

THE DEPARTMENT FOR WORK AND PENSIONS

**Speeding Up Winding Up Of
Occupational Pension Schemes**

November 2006

Contents

EXECUTIVE SUMMARY	3
INTRODUCTION.....	6
CHAPTER 1: BACKGROUND - THE NATURE OF ‘WINDING UP’ AND POSSIBLE REASONS FOR DELAYS	8
CHAPTER 2: THE VIEWS OF THE PENSIONS INDUSTRY.....	14
CHAPTER 3: PROPOSALS TO SPEED UP WINDING UP.....	17
CHAPTER 4: CONCLUSION.....	31
ANNEX 1: PEOPLE AND ORGANISATIONS INVOLVED IN THE WIND UP PROCESS	33
ANNEX 2: ACTIVITIES DURING WIND UP	36
ANNEX 3: LEGISLATION PROTECTING SCHEME MEMBERS.....	38

Executive summary

1. This is a report of the Government's review of how to speed up the winding up of defined benefit occupational pension schemes, as recommended by the Parliamentary and Health Service Ombudsman.
2. The report outlines how schemes are wound up and, taking account of the views of the pensions industry, makes proposals for how the process can be speeded up. The report invites views on further initiatives that would speed up the winding up process.
3. The Government has concluded that it is reasonable that the key activities of winding up of a pension scheme should be completed within **two years**.
4. In terms of implementation, it is clearly impossible to apply this target retrospectively to schemes currently in wind-up, some of which have already exceeded this time period. In their case, however, the Government wishes to see the winding up process conclude as fast as possible, but certainly within two years from now, taking account of the improvements set out in this report. As far as schemes going into wind-up from now are concerned, the Government intends that the same target (two years from now) should apply to such schemes.
5. To help achieve this target:
The Pensions Regulator will:
 - target administrators and/or providers that hold significant portfolios of schemes that are winding up, and where

those schemes seem to have been winding up for the longest amount of time;

- where appropriate publish information on the time schemes are taking to wind up, when the scheme return cycle is complete;
- consider publishing reports of individual investigations and outcomes under section 89 of the Pensions Act 2004;
- ensure that, where it appoints an independent trustee to oversee a winding up, the trustee does so effectively and in a timely fashion. Where a trustee consistently fails to do so, then the Pensions Regulator will use its powers to remove the trustee from both the scheme(s) involved and its register of independent trustees; and
- provide appropriate guidance and regulatory support to trustees and administrators - by introducing an e-learning module on wind up (to form part of the suite on trustees' knowledge and understanding) and issue regulatory guidance (which will explain how it will regulate schemes winding up and lay out what it considers to be best practice).

HM Revenue and Customs (HMRC) will:

- set up a pilot exercise bringing together all the interested parties in a winding up at the earliest stage to agree a timeline and strengthen communications;
- further publicise the services which its National Insurance Services to the Pensions Industry (NISPI) unit provides;
- extend the scope of the NISPI Shared Workspace pilot (which allows HMRC and scheme administrators to exchange data electronically); and
- streamline internal processes.

The Government will

- bring forward legislation:
 - requiring schemes in wind up to report to the Pensions Regulator after two rather than three years; and
 - giving trustees more discretion to discharge trivial pension rights through lump sum payments; and
- work closely with the pensions industry to evaluate the impact of such changes.

Introduction

i. Winding up an occupational pension scheme can be a long process, and the Government fully understands, and shares, the concerns of scheme members who are facing scheme wind up.

ii. In her report “Trusting in the Pensions Promise”, published on 15 March 2006, the Parliamentary and Health Service Ombudsman recommended that:

the Government should conduct a review - with the pensions industry and other key stakeholders - to establish what can be done to improve the time taken to wind up final salary schemes (recommendation 5).

iii. On 16 March, the Secretary of State informed Parliament that work was already under way in this area and that he would set out proposals for how he intended to proceed when that work was completed. This report fulfils that commitment.

iv. The Government has considered defined-benefit (DB) schemes, and DB elements of hybrid schemes that are subject to winding up legislation. It examined those areas where improvements have been

made, to see if anything more needed to be done there, and looked at areas where concerns remain. The Government recognises that winding up a DB scheme is very complex and, for good reason, it can take time to complete the process properly. The Government's proposals are intended to make a difference where it is possible for Government to make a difference and to encourage a step change in the behaviour of some scheme trustees and administrators.

v. The Government recognises that the proposed measures it will introduce will have different impacts on those schemes that started to wind up before April 2005, when the Pension Protection Fund (PPF) came into operation, and those that started to wind up after that date. Any changes the Government makes to legislation will mainly affect schemes that start to wind up after the change comes into force. However, with the introduction of the PPF, the Government expects that future scheme wind-ups should be fewer.

vi. The Government is grateful for the assistance and advice it has received, in particular from Higham Dunnett Shaw PLC and Independent Trustee Services Ltd.

