
STATUTORY INSTRUMENTS

2005 No. 706

The Occupational Pension Schemes (Winding up etc.) Regulations 2005

Winding up

Schemes to which section 73 of the 1995 Act does not apply

3.—(1) Section 73 of the 1995 Act does not apply to any scheme which is—

- (a) a public service pension scheme under the provisions of which there is no requirement for assets related to the intended rate or amount of benefit under the scheme to be set aside in advance (disregarding requirements relating to voluntary contributions);
- (b) a scheme which is made under section 7 of the Superannuation Act 1972 ^{F1} (superannuation of persons employed in local government etc.) and provides pensions to local government employees;
- (c) a scheme which is made under section 2 of the Parliamentary and Other Pensions Act 1987 ^{F2} (power to provide for pensions for Members of the House of Commons etc.);
- (ca) [^{F3}a scheme, provision for which is made by virtue of section 81(3) of the Scotland Act 1998 (remuneration of members of the Parliament and Executive);]
- (d) a scheme in respect of which a relevant public authority, as defined in subsection (4) of section 307 of the 2004 Act (modification of that Act in relation to certain categories of schemes), has given a guarantee or made any other arrangements for the purposes of securing that the assets of the scheme are sufficient to meet its liabilities;
- (e) a scheme which does not meet the tax condition;
- (f) a scheme which—
 - (i) has been categorised by the Commissioners of the Board of Inland Revenue for the purposes of its approval as a centralised scheme for non-associated employers;
 - (ii) which [^{F4}was not contracted-out at any time before the second abolition date]; and
 - (iii) under the provisions of which the only benefits that may be provided on or after retirement (other than money purchase benefits derived from the payment of voluntary contributions by any person) are lump sum benefits which are not calculated by reference to a member's salary;
- (g) a scheme—
 - (i) the only benefits provided by which (other than money purchase benefits) are death benefits; and
 - (ii) under the provisions of which no member has accrued rights (other than rights to money purchase benefits);
- [^{F5}(h) a scheme—
 - (i) which has such a superannuation fund as is mentioned in section 615(6) of the Income and Corporation Taxes Act 1988 (exemption from tax in respect of certain pensions);]^{F6}...

^{F6}

- (i) a scheme with fewer than two members;
- (j) a scheme with fewer than 12 members where all the members are trustees of the scheme and either—
 - [^{F7}(i) the provisions of the scheme provide that any decision made by the trustees is made by the unanimous agreement of the trustees who are members of the scheme; or]
 - (ii) the scheme has a trustee who is independent in relation to the scheme for the purposes of section 23 of the 1995 Act ^{F8} (power to appoint independent trustees) (see subsection (3) of that section) and is registered in the register maintained by the Authority in accordance with regulations made under subsection (4) of that section;
- (k) a scheme with fewer than 12 members where all the members are directors of a company which is the sole trustee of the scheme and either—
 - [^{F9}(i) the provisions of the scheme provide that any decision made by the company in its capacity as trustee is made by the unanimous agreement of the directors who are members of the scheme; or]
 - (ii) one of the directors of the company is independent in relation to the scheme for the purposes of section 23 of the 1995 Act and is registered in the register maintained by the Authority in accordance with regulations made under subsection (4) of that section; [^{F10}or]
- (l) the Chatsworth Settlement Estate Pension Scheme;^{F11}...

^{F12}(m)

[^{F13}(1A) Section 73 of the 1995 Act does not apply to a section of a scheme that is a collective money purchase scheme for the purposes of Part 1 of the Pension Schemes Act 2021.]

(2) Before 6th April 2006 paragraph (1)(e) applies with the addition at the end of the words “and is not a relevant statutory scheme providing relevant benefits”; and for the purposes of that paragraph “relevant statutory scheme” and “relevant benefits” have the same meaning as in Chapter 1 of Part 14 of the Income and Corporation Taxes Act 1988 ^{F14} (see sections 611A and 612(1) of that Act).

