EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made as a consequence of provisions in the Pensions Act 2004 (c. 35) ("the 2004 Act") and replace the Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations 1996 (S.I.1996/3128) ("the 1996 Regulations") where debts arise under section 75 of the Pensions Act 1995 (c. 26) ("the 1995 Act") in respect of occupational pension schemes.

Under regulation 1 these Regulations come into force on 6th April 2005, but do not apply in the case of schemes that have begun to wind up before that date or, unless the scheme is a money purchase scheme, if a debt arose under section 75 of the 1995 Act before that date.

Regulation 2 deals with the interpretation of these Regulations.

Regulation 3 provides that the 1996 Regulations do not apply in any case where these Regulations apply and identifies the two Actuarial Guidance Notes that will be used in connection with the calculation of debts.

Regulation 4 makes provision about the schemes that are excluded from section 75 of the 1995 Act and hence from these Regulations. They largely correspond with the schemes that are excluded from being eligible schemes for the purposes of Part 2 of the 2004 Act.

Regulation 5 makes provision about how the assets and liabilities of schemes are to be valued for the purposes of section 75 of the 1995 Act. It provides for all liabilities in respect of pensions or other benefits to be valued on the basis that the trustees or managers will provide for them by buying annuities, but, apart from that, for similar principles to apply as apply for the purpose of minimum funding valuations and for the valuation certificate set out in Schedule 1 to be used. The costs of winding up the scheme are to be included amongst its liabilities.

Regulations 6 to 8 deal with how section 75 of the 1995 Act and these Regulations apply to multi-employer schemes.

Regulation 6 provides that a debt only arises under section 75(2) while a multi-employer scheme is being wound up if a deficit in the scheme assets occurs before a relevant event has occurred in relation to all the employers, and all the employers are then responsible for a share of the debt. But whether a debt arises under section 75(4) is judged by reference to each of the employers separately and debts under that section are also taken to arise as respects an employer if he ceases to have any employees in pensionable service to which the scheme applies. The debt on each employer under section 75(4) is his share of the deficit in the assets.

Regulation 7 modifies the rules in regulation 5 where a debt arises because of an employer in a multi-employer scheme ceasing to have any employees in pensionable service. The provisions about buying annuities and including winding up costs are disapplied.

Regulation 8 provides that section 75 and these Regulations apply as if sections of multi-employer schemes were separate schemes.

Regulation 9 ensures that in the case of a scheme which has no active members section 75 and these Regulations apply as if anyone who was an employer immediately before the scheme ceased to have any active members is treated as an employer and so may be liable for a debt.

Regulations 10 to 12 deal with how section 75 of the 1995 Act and these Regulations apply to money purchase schemes.

Regulation 10 modifies section 75 so that it only applies to money purchase schemes in two cases, which differ from those where it applies for defined benefit schemes. The first is where general levy has not been paid and the second is where there has been a reduction in the scheme's assets because of a crime. Regulation 11 provides special valuation rules for these cases.

Regulation 12 modifies how regulation 10 applies where the money purchase scheme is a multi-employer scheme, apportioning the deficit among the employers in a similar way to regulation 6.

Regulation 13 makes similar provision to regulation 9 for former employers of money purchase schemes.

Regulation 14 provides that sectionalised schemes covering United Kingdom and foreign employment are to be treated as separate schemes.

Regulation 15 provides that where a scheme is partly the subject of a government guarantee, the part that is so subject and the other part are treated as separate schemes.

Regulation 16 enables trustees to modify schemes by resolution for the purpose of apportioning debts under section 75 of the 1995 Act amongst employers in different proportions from those that would otherwise apply.

Regulation 17 prescribes the circumstances in which the staying of the voluntary winding up of an employer is disregarded for the purposes of section 75 of the 1995 Act. Stays for a limited period are prescribed so that the resolution for the winding up and any debt which arose under that section by virtue of the passing of the resolution are not affected by the temporary staying of the winding up.

Regulation 18 introduces Schedule 2 which contains amendments of the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996 (S.I. 1996/1536), the Occupational Pension Schemes (Winding Up) Regulations 1996 (S.I. 1996/3126) and the Occupational Pension Schemes (Investment) Regulations 1996 (S.I. 1996/3127) that are consequential on the changes made to section 75 of the 1995 Act by the 2004 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 2004 Act on which they are consequential, 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 on this instrument as it has no impact on the costs of business, charities or the voluntary sector.