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STATUTORY INSTRUMENTS

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**2005 No. 72**

**The Occupational Pension Schemes (Winding Up, Deficiency on Winding Up and Transfer Values) (Amendment) Regulations 2005**

**Amendment of the Deficiency on Winding Up Regulations**

**3.—**(1) The Deficiency on Winding Up Regulations shall be amended as provided for by the following paragraphs of this regulation.

(2) In regulation 3(1) (calculation of the value of scheme liabilities and assets) for “regulations 3A and 3B” there shall be substituted “regulations 3A to 3D”.

(3) At the beginning of regulation 3B(1) (valuation of liabilities where employer not insolvent and where winding up commences on or after 11th June 2003) there shall be inserted “Subject to regulation 3C.”.

(4) After regulation 3B, there shall be inserted the following regulations—

**“Valuation of liabilities where winding up commences, and date of calculation falls, on or after 15 February 2005**

**3C.—**(1) This regulation shall apply in the case of a scheme which begins to wind up on or after 15 February 2005 (“the commencement date”), and the date by reference to which the liabilities and assets of the scheme are determined, calculated and verified for the purposes of section 75 is a date falling on or after the commencement date.

(2) In the case of a scheme to which this regulation applies, regulation 3 shall have effect as if—

(a) in paragraph (1)—

(i) at the beginning of sub-paragraph (a), there were inserted the words “except to the extent that the liabilities are in respect of any entitlement to a pension or other benefit that has arisen under the scheme and in respect of which paragraph (1B) applies,”;

(ii) for the words “paragraphs (2) and (3)” in sub-paragraph (a), there were substituted the words “paragraphs (2)(a) to (c) and (3)”;

(iii) for the words “paragraphs (3) and (4)” in sub-paragraph (b), there were substituted the words “paragraphs (1B), (3) and (4)”;

(iv) for the words “regulations 3(2) and (3)” in sub-paragraph (c), there were substituted the words “regulations 3(2)(a) to (c) and (3)”;

(v) after the words “and 4 to 8 of the MFR Regulations” in sub-paragraph (c), there were inserted the words “or as respects paragraphs (1A) and (1B)”;

(b) after paragraph (1) there were inserted the following paragraphs:

“(1A) The liabilities of a scheme which are to be taken into account under paragraph (1) above shall include all expenses (except the cost of annuities taken into account by virtue of paragraph (1B)) which, in the opinion of the trustees or

managers of the scheme, are likely to be incurred in connection with the winding up of the scheme.

- (1B) When calculating the liabilities of the scheme for any—
- (a) accrued rights that exist on or before the applicable time to the payment of any pension or other benefit under the scheme (including any increase to a pension);
  - (b) future pensions, or other future benefits, attributable (directly or indirectly) to pension credits (including any increase to a pension) which have arisen on or before the applicable time; and
  - (c) entitlement to the payment of a pension or other benefit (including any increase in a pension) that has arisen on or before the applicable time,

it shall be assumed that all such liabilities will be discharged by the purchase of annuities of the type described in section 74(3)(c) and, for the purposes of the calculation, the actuary shall estimate the costs of purchasing any such annuities.

#### **Valuation of liabilities where there is more than one employer**

**3D.—**(1) This regulation shall apply where there is a scheme to which regulation 4 (multi-employer schemes) applies (including a section of a scheme in relation to which there is more than one employer which is treated as a separate scheme for the purposes of section 75) and the circumstances described in paragraph (2) apply.

- (2) The circumstances are that—
- (a) the scheme is not being wound up;
  - (b) a relevant insolvency event occurs in relation to an employer in relation to the scheme; and
  - (c) the applicable time is on or after 15 February 2005.

(3) In the case of a scheme to which this regulation applies, regulation 3 shall have effect with the modifications set out in regulation 3C(2)(a) and (b).”.”

(5) In the Note at the end of the form of certificate set out in Schedule 1 (form of actuary’s certificate), for “does not reflect the cost” there shall be substituted “may not reflect the actual cost”.