[^{F15}(3) In this regulation—

“contracted-out” is to be construed in accordance with section 7B(2) (meaning of “contracted-out scheme” etc.) of the Pension Schemes Act 1993; and

“the second abolition date” has the meaning given in section 181(1) (general interpretation) of the Pension Schemes Act 1993.]

F1 1972 c. 11.

F2 1987 c. 45.

F3 Reg. 3(1)(ca) inserted (1.9.2009) by Occupational Pension Schemes (Scottish Parliamentary Pensions Act 2009) Regulations 2009 (S.I. 2009/1906), reg. 1, **Sch. para. 4**

F4 Words in reg. 3(1)(f)(ii) substituted (6.4.2016) by The Pensions Act 2014 (Abolition of Contracting-out for Salary Related Pension Schemes) (Consequential Amendments and Savings) Order 2016 (S.I. 2016/200), arts. 1(2), **23(a)**

F5 Reg. 3(1)(h) substituted (30.3.2006) by Occupational Pension Schemes (Republic of Ireland Schemes Exemption (Revocation) and Tax Exempt Schemes (Miscellaneous Amendments)) Regulations 2006 (S.I. 2006/467), regs. 1(2), **7(2)**

F6 Reg. 3(1)(h)(ii) and word omitted (31.12.2020) by virtue of The Occupational and Personal Pension Schemes (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/192), regs. 1, **20(2)**; 2020 c. 1, Sch. 5 para. 1(1)

- F7** Reg. 3(1)(j)(i) substituted (6.4.2007) by [Occupational and Personal Pension Schemes \(Miscellaneous Amendments\) Regulations 2007 \(S.I. 2007/814\)](#), regs. 1, **12(2)(a)**
- F8** Section 23 is substituted by section 36(3) of the Pensions Act 2004.
- F9** Reg. 3(1)(k)(i) substituted (6.4.2007) by [Occupational and Personal Pension Schemes \(Miscellaneous Amendments\) Regulations 2007 \(S.I. 2007/814\)](#), regs. 1, **12(2)(b)(i)**
- F10** Word in reg. 3(1)(k)(ii) inserted (6.4.2007) by [Occupational and Personal Pension Schemes \(Miscellaneous Amendments\) Regulations 2007 \(S.I. 2007/814\)](#), regs. 1, **12(2)(b)(ii)**
- F11** Word in reg. 3(1)(l) omitted (6.4.2007) by virtue of [Occupational and Personal Pension Schemes \(Miscellaneous Amendments\) Regulations 2007 \(S.I. 2007/814\)](#), regs. 1, **12(2)(c)**
- F12** Reg. 3(1)(m) omitted (6.4.2007) by virtue of [Occupational and Personal Pension Schemes \(Miscellaneous Amendments\) Regulations 2007 \(S.I. 2007/814\)](#), regs. 1, **12(2)(d)**
- F13** [Reg. 3\(1A\) inserted \(1.8.2022\) by The Occupational Pension Schemes \(Collective Money Purchase Schemes\) \(Modifications and Consequential and Miscellaneous Amendments\) Regulations 2022 \(S.I. 2022/337\)](#), regs. 1(3), **10**
- F14** Section 611A was inserted by section 75 of, and paragraph 15 of Schedule 6 to, the [Finance Act 1989 \(c. 26\)](#) and amended by section 52(1) of, and paragraph 5 of Schedule 5 to, the Finance Act 1999. The definition of “relevant benefits” was amended by section 79 of, and paragraph 10(1) of Schedule 10 to, the Finance Act 1999.
- F15** [Reg. 3\(3\) inserted \(6.4.2016\) by The Pensions Act 2014 \(Abolition of Contracting-out for Salary Related Pension Schemes\) \(Consequential Amendments and Savings\) Order 2016 \(S.I. 2016/200\)](#), arts. 1(2), **23(b)**

Corresponding PPF liability: modifications of the pension compensation provisions etc.

