

**2006 No. 1733**

**PENSIONS**

**The Occupational Pension Schemes (Winding up Procedure Requirement) Regulations 2006**

<i>Made</i> - - - -	<i>29th June 2006</i>
<i>Laid before Parliament</i>	<i>3rd July 2006</i>
<i>Coming into force</i> - -	<i>24th July 2006</i>

The Secretary of State, being a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b), in relation to matters relating to personal and occupational pensions makes the following Regulations in exercise of the powers conferred by section 2(2) of that Act and sections 113(1), 181(1) and 182(2) and (3) of the Pension Schemes Act 1993(c) and sections 60(2)(h), 69(2)(a), 315(2) and (5) and 318(1) of the Pensions Act 2004(d).

In accordance with section 185(1) of the Pensions Schemes Act 1993(e) and section 317(1) of the Pensions Act 2004, the Secretary of State has consulted such persons as he considers appropriate before making these Regulations.

**Citation and commencement**

1. These Regulations may be cited as the Occupational Pension Schemes (Winding up Procedure Requirement) Regulations 2006 and shall come into force on 24th July 2006.

**Amendment of the Pensions Act 2004**

2.—(1) After section 231 of the Pensions Act 2004 (powers of the Regulator) insert—

**“Requirements for winding up procedure**

**231A.**—(1) Where an occupational pension scheme in respect of which a recovery plan has been prepared under section 226 begins to wind up during the recovery period, the trustees or managers of the scheme must as soon as reasonably practicable prepare a winding up procedure.

(2) A winding up procedure must—

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(a) See S.I. 2004/3328.

(b) 1972 c.68.

(c) 1993 c.48; section 113(1) was amended by section 52(1) of the Child Support, Pensions and Social Security Act 2000 (c.19). Section 181(1) is cited because of the meaning there given to “prescribed” and “regulations”.

(d) 2004 c.35. The Act is modified in its application to partially guaranteed schemes by S.I. 2005/277, in its application to multi-employer schemes by S.I. 2005/441 (as amended by S.I. 2005/993 and 2113) and in its application to hybrid schemes by S.I. 2005/449. The Act is further modified by S.I. 2005/3377 and 3380. Section 318(1) is cited because of the meaning there given to “prescribed” and “regulations”.

(e) Section 185(1) is amended by paragraph 80(a) of Schedule 5 to the Pensions Act 1995 (c.26).

- (a) set out the action to be taken to establish the liabilities to or in respect of the members of the scheme, in respect of pensions or other benefits, and to recover any assets of the scheme;
- (b) give an estimate of the amount of time it will take to establish those liabilities and to recover any such assets;
- (c) give an indication of which of the accrued rights or benefits (if any), to which a person is entitled under the scheme, are likely to be affected by a reduction in actuarial value;
- (d) specify which one or more of the ways mentioned in subsection (3)(a) to (e) of section 74 of the Pensions Act 1995 will be used to discharge the liabilities to or in respect of the members of the scheme in respect of pensions or other benefits;
- (e) give an estimate of the amount of time it will take to discharge those liabilities.

(3) The requirement imposed by subsection (2)(c) applies only to the extent that the trustees or managers have sufficient information to give such an indication.

(4) A winding up procedure must be appropriate having regard to the nature and circumstances of the scheme.

(5) A winding up procedure may be reviewed, and if necessary revised, where the trustees or managers consider that there are reasons that may justify a variation to it.

(6) The trustees or managers must send a copy of any winding up procedure to the Regulator as soon as reasonably practicable after it has been prepared or, as the case may be, revised.

(7) Where any requirement of this section is not complied with, section 10 of the Pensions Act 1995 (civil penalties) applies to a trustee or manager who has failed to take all reasonable steps to secure compliance.

(8) In this section “recovery period”, in relation to an occupational pension scheme, means the period specified in the scheme’s recovery plan in accordance with section 226(2)(b).”.

**Amendment of the Occupational Pension Schemes (Disclosure of Information) Regulations 1996**

**3.—**(1) Amend the Occupational Pension Schemes (Disclosure of Information) Regulations 1996(a) as follows.

(2) In regulation 7(1) (availability of other documents), after sub-paragraph (d) insert—

“(e) an outline of the winding up procedure prepared or revised under section 231A of the 2004 Act,”.

