

1996 No. 1975

PENSIONS

The Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) Regulations 1996

Made - - - -

25th July 1996

Coming into force -

6th April 1997

Whereas a draft of these Regulations was laid before Parliament in accordance with the provisions of section 175(2) of the Pensions Act 1995(a) and approved by resolution of each House of Parliament:

Now, therefore, the Secretary of State for Social Security in exercise of powers conferred on him by sections 41(1) and (6), 116(1), 124(1) and 174(2) and (3) of the Pensions Act 1995(b), and of all other powers enabling him in that behalf, by this instrument, which is made before the end of the period of six months beginning with the coming into force of the provisions of Part I of that Act by virtue by which they are made(c), hereby makes the following regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) Regulations 1996 and shall come into force on 6th April 1997.

(2) In these Regulations—

“ear-marked scheme” means an occupational pension scheme ▶¹under which all the benefits other than death benefits are money purchase benefits and all the benefits ◀ are secured by one or more policies of insurance or annuity contracts and such policies or contracts are specifically allocated to the provision of benefits for individual members or any other person who has a right to benefits under the scheme;

▶²“group of companies” has the meaning given by section 71 of the Finance Act 2005(d); ◀

▶³“money purchase benefits” has the same meaning as in section 181(1) of the Pension Schemes Act 1993◀(e); and

“scheme year” means—

- (a) a year specified for the purposes of the scheme in any document comprising the scheme or, if none, a period of 12 months commencing on 1st April or on such date as the trustee or managers select; or
- (b) such other period (if any) exceeding 6 months but not exceeding 18 months as is selected by the trustees or managers in connection with—
 - (i) the commencement or termination of the scheme, or
 - (ii) a variation of the date on which the year or period referred to in paragraph (a) is to commence.

¹Defn. amended in reg. 1(2) by reg. 13(2) of S.I. 1997/786 as from 6.4.97.

²Defn. of “group of companies” inserted in reg. 1(2) by reg. 2(2) of S.I. 2005/2426 as from 22.9.05.

³Defn. amended by reg. 13(2) of S.I. 1997/786 as from 6.4.97.

(a) 1995 c. 26.

(b) Section 124(1) is cited because of the meaning ascribed to “prescribed” and “regulations”.

(c) See section 120(2)(c) of the Pensions Act 1995. This provides that the requirement to consult does not apply where regulations are made before the end of six months beginning with the coming into force of the provisions of Part I of the Pensions Act 1995 by virtue of which they are made.

(d) 2005 c. 7.

(e) 1993 c. 48.

- (3) In these Regulations, unless the context otherwise requires, a reference—
- (a) to a numbered regulation is to the regulation bearing that number in these Regulations;
 - (b) in a regulation to a numbered paragraph is to the paragraph bearing that number in that regulation.

Requirement of trustees or managers to obtain documents

¹Words in reg. 2(1) & 2(2) substituted and reg. 2(2B) inserted by reg. 2(3)(a)-(c) of S.I. 2005/2426 as from 22.9.05.

2.—(1) ¹Subject to paragraphs (2), (2A) and (2B) ²where the requirement of section 47(1)(a) of the Pensions Act 1995 (requirement to appoint an individual or a firm as auditor) applies, the trustees or managers of an occupational pension scheme shall obtain not more than seven months after the end of each scheme year which ends on or after 6th April 1997—

- (a) accounts, prepared in accordance with regulation 3, audited by the auditor;
- (b) the auditor's statement, prepared in accordance with regulation 4, about contributions under the scheme.

See reg. 3(a) & (b) of S.I. 2010/8 at page 5.7191 for details of modifications to reg. 2 as from 5.7.10.

¹(2) In the case of an ear-marked scheme, the requirements contained in paragraph (1)(a) shall not apply and the trustees and managers of such a scheme shall—

- (a) upon receiving a written request from a person specified in section 41(4) of the Pensions Act 1995—
 - (i) make available a copy of the most recent accounts published in relation to the insurance companies (whether as part of a group of companies or otherwise) with which they hold ear-marked policies of insurance or annuity contracts in relation to that person; and
 - (ii) make that information available to the person who requested it within a reasonable time of receiving the request; and
- (b) provide each scheme member within 12 months of the end of each scheme year with a statement detailing the amount of contributions credited to him during that scheme year. ²

[Regulations 2(2A) revoked by S.I. 2006/467.]

²Reg. 2(2AA) inserted by para. 4(2) of Sch. 9 to S.I. 2013/2734 as from 6.4.14.