4.—(1) For the purposes of section 73 of the 1995 Act, when determining the corresponding PPF liability in relation to any liability of a scheme to or in respect of a member for pensions or other benefits, the pension compensation provisions apply as if—

- (a) those provisions applied to all schemes to which section 73 of the 1995 Act applies and any reference in the pension compensation provisions to members, employers or any other expression the construction of which is dependent on the meaning of “scheme” were to be read accordingly (but subject to the following provisions of this regulation);
- (b) sections 140 to 142, 164 and 168(2)(a) and (c) to (f) of the 2004 Act were omitted;
- (c) Schedule 7 to that Act (pension compensation provisions) applied—
 - (i) with the substitution for the references in paragraphs 5(4A), 15(5A) and 19(5A) ^{F16} to the Board of references to the trustees or managers of the scheme;
 - (ii) with the substitution for the references in paragraphs 20(1)(a) and 32(1)(a) to the commencement of the assessment period of references to the commencement of the winding up period;
 - (iii) with the substitution for the reference in paragraph 35(4) to the time immediately before the assessment period which begins on the assessment date of a reference to the time immediately before the winding up period begins;
 - (iv) with the addition at the end of paragraph 35(5) of the words—

“and in this sub-paragraph as it applies for the purposes of section 73(4)(b) of the Pensions Act 1995, “the employer” includes both any person included by virtue of regulation 4(1)(a) of the Occupational Pension Schemes (Winding up etc.) Regulations 2005 and any person who is the employer apart from by virtue of that regulation.”;
 - (v) with the substitution for other references to the assessment date of references to the winding up date; and

- (vi) with the omissions specified in paragraph (2);
 - (d) no determination might be made under paragraph 29 of Schedule 7 (Board's powers to alter rates of revaluation and indexation) after the time as at which the corresponding PPF liability is determined for the purposes of section 73 of the 1995 Act;
 - (e) no order might be made under paragraph 30 of that Schedule (Secretary of State's powers to vary any percentage paid as compensation) after that time;
 - (f) the Pension Protection Fund (Compensation) Regulations 2005 applied with the modifications specified in paragraph (3); and
 - (g) (so far as they are included in the pension compensation provisions) the Pension Protection Fund (Hybrid Schemes) (Modification) Regulations 2005 ^{F17} applied with the substitution for the reference in regulation 3(2) of those Regulations to the assessment date of a reference to the winding up date.
- (2) The omissions are—
- (a) paragraphs 2, 20(4), 23A ^{F18}, 24, 25, 27 and 31A ^{F19} and all references to those paragraphs;
 - (b) in paragraph 26—
 - (i) in sub-paragraphs (2)(b)(i), (6B)(a) ^{F20} and (9)(a) and (b), the words “or a connected occupational pension scheme”;
 - (ii) in sub-paragraph (6B)(b) the words “or a relevant connected occupational pension scheme”; and
 - (iii) the words following sub-paragraph (6B)(b).
- (3) The modifications are—
- (a) in regulation 4 (compensation for surviving dependants)—
 - (i) in paragraph (2) omit the words following “otherwise”;
 - (ii) for regulation 4(3) substitute—

“(3) In the case of a surviving dependant the circumstances are where the admissible rules of the scheme provide for the payment of pension or other benefits to that person.”;
 - (b) for references in regulations 5, 6, 9, 10(1), 11(1), 12(1), 13, 14 and 15 to the assessment date, wherever they occur, substitute references to the winding up date; and
 - (c) omit regulation 16 (modification of admissible rules).
- (4) In this regulation—
- (a) “corresponding PPF liability” has the meaning given in section 73(5) of the 1995 Act;
 - (b) “the pension compensation provisions” has the same meaning as in Part 2 of the 2004 Act (see section 162 of that Act); and
 - (c) “the winding up date” means the date on which the winding up period began or, if the crystallisation date for the scheme for the purposes of regulation 4 of the Occupational Pension Schemes (Winding Up) Regulations 1996 (calculation of amounts of liabilities) is an earlier date, that date.

^{F21}(5)

F16 Paragraphs 5, 15 and 19 are modified in their application to cash balance schemes by regulation 25 of the [Pension Protection Fund \(Compensation\) Regulations 2005 \(S.I. 2005/670\)](#).

F17 [S.I. 2005/449](#).