**Amendment of the Register of Occupational and Personal Pension Schemes Regulations 2005**

**4.—**(1) Amend the Register of Occupational and Personal Pension Schemes Regulations 2005(b) as follows.

(2) In regulation 3 (registrable information)—

(a) after paragraph (1)(f) add—

“(g) in the case where an occupational pension scheme in respect of which a recovery plan has been prepared under section 226 of the Act begins to wind up during the recovery period, the date on which the winding up commenced.”; and

(b) for paragraph (4) substitute—

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(a) S.I. 1996/1655; the relevant amending instrument is S.I. 2005/3377.  
 (b) S.I. 2005/597.

“(4) In this regulation—

“multi-employer scheme” means a trust scheme in relation to which there is more than one employer;

“recovery period” means the period specified in the scheme’s recovery plan in accordance with section 226(2)(b) of the Act.”.

#### **Amendment of the Occupational Pension Schemes (Scheme Funding) Regulations 2005**

**5.**—(1) Amend the Occupational Pension Schemes (Scheme Funding) Regulations 2005(a) as follows.

(2) In regulation 8 (recovery plan), omit paragraph (8).

(3) In regulation 17 (exemptions – general)—

(a) in paragraph (1)(l), for “subject to regulation 18” substitute “subject to paragraph (1A) and regulation 18”;

(b) after paragraph (1) insert—

“(1A) Section 231A of the 2004 Act applies to a scheme where—

(a) a recovery plan has been prepared under section 226 of the 2004 Act, and

(b) the scheme begins to wind up during the recovery period.”.

(4) after paragraph (2) insert—

“(2A) In paragraph (1A) “recovery period” means the period specified in the scheme’s recovery plan in accordance with section 226(2)(b) of the 2004 Act;”.

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

29th June 2006

*James Purnell*  
Minister of State,  
Department for Work and Pensions

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(a) S.I. 2005/3377.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made under section 2(2) of the European Communities Act 1972 (c.68) and implement paragraph (c) of Article 16.2 of the European Union Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision (OJ No. L 235, 23.9.03, p.10) (“the Directive”).

Regulation 2 inserts new section 231A into the Pensions Act 2004 (c.35) (“the 2004 Act”). Subsection (1) of the new section 231A provides that the trustees or managers of a scheme must prepare a winding up procedure as soon as reasonably practicable after a scheme begins to wind up during the recovery period. The “recovery period” is defined as the period specified in the scheme’s recovery plan in accordance with section 226(2)(b) of the 2004 Act (new section 231A(8)). The winding up procedure must include specified information (new section 231A(2)). The trustees or managers must send a copy of the winding up procedure to the Pensions Regulator as soon as reasonably practicable after it has been prepared or revised (new section 231A(6)). New section 231A(7) provides that penalties under section 10 of the Pensions Act 1995 (c.26) apply to a trustee or manager who has failed to take all reasonable steps to ensure compliance with the requirements of section 231A of the 2004 Act.

Regulation 3 amends the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 (S.I. 1996/1655) to require the trustees or managers of a scheme to disclose an outline of the winding up procedure to the members of the scheme and their representatives.

Regulation 4 amends the Register of Occupational and Personal Pension Schemes Regulations 2005 (S.I. 2005/597) to prescribe that where a scheme begins to wind up during the recovery period, the date the winding up of the scheme commenced is registrable information for the purposes of section 60(2)(h) of the 2004 Act.

Regulation 5 amends the Occupational Pension Schemes (Scheme Funding) Regulations 2005 (S.I. 2005/3377) and removes the disclosure provision in regulation 8 as a consequence of regulation 5 of these Regulations. It also amends regulation 17 enabling section 231A of the 2004 Act to apply to a scheme in respect of which a recovery plan has been prepared under section 226 of that Act and the scheme begins to wind up during the recovery period.

These Regulations have only a negligible impact on business. Publication of a full Regulatory Impact Assessment is not necessary for such legislation. 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, Adelphi, 1-11 John Adam Street, London WC2N 6HT.

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