

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

Government response to the consultation

June 2006

DWP Department for
Work and Pensions

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INTRODUCTION

1. On 29th March 2006, the Government undertook a consultation exercise on a draft of the Occupational Pension Schemes (Winding Up Procedure Requirement) Regulations. The regulations are required to implement into UK legislation the provisions contained in Article 16(2)(c) of the European Pensions Directive¹. The consultation ended on 25th April 2006.
2. Four written responses to the consultation were received. A list of respondents is at page 5. The Government is very grateful to all who contributed to the consultation. Their comments have been very helpful in finalising the regulations.
3. The Occupational Pension Schemes (Winding up Procedure Requirement) Regulations 2006 will be laid shortly.
4. The regulations will be available on HMSO's website at <http://www.legislation.hmso.gov.uk/stat.htm#2006>.
5. This document is available on the Department's website at <http://www.dwp.gov.uk/consultations/2006/index.asp>
6. A paper copy of this document can be obtained from:
Alan Napier
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3rd Floor
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1-11 John Adam Street
London WC2N 6HT
Email: alan.napier@dwp.gsi.gov.uk
7. This document describes the policy underpinning the changes being made. Comments on the regulations should not however be taken as an authoritative interpretation of the law. Such an interpretation can only be provided by a court.

¹Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision.

RESPONSES TO CONSULTATION

8. This document sets out the issues raised in response to the consultation exercise and provides the Government's response.

9. This response may be taken as an indication of how the Government plans that the regulations should work in practice.

Specific comments and the Government's response

Regulation 3 – the new Section 231A of the Pensions Act 2004.

10. The view was expressed that, where trustees had prepared a winding-up procedure in advance of a wind-up starting, a strict reading of the draft new section 231A(5) appeared to indicate that this 'optional' or 'notional' procedure should be sent to the Regulator.

The policy intention is that the new provision would apply only where:

- *a scheme had a recovery plan pursuant to section 226 of the 2004 Act; and*
- *it began to wind up during the recovery period.*

The trustees would not be required to disclose any wind up procedure prepared in advance of the scheme beginning to wind up during the recovery period. We have amended the regulations to make this clear.

11. They also noted the lack of a requirement for the procedure to be revisited subsequently during the wind-up process.

The Directive is silent on whether the procedure should be revised. We have amended the regulations to include a provision that trustees may revise the procedure if they consider that is warranted.

12. Respondents had concerns that draft subsections 231A(2)(a) and 231(3)(d) were identical, and that they required schemes to discharge liabilities in accordance with section 74 of the Pensions Act 1995, although that section simply provides a statutory discharge where it is followed.

The Directive requires institutions to “establish a procedure in order to transfer the assets and the corresponding liabilities to another financial institution or a similar body”. We believe that requiring trustees to discharge their liabilities in one or more of the ways mentioned at section 74(3) of the 1995 Act is a proportionate approach to the transposition of this requirement. We have amended the regulations to make this clear, and have removed the “duplicate provision”.

13. Respondents considered that (although they recognised that the wording was taken from paragraph 15 of Schedule 2 to the Occupational Pension Schemes (Disclosure) Regulations 1996), the extent of the phrase “recover any

assets” in draft subsection 231A(2)(a) was unclear, and the reference to “actuarial value” in draft subsection 231A(2)(c) ambiguous.

To reassure trustees that these are not new requirements, we think it better to maintain consistency between this and the existing provision.

14. Respondents also made a number of helpful drafting suggestions. These were considered by our drafting lawyers and were taken on where it was considered the change would be beneficial.

Thanks

15. We are most grateful to everyone who took the time to comment on this consultation document.

16. List of respondents:

Association of Consulting Actuaries
Association of Pension Lawyers
Financial Services Authority
Government Actuary’s Department