- F18** Paragraph 23A is inserted by regulation 3 of the Occupational Pension Schemes (Modification of Pension Protection Provisions) Regulations 2005 (S.I. 2005/705).
- F19** Regulation 3(4) of the Pension Protection Fund (Hybrid Schemes) (Modification) Regulations 2005 modifies Schedule 7 in its application to hybrid schemes so that it reads as if it contained paragraph 31A.
- F20** Sub-paragraph (6B) is inserted by regulation 22 of the Pension Protection Fund (Compensation) Regulations 2005.
- F21** [Reg. 4\(5\)](#) revoked (31.8.2005) by [Occupational Pension Schemes \(Winding Up\) \(Modification for Multi-employer Schemes and Miscellaneous Amendments\) Regulations 2005 \(S.I. 2005/2159\)](#), regs. [1\(2\)](#), [3\(2\)](#)

Early leaver's rights: deemed election for contribution refund

5. Where, on the commencement of the winding up period, a member becomes a person to whom Chapter 5 of Part 4 of the 1993 Act ^{F22} applies (early leavers: cash transfer sums and contribution refunds), that Chapter applies as if—

- (a) he had elected on the day on which that period begins for a contribution refund;
- (b) he had accordingly acquired a right to such a refund (and not a right to a cash transfer sum) under section 101AB of that Act; and
- (c) all steps required to be taken under that Chapter preliminary to that election had been taken.

F22 [Chapter 5](#) of Part 4 of the Pension Schemes Act 1993 is inserted by section 264 of the Pensions Act 2004.

Adjustments to discretionary awards

6.—(1) For the purposes of section 73A of the 1995 Act ^{F23} (operation of scheme during winding up period) and this regulation, “discretionary award”, in relation to an occupational pension scheme, means an award of a pension or other benefit under the scheme where either—

- (a) entitlement to the award arises as a result of the exercise of a discretion conferred by the scheme rules that may be exercised in circumstances specified in those rules; or
- (b) the amount awarded depends on the exercise of such a discretion.

(2) Where section 73A of the 1995 Act applies, the circumstances in which trustees or managers of the scheme are required to adjust any such entitlement as is referred to in section 73A(7)(a) are where—

- (a) the entitlement to a pension or other benefit is—
 - (i) the entitlement of a member; or
 - (ii) the entitlement to a pension or other benefit in respect of a member other than a member who dies during the winding up period; and
- (b) it appears to the trustees or managers that as a result of—
 - (i) the discretionary award in question;
 - (ii) that award and any other awards under the scheme rules to which section 73A(7)(a) applies; or
 - (iii) all the awards under the scheme rules to which that section applies and any entitlements in respect of the member to which section 73A(7)(b) applies (“survivor entitlements”),

the total amount of the liability for pensions and other benefits in respect of the member is greater than it was immediately before the commencement of the winding up period.

- (3) In those circumstances, the trustees or managers are required to adjust the entitlement—
- (a) to the discretionary award;
 - (b) to that award and the other awards mentioned in paragraph (2)(b)(ii); or
 - (c) to the awards and entitlements mentioned in paragraph (2)(b)(iii),

in such manner as they think fit so that the total amount of that liability does not exceed its amount immediately before the commencement of the winding up period.

(4) If—

- (a) the commencement of the winding up of the scheme is backdated (whether in accordance with section 154 of the 2004 Act or otherwise); and
- (b) the requirement under paragraph (3) to adjust any entitlement arises as a result of that backdating,

the adjustment must be made with effect from the time the award takes effect.

(5) Where a discretionary award takes effect during a period that is a winding up period or an assessment period in relation to a scheme, the trustees or managers of the scheme must give the person to whom the award is made notice in writing not later than one month after the date on which the award is made—

- (a) that the award may be adjusted by virtue of this regulation; or
- (b) where the award takes effect before the scheme has begun to be wound up, that it may be so adjusted if the scheme begins to be wound up and the commencement of the winding up is backdated.

(6) Such a notice may be given [^{F24}in accordance with regulations 26 to 28 (giving information and documents) of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013] and, if the person to whom it is given is not in employment to which the scheme relates, is to be treated as having been given if it is sent to him by post to his last address known to the trustees or managers.

