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STATUTORY INSTRUMENTS

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**1996 No. 2156**

**PENSIONS**

**The Occupational Pension Schemes  
(Payments to Employers) Regulations 1996**

<i>Made</i>	- - - -	<i>19th August 1996</i>
<i>Laid before Parliament</i>		<i>27th August 1996</i>
<i>Coming into force</i>	- -	<i>6th April 1997</i>

The Secretary of State for Social Security, in exercise of the powers conferred by sections 37(3), (4) and (10), 69(3)(a) and (b), 76(2), (3) and (8), 77(4) and (6), 124(1), 125(4)(a) and 174 of the Pensions Act 1995<sup>(1)</sup> and of all other powers enabling him in that behalf, by this instrument, which contains only regulations made by virtue of, or consequential on, provisions in Part I of that Act and is made before the end of the period of 6 months beginning with the coming into force of those provisions<sup>(2)</sup>, hereby makes the following Regulations:

*Preliminary*

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Payments to Employers) Regulations 1996 and shall come into force on 6th April 1997.

(2) Unless the context otherwise requires, in these Regulations —

“the 1995 Act” means the Pensions Act 1995;

“the Authority” means the Occupational Pensions Regulatory Authority established under section 1 of the 1995 Act;

“surplus” means an excess in the value of the assets in a scheme over its liabilities by more than the maximum percentage prescribed under Schedule 22 to the Taxes Act<sup>(3)</sup>;

“the Taxes Act” means the Income and Corporation Taxes Act 1988<sup>(4)</sup>,

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(1) 1995 c. 26. Section 124(1) is cited for the meaning it gives to "prescribed" and "regulations".

(2) See section 120 of the Pensions Act 1995 which provides that the Secretary of State must consult such persons as he considers appropriate before making regulations by virtue of the provisions in Part I of that Act. This duty does not apply to regulations made before the end of 6 months from the coming into force of the provisions under which they are made or regulations which state that they are consequential on a specified enactment and are made within 6 months of the coming into force of that enactment.

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

(4) 1988 c. 1.

and any other expressions used in these Regulations have the same meaning as in Part I of the 1995 Act.

### **Meaning of “member”**

2. For the purposes of these Regulations and sections 37 and 76 of the 1995 Act, the meaning of “member” in relation to any scheme is extended to include any person who is entitled to the present payment of benefits under the scheme.

### **Application of these Regulations**

3. These Regulations do not apply to a scheme unless it is a trust scheme which is an exempt approved scheme within the meaning given by section 592(1) of the Taxes Act.

### *Payments from surplus — ongoing schemes*

### **Notice of proposed payment from surplus**

4.—(1) For the purposes of section 37 of the 1995 Act (which sets out the requirements which must be satisfied before a power to make payments to the employer out of funds held for the purposes of a scheme may be exercised) the prescribed requirements as to notice referred to in subsection (4) (e) of that section are set out in paragraphs (2) to (5).

(2) The trustees must take all reasonable steps to ensure that each member is given two written notices in accordance with the following provisions of this regulation.

(3) The first notice must be given after proposals to reduce or eliminate a surplus have been approved under paragraph 6(1) of Schedule 22 to the Taxes Act. It must —

- (a) inform the member as to —
  - (i) how it is proposed that the surplus shall be reduced or eliminated, by reference to the ways permitted under paragraph 3(3) of that Schedule; and
  - (ii) whether the requirements of section 37(4) of the 1995 Act are satisfied;
- (b) invite the member, if he wishes, to make written representations in relation to the proposals to the trustees before a specified date (which is not earlier than two months from the date on which the first notice is given);
- (c) advise the member —
  - (i) that a second notice will be given to him if the trustees intend to proceed with the proposals; and
  - (ii) that no payment may be made to the employer in accordance with the proposals until at least 3 months after the date on which the second notice is given.

(4) The second notice must be given after the date specified in accordance with paragraph (3)(b) and at least 3 months before the power is exercised. It must —

- (a) contain the information referred to in paragraph (3)(a), including any modifications to the proposals; and
- (b) advise the member that he may make written representations to the Authority before a specified date (which is not earlier than 3 months from the date on which the second notice is given) if he considers that any of the requirements of section 37(4) of the 1995 Act are not satisfied.

(5) For the purposes of paragraph (2) —

- (a) a notice shall be treated as having been given to a member if it has been sent to him by post either at the address at which he was last known to be living or, in the case of an active member, at an address at which he is known to be currently employed; and
- (b) notices are not required to be given where a member has no known address or where correspondence sent to a member's last known address has been returned.

