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STATUTORY INSTRUMENTS

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**1990 No. 2021**

**PENSIONS**

**The Occupational Pension Schemes  
(Modification) Regulations 1990**

<i>Made</i>	- - - -	<i>15th October 1990</i>
<i>Laid before Parliament</i>		<i>22nd October 1990</i>
<i>Coming into force</i>	- -	<i>12th November 1990</i>

The Secretary of State for Social Security, in exercise of powers conferred upon him by sections 64(1A) and (10A), 96(1) and (2) and 99(1) and (3) of the Social Security Act 1973(1), and of all other powers enabling him in that behalf, after considering the report of the Occupational Pensions Board on the proposals submitted to them(2), hereby makes the following Regulations:

**Citation and commencement**

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Modification) Regulations 1990.

(2) These Regulations come into force on 12th November 1990.

**Reduction of pension fund surpluses**

2.—(1) In this regulation and in regulation 3, “surplus” means the amount by which the value of the assets of the scheme exceeds the value of the liabilities, as shown by the valuation, or stated in the certificate, referred to in regulation 3(2) below.

(2) Where all the requirements of regulation 3 are satisfied, the Occupational Pensions Board may make an order under section 64(1A) of the Social Security Act 1973 to enable the surplus to be reduced or eliminated in the way or ways specified in the application for the order.

(3) Where the Board make an order for the purpose prescribed by paragraph (2) of this regulation, section 64(7) of the Social Security Act 1973 is modified so that it does not apply except insofar as it requires the Board to be satisfied that it is reasonable in all the circumstances to make the order.

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(1) 1973 c. 38. Section 64(1A) was inserted by paragraph 3 of Schedule 10 to the Social Security Act 1986 (c. 50). Section 64(10A) was inserted by paragraph 3 of Schedule 6 to the Social Security Act 1989 (c. 24). See definition of “prescribed” in section 99(1) and explanation of “regulations” in section 99(3).

(2) See section 68(1) and (2) of the Social Security Act 1973 (c. 38).

**Requirements for regulation 2 to apply**

3.—(1) The Occupational Pensions Board may make an order under section 64(1A) of the Social Security Act 1973 for the purpose prescribed by regulation 2(2) only if all the requirements of this regulation are satisfied.

(2) The first requirement is that an actuarial valuation of the assets and liabilities of the scheme produced under paragraph 2 of Schedule 22 to the Income and Corporation Taxes Act 1988(3) shows, or a certificate given under that paragraph states, that the value of the assets exceeds the value of the liabilities by a percentage which is more than the maximum prescribed for the purposes of that Schedule(4).

(3) The second requirement is that the trustees or managers of the scheme are satisfied that it is in the interests of the beneficiaries that the surplus be reduced or eliminated in the way or ways specified in the application for the order. The specified way or ways must be permitted ways of reducing or eliminating the surplus in accordance with paragraph 3 of Schedule 22 to the Income and Corporation Taxes Act 1988.

(4) The third requirement is that the proposals for reducing or eliminating the surplus are approved by the Commissioners of Inland Revenue for the purposes of Schedule 22 to the Income and Corporation Taxes Act 1988.

(5) The fourth requirement is that—

- (a) the scheme provides for the annual rate of every pension which commences or has commenced under the scheme to be increased each year by at least an amount equal to the appropriate percentage of that rate; or
- (b) the proposals for reducing or eliminating the surplus include a provision for increasing each pension under the scheme as mentioned in sub-paragraph (a).

(6) In paragraph (5) above and in this paragraph—

“annual rate”, in relation to a pension, means the annual rate of the pension, as previously increased under the rules of the scheme;

“the appropriate percentage”, in relation to an increase in the annual rate of a pension, means the percentage specified in the last revaluation order made before the increase is to take effect as the revaluation percentage for the last revaluation period of 12 months;

“pension” does not include—

- (a) a guaranteed minimum pension or any increase in such a pension under section 37A of the Social Security Pensions Act 1975(5); or
- (b) any money purchase benefit (as defined in section 66(1) of the Social Security Pensions Act 1975)(6);

“revaluation order”, “revaluation percentage” and “revaluation period” mean the same as in section 52A of the Social Security Pensions Act 1975(7).

(3) 1988 c. 1. Schedule 22 deals with the reduction of pension fund surpluses.

(4) The prescribed maximum is currently 5 per cent. (See S.I.1987/412, regulation 10(4).)

(5) 1975 c. 60. Section 37A was inserted by section 9(7) of the Social Security Act 1986 (c. 50).

(6) The definition of “money-purchase benefits” was inserted into section 66(1) by paragraph 11 of Schedule 2 to the Social Security Act 1986.

(7) Section 52A was inserted by section 2 of, and paragraph 2 of Schedule 1 to, the Social Security Act 1985 (c. 53). Paragraph 13 of Schedule 6 to the Social Security Act 1989 (c. 24) amended subsection (3) of section 52A and, for subsection (8), substituted new subsections (8) and (9).

**Reflecting overriding legislation in scheme rules**

4. The Occupational Pensions Board may make an order under section 64(1A) of the Social Security Act 1973 for the purpose of reflecting, in the rules of the scheme, any requirements of overriding legislation.

Signed by authority of the Secretary of State for Social Security.

15th October 1990

*Nicholas Scott*  
Minister of State,  
Department of Social Security

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## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations are made under section 64 of the Social Security Act 1973.

Regulation 2 allows the Occupational Pensions Board to make orders to enable schemes to reduce the amount of their surplus assets in accordance with Schedule 22 to the Income and Corporation Taxes Act 1988.

Regulation 3 sets out the requirements that must be satisfied before the Board can make an order to enable schemes to reduce the amount of their surplus assets.

Regulation 4 allows the Board to make orders to enable schemes to change their rules to reflect the requirements of overriding legislation.

The report of the Occupational Pensions Board on the draft of these Regulations which was referred to them, together with a statement by the Secretary of State showing that these Regulations give effect to the Board's recommendations, is contained in Command Paper No. 1255, published by Her Majesty's Stationery Office.