F23 Section 73A is inserted by section 270 of the Pensions Act 2004.

F24 Words in [reg. 6\(6\)](#) substituted (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. 13\(2\)](#)

Adjustments to survivors' benefits

7.—(1) Where section 73A of the 1995 Act applies, the circumstances in which trustees or managers of the scheme are required to adjust any such entitlement as is referred to in section 73A(7) (b) are where—

- (a) it appears to the trustees or managers that as a result of—
 - (i) the entitlement in question having arisen; or
 - (ii) that entitlement and any other entitlements under the scheme rules to which section 73A(7)(b) applies having arisen;

the amount of the total liability for pensions and other benefits in respect of the member is greater than it was immediately before the commencement of the winding up period, or

- (b) regulation 6(3) requires the trustees or managers to adjust the entitlement.

(2) In the circumstances mentioned in paragraph (1)(a), the trustees or managers are required to adjust the entitlement or entitlements in such manner as they think fit so that the total amount of the liability for pensions and other benefits in respect of the member does not exceed its amount immediately before the commencement of the winding up period.

(3) See regulation 6(3) for the manner in which the trustees or managers are required to adjust the entitlement or entitlements where that regulation applies.

(4) If—

- (a) the commencement of the winding up of the scheme is backdated (whether in accordance with section 154 of the 2004 Act or otherwise); and
- (b) the requirement under paragraph (2) to adjust any entitlement arises as a result of that backdating,

the adjustment must be made with effect from the time the award takes effect.

(5) Where any such entitlement of a person as is referred to in section 73A(7)(b) of the 1995 Act arises during a period that is a winding up period or an assessment period in relation to a scheme, the trustees or managers of the scheme must give the person notice in writing not later than one month after the date on which it arises—

- (a) that it may be adjusted by virtue of this regulation; or
- (b) where the entitlement arises before the scheme has begun to be wound up, that it may be so adjusted if the scheme begins to be wound up and the commencement of the winding up is backdated.

(6) Such a notice may be given [^{F25}in accordance with regulations 26 to 28 (giving information and documents) of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013] and is to be treated as having been given to the person if it is sent to him by post to his last address known to the trustees or managers.

F25 Words in [reg. 7\(6\)](#) substituted (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. 13\(3\)](#)

Entitlement to death benefits treated as arising before commencement of winding up period

8.—(1) This regulation applies where—

- (a) an occupational pension scheme to which section 73 of the 1995 Act applies is being wound up;
- (b) a member of the scheme died before the winding up began;
- (c) during the winding up period a person (“the beneficiary”) becomes entitled under the scheme rules to one or more benefits within paragraph (2) in respect of the member; and
- (d) the beneficiary could have become so entitled before the winding up period began had the trustees or managers of the scheme taken any action earlier.

(2) The benefits are—

- (a) a pension of a kind permitted by the pension death benefit rules set out in section 167 of the Finance Act 2004 (pension death benefit rules); and
- (b) a lump sum of a kind permitted by the lump sum death benefit rule set out in section 168 of that Act (lump sum death benefit rule).

(3) For the purposes of section 73B(6)(a) ^{F26} (liabilities to which the winding up provisions do not apply)—

- (a) the beneficiary's entitlement to payment of so much of the pension (if any) as is attributable to the period between the member's death and the commencement of the winding up period; and
 - (b) the beneficiary's entitlement to payment of the lump sum,
- are to be treated as having arisen immediately before the commencement of the winding up period.
- (4) In the case of a scheme which begins to be wound up before 6th April 2006, this regulation has effect as if the benefits referred to in paragraph (2) were—
- (a) a pension payable to the deceased member's [^{F27}former spouse, former civil partner] or dependant; and
 - (b) a lump sum calculated by reference to the member's remuneration.

F26 Section 73B is inserted by section 270 of the Pensions Act 2004.