**Circumstances in which the Authority must be satisfied that requirements of section 37 of the 1995 Act are met**

5.—(1) For the purposes of section 37(3) of the 1995 Act (which provides that, in prescribed circumstances, the power to make payments to an employer out of funds held for the purposes of a scheme cannot be exercised unless the Authority is of the opinion that the requirements of subsection (4) of that section and any prescribed requirements are satisfied) the prescribed circumstances are —

- (a) that, subject to paragraph (2), the Authority receives in relation to any proposals to which that section applies —
  - (i) written representations from a member to the effect that any of the requirements of section 37(4) of the 1995 Act are not satisfied; or
  - (ii) information from any source sufficient to raise a doubt as to whether all those requirements are satisfied; and
- (b) the Authority notifies the trustees in writing that no payment should be made to the employer in accordance with the proposals until the Authority has confirmed in writing that it is satisfied that those requirements are satisfied.

(2) Where the trustees have given notice to a member in accordance with regulation 4, paragraph 1(a)(i) will only apply in the case of representations received by the Authority from the member before the date specified in accordance with regulation 4(4)(b) (expiry date of the second notice).

**Additional requirement for purposes of section 37 of the 1995 Act**

6.—(1) For the purposes of section 37(3) of the 1995 Act (which provides for requirements to be prescribed in addition to those mentioned in section 37(4) of that Act) the requirement set out in paragraph (2) applies where —

- (a) the date specified in accordance with regulation 4(4)(b) (expiry date of the second notice) has passed; and
- (b) the trustees have not received notification from the Authority in accordance with regulation 5(1)(b).

(2) The requirement is that the trustees obtain written confirmation from the Authority that it has not received any representations or information referred to in regulation 5(1)(a) and accordingly section 37(5) of the 1995 Act does not apply.

*Distribution of excess assets — schemes winding up*

**Notice of proposal to distribute excess assets to the employer**

7.—(1) For the purposes of section 76 of the 1995 Act (which sets out the requirements which must be satisfied before a power to distribute assets to the employer on a winding up may be exercised) the prescribed requirements as to notice referred to in subsection (3)(d) of that section are set out in paragraphs (2) to (5).

(2) Where the trustees or the employer propose to exercise a power such as is referred to in paragraph (1), the trustees or, as the case may be, the employer, must take all reasonable steps to ensure that each member is given two written notices of the proposal in accordance with the following provisions of this regulation.

(3) The first notice must —

(a) inform the member as to —

- (i) the trustees' estimate of the value of the assets remaining after the liabilities of the scheme have been fully discharged and the persons or class of person to whom, and in what proportions, it is proposed that they should be distributed; and
- (ii) whether the requirements of section 76(3) of the 1995 Act are satisfied;

(b) invite the member, if he wishes, to make written representations in relation to the proposal to the trustees or, as the case may be, to the employer, before a specified date (which is not earlier than two months from the date on which the first notice is given);

(c) advise the member —

- (i) that a second notice will be given to him if the trustees or the employer, as the case may be, intend to proceed with the proposal; and
- (ii) that no excess assets may be distributed to the employer in accordance with the proposal until at least 3 months after the date on which the second notice is given.

(4) The second notice must be given after the date specified in accordance with paragraph (3)(b) and at least 3 months before the power is exercised. It must —

(a) contain the information referred to in paragraph (3)(a), including any modifications to the proposal;

(b) advise the member that he may make written representations to the Authority before a specified date (which is not earlier than 3 months from the date on which the second notice is given) if he considers that any of the requirements of section 76(3) of the 1995 Act are not satisfied.

(5) For the purposes of paragraph (2) —

(a) a notice shall be treated as having been given to a member if it has been sent to him by post either at the address at which he was last known to be living or, in the case of an active member, at an address at which he is known to be currently employed; and

(b) notices are not required to be given where a member has no known address or where correspondence sent to a member's last known address has been returned.

**Circumstances in which the Authority must be satisfied that requirements of section 76 of the 1995 Act are met**

8.—(1) For the purposes of section 76(2) of the 1995 Act (which provides that, in prescribed circumstances, the power to distribute assets to the employer on winding up cannot be exercised unless the Authority is of the opinion that the requirements of subsection (3) of that section and any prescribed requirements are satisfied) the prescribed circumstances are —

(a) that, subject to paragraph (2), the Authority receives in relation to any proposal to which that section applies —

- (i) written representations from a member to the effect that any of the requirements of section 76(3) of the 1995 Act are not satisfied; or
- (ii) information from any source sufficient to raise a doubt as to whether all those requirements are satisfied; and

(b) the Authority notifies the trustees or, as the case may be, the employer in writing that the power should not be exercised until the Authority has confirmed in writing that it is satisfied that those requirements are satisfied.

