

2005 No. 686

PENSIONS

The Pensions Regulator (Freezing Orders and Consequential Amendments) Regulations 2005

<i>Made</i>	- - - -	<i>11th March 2005</i>
<i>Laid before Parliament</i>		<i>15th March 2005</i>
<i>Coming into force</i>	- -	<i>6th April 2005</i>

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 93A(2), 99(4), 181(1) and 182(2) and (3) of the Pension Schemes Act 1993(a) and sections 23(10)(b)(i), 24(7)(a), 30(7)(c), 315(5) and 318(1) of the Pensions Act 2004(b), and of all other powers enabling him in that behalf, by this instrument, regulation 4 of which is consequential upon those sections of the Pensions Act 2004 and which is made before the end of the period of six months beginning with the coming into force of those sections of that Act(c), makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Pensions Regulator (Freezing Orders and Consequential Amendments) Regulations 2005 and shall come into force on 6th April 2005.

(2) In these Regulations,

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

“the 1996 Regulations” means the Occupational Pension Schemes (Transfer Values) Regulations 1996(d);

“the Act” means the Pensions Act 2004; and

“salary-related occupational pension scheme” has the same meaning as in section 93(1A) of the 1993 Act.

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- (a) 1993 c. 48. Section 93A was inserted by section 153 of the Pensions Act 1995 (“the 1995 Act”); section 99(4) was substituted by paragraphs 2 and 6(c) of Schedule 6 to the 1995 Act; section 181(1) is cited because of the meaning given to “prescribe” and “regulations”.
- (b) 2004 c. 35; section 318(1) is cited because of the meaning given to “prescribed” and “regulations”.
- (c) See section 185(1) of the Pension Schemes Act 1993 (“the 1993 Act”) and section 317(1) of the Pensions Act 2004 (“the 2004 Act”) which provide that the Secretary of State must consult such persons as he may consider (or “considers” in the case of the 2004 Act) appropriate before making any regulations under Part 4 or Part 1 of those Acts respectively (which include the powers being exercised in these Regulations). In the case of the 1993 Act, the requirement to consult does not apply to regulations which state that they are consequential upon a specified enactment and are made before the end of the period of six months beginning with the coming into force of that enactment (see section 185(2)(e)), and in the case of the 2004 Act the requirement to consult does not apply to regulations contained in a statutory instrument made before the end of the period of six months beginning with the coming into force of the provision of the Act by virtue of which the regulations are made (see section 317(2)(c)).
- (d) S.I. 1996/1847, to which there are amendments not relevant to these Regulations.

Meaning of “the actuary”

2. The qualifications prescribed for the purposes of section 23(10)(b)(i) of the Act (freezing orders – meaning of “the actuary”) are—

- (a) Fellowship of the Institute of Actuaries; or
- (b) Fellowship of the Faculty of Actuaries.

Modification of the 1993 Act

3.—(1) This regulation applies where, in relation to a salary related occupational pension scheme—

- (a) the trustees or managers are required to act in accordance with subsection (2) of section 99 of the 1993 Act^(a) (trustees’ duties after exercise of cash equivalent option) within whichever of the time limits set out in paragraph (a) of that subsection is applicable (“the relevant period”); and
- (b) at any time during the relevant period there is a freezing order in effect, which is made in accordance with section 23 of the Act and which contains a direction under subsection (4)(f) of that section that affects the application referred to in section 99(2) of the 1993 Act.

(2) Where this regulation applies, section 99(2)(a) of the 1993 Act shall have effect as if for paragraph (a) there were substituted—

“(a) in the case of a member of a salary related occupational pension scheme—

- (i) by the date which is the last day of the period of six months beginning immediately after the guarantee date, or (if earlier) by the date on which the member attains normal pension age, or
- (ii) (if later than the date arrived at under sub-paragraph (i)) where a freezing order made under section 23 of the Pension Act 2004 which contains a direction under subsection (4)(f) of that section is in effect prior to the date arrived at under sub-paragraph (i) above in relation to that scheme, within three months beginning with the date on which that direction ceases to have effect;”.