F27 Words in reg. 8(4)(a) substituted (6.4.2007) by [Occupational and Personal Pension Schemes \(Miscellaneous Amendments\) Regulations 2007 \(S.I. 2007/814\)](#), regs. 1, **12(3)**

Calculation of the value or amount of scheme assets and liabilities

9. [^{F28}For regulations 4 to 4C] of the Occupational Pension Schemes (Winding Up) Regulations 1996 ^{F29} (calculation of amounts of liabilities) substitute—

“Calculation of the value or amount of scheme assets and liabilities

4.—(1) The liabilities of a scheme to which section 73 applies and their amount or value must be determined, calculated and verified by the actuary of the scheme—

- (a) on the assumption that any questions relating to any person's entitlement to a pension or other benefit are to be determined as at the crystallisation date;
- (b) on the assumption that liabilities in respect of pensions or other benefits will be discharged by the purchase of annuities of the kind described in section 74(3)(c) ^{F30} (discharge of liabilities: annuity purchase) and include the expenses involved in discharging them;
- (c) subject to sub-paragraph (b) and paragraph (4), on the general assumptions specified in regulations 7(2), (3) and (7) to (10) and 8(2) of the MFR Regulations ^{F31} (determination and valuation of liabilities and further provisions as to valuation: methodology, assumptions, etc.) so far as they relate to the calculation and verification of liabilities; and
- (d) otherwise in accordance with the guidance given in GN 19 ^{F32}, so far as that guidance applies for the purposes of these Regulations.

(2) For the purpose of paragraph (1)(b) the actuary must estimate the cost of purchasing the annuities.

(3) A calculation of the value or amount of the liabilities of a scheme for the purposes of section 73 must be accompanied by a statement that it is in accordance with the guidance mentioned in paragraph (1)(d).

(4) For the purposes of this regulation, regulations 7 and 8 of the MFR Regulations are modified as follows—

- (a) references in regulations 7(3), (7) and (8) and 8(2) of the MFR Regulations to the relevant date are to be taken as references to the date as at which the calculation is

made (being a date not earlier than the crystallisation date or the commencement of winding up, if later);

- (b) in regulation 7(3) the words “subject to paragraphs (4) and (5)” are omitted; and
- (c) paragraph (i) of regulation 8(2)(a) is omitted.

(5) Paragraph (6) applies if, when the assets of the scheme are applied in accordance with section 73(3) towards satisfying any liability of the scheme mentioned in section 73(4), that liability, as calculated in accordance with the rules of the scheme (without any reduction by reason of its falling within a class of liability which is to be satisfied after another class), is in the opinion of the actuary fully satisfied by applying assets of a value less than the amount of that liability calculated in accordance with paragraph (1).

(6) If this paragraph applies the amount to be taken as the amount of that liability for the purposes of section 73(3) is to be reduced accordingly.

(7) Paragraph (8) applies if, when the assets of the scheme are so applied, the liabilities mentioned in section 73(3), as calculated in accordance with the rules of the scheme (without any reduction by reason of their falling within a class of liability which is to be satisfied after another class), cannot in the opinion of the actuary be fully satisfied by applying assets of a value equal to the amount of those liabilities calculated in accordance with paragraph (1).

(8) If this paragraph applies the amount to be taken as the amount of those liabilities for the purposes of section 73(3) is to be increased accordingly.

(9) If section 73 does not apply to any liability by virtue of—

- (a) section 73B(6)(d) (which provides that the winding up provisions do not apply to liabilities the discharge of which is validated under section 136 of the Pensions Act 2004); or
- (b) regulation 10(2) of the Occupational Pension Schemes (Winding up etc.) Regulations 2005 (which makes similar provision as respects liabilities discharged by virtue of regulations under section 135(4) of that Act),

the value of any corresponding assets is to be deducted from the value of the assets of the scheme for the purposes of section 73.

(10) For the purposes of paragraph (9), “the value of any corresponding assets” means—

- (a) in a case where assets of the scheme at the crystallisation date are transferred from the scheme in consideration for the discharge, the value of those assets at that date; and
- (b) in a case where assets that are not assets of the scheme at that date are so transferred, the value of those assets at the date of the discharge.