(2) Where notice has been given to a member in accordance with regulation 7, paragraph (1)(a) (i) will only apply in the case of representations received by the Authority from the member before the date specified in accordance with regulation 7(4)(b) (expiry date of the second notice).

#### **Additional requirement for purposes of section 76 of the 1995 Act**

**9.—**(1) For the purposes of section 76(2) of the 1995 Act (which provides for requirements to be prescribed in addition to those mentioned in section 76(3) of that Act) the requirement set out in paragraph (2) applies where —

- (a) the date specified in accordance with regulation 7(4)(b) (expiry date of the second notice) has passed; and
- (b) the trustees or, as the case may be, the employer have not received notification from the Authority in accordance with regulation 8(1)(b).

(2) The requirement is that the trustees or, as the case may be, the employer obtain written confirmation from the Authority that it has not received any representations or information referred to in regulation 8(1)(a) and accordingly section 76(4) of the 1995 Act does not apply.

#### **Requirement to increase benefits — maximum limits**

**10.—**(1) For the purposes of section 77 of the 1995 Act (which provides, where a scheme prohibits the distribution of assets to the employer, for excess assets to be distributed after benefits have been increased, subject to prescribed limits) the prescribed limits referred to in subsection (4) (a) are the maximum benefits that may be provided by the scheme as an exempt approved scheme within the meaning of section 592(1) of the Taxes Act.

(2) For the purposes of calculating the maximum benefits referred to in paragraph (1), final remuneration may, if the trustees so determine, be taken to be any one of the following amounts —

- (a) the amount of annual remuneration on which the scheme benefits are calculated;
- (b) the highest amount of annual remuneration on which, under the rules of the scheme, benefits could be calculated; or
- (c) the amount referred to in regulation 5(4)(f)(iii) of the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Additional Voluntary Contributions) Regulations 1993<sup>(5)</sup> (which is an amount based on the average of the total emoluments paid to an employee during the last 3 years of assessment).

#### *Miscellaneous*

#### **Modification of schemes**

**11.** For the purposes of section 69 of the 1995 Act (grounds for applying for modifications) —

- (a) a further requirement prescribed for the purposes of subsection (3)(a) of that section (which provides for modification of schemes for the purpose of reducing or eliminating a surplus) is that the second notice referred to in regulation 4 also advises the member of the requirement for an order under that section;

- (b) the prescribed requirements referred to in subsection (3)(b) of that section (which provides for modification of schemes for the purposes of distributing excess assets on winding up) are —
- (i) any requirements under section 76(3) or (4) of the 1995 Act or regulation 7 which must be satisfied before a power to distribute assets to the employer on a winding up can be exercised;
  - (ii) a requirement that the trustees are satisfied that any proposal to distribute excess assets to the employer is in the interests of the members; and
  - (iii) a requirement that the second notice referred to in regulation 7 also advises the member of the requirement for an order under section 69(3)(b) of the 1995 Act and both the first and second notice referred to in that regulation also advise the member of the requirement referred to in sub-paragraph (ii).

### **Schemes with more than one employer**

**12.—**(1) Where a scheme in relation to which there is more than one employer 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 or groups of employers (whether or not more than one section applies to any particular employer or groups including any particular employer);
- (b) contributions payable to the scheme by an employer, or by a member in employment under that employer, are allocated to that employer’s section (or, if more than one section applies to the employer, the section which is appropriate in respect of the employment in question); 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 section,

sections 37, 76 and 77 of the 1995 Act and these Regulations shall apply as if each section of the scheme were a separate scheme.

(2) Where —

- (a) a scheme which has been such a scheme as is mentioned in paragraph (1) above is divided into two or more sections some or all of which apply only to members who are not in pensionable employment under the scheme;
- (b) the provisions of the scheme have not been amended so as to prevent the conditions in paragraph (1)(a) to (c) being satisfied in relation to two or more sections; but
- (c) those conditions have ceased to be satisfied in relation to one or more sections (whether before or after 6th April 1997 ) by reason only of there being no members in pensionable service under the section and no contributions which are to be allocated to it,

sections 37, 76 and 77 of the 1995 Act and these Regulations shall apply as if each section in relation to which those conditions have ceased to be satisfied were a separate scheme.

(3) Where on the winding up of a scheme —

- (a) the liabilities of the scheme are satisfied in accordance with the requirements of section 73 of the 1995 Act; and
- (b) paragraph (1) or (2) above would apply to the scheme but for the fact that undistributed assets attributable to one section (“the first section”) may be applied to another section if —
  - (i) the annual rates of pension under the first section have been increased by the appropriate percentage; and

(ii) in relation to that section, additional benefits have been provided or the value of any benefits has been increased within the limits referred to in regulation 10, sections 76 and 77 of that Act and regulations 7 to 10 of these Regulations shall apply as if each section of the scheme were a separate scheme.

