

2005 No. 672

PENSIONS

The Pension Protection Fund (Valuation) Regulations 2005

Made - - - - *11th March 2005*

Laid before Parliament *16th March 2005*

Coming into force - - *6th April 2005*

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 143(3) to (5) and (11)(a), 145(4), 179(1)(a), (2) and (3), 190(1), 315(2), (4) and (5), and 318(1) and (4)(a) of the Pensions Act 2004(a), and of all other powers enabling him in that behalf, by this instrument, which contains regulations made before the end of the period of six months beginning with the coming into force of the provisions of the Pensions Act 2004 by virtue of which they are made(b), hereby makes the following Regulations:

Commencement, citation and interpretation

1.—(1) These Regulations may be cited as the Pension Protection Fund (Valuation) Regulations 2005 and shall come into force on 6th April 2005.

(2) In these Regulations—

“the Act” means the Pensions Act 2004;

“appropriate person” in the case of a section 143 valuation, means the person specified in section 143(11)(a)(ii) of the Act and, in the case of a section 179 valuation means the actuary as defined in section 179(2) of the Act;

“commencement date” means the 6th April 2005;

“contribution notice” means a notice issued under section 38 (contribution notices where avoidance of employer debt), 47 (contribution notices where non-compliance with financial support direction) or 55 (contribution notice where failure to comply with restoration order) of the Act;

“eligible scheme” has the meaning given by section 126 (eligible schemes) of the Act;

“employer” in relation to an occupational pension scheme which has no active members, except in relation to a multi-employer scheme, or section of a multi-employer scheme, includes every person who was the employer of persons in the description of employment to

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- (a) 2004 c. 35. The Pensions Act 2004 is modified in its application to partially guaranteed schemes by the Pension Protection Fund (Partially Guaranteed Schemes) Regulations 2005 (S.I. 2005/277), in its application to hybrid schemes by the Pension Protection Fund (Hybrid Schemes) (Modification) Regulations 2005 (S.I. 2005/449), and in its application to multi-employer schemes by the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations 2005 (S.I. 2005/441). Section 318(1) is cited because of the meaning there given to “modifications”, “prescribed” and “regulations”.
- (b) See section 317 of the Pensions Act 2004, which provides that the Secretary of State must consult such persons as he considers appropriate before making regulations by virtue of the provisions of that Act (other than Part 8). This duty does not apply where regulations are made before the end of six months beginning with the coming into force of the provisions of that Act by virtue of which the regulations are made.

which the scheme relates immediately before the time at which the scheme ceased to have any active members in relation to it;

“employer” in relation to a multi-employer scheme, or a section of a multi-employer scheme includes—

- (a) in the case of a scheme which has no active members, every person who was the employer of persons in the description of employment to which the scheme, relates immediately before the time at which the scheme, or section ceased to have any active members in relation to it unless, after that time—
 - (i) a section 75 debt becomes due from that person to the scheme, or section; and
 - (ii) either—
 - (aa) the full amount of the debt has been paid by that person to the trustees or managers of the scheme, or section, or
 - (bb) in circumstances where a legally enforceable agreement has been entered into between that person and the trustees or managers of the scheme, or section, the effect of which is to reduce the amount which is payable in respect of the debt, the reduced amount of the debt has been paid in full by that person to those trustees or managers; and
- (b) in any other case, any person who has ceased to be the employer of persons in the description of employment to which the scheme, or section relates unless—
 - (i) at the time when he so ceased the scheme, or section, was not being wound up and continued to have active members in relation to it; and
 - (ii) a section 75 debt became due at that time from that person to the scheme, or section and either—
 - (aa) the full amount of the debt has been paid by that person to the trustees or managers of the scheme or section, or
 - (bb) in circumstances where a legally enforceable agreement has been entered into between that person and the trustees or managers of the scheme or section, the effect of which is to reduce the amount which is payable in respect of the debt, the reduced amount of the debt has been paid in full by that person to those trustees or managers.