(11) Subject to paragraph (12), in this regulation “the crystallisation date” means—

- (a) in the case of a scheme where—
 - (i) the trustees or managers determined (whether in pursuance of section 38 (power to defer winding up) or otherwise) that the scheme was not for the time being to be wound up, despite rules otherwise requiring it to be so;
 - (ii) the time when the paragraph of section 73(4) into which the liability in respect of any person falls is determined is fixed under the provisions of the scheme; and
 - (iii) that time falls on or after the date of the determination mentioned in paragraph (i) and before the date on which the scheme begins to be wound up,

the date when that time occurs; and

- (b) otherwise, the date on which the scheme begins to be wound up.
 - (12) Where the trustees or managers of a scheme—
 - (a) determined before 6th April 1997 that the scheme was not for the time being to be wound up, despite rules otherwise requiring it to be so; and
 - (b) before that date determined a time (being a time before 6th April 1997) when the amounts or descriptions of liabilities of the scheme were to be determined for the purposes of any rule of the scheme requiring the assets of the scheme to be applied on winding up in satisfying the amounts of certain liabilities to or in respect of members before other such liabilities,
- the date when that time occurs is the crystallisation date.”.

- F28** Words in [reg. 9](#) substituted (31.8.2005) by [Occupational Pension Schemes \(Winding Up\) \(Modification for Multi-employer Schemes and Miscellaneous Amendments\) Regulations 2005 \(S.I. 2005/2159\)](#), regs. 1(2), 3(3)
- F29** Regulation 4(1) is amended by regulation 2 of [S.I. 2004/403](#) and regulation 2(2) of [S.I. 2005/72](#). (See also regulations 4A and 4B which are inserted respectively by regulation 3(3) of [S.I. 2002/380](#) and regulation 2(5) of [S.I. 2004/403](#)). Regulation 4C is inserted by regulation 2(4) of [S.I. 2005/72](#).
- F30** Section 74(3)(c) was amended by [S.I. 2001/3649](#).
- F31** [S.I. 1996/1536](#); relevant amending instruments are [S.I. 1997/786](#) and 2000/2691.
- F32** The publication GN19 may be obtained from the Institute of Actuaries, Staple Inn Hall, High Holborn, London WC1V 7QJ and from the Faculty of Actuaries, Maclaurin House, 18 Dublin Street, Edinburgh EH1 3PP.

Discharge of liabilities during assessment period

10.—(1) This regulation applies in any case where any liability of a scheme in respect of a member has been discharged by virtue of regulations under section 135(4) of the 2004 Act (power to make regulations permitting discharge of scheme's liabilities during an assessment period).

(2) Sections 73 to 73B of the 1995 Act (except section 73B(4)(b)(iii)) apply as if references to liabilities did not include the discharged liability.

(3) Section 74(2) and (4) of the 1995 Act ^{F33} applies as if the trustees or managers of the scheme had—

- (a) in accordance with arrangements prescribed under section 74(2) of that Act, provided for the discharge of the discharged liability in one or more of the ways mentioned in section 74(3) of that Act; and
- (b) applied any amount available to them in accordance with section 73 of that Act in one or more of those ways.

- F33** [Section 74\(2\)](#) and (4) is amended by sections 270(2)(b) and (d) and 320 of, and Part 1 of Schedule 13 to, the Pensions Act 2004.

Requirements to be met where liabilities discharged on winding up

11. In regulation 8 of the Occupational Pension Schemes (Winding Up) Regulations 1996 (requirements to be satisfied by transferee schemes, annuities etc.) after paragraph (5) add—

“(6) For the purposes of section 74(3)(e) ^{F34} (liabilities treated as discharged where the trustees have provided for them to be discharged by the payment of a cash sum

in circumstances where prescribed requirements are met), the circumstances which are prescribed are—

