EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made primarily under Part 3 of the Pensions Act 2004 (c. 35) ("the Act"). Together with provisions in that Part, they implement article 15 and the funding requirements in article 16 of European Union Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision (OJNo. L 235, 23.9.03, p.10) ("the Directive"). They replace the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996 (S.I. 1996/1536), which are revoked together with provisions that amend those Regulations.

Section 222 of the Act imposes on every occupational pension scheme a requirement, derived from article 16 of the Directive, to hold sufficient and appropriate assets to cover the scheme's "technical provisions" — the amount required, on an actuarial calculation, to make provision for its liabilities. Regulation 3 of these Regulations identifies the assets and liabilities to be taken into account in determining whether this requirement ("the statutory funding objective") is met; regulation 4 makes provision in respect of the valuation of the assets and the determination of the amount of the liabilities, and regulation 5 prescribes matters to be taken into account and principles to be followed in calculating a scheme's technical provisions.

Section 223 of the Act requires the trustees or managers of a scheme to maintain a statement of their policy for securing that the statutory funding objective is met. Regulation 6 prescribes other matters to be covered in the statement. Sections 224 and 225 provide for actuarial valuations calculating a scheme's technical provisions, actuarial reports at intervals between valuations, and for the calculation of technical provisions to be certified by the scheme actuary. Regulation 7 includes provision about the circumstances in which "out-of-cycle" valuations are required, the content of valuations and reports, and the form of the actuary's certification.

Section 226 of the Act and regulation 8 implement provisions in article 16 of the Directive for schemes to adopt a recovery plan where a valuation indicates that the statutory funding objective has not been met. Section 227 provides for trustees or managers to maintain a schedule of contributions payable towards a scheme; regulation 9 imposes time limits in respect of the preparation and review of such schedules and regulation 10 requirements as to their content and certification. Regulation 11 requires trustees or managers to keep records of contributions made to a scheme. Regulation 12 sets out exceptions to the requirement in section 228 of the Act that any failure to pay contributions due which is likely to be of material significance must be reported to the Pensions Regulator ("the Regulator").

Under section 229 of the Act, trustees or managers are required to obtain the agreement of the employer contributing towards a scheme with regard to the calculation of technical provisions, the statement of funding principles, the recovery plan and the schedule of contributions; regulation 13 imposes a time limit for this. Section 231 sets out powers relating to the funding of a scheme which are exercisable by the Regulator in particular circumstances; regulation 14 provides that, where the contribution rate is set by someone other than the trustees or managers – such as the scheme actuary – the Regulator must take account of that person's recommendations in determining whether to exercise any of these powers.

Regulation 15 requires scheme actuaries to take account of professional guidance approved for the purposes of these Regulations. Regulation 16 enables the trustees of certain schemes to modify the terms of the scheme where additional contributions are required in order to give effect to a recovery plan. Regulation 17 exempts certain schemes from Part 3 of the Act; these are either schemes to which the Directive does not apply, or schemes that may be exempted from the requirements of the Directive under article 5 because they are guaranteed statutory schemes or because they have fewer than 100 members. The schemes exempted include schemes in the course of winding up; where the winding up begins after the Regulations come into force, regulation 18 makes the exemption conditional upon annual estimates of solvency. The remaining regulations give effect to Schedules.

Schedule 1 to the Regulations prescribes the form in which a scheme actuary is required to certify the calculation of technical provisions in respect of the scheme and its schedule of contributions. The terms in which the certification of a schedule of contributions is given, set out in section 227(6) of the Act, are modified in particular circumstances by paragraphs 6 and 12 of Schedule 2. Schedule 2 contains other modifications of provisions in Part 3 of the 2004 Act and provisions in these Regulations which apply in relation to particular kinds of scheme.

Schedule 3 to the Regulations makes consequential amendments to other secondary legislation. It also includes, in paragraphs 2 and 3, provisions which supplement the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 (S.I. 1996/1655) by requiring that scheme members and beneficiaries receive a summary funding statement following actuarial valuations and reports. The statement must include specified information relating to the funding of the scheme and, where applicable, information about its recovery plan, interventions by the Regulator and the payment of surplus funds to the employer.

Schedule 4 contains transitional provisions, which determine the period within which the trustees or managers of a scheme have to obtain the first actuarial valuation under the Act and to prepare the first schedule of contributions. It also contains savings, which preserve the application of provisions of the Pensions Act 1995 (c. 26) and subordinate regulations during the transitional period.

An assessment of the impact on business, charities and the voluntary sector of the provisions of these Regulations was included in the Regulatory Impact Assessment that accompanied the Pensions Act 2004. A copy of the assessment has been placed in the libraries of both Houses of Parliament. Copies may also be obtained from the Better Regulation Unit, Department for Work and Pensions, 4th floor, Adelphi, 1-11 John Adam Street, London WC2N 6HT. Copies of a transposition note concerning the implementation of the Directive by these Regulations may be obtained from Private Pensions, Department for Work and Pensions, 3rd floor, at the same address.

Changes to legislation:
There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Occupational Pension Schemes (Scheme Funding) Regulations 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations.
View outstanding changes

Changes and effects yet to be applied to :

– Sch. 2 para. 4(2)(b) words substituted by S.I. 2007/3014 reg. 2(b)Sch. Para. 7(b)
– Sch. 2 para. 4(2)(d)(i) words substituted by S.I. 2007/3014 reg. 2(b)Sch. Para. 7(b)
– Sch. 2 para. 4(3)(a) words substituted by S.I. 2008/3014 reg. 2(b)Sch. Para. 7(b)