“employment” means trade, business, profession, office or vocation;

“external liabilities” means any liabilities which do not fall due to the members of the scheme;

“financial support direction” means a direction issued under section 43 (financial support directions) of the Act;

“pension credit rights” has the meaning given by section 124(1) (interpretation of part I) of the Pensions Act 1995(a);

“registrable scheme” has the meaning given by section 59(2) (register of occupational and personal pension schemes) of the Act;

“relevant accounts” means—

- (a) audited accounts for the scheme which are prepared in respect of a period ending with the relevant time;
- (b) if none are so prepared, the latest such accounts which are available at the relevant time; or
- (c) if the appropriate person’s opinion is that it is practicable to use them, the latest such accounts which are available on the date the appropriate person signs the section 143 or section 179 valuation;

(a) 1995 c. 26. The definitions of “pension credit”, “pension credit member” and “pension credit rights” were inserted by section 84(1) of, and paragraphs 43, 61(1) and (3) of Schedule 12 to, the Welfare Reform and Pensions Act 1999 (c.30).

“relevant time” for the purposes of section 179 of the Act, means the date in relation to which the assets and liabilities of the eligible scheme are calculated.

“restoration order” has the meaning given by section 52 of the Act (restoration orders where transactions at an undervalue);

“restricted information” has the meaning given in section 197 of the Act (restricted information);

“section 143 valuation” means an actuarial valuation under that section of the Act;

“section 179 valuation” means an actuarial valuation under that section of the Act;

“section 75 debt” means so much of the amount treated by section 75(a) of the Pensions Act 1995 (deficiencies in the assets) as a debt due from the employer to the trustees or managers at the applicable time.

Provision of actuarial valuation to determine scheme underfunding

2.—(1) The trustees or managers of an eligible scheme shall provide the Board or the Regulator on the Board’s behalf with its first section 179 valuation within one year of the relevant time of the valuation.

(2) Subject to paragraph (3), the relevant time of the first section 179 valuation shall not be later than—

- (a) in the case of an eligible scheme that is a registrable scheme prior to the commencement date, 5th April 2008.
- (b) in the case of an eligible scheme that becomes a registrable scheme on or after the commencement date, a period of one year beginning immediately after the registration date of the scheme.

(3) In a case to which paragraph (2)(a) applies, for the purposes of a section 179 valuation prepared and signed by an appropriate person on or after the commencement date, a calculation of the assets and liabilities as at a date before the commencement date, but no earlier than 1st November 2004 may be used, and in such a case the relevant time shall be taken to be the date on which the assets and liabilities of the scheme were so calculated.

(4) The relevant time of any subsequent section 179 valuation must not exceed a period of three years beginning immediately after the relevant time of the previous valuation provided to the Board or the Regulator on the Board’s behalf.

(5) Any subsequent section 179 valuation shall be provided to the Board or the Regulator on the Board’s behalf within 12 months of the relevant time of that valuation.

Excluded assets

3. There shall be excluded from the value of the eligible scheme’s assets—

- (a) in the case of a section 143 valuation, any amounts treated as a debt due to the trustees or managers which are unlikely to be recouped without disproportionate cost or unlikely to be recovered within a reasonable time; and
- (b) in the case of a section 179 valuation—
 - (i) any amounts treated as a debt due to the trustees or managers under section 75 of the Pensions Act 1995 (deficiencies in the assets);
 - (ii) any amounts treated as debt under section 228(3) of the Act (failure to make payments);
 - (iii) any resources invested (or treated as invested) in contravention of section 40 of the Pensions Act 1995 (restriction on employer-related investments); and

(a) Section 75 is amended by section 271 of the Pensions Act 2004 (c. 35).

- (iv) any amounts treated as a debt due to the trustees or managers which are unlikely to be recouped without disproportionate cost or unlikely to be recovered within a reasonable time.

Contribution notices, financial support directions and restoration orders

4. Subject to regulation 7(3) and (4), the prescribed requirement for any amount due under a contribution notice, financial support direction or restoration order to be regarded as an asset of the scheme is that the notice, direction or order was issued by the Regulator prior to the date that the valuation is approved.

Valuation of assets

5. Subject to regulations 3 and 7, in determining the value of the assets of a scheme for the purposes of obtaining a section 143 valuation or a section 179 valuation, the appropriate person shall adopt the value given of the assets of the scheme stated in the relevant accounts, less the amount of the external liabilities, and that value shall be taken to be the value of those assets at the relevant time.

Valuation of protected liabilities

6. Subject to regulation 7, in the case of protected liabilities^(a) the value of a protected liability shall be—

- (a) for a section 143 valuation, the estimated cost of securing scheme benefits calculated in accordance with Schedule 7 of the Act (pension compensation provisions) to the member by means of an annuity purchased at the market rate at the relevant time;
- (b) for a section 179 valuation, the estimated cost of securing scheme benefits in accordance with any guidance issued by the Board in accordance with section 179(4) of the Act, for the member by means of an annuity purchased at the market rate at the relevant time.