Chapter 1: Background - The nature of 'Winding Up' and possible reasons for delays

1.1 Pension schemes may start to wind up for a variety of reasons. The scheme rules will generally set out a number of 'trigger' events that will mark the start of the winding up of the scheme. The most common reasons for a scheme to start to wind up are that its sponsoring employer has gone into insolvency, or a scheme is wound up whilst an employer is solvent, for example, because the employer has decided to stop contributing to it. The role of people and organisations involved in the wind up process is attached at *Annex 1*.

1.2 The schemes concerned fall broadly into the following three groups:

- schemes that for all intents and purposes wind up, but actually go through a PPF assessment period and enter the PPF. Since 6 April 2005, if a qualifying insolvency event¹ occurs in relation to an employer of an eligible scheme, this will trigger the beginning of a PPF assessment period. During this period the PPF will assess whether or not it must assume responsibility for the scheme; trustees have responsibility for ensuring that a number

¹ In summary, a qualifying insolvency event in relation to the employer of an eligible scheme is an insolvency event that occurs on or after 6 April 2005. This is irrespective of any previous insolvency event prior to this date. In addition, the scheme must not have commenced wind up before 6 April 2005.

of tasks are completed to enable a proper assessment of the scheme; and the PPF assigns a caseworker to guide and monitor trustees during the assessment period. Anecdotal evidence suggests that the PPF's approach is expediting the completion of the assessment period tasks, many of which align closely with work which must be undertaken during a wind-up;

- schemes that began winding up on or after 6 April 2005, where the employer is sufficiently solvent to agree a full or a compromised buy-out above PPF levels of compensation (and the scheme is wound up outside the PPF), and the members receive either their full benefits, or a level in excess of the PPF level of benefits; and
- schemes that began winding up before 6 April 2005, with a solvent employer, or where an employer has experienced an insolvency event and the scheme is not eligible for PPF compensation but its members may be eligible for assistance from the Financial Assistance Scheme (FAS).

What do trustees have to do to wind up a scheme?

1.3 When a DB occupational pension scheme starts to wind up, its trustees must discharge the scheme's liabilities towards scheme

members, for example, through the purchase of individual annuities or the payment of transfer values into another pension scheme.

1.4 The first part of the winding up process consists of the trustees checking the accuracy of scheme data records. The trustees need to take steps to ensure they do not overlook any member's benefit claims. These tasks are more difficult when a scheme's data records have not been kept properly, which can be more difficult to rectify where there is an insolvent employer.

1.5 Trustees will have to obtain actuarial advice in order to calculate each member's entitlement according to scheme rules and overriding legislation, make an assessment of the value of a scheme's assets, and compare this to its liabilities. They also have to review a scheme's investment strategy, and realise assets; which means selling any investments a scheme may hold.

1.6 Throughout this process frequent communication with members about the progress of the winding-up is required by law (see *Annex 3*). In addition, normal scheme business has to be undertaken; for example, accounts have to be produced and members will retire or wish to transfer to another scheme etc. *Annex 2* contains an example of the

steps usually taken during wind up.

Why does it take time to wind up a scheme?

1.7 Winding up a DB scheme is very complex and, for good reason, it can take time to complete the process properly. For example, checking the accuracy of the scheme data and obtaining actuarial advice in order to calculate each member's entitlement according to scheme rules are both resource intensive tasks. Because of the limitations of the data collected until recently by the Pensions Registry, it is not currently possible to provide comprehensive information on the amount of time it is taking to complete the process for pension schemes which have started to wind up. However, steps have been taken to improve the data, so that such information will be available through the scheme return (see paragraph 3.10 below).

1.8 Such information as is available shows that between 1997 and April 2005, some 800 pension schemes, with about 190,000 members, went into wind up under funded with insolvent employers.

1.9 In ongoing pension scheme administration, an accurate calculation of benefit is usually only done at the point where the benefit is crystallised; be it death, retirement or leaving employment. Some

standard benefit calculations are automated, but, in most schemes, a significant amount of specialist work is needed to calculate benefits. In day-to-day administration errors do occur, some of which are later spotted and can be corrected.