(4) In paragraph (3)(b)(i) “annual rate”, “appropriate percentage” and “pension” have the same meaning as in sections 76 and 77 of the 1995 Act.

### **Other multi-employer schemes**

**13.** In the application of section 37(4) of the 1995 Act to a scheme in relation to which there is more than one employer (other than a scheme to which regulation 12 applies), paragraph (c) of that section has effect with the substitution for the word “employer”, where it appears for the second time, of the words “person whom the employers nominate to act as their representative for the purposes of this paragraph or, if no such nomination is made, all the employers”.

### **Exemptions**

**14.** Sections 37 and 76 of the 1995 Act do not apply to a scheme where —

- (a) any Minister of the Crown has given a guarantee or made any other arrangements for the purpose of securing that the assets of the scheme are sufficient to meet its liabilities; or
- (b) arrangements for the payment of any surplus or for the distribution of any excess assets on the winding up of the scheme are provided for by virtue of any enactment or are subject to the approval of any Minister of the Crown.

### **Revocations and savings**

**15.—(1)** Subject to paragraph (2), the following regulations are revoked —

- (a) regulations 2 and 3 of the Occupational Pension Schemes (Modification) Regulations 1990<sup>(6)</sup>;
- (b) the Occupational Pension Schemes (Transitional Provisions and Savings) Regulations 1990<sup>(7)</sup>.

(2) The regulations referred to in paragraph (1) shall continue to have effect, as if these Regulations had not been made and sections 108 and 136 of the Pension Schemes Act 1993<sup>(8)</sup> had not been repealed, in the case of —

- (a) any payment to the employer out of funds held for the purposes of the scheme where an application to modify the scheme rules for the purposes of making that payment has been made before 6th April 1997; or
- (b) any distribution of excess assets to the employer in relation to a scheme which begins to be wound up before 6th April 1997.

(3) For the purposes of paragraph (2), the date on which a scheme begins to be wound up shall be determined in the same manner as it is determined for the purposes of any regulations made under section 73 of the 1995 Act.

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<sup>(6)</sup> S.I. 1990/2021, amended by S.I. 1994/1062.

<sup>(7)</sup> S.I. 1990/1530, amended by S.I. 1991/4.

<sup>(8)</sup> 1993 c. 48; sections 108 and 136 are repealed by, respectively, paragraph 25 of Schedule 3 to, and section 161 of, the Pensions Act 1995.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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

Department of Social Security  
19th August 1996

*MacKay of Ardbrecknish*  
Minister of State,



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## EXPLANATORY NOTE

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

These Regulations concern the requirements which must be satisfied before the employer may receive a payment or distribution of assets from an occupational pension scheme. The requirements are applicable only to exempt approved trust schemes.

Regulations 1 to 3 relate to preliminary matters.

Regulations 4 to 6 relate to payments to the employer from surplus approved under Schedule 22 to the Income and Corporation Taxes Act 1988. Regulation 4 prescribes requirements for notifying members of any proposals to make such a payment. Regulation 5 prescribes the circumstances in which the Occupational Pensions Regulatory Authority (“the Authority”) must be satisfied that all the relevant requirements are met. In a case where the Authority have not confirmed that they are so satisfied, regulation 6 requires that confirmation be obtained from the Authority that the circumstances provided for in regulation 5 do not apply.

Regulations 7 to 10 relate to proposals to exercise a power to distribute excess assets to the employer on the winding up of a scheme. They prescribe, in broadly similar terms, the matters provided for in regulations 4 to 6.

Regulation 10 relates to the requirement, in cases where the scheme prohibits distribution of excess assets to the employer, to increase benefits subject to prescribed limits before making such a distribution. The prescribed limits are the maximum benefits which may be provided by the scheme as an exempt approved scheme.

Regulation 11 makes provision for cases where the scheme rules require modification before a payment or distribution of assets to the employer may be made.

Regulations 12 and 13 provide for sections 37, 76 and 77 of the Pensions Act 1995 (“the 1995 Act”) to be modified in cases where a scheme has more than one employer.

Regulation 14 provides for exemptions from sections 37 and 76 of the 1995 Act.

Regulation 15 provides for revocations and savings.

As all of the regulations contained in this instrument are made either by virtue of, or consequential on, provisions in Part I of the 1995 Act and within 6 months of the coming into force of those provisions, the requirement in section 120(1) of that Act for the Secretary of State to consult such persons as he considers appropriate does not apply.

An assessment of the cost compliance 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, OPS, 11th Floor, Adelphi, 1 – 11 John Adam Street, London WC2N 6HT.