STATUTORY INSTRUMENTS

1994 No. 895

PENSIONS

The Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations 1994

Made - - - -	*23rd March 1994*
Laid before Parliament	*29th March 1994*
Coming into force - -	*19th April 1994*

The Secretary of State for Social Security, in exercise of his powers under sections 144(5), 153(5)(a) and (b), 181(1), 182(2) and (3) and 183(3) of the Pension Schemes Act 1993(**1**) and of all other powers enabling him in that behalf, after considering the report of the Occupational Pensions Board on proposals submitted to them and the Board having agreed that remaining proposals need not be referred to them(**2**), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations 1994.

(2) These Regulations come into force on 19th April 1994.

(3) These Regulations apply to every occupational pension scheme which is not a money purchase scheme.

(4) In these Regulations—

"the Act" means the Pension Schemes Act 1993;

"actuary" means—

(a) a Fellow of the Institute of Actuaries,

(b) a Fellow of the Faculty of Actuaries, or

(c) a person with other actuarial qualifications who is approved by the Secretary of State as being a proper person to act for the purposes of section 144 of the Act.

(**1**) 1993 c. 48. Section 181(1) is cited because it contains definitions of "prescribe" and "regulations".

(**2**) See section 185(1) and (6) of the Pension Schemes Act 1993 and section 173(1)(b) of the Social Security Administration Act 1992 (c. 5). The proposals referred to the Board concerned the amendment of the Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations 1992 S.I. 1992/1555. These Regulations revoke and replace those Regulations and incorporate the proposed amendments on which the Board reported. The Board have agreed that the proposal to replace the previous regulations in amended form by these Regulations need not be referred to them.

Calculation of the value of scheme liabilities and assets

2.—(1) For the purposes of section 144(1) of the Act, the value of a scheme's liabilities and assets are, subject to paragraphs (2) and (3), to be determined by being calculated and verified in accordance with the Guidance Note "Retirement Benefits Schemes — Deficiency on Winding Up (GN19)" jointly published on 1st April 1993, and revised with effect from 1st October 1993, by the Institute of Actuaries and the Faculty of Actuaries(**3**).

(2) In calculating the value of the scheme's liabilities, any provision of the scheme which limits the amount of its liabilities by reference to the amount of its assets is to be disregarded.

(3) A determination under paragraph (1) must be certified by an actuary appointed by the trustees of the scheme in question as being in accordance with the guidance referred to in that paragraph.

Scheme which applies to more than one employer

3. In the application of section 144 of the Act to a scheme which applies to earners in employments under different employers and in respect of which there are members in pensionable service under the scheme—

(a) that section is modified by adding, after subsection (1), the following subsections

"(1A) The amount of the debt due from each employer shall be such amount as, in the opinion of the actuary referred to in regulation 2(3) of the Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations 1994(**4**), bears the same proportion to the deficiency under the scheme as the amount of the scheme's liabilities attributable to employment with that employer (including liabilities in respect of any transfer credits allowed under the scheme in connection with employment with that employer) bears to the total amount of the scheme's liabilities.

(1B) Where a scheme which applies to earners in employments under different employers is divided into two or more sections and the provisions of the scheme are such that—

(a) different sections of the scheme apply to different employers,

(b) contributions payable to the scheme by an employer, or by an earner in employment under that employer, are allocated to that employer's section, and

(c) a specified part or proportion of the assets of the scheme is attributable to each section and cannot be used for the purposes of any other such section,

each section of the scheme shall be treated as a separate scheme for the purposes of this section.";

and

(b) section 144(3) is modified—

(i) by substituting the following definition for the definition of "the applicable time"—

""the applicable time" means—

(a) in relation to a scheme which is being wound up, any time—

(i) after the commencement of the winding up, or, where on the 1st July 1992(**5**) a scheme was being wound up, on or after that date, and

(**3**) Copies of the Guidance Note GN19 may be obtained from the Institute of Actuaries, Staple Inn Hall, High Holborn, London WC1V 7QJ and the Faculty of Actuaries, 23 St. Andrew Square, Edinburgh EH2 1AQ.

(**4**) S.I. 1994/895.

(**5**) 1st July 1992 is the date on which the Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations 1992 S.I. 1992/1555 came into force. Regulation 3(b) of these Regulations re-enacts regulation 3(b) of those Regulations, which are now revoked: see regulation 5 of these Regulations.

