

2005 No. 931

PENSIONS

The Pension Regulator (Contribution Notices and Restoration Orders) Regulations 2005

<i>Made</i> - - - -	<i>24th March 2005</i>
<i>Laid before Parliament</i>	<i>30th March 2005</i>
<i>Coming into force</i> -	<i>6th April 2005</i>

The Secretary of State, in exercise of the powers conferred upon him by sections 38(1)(b), 52(1)(b) and (7)(a), 315(2) and (5) and 318(1) of the Pensions Act 2004(a), 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 that Act by virtue of which they are made(b), makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Pensions Regulator (Contribution Notices and Restoration Orders) Regulations 2005 and shall come into force on 6th April 2005.

Interpretation

2.—(1) In these Regulations—

“the 1988 Act” means the Income and Corporation Taxes Act 1988(c);

“the Act” means the Pensions Act 2004;

“registered for tax purposes” in relation to a scheme, means registered in accordance with section 153 of the Finance Act 2004(d) (registration of pension schemes) or treated as registered by virtue of Schedule 36 of that Act (pension schemes etc: transitional provisions and savings);

“relevant public authority” has the meaning given in section 307(4) (modification of the Act in relation to certain categories of schemes); and

“tax approved scheme” means a scheme which is approved or was formerly approved under section 590 (conditions for approval of retirement benefit schemes) or 591

(a) 2004 c. 35; section 318(1) is cited because of the meaning there given to “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.

(c) 1988 c. 1.

(d) 2004 c. 12; at the time of the coming into force of these Regulations section 153 had not yet been brought into force.

(discretionary approval) of the 1988 Act(a) or in respect of which an application for such approval has been duly made but has not been determined.

(2) In these Regulations, unless otherwise stated, a reference to a numbered section is a reference to the section of the Act bearing that number.

Prescribed schemes

¹Reg. 3 renumbered 3(1) & words in sub-para. (g)(ii) substituted by art. 24(a) & (b) of S.I. 2016/200 as from 6.4.16.

²Para. (a) of reg. 3 omitted & words in para. (f) substituted by reg. 9(a) & (b) of S.I. 2005/993 as from 1.4.05.

³Reg. 3(da) inserted by reg. 5 of S.I. 2009/1906 as from 1.9.09.

3.—¹(1)◀ For the purposes of sections 38(1)(b) and 52(1)(b) (schemes to which sections 38 (contribution notices) and 52 (restoration orders) do not apply), a prescribed scheme or a scheme of a prescribed description is—

- (a) ▶²◀
- (b) a public service pension scheme under the provisions of which there is no requirement for assets related to the intended rate or amount of benefit under the scheme to be set aside in advance (disregarding requirements relating to voluntary contributions);
- (c) a scheme which is made under section 7 of the Superannuation Act 1972(b) (superannuation of persons employed in local government service etc.) which provides pensions to persons employed in local government service;
- (d) a scheme which is made under section 2 of the Parliamentary and Other Pensions Act 1987(c) (power to provide for pensions for Members of the House of Commons etc.);
- ▶³(da) a scheme, provision for which is made by virtue of section 81(3) of the Scotland Act 1998 (remuneration of members of the Parliament and Executive);◀
- (e) a scheme in respect of which a relevant public authority 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;
- (f) a scheme which provides relevant benefits within the meaning of section 612(1) of the 1988 Act (interpretation) but ▶²which—
 - (i) has never been a tax approved scheme or registered for tax purposes, and
 - (ii) is not a relevant statutory scheme within the meaning of section 611A of the 1988 Act (d) (definition of relevant statutory scheme);◀
- (g) a scheme—
 - (i) which has been categorised by the Commissioners of the Board of Inland Revenue for the purposes of its approval, or registration, as a centralised scheme for non-associated employers;
 - (ii) which ▶¹was not contracted-out at any time before the second abolition date◀; and
 - (iii) under the provisions of which the only benefits that may be provided on or after retirement (other than money purchase benefits derived from the payment of voluntary contributions by any person) are lump sum benefits which are not calculated by reference to a member's salary;

