

PROPOSED AMENDMENTS TO PENSIONS LEGISLATION AS A CONSEQUENCE OF THE REPLACEMENT OF THE MINIMUM FUNDING REQUIREMENT (MFR)

General

1. The phasing out of the MFR through the repeal of sections 56-61 of the Pensions Act 1995 will impact on a number of provisions within the legislation. The MFR is used as an underpin for the calculation of Cash Equivalent Transfer values (CETVs) for different purposes within the legislation – transfers in or out of schemes and in pension sharing cases. It is also used as a means of determining the liabilities attributable to an employer who withdraws from a multi-employer scheme¹ and for schemes in wind-up with liabilities that have to be determined and verified in accordance with the MFR provisions.
2. The intention is to make a number of consequential amendments by means of an Order to come into effect when the new scheme funding provisions are commenced (expected to be 23 September 2005). Many provisions in the MFR Regulations will be retained for a transitional period for schemes which have yet to have a valuation under the new scheme funding requirements, for some schemes in wind-up and in some multi-employer schemes to calculate any debt owed by an employer who withdraws from the scheme.
3. The main consequential amendments to be included in the scheme funding legislation are set out below. There are a number of other minor provisions cross referring to the MFR that are not included. Some of these will be amended in other Regulations to reflect other changes in policy, in addition to the replacement of the MFR. The same approach will apply to the changes in the calculation of CETVs and in the rules on the winding-up of schemes.

Regulations 6 and 18 of The Occupational Pension Schemes (Contracting-out) Regulations 1996 (SI 1996/1172)

Regulation 6 – information to be included in an election

¹ The MFR will continue to be used in such schemes until they obtain their first scheme funding valuation.

4. Employers electing to contract out have to provide the Inland Revenue with assurances on the funding of their scheme. Currently, the MFR underpins the funding information required with an election.
5. References to the MFR will be replaced with references to the scheme funding provisions. Employers electing to contract out after they have obtained their first valuation under the new provisions will need to confirm that they have complied with the requirements in:
 - Section 224 – actuarial valuations and reports;
 - Section 225 - certification of technical provisions;
 - Section 226 – recovery plan (where applicable);
 - Section 227 – schedule of contributions; and
 - any regulations made under these provisions.

Regulation 18 – Requirement as to the resources of the schemes

6. As a condition of contracting out, salary-related schemes are required on an on-going basis to have sufficient resources to meet their pension commitments and the MFR is used as a funding measure. References to the MFR in Regulation 18 will be removed and replaced with a requirement that schemes must meet the statutory funding objective in Section 222 of the Pensions Act 2004. Where the statutory funding objective is not met, the actuary must be able to certify under section 227(6)(b)(i) that it will be met by the end of the period set out in the recovery plan.

The Minimum Funding Requirement Regulations 1996 (SI 1996/1536)

7. Most of the MFR provisions will be saved transitionally for schemes which have yet to obtain their first valuation under the new provisions, and for schemes that have started to wind-up with liabilities that fall to be determined and verified, in accordance with the MFR provisions.
8. However, Regulation 11 (Duty to obtain MFR valuation following events with significant effects on funding) and Regulation 12 (Duty to obtain MFR valuations where new serious underfunding suspected) will be repealed.

9. Regulation 19 (Records) - this provision will be saved transitionally in its current draft for schemes until they have obtained their first valuation under the new provisions. A similar provision will then apply under the new scheme funding provisions.

Regulation 4 of The Personal and Occupational Pension Schemes (Ombudsman) Regulations 1996 (SI 1996/2475)

10. This provision covers matters outside the Pensions Ombudsman's jurisdiction. The Ombudsman is not able investigate any alleged non-compliance with the MFR legislation. The intention is to carry forward this restriction into the scheme funding arrangements. Non-compliance with the scheme funding legislation will be excluded from his jurisdiction. The reference to the MFR will be replaced with a reference to the scheme funding provisions.

Regulation 19 of The Stakeholder Pensions Scheme Regulations 2000 (SI 2000/1403)

11. Regulation 19 of the Stakeholder Pension Schemes Regulations provides that a stakeholder pension scheme established under trust must comply with sections 35 and 36 of the Pensions Act 1995 which relate to investment principles. These provisions have been amended in the Pensions Act 2004. The cross reference to the MFR in the Regulations will be deleted.