²(2AA) Information may be made available under paragraph (2) in accordance with regulations 26 to 28 of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (giving information and documents). ²

¹(2B) In relation to a scheme to which section 47(1)(a) of the Pensions Act 1995 does not apply, the requirement to obtain accounts in accordance with paragraph (1)(a) or an auditor's statement in accordance with paragraph (1)(b) shall apply—

- (a) to such a scheme—
 - (i) which falls within regulation 3(1)(c) or (i) of the Occupational Pension Schemes (Scheme Administration) Regulations 1996, and
 - (ii) which has 100 or more members;
- (b) to such a scheme which falls within regulation 3(1)(j), (m) or (o) of the Occupational Pension Schemes (Scheme Administration) Regulations 1996. ²

³Paras. (3) and (4) substituted for para. (3) by reg. 2 of S.I. 2000/833 as from 3.4.00.

⁴Words in reg. 2(3) substituted, & para. (4) omitted by reg. 2(3)(d) & (e) of S.I. 2005/2426 as from 22.9.05.

³(3) Where the trustees or managers of a scheme have failed without reasonable excuse to take all such steps as are necessary to secure compliance with either the requirement to obtain an auditor's statement about contributions to the scheme in accordance with paragraph (1)(a) or (b), they shall be liable to pay to ⁴the Regulator, ² within 28 days from the date of its imposition, a penalty not exceeding—

- (a) £5,000 in the case of an individual; and
- (b) £50,000 in any other case.

(4) ⁴ ²

Form and contents of the accounts audited by the auditor

3. The accounts audited by the auditor of the scheme shall—
- (a) contain the information specified in the Schedule to these Regulations;
 - (b) show a true and fair view of—
 - (i) the financial transaction of the scheme during the scheme year;
 - (ii) the amount and disposition of the assets at the end of the scheme year;
 - (iii) the liabilities of the scheme, other than the liabilities to pay pensions and benefits after the end of the scheme year; and
 - (c) contain a report by the auditor as to whether or not in his opinion the requirements of paragraphs (a) and (b) are satisfied.

Form and content of the auditor's statement

4.¹—(1)◀ The auditor's statement about contributions under the scheme shall contain—

- ▶²(a) a statement as to whether or not in his opinion contributions have in all material respects been paid at least in accordance with the schedule of contributions or payment schedule; and◀
- (b) if the statement under paragraph (a) is negative or qualified, a statement of the reasons.

▶³(2) Where there is no schedule of contributions or payment scheme in relation to the whole or part of the scheme year, the auditor's statement about contributions shall contain—

- (a) a statement as to whether or not in his opinion contributions payable to the scheme during that year or that part have been in accordance with the scheme rules or contracts under which they were payable, and (where appropriate) with the recommendation of the actuary; and
- (b) if the statement under paragraph (a) is negative or qualified, a statement of the reasons.◀

¹Reg. 4 renumbered by reg. 13(3) of S.I. 1997/786 as from 6.4.97.

²Words in reg. 4(1)(a) substituted by reg. 2(4) of S.I. 2005/2426 as from 22.9.05.

³Sub-para (2) added by reg. 13(3) of S.I. 1997/786 as from 6.4.97.

SCHEDULE

Regulation 3

CONTENTS OF ACCOUNTS AUDITED BY THE AUDITOR OF THE SCHEME

1. An account of the financial additions to, withdrawals from and changes in value of the fund of the scheme during the scheme year to which the accounts relate.

2.—(1) A statement, as at the end of the scheme year to which the accounts relate, of the assets at market value, or trustees' or managers' estimate thereof where market value is not readily ascertainable and liabilities of the scheme, other than liabilities to pay pensions and benefits after the end of that scheme year—

- (a) giving, in the case of any assets which are stated at an estimate of their market value, the reason why the valuation is an estimate;
- (b) showing the distribution of the investment and other assets of the ¹scheme between each of the following categories (where none of the investments falls within a particular category, that fact is not required to be stated), namely—
 - (i) insurance policies;
 - (ii) public sector fixed interest investments and separately showing quoted securities and unquoted securities;
 - (iii) other fixed interest investments and separately showing quoted securities and unquoted securities;
 - (iv) index-linked securities and separately showing quoted securities and unquoted securities;
 - (v) equities (including convertible shares) and separately showing quoted equities and unquoted equities;
 - (vi) property (which in this paragraph means any right or interest in freehold or leasehold land or buildings);
 - (vii) unit trusts invested in property;
 - (viii) other unit trusts;
 - (ix) managed funds (other than unit trusts) invested in property;
 - (x) other managed funds (not being unit trusts);
 - (xi) loans (whether or not secured by mortgages);
 - (xii) cash deposits and cash in hand;
 - (xiii) investments and other assets not included in heads (i) to (xii) above; and
- (c) showing separately, in the case of investments in each category, investments in the United Kingdom and investments outside the United Kingdom, and in the case of investments mentioned in heads (vii) to (x) of sub-paragraph (b) investments where the company operating the unit trust or managed funds is, and investments where it is not, a company registered in the United Kingdom.

(2) Where the assets include insurance policies which are specifically allocated to the provision of benefits for, and which provide all the benefits payable under the scheme to, particular members or other persons in respect of particular members or both, those policies must be included in the statement and there must be a note of the existence of such policies but that entry need not include their market value or an estimate.

