Impact Assessment that accompanied the Child Support, Pensions and Social Security Act 2000. A copy of that assessment has been placed in the libraries of both Houses of Parliament. Copies can be obtained from the Department for Work and Pensions, Regulatory Impact Unit, Level 3, The Adelphi, 1–11 John Adam Street, London, WC2N 6HT. There are no additional costs associated with these Regulations.

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