Amendment of the 1996 Regulations

4.—(1) The 1996 Regulations shall be amended in accordance with the following paragraphs.

(2) In regulation 6 (guaranteed statements of entitlement)—

- (a) at the beginning of paragraph (1) there shall be inserted “Subject to paragraph (1A),”; and
- (b) after paragraph (1) there shall be inserted—

“(1A) Where a relevant scheme has received an application, the guarantee date must be either—

- (a) within the period, or, where applicable, the longer period, set out in paragraph (1); or
- (b) within a period of three months beginning on the date on which the relevant direction ceases to have effect,

whichever ends later.

(1B) In paragraph (1A)—

“application” means an application for a statement of entitlement made under section 93A(1) of the 1993 Act;

(a) Section 99(2)(a) was substituted by paragraphs 2 and 6(a) of Schedule 6 to the 1995 Act.

“relevant scheme” means a scheme which either—

- (a) is the subject of a freezing order made under section 23 of the Pensions Act 2004 containing a relevant direction on the date it receives the application; or
- (b) becomes the subject of such a freezing order during the period, or, where applicable, the longer period, set out in paragraph (1); and

“relevant direction” means a direction under section 23(4)(g) of the Pensions Act 2004.”.

(3) In regulation 13 (extension of time limits for payment of cash equivalents)—

- (a) at the end of paragraph (b) “or” shall be deleted;
- (b) after paragraph (b) there shall be inserted—

“(ba) the scheme is or has been within the three months immediately before the end of that period the subject of a freezing order under section 23 of the Pensions Act 2004 which contains a direction under section 23(4)(f) of that Act; or”; and

- (c) in paragraph (c) for the words “paragraph (a) or (b)” there shall be substituted the words “paragraph (a), (b) or (ba)”.

Prescribed period for notification of non-payment of contribution

5. The period prescribed for the purposes of section 30(7)(c) of the Act (period within which trustees or managers must give notice to the Regulator and to the member of failure to pay a contribution) is—

- (a) in the case of notice to the Regulator, 7 days; and
- (b) in the case of notice to the member, 14 days.

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

11th March 2005

Malcolm Wicks
Minister of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under the cited sections of the Pensions Act 2004 (c.35) (“the Act”), except regulation 4 which is made in exercise of powers conferred in the Pension Schemes Act 1993 (c.48) (“the 1993 Act”) and is consequential upon those provisions of the Act, and are made before the end of the period of six months beginning with the coming into force of those sections of the Act. They are accordingly exempt from the requirement in section 185(1) of the 1993 Act and section 317(1) of the Act for the Secretary of State to consult such persons as he considers appropriate before making these Regulations.

Trustees or managers of pension schemes are required to abide by specified time limits in taking certain actions in relation to members’ entitlements, such as issuing a statement of entitlement to a member of a salary related occupational pension scheme (under section 93A of the 1993 Act), or carrying out what the member requires in response to an application received from the member to take his cash equivalent in accordance with section 95 of the 1993 Act (see section 99 of that Act). If, however, the scheme in question is the subject of a freezing order made under section 23 of the Act which contains certain directions, it may be impossible for the trustees or managers to abide by the time limits set out in the 1993 Act or regulations made under it.

Regulation 2 prescribes the qualifications necessary for a person to be brought within the meaning of “the actuary” as set out in section 23(10) of the Act.

Regulation 3 modifies the 1993 Act, and regulation 4 amends regulations made under the 1993 Act, to take account of the fact that it may be impossible to abide by time limits, and extends the time limits where appropriate if a freezing order containing a relevant direction is or has been in effect.

Regulation 5 prescribes the period within which trustees or managers must give notice to the Regulator and to the member of failure to pay a contribution, where they were required to do so by the Regulator in an order made under section 30 of the Act.

An assessment of the impact on business, charities or the voluntary sector of the provisions in these regulations is included in the Regulatory Impact Assessment that accompanied the Pensions Act 2004. A copy of that assessment has been placed in the libraries of both Houses of Parliament. Copies may be obtained from the Department for Work and Pensions, Regulatory Impact Unit, 3rd floor, The Adelphi, 1-11 John Adam Street, London WC2N 6HT.

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