²(3) Where the assets—

- (a) are invested only for the purposes of securing additional money purchase benefits derived from voluntary contributions ³; and
- (b) are specifically allocated to the provision of additional benefits for particular members or other persons in respect of particular members (or both),

a note that paragraph (a) and (b) apply must be included in the statement, but that entry need not include the market value or an estimate of value of those assets.

3. Where any assets or liabilities are denominated in currencies other than sterling, a translation of those assets into sterling and an explanation of the basis on which they have been translated.

¹Word altered in Sch. by reg. 13(4) of S.I. 1997/786 as from 6.4.97.

²Sub-para 2(3) added to the Sch. by reg. 13(4) of S.I. 1997/786 as from 6.4.97.

³Words in sub-para. 2(3)(a) omitted by reg. 2(5) of S.I. 2005/2426 as from 22.9.05.

4. Particulars of any investment (other than in UK Government securities) in which more than 5 per cent. of the total value of the net assets of the scheme is invested, and if any such investment is an insurance policy, a statement of its main characteristics.

▶¹5. ▶²Except in relation to a trust scheme that applies to earners in employments under different employers.◀ Where the scheme has employer-related investments, within the meaning of section 40(2) of the Pensions Act 1995, a statement—

- (a) as to the percentage of the scheme’s resources invested in such investments at the end of the scheme year; and
- (b) if that percentage exceeds 5 per cent., as to the percentage of the scheme’s resources which are investments to which ▶³regulation 13 of the Occupational Pension Schemes (Investment) Regulations 2005 (investments to which restrictions do not apply)◀ applies.◀

See reg. 3 of S.I. 2011/673 for details of modifications to para. 5 of the Sch. as from 6.4.11.

▶²5A.—(1) Where the scheme is a trust scheme that applies to earners in employments under different employers, a statement in accordance with paragraph 5 or a statement—

- (a) listing the 100 largest investments by value held by the scheme at the end of the scheme year and stating what percentage of the resources of the scheme each such investment represents;
- (b) identifying which of the investments mentioned in paragraph (a) are employer-related investments;
- (c) if, as at the end of the scheme year, more than 5 per cent of the resources of the scheme are invested in employer-related investments in contravention of section 40(1) of the Pensions Act 1995, listing the employer-related investments and the employer concerned.

(2) In sub-paragraph (1) “employer-related investments” has the meaning as in section 40(2) of the Pensions Act 1995 but as if the following words were omitted from subsection (2)—

- (a) in paragraph (a) “or by any person who is connected with, or an associate of, the employer”; and
- (b) “or any such person” in each place where they occur.◀

6. In respect of every amount shown in the accounts other than the amounts referred to in paragraph 7, a statement of the corresponding amount for the scheme year previous to the one to which the accounts relate, except in a case where regulation 2 is complied with by trustees ▶⁴or managers◀ of a scheme for the first time.

7. The total amount of the purchases and the total amount of the sales of investments during the scheme year to which the accounts relate.

8. A statement whether the accounts have been prepared in accordance with the Statement of Recommended Practice, the guidelines (“Financial Reports of Pension Scheme”) published by the Pensions Research Accountants Group or another organisation approved for this purpose by the Accounting Standards Board, current at the end of the scheme year to which the accounts relate and, if not, an indication of where there are any material departures from those guidelines.

¹Para. 5 substituted by reg. 8 of S.I. 1997/3038 as from 12.1.98.

²Words in para. 5 & para. 5A inserted into Sch. by para. 4(3) of Sch. 9 to S.I. 2013/2734 as from 6.4.14.

³Words substituted in para. 5(b) of Sch. by reg. 5 of S.I. 2006/778 as from 6.4.06.

⁴Words added to para. 6 to the Sch. by reg. 13(5) of S.I. 1997/786 as from 6.4.97.

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) Regulations 1996 (“the Regulations”) make provision in respect of documents which the trustees or managers of an occupational pension scheme must obtain.

The Regulations are made before the end of the period of six months beginning with the coming into force of the provisions of Part I of the Pensions Act 1995 by virtue of which they are made and therefore the requirement to consult does not apply.

Regulation 1 relates to citation, commencement and interpretation.

Regulation 2 requires trustees or managers to obtain accounts and the auditor’s statement within a prescribed time. Trustees or managers who fail to obtain accounts or the auditor’s statement without reasonable excuse are guilty of an offence and liable to a fine.

Regulation 3 and the Schedule makes provision in respect of the form and content of accounts.

Regulation 4 makes provision in respect of the auditor’s statement.

An assessment of the compliance cost for employers of the measures arising from the Pensions Act 1995, including regulations, has been placed in the libraries of both Houses of Parliament. Copies can be obtained by post from the Department of Social Security, Private Pensions, 11th Floor, Adelphi, 1-11 John Adam Street, London, WC2N 6HT.