(ii) before a relevant insolvency event occurs in relation to all of the employers to whom the scheme relates; and

(b) in relation to a scheme which is not being wound up, each of the times on or after 1st July 1992 at which a relevant insolvency event occurs in relation to any of the employers to whom the scheme relates;"; and

(ii) by substituting the following definition for the definition of "the employer"—

""the employer" means every employer of persons in the description or category of employment to which the scheme relates and includes any person who was an employer of such persons immediately before the scheme—

(a) commenced winding up, or

(b) if earlier, ceased to admit new members;".

Scheme in respect of which there are no members in pensionable service

4. In the application of section 144 of the Act to a scheme in respect of which there are no members who are in pensionable service under the scheme—

(a) that section is modified in the manner provided by regulation 3(b)(ii) above;

(b) that section is further modified by inserting at the beginning of subsection (1) the words "Subject to the following provisions of this section," and by adding immediately before subsection (2), the following subsections—

"(1C) Where by virtue of subsection (1) a debt ("the debt") is due from the employer to the trustees of a scheme ("the original scheme") and—

(a) arrangements have been made by the employer and the trustees of the original scheme under which the employer will make contributions to another occupational pension scheme so as to enable that other scheme to pay benefits ("the replacement benefits") to persons who have accrued rights under the original scheme in place of the benefits that would be payable under the original scheme,

(b) contributions are made by the employer in accordance with those arrangements, and

(c) the replacement benefits are broadly equivalent to the benefits payable under the original scheme which they replace,

then the debt shall not be recoverable.

(1D) Where the arrangements referred to in subsection (1C) relate to part of the deficiency under the scheme then a corresponding part of the debt ("the relevant part") shall not be recoverable.

(1E) If the employer fails or ceases, in whole or in part, duly to make contributions in accordance with the arrangements referred to in subsection (1C), or a relevant insolvency event occurs in relation to that employer, the debt or, as the case may be, the relevant part of it, shall again be recoverable.

(1F) Any amounts paid by the employer under arrangements to fund the provision of replacement benefits in accordance with subsection (1C) shall be offset against the debt or, as the case may be, the relevant part of the debt.

(1G) Where arrangements have been made to which subsection (1C) relates, the trustees of the original scheme may assign all such rights and powers as they possess in relation to the debt, or, as the case may be, the relevant part of the debt, to the trustees or managers of the scheme providing the replacement benefits.";

and

(c) where there is more than one employer within the meaning of that term as modified by paragraph (a) above, that section is further modified in the manner provided by regulation 3(a) and (b)(i) above.

Revocations

5. The Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations 1992(**6**) are revoked.

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

William Hague
Parliamentary Under-Secretary of State,
Department of Social Security

23rd March 1994

(**6**) S.I. 1992/1555.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 144 of the Pension Schemes Act 1993 (which re-enacts provisions previously contained in section 58B of the Social Security Pensions Act 1975) provides for deficiencies in the assets of an occupational pension scheme on a winding up to be a debt due from the employer to the trustees of the scheme. Regulations made under section 58B, namely, the Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations 1992 ("the 1992 Regulations"), made provision for calculating scheme liabilities and assets and for the modification of section 58B in certain circumstances.

These regulations replace, in amended form, the 1992 Regulations.

Regulation 2 makes new provision in relation to the calculation of scheme assets and liabilities. It provides for such calculations to be made in accordance with the valuation method set out in Guidance Note GN19 published by the Institute of Actuaries and the Faculty of Actuaries.

Regulations 3 and 4 modify section 144.

Regulation 3 re-enacts provision previously contained in the 1992 Regulations concerning the allocation of a debt under section 144 between a number of employers. It also adds new provision in relation to the treatment, in certain circumstances, of each section of a scheme as a separate scheme.

Regulation 4 re-enacts provision previously contained in the 1992 Regulations in relation to schemes in respect of which there are no members in pensionable service. It also makes new provision in relation to certain circumstances where alternative arrangements are made for the payment of benefits.

The report of the Occupational Pensions Board on proposals referred to them, together with a statement by the Secretary of State showing the extent to which these Regulations give effect to their recommendations, is contained in Command Paper Cm. 2531 published by Her Majesty's Stationery Office. To the extent that these Regulations replace the 1992 Regulations, the Board agreed that proposals need not be referred to them.

These Regulations do not impose any new costs on businesses.