

2005 No. 705

PENSIONS

The Occupational Pension Schemes (Modification of Pension Protection Provisions) Regulations 2005

Made - - - - - *16th March 2005*

Coming into force - - - - - *6th April 2005*

Whereas a draft of this instrument was laid before Parliament in accordance with section 316(2)(b) of the Pensions Act 2004(a) and approved by resolution of each House of Parliament;

Now, therefore, the Secretary of State for Work and Pensions, in exercise of the powers conferred on him by sections 167(1), 315(2) and (5) and 318(1) of the Pensions Act 2004(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 those sections(c), hereby makes the following Regulations:

Citation and commencement

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Modification of Pension Protection Provisions) Regulations 2005.

(2) These Regulations come into force on 6th April 2005.

Valuations of assets and liabilities for determining if the Board must assume responsibility for schemes

2.—(1) Section 143 of the Pensions Act 2004 (Board's obligation to obtain valuation of assets and protected liabilities) is amended in accordance with paragraphs (2) and (3).

(2) After subsection (5) insert—

“(5A) Subsection (5B) applies if—

- (a) during the pre-approval period any liability to provide pensions or other benefits to or in respect of any member or members under the scheme is discharged by virtue of regulations under section 135(4) or the Board validating any action mentioned in section 135(9), and
- (b) at the relevant time the protected liabilities of the scheme include any cost within section 131(1)(a) relating to compensation in respect of those pensions or other benefits.

(a) 2004 c. 35.

(b) Section 318(1) is cited because of the meaning given in that section to “modifications”, “prescribed” and “regulations”.

(c) 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.

- (5B) If this subsection applies, for the purposes mentioned in subsection (2)—
- (a) in determining that cost the effect of the discharge on the compensation payable in respect of those pensions or other benefits under paragraph 23A of Schedule 7 must be taken into account,
 - (b) in a case where assets of the scheme at the relevant time were transferred from the scheme during the pre-approval period in consideration for the discharge, those assets are not to be regarded as assets of the scheme at the relevant time, and
 - (c) in a case where assets that were not assets of the scheme at that time (“later-acquired assets”) were so transferred, the value of the assets of the scheme at that time is to be reduced by the value of the later-acquired assets at the time of the discharge.”.

(3) In subsection (9) after “or (4)” insert “or by virtue of subsection (5B)”.

(4) In section 158 of that Act (duty to assume responsibility for closed schemes) in subsection (6)(a) for the words from “subsections” to “section 143” substitute “subsections (3), (5), (5A), (5B) and (11)(b) and (c) of section 143”.

Effect of discharge of liability on compensation under Schedule 7 to the Pensions Act 2004

3. After paragraph 23 of Schedule 7 to the Pensions Act 2004 (pension compensation provisions) the following paragraph is inserted —

“Effect of discharge of liability during or immediately before assessment period

23A.—(1) This paragraph applies if—

- (a) at any time during the assessment period in relation to the scheme (or, if there has been more than one such assessment period, the last one) any liability to provide pensions or other benefits to or in respect of any member or members under the scheme is discharged by virtue of—
 - (i) regulations under section 135(4), or
 - (ii) the Board validating any action mentioned in section 135(9), or
- (b) any such liability is discharged on the assessment date, but before the commencement of the assessment period,

and compensation is payable in accordance with this Schedule in respect of the pensions or other benefits (apart from this paragraph).

(2) Any entitlement to compensation under this Schedule in respect of the pensions or other benefits that arose before the discharge ceases on the discharge, except so far as the entitlement was to a payment falling to be made before the discharge.

(3) After the discharge any compensation payable under this Schedule in respect of the pensions or other benefits is determined on the basis that—

- (a) the discharge occurred immediately before the assessment date, and
- (b) the admissible rules of the scheme provided—
 - (i) for the discharge to occur at that time, and
 - (ii) accordingly, for entitlement under those rules to the pensions or other benefits then to cease or, as the case may be, to cease to the extent to which liability in respect of them is discharged.”.

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

16th March 2005

Malcolm Wicks
Minister of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations modify Chapter 3 of Part 2 of the Pensions Act 2004 (“the Act”) (pension protection provisions) as it applies where any liability to provide pensions or other benefits to or in respect of any member or members under an occupational pension scheme that is an eligible scheme (as defined in section 126 of the Act) is discharged during an assessment period or on the day when that period will begin. An assessment period is defined in section 132 of the Act and, broadly, is the period beginning with an insolvency event occurring in relation to a scheme’s employer and ending with either the Board of the Pension Protection Fund (“the Board”) assuming responsibility for the scheme or ceasing to be involved with it.

Most discharges of liability during an assessment period are prohibited under section 135 of the Act. But regulations under section 135(4) may allow transfers of, or transfer payments in respect of, members’ rights and other steps to discharge liability in respect of rights to pensions or other benefits, and under section 135(9) the Board may validate actions that would otherwise contravene section 135. The modifications of the Act made by these Regulations apply in cases where a discharge occurs that is so allowed or validated (“a relevant discharge”).

Regulation 1 provides for citation and commencement.

Regulation 2 modifies sections 143 and 158 of the Act so that the actuarial valuations that are used to determine if the Board is to assume responsibility for a scheme under section 127, 128 or 158 of the Act must take into account the effect of a relevant discharge that occurs before the valuation is approved by the Board. Section 143 is also modified so that the Board need not obtain such valuations if it considers that a relevant discharge may occur.

Regulation 3 inserts a new paragraph, paragraph 23A, into Schedule 7 which provides that where a relevant discharge occurs the compensation payable under that Schedule is determined on the basis that the discharge occurred immediately before the assessment period began, and the scheme rules provided for it to occur, and hence for the rights corresponding to the discharged liabilities to cease. Compensation payable before the discharge will not be affected. Similar provision is made for discharges of liability occurring on the date the assessment period begins, but before the period begins.

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 Act by 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 regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.

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**The Occupational Pension Schemes (Modification of Pension
Protection Provisions) Regulations 2005**

£3.00

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Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.

E0605 3/2005 150605T 19585

ISBN 0-11-072572-7



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