Alternative valuation of assets and protected liabilities in specific cases

7.—(1) For the purposes of a section 143 or section 179 valuation, where arrangements are being made by the eligible scheme for the transfer to or from it, of accrued rights and any pension credit rights, until such time as the trustees or managers of the scheme to which the transfer is being made (“the receiving scheme”) have received assets of the full amount agreed by them as consideration for the transfer, it shall be assumed—

- (a) that the rights have not been transferred; and
- (b) that any assets transferred in respect of the transfer of those rights are assets of the scheme making the transfer and not of the receiving scheme.

(2) For the purposes of a section 143 or section 179 valuation, in the case of a contract of insurance, the value shall be—

- (a) the value of the liability secured where the contract of insurance falls within the definition of a relevant contract of insurance in section 161(8) of the Act (effect of Board assuming responsibility for a scheme); or where this is not the case either—
- (b) the surrender value of the contract of insurance; or
- (c) where it appears to the appropriate person that the surrender value of the contract of insurance does not accurately reflect the actual value at the relevant time; then he shall adopt such a value as appears to him to be appropriate.

(3) In the case of an asset to which regulation 4 applies, the appropriate person shall adopt as the value of the asset, the amount due to the scheme given in the notice, direction or order.

(a) The term “protected liabilities” is defined in section 131(1) (protected liabilities) of the Pensions Act 2004;

- (4) For the purposes of a section 143 valuation—
- (a) where the appropriate person, in accordance with guidance issued by the Board in accordance with section 143(6) of the Act, holds the opinion that any section 75 debt falling due to the eligible scheme will be recouped in the future then he shall treat the proportion of the section 75 debt that he believes will be recovered as an asset of the scheme;
 - (b) where any section 75 debt is recouped between the relevant time and the date the valuation is approved under section 144(2) of the Act (approval of valuation), then the amount so recouped—
 - (i) shall be treated as an asset of the scheme; and
 - (ii) the section 143 valuation shall be adjusted accordingly;
 - (c) where an amount is due under a contribution notice, a financial support direction or a restoration order, and
 - (i) a proportion of the amount due has been recouped; and
 - (ii) the appropriate person, in accordance with any guidance issued by the Board in accordance with section 143(6) or section 179(4) of the Act as appropriate, holds the opinion that no further payments due in relation to the notice or direction will be recouped by the scheme; then

the appropriate person shall adjust the value of the asset contained in the notice or direction to the value recouped by the trustees or managers of the eligible scheme during the pre-approval period.
 - (d) if the appropriate person—
 - (i) has been given notice; or
 - (ii) holds the opinion;

that the value of any asset set out in the relevant accounts, that is not excluded from the actuarial valuation, is substantially different at the relevant time from that set out in the relevant accounts, then he shall adjust the value of the asset to the market value of the asset at the relevant time; or
 - (e) where the appropriate person—
 - (i) has been given notice; or
 - (ii) holds the opinion

in accordance with any Board guidance issued in accordance with section 143(6) of the Act, that there exists an asset of the scheme which is not listed in the relevant accounts, and which is not excluded from the actuarial valuation, then he shall adopt such a value for the asset as he considers is appropriate.
- (5) The appropriate person shall not make an adjustment to the value of an interest in real property unless the adjustment reflects a more recent valuation given by a chartered surveyor in accordance with any relevant practice statements and guidance notes issued by the Royal Institution of Chartered Surveyors(a) current on the date that the valuation is signed.

Application of these regulations to multi-employer schemes

8. In these regulations, in the case of a scheme which is a multi-employer scheme for the purposes of the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations 2005, where these regulations apply to a section or a segregated part of a scheme, which is for the purposes of Part 2 of the Act, an eligible scheme, for “eligible scheme” and “scheme” substitute “section or segregated part of a scheme”.

(a) The Royal Institution of Chartered Surveyors can be contacted at- RICS Contact Centre, Surveyor Court, Westwood Way, Coventry, CV4 8JE.