- (a) where the payment is a contribution refund under Chapter 5 of Part 4 of the 1993 Act; or
- (b) where the payment—
 - (i) is made to a member who has a right under the scheme rules to the payment of a lump sum that is a trivial commutation lump sum or a winding up lump sum for the purposes of Part 1 of Schedule 29 to the Finance Act 2004 (see paragraphs 7 to 10 of that Schedule (registered pension schemes: authorised lump sums: trivial commutation lump sum and winding up lump sum)); and
 - (ii) does not contravene any trivial commutation restriction that applies in the circumstances in question.
- (7) In this regulation “trivial commutation restriction” means a restriction imposed by—
 - (a) regulation 19, 20 or 60 of the Occupational Pension Schemes (Contracting-out) Regulations 1996 ^{F35} (lump sum benefits and salary related contracted-out schemes, trivial commutation of benefits derived from section 9(2B) rights and trivial commutation of guaranteed minimum pensions);
 - (b) regulation 2 of the Occupational Pension Scheme (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997 ^{F36} (commutation of a pension under an occupational pension scheme); or
 - (c) regulation 3(2)(b) of the Pension Sharing (Pension Credit Benefit) Regulations 2000 ^{F37} (commutation of the whole of pension credit benefit).
- (8) Before 6th April 2006 this regulation applies with the modification in paragraph (9).
- (9) For paragraph (6)(b)(i) substitute—
 - “(i) extinguishes the whole or part of the person's entitlement to benefits under the scheme;
 - (ia) does not contravene Revenue restrictions; and”.
- (10) For the purposes of this regulation a payment does not contravene Revenue restrictions if—
 - (a) in the case of a scheme that is an approved scheme for the purposes of Chapter 1 of Part 14 of the Income and Corporation Taxes Act 1988 (see section 612(1) of that Act), it is permitted under the scheme rules in accordance with its approval for those purposes; and
 - (b) in the case of a scheme that is a relevant statutory scheme for those purposes (see section 611A of that Act), it is permitted under the regulations or rules governing the scheme as such a scheme.”.

F34 Paragraph (e) is inserted by section 270(2)(c) of the Pensions Act 2004.

F35 [S.I. 1996/1172](#); relevant amending instruments are [S.I. 1997/786](#), 2000/2975 and 2002/681.

F36 [S.I. 1997/785](#); the relevant amending instrument is [S.I. 2002/681](#).

F37 [S.I. 2000/1054](#).

Commencement of winding up

12.—(1) Regulation 12 of the Occupational Pension Schemes (Winding Up Notices and Reports etc.) Regulations 2002 ^{F38} (time when winding up taken to begin) does not apply in any case where

in accordance with section 124(3A) to (3E) of the 1995 Act a scheme begins to wind up on or after 6th April 2005.

(2) Accordingly, in such a case—

(a) that section applies for the purpose of determining the time when that scheme winds up for the purposes of—

(i) sections 73 to 74 of the 1995 Act;

(ii) these Regulations; and

(iii) the Occupational Pension Schemes (Winding Up) Regulations 1996; and

(b) regulation 2 of those Regulations does not apply.

(3) If immediately before 6th April 2005 a scheme was regarded as having begun to be wound up for any purpose by virtue of regulation 2 of the Occupational Pension Schemes (Winding Up) Regulations 1996, paragraphs (1) and (2) do not affect the time when it is to be taken as having begun to be wound up for that purpose.

F38 [S.I. 2002/459](#).

Multi-employer sectionalised schemes, schemes with partial government guarantee and partly foreign schemes

13. In any case where, by virtue of regulation 12, 12A or 12B of the Occupational Pension Schemes (Winding Up) Regulations 1996 ^{F39} (winding up of sectionalised schemes, schemes with partial government guarantee and partly foreign schemes), sections 73 to 74 of the 1995 Act apply to a scheme as if different parts of the scheme were separate schemes, these Regulations (apart from this regulation) also so apply.

F39 [Regulation 12](#) is amended by [S.I. 1997/786](#) and the Schedule to these Regulations. Regulations 12A and 12B are inserted by the Schedule to these Regulations.

Consequential amendments

^{F40}**14.**

F40 [Reg. 14](#) revoked (6.4.2006 for certain purposes) by [Occupational Pension Schemes \(Payments to Employer\) Regulations 2006 \(S.I. 2006/802\)](#), reg. 1, [Sch. 2](#)

Changes to legislation:

There are currently no known outstanding effects for the The Occupational Pension Schemes (Winding up etc.) Regulations 2005, Winding up.