Draft Regulations laid before Parliament under section 316(2)(b) of the Pensions Act 2004, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2005 No.

PENSIONS

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

Made - - - -	*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(**1**) 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(**2**), 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(**3**), 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–

(**1**) 2004 c. 35.
(**2**) Section 318(1) is cited because of the meaning given in that section to "modifications", "prescribed" and "regulations".
(**3**) *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.

(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.

(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—