Form and content of section 143 valuation and notice

9.—(1) A section 143 valuation shall be in writing, and shall contain the following information—

- (a) a statement of the assets and protected liabilities of the eligible scheme calculated in accordance with these Regulations and guidance issued by the Board in accordance with s143(6) of the Act;
- (b) a statement that the valuation was prepared in accordance with these Regulations and any guidance issued by the Board in accordance with section 143(6);
- (c) a statement that the valuation does not take effect until the valuation has become binding;
- (d) a statement that the person who prepared the valuation is an appropriate person;
- (e) the effective date and the date of issue of the valuation;
- (f) the name, address and pension scheme registration number of the scheme;
- (g) the name and address of the appropriate person who prepared and signed the section 143 valuation;
- (h) the names and contact details of the trustees or managers of the eligible scheme.

(2) Where a section 143 valuation becomes binding, the notice which the Board must issue under section 145(4) shall be in writing and shall contain the following information—

- (a) the name or type of notice issued;
- (b) the date on which the notice is issued;
- (c) the name, address and pension scheme registration number of the scheme in respect of which the notice is issued;
- (d) a statement that the valuation under section 143(2) has become binding;
- (e) the date on which the approval of valuation notice was issued.
- (f) the name of the employer in relation to the scheme in respect of which the notice is issued;
- (g) whether the notice issued by the Board contains any restricted information and, if so, the nature of the restriction.

Prescribed qualifications for the purposes of section 143 and section 179 of the Act

10. For the purpose of the definition of actuarial valuation contained in section 143(11) and the purpose of the definition of actuary contained in section 179(2) of the Act, a person with the prescribed qualifications is—

- (a) a Fellow of the Faculty of Actuaries(a); or
- (b) a Fellow of the Institute of Actuaries(b).

Signed by authority of the Secretary of State for Work and Pensions.

11th March 2005

Malcolm Wicks
Minister of State
Department for Work and Pensions

(a) The Faculty of Actuaries can be contacted at Faculty of Actuaries, Maclaurin House, 18 Dublin Street, Edinburgh, EH1 3PP.
(b) The Institute of Actuaries can be contacted at Institute of Actuaries, Staple Inn Hall, High Holborn, London, WC1V 7QJ.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the assessment of the assets and liabilities of eligible schemes in accordance with sections 143 and 179 of the Pensions Act 2004 (c. 35) (“the Act”).

The Board of the Pension Protection Fund (“the Board” is established by section 107 of the Act to provide compensation for members of certain occupational pension schemes in the event of the insolvency of the scheme’s sponsoring employer and where the pension scheme is underfunded at a certain level.

Regulation 2 provides that eligible schemes must provide an initial section 179 actuarial valuation of the scheme’s assets and liabilities by a prescribed date. The Regulation further provides that in the case of section 179 valuations, the trustees or managers of eligible schemes must provide actuarial valuations to the Board, or to the Pensions Regulator (established under section 1 of the Act) at least every three years after the initial actuarial valuation.

Regulation 3 provides for assets that shall be excluded from the actuarial valuations.

Regulation 4 provides for how the value of assets of eligible schemes are to be determined for the purposes of an actuarial valuation under sections 143 and 179 of the Act.

Regulation 5 provides for the circumstances where a payment due to the eligible scheme under a contribution notice, a financial support direction or a restoration order shall be considered to be an asset of the eligible scheme. The Regulation also further provides that where such a payment is considered to be an asset the actuarial valuation shall be adjusted accordingly.

Regulation 6 provides for the valuation of protected liabilities of the eligible scheme.

Regulation 7 provides for valuation of assets and protected liabilities of the scheme in specific cases where the valuation contained regulations 4, 5 and 6 would not give an accurate picture of the assets and protected liabilities of the eligible scheme.

Regulation 8 provides for the application of these Regulations to multi employer schemes.

Regulation 9 prescribes the form and content of the notice sent by the Board to the relevant employer when a valuation becomes binding under section 145 of the Act and also the form and content of the valuation sent by the eligible scheme to the Board.

Regulation 10 prescribes the qualifications required of a person conducting an actuarial valuation under section 143 or section 179 of the Act.

As these Regulations are made before the expiry of the period of six months beginning with the coming into force of the provisions of the Pensions Act 2004, but virtue of which they are made, the requirement for the Secretary of State to consult such persons as he considers appropriate does not apply.

A full regulatory impact assessment has not been produced for this regulation as it has negligible impact on the costs of business.

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