(a) Section 590 was amended by section 35 of, and paragraph 18 of Part 1 of Schedule 3 to, the Finance Act 1988 (c. 39); sections 75 and 187 of, and paragraphs 3 and 18(2) and (3) of Schedule 6, and Part 4 of Schedule 17 to, the Finance Act 1989 (c. 26); sections 34(2) to (4), 36(2) and (3) and 123 of, and Part 5 of Schedule 19 to, the Finance Act 1991 (c. 31); and section 79 of, and paragraphs 2(1) to (4) and (7) and (8) and 18(1) and (3) of Schedule 10 to, the Finance Act 1999 (c. 16). Section 591 was amended by section 146 of, and paragraph 6 of Part 1 of Schedule 13 to, the Finance Act 1988; sections 107(2) to (4) and 258 of, and Part 5 of Schedule 26 to, the Finance Act 1994 (c. 9); sections 59(2) and 60(1) of the Finance Act 1995 (c. 4); and section 79 of, and paragraphs (3)(a) and (b) and 18(1) and (3) of Schedule 10 to, the Finance Act 1999.

(b) 1972 c. 11.

(c) 1987 c. 45; section 2 was amended by section 2(1) of the Ministerial and Other Pensions and Salaries Act 1991 (c. 5).

(d) Section 611A was inserted by section 75 of, and paragraphs 15 and 18(1) of Schedule 6 to, the Finance Act 1989 (c. 26, and amended by section 52(1) of, and paragraph 5 of Schedule 5 to, the Finance Act 1999 (c. 16).

- (h) a scheme—
 - (i) the only benefits provided by which (other than money purchase benefits) are death benefits; and
 - (ii) under the provisions of which no member has accrued rights (other than rights to money purchase benefits);
 - ▶¹(i) a scheme—
 - (i) which has such a superannuation fund as is mentioned in section 615(6) of the 1988 Act (exemption from tax in respect of certain pensions); and
 - (ii) in relation to which the trustees or managers are not—
 - (aa) authorised under section 288 of the Act (general authorisation to accept contributions from European employer); or
 - (bb) approved under section 289 of the Act (approval in relation to particular European employer) in relation to a European employer;◀
 - (j) the Chatsworth Settlement Estate Pension Scheme; and
 - (k) the scheme established by the Salvation Army Act 1963(a).

¹Sub-para. (i) of reg. 3 substituted by reg. 8(2) of S.I. 2006/467 as from 30.3.06.

- ▶²(2) In this regulation—
 - “contracted-out” is to be construed in accordance with section 7B(2) (meaning of “contracted-out scheme” etc.) of the Pension Schemes Act 1993; and
 - “the second abolition date” has the meaning given in section 181(1) (general interpretation) of the Pension Schemes Act 1993.◀

²Reg. 3(2) inserted by art 24(c) of S.I. 2016/200 as from 6.4.16.

Person of a prescribed description

4. A person who is prescribed for the purposes of section 52(7)(a) is any person whom the trustees or managers of the scheme have authorised to enter into transactions involving the assets of that scheme.

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

24th March 2005

Malcolm Wicks
Minister of State,
Department for Work and Pensions

(a) 1963 c. xxxii.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make further provision relating to the “moral hazard” provisions in sections 38 and 52 of the Pensions Act 2004 (c. 35) (“the Act”). These sections provide for two of the powers of the Pensions Regulator known as the “moral hazard” provisions, that is, the Regulator’s power to issue contribution notices and to make restoration orders.

Regulation 3 prescribes those schemes to which sections 38 and 52 of the Act do not apply.

Regulation 4 prescribes “appropriate persons” who may be involved in a transaction involving scheme assets which is at an undervalue.

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 full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business, charities or the voluntary sector.