1.10 By contrast, a pension scheme wind up requires the benefit calculations to be done across the whole membership, with any data anomalies resolved. It is a substantial piece of specialist work and is usually done manually, which in itself takes time. At the end of the process, all of a scheme's assets are distributed. Any errors made during the wind up process are difficult to correct once a scheme has wound up, because the trust it is made under ceases to exist. For that reason, a high degree of care and caution is exercised to ensure that scheme records are thoroughly checked, so that the correct entitlements are calculated.

1.11 Trustees of a scheme must also ensure they comply with legislation designed to protect members if their scheme is winding up (*see Annex 3*).

1.12 One additional issue which can give rise to administrative delays in some cases is the process for considering whether members may benefit from special rules to reinstate them into the state additional

pension (State Second Pension, formerly SERPS), in return for the payment of a premium by the pension scheme. This facility is known as 'Deemed Buy Back', and - where relevant - requires schemes to obtain information from HMRC on the amount of the Deemed Buy Back premiums which would be payable in respect of the individual members of the scheme. In providing this information, HMRC, in turn, need to reconcile detailed information about members' earnings and length of service.

1.13 HMRC has recently carried out work on improving its IT systems so that the necessary information can be provided more quickly. Up to now, schemes which needed Deemed Buy Back figures for all of their members have had to wait for the figures to be calculated clerically. From November 2006, HMRC plans to roll out a new, automated calculation system which is intended to cut the time taken to complete this stage of the Deemed Buy Back process.

Chapter 2: The Views of the Pensions Industry

2.1 Views from a range of trustees and scheme administrators and from the pensions industry more generally about why the winding up of DB pension schemes took a long time are that:

- there was a vastly different experience for solvent and insolvent wind ups, with the latter being more problematic (because there is no employer to support the scheme in a time of uncertainty);
- many schemes are complex to administer in terms of calculating benefit entitlements, which have been regularly amended because schemes have, for example, been integrated on corporate re-structuring or acquisitions; and
- even within the world of pensions administration, trustees consider that the tasks involved in winding up are particularly specialist and that expertise is relatively scarce. They believe that the volume of work needed, enhanced by cautious attitudes and the scarcity of expertise, are some of the key reasons behind the lengthy timescales that can be experienced.

2.2 Trustees and administrators:

- advocated a need to put in place a framework that encourages the utilisation of professional expertise and judgement without exposure to undue risk;
- believed that the key issue is the diligence and dedication of the professionals involved in the process, and that, for those schemes that can afford it, the choice of a professional trustee does make a significant difference;
- agreed that it would be possible to complete the key stages of winding up within two years if all professionals involved both in the private and Government sectors were encouraged to use their best endeavours to complete their tasks on a timely basis, but that performance would need to be monitored and achievement of the required standards backed up by, for example, the Pensions Regulator on a consistent basis;
- suggested that trustees and scheme administrators should be held to account for progressing a winding up within the stated timescale by the Pensions Regulator visibly using its powers to encourage them to achieve the required standards;

- suggested that if the above steps could be taken then professionals working on winding up might be enabled with greater confidence to focus on speeding up the whole process, thereby minimising depletion of assets available for members.

Chapter 3: Proposals to speed up winding up

3.1 The Government believes that it is reasonable to expect that the key activities in the winding up process (see table 1 below) should, at most, be completed in **two years** and can be achieved much more quickly if the scheme is not contracted-out of the State additional pension.

Table 1 – Key Activities in the Winding up Process

- Securing pensioner benefits (purchasing an annuity in the pensioner's name with an insurance company using the funds allocated to the pensioner under the rules of the scheme).
- Serving a debt on the employer (assessing what level of debt is owed by the company or companies who sponsor the scheme).
- Identifying the individual remaining members' (non-pensioners') share of the assets and obtaining terms from an insurer to secure a guaranteed pension.
- Conducting a final actuarial valuation (this is the process that places a value on every member's full entitlement under the rules of the scheme. This then allows any debt to be served on the employer. Once all funds due to the scheme are collected it is then used to apportion the funds across the membership).
- Issuing option letters to non-pensioners (this gives non-pensioners the choice of the guaranteed level of pension their share of the fund can purchase with an insurance company or to transfer their share of the fund to an approved pension vehicle which may or may not then provide a better level of pension in future).

3.2 The winding up process is more widely understood now, as compared with five or six years ago. For example, scheme administrators have built up more expertise and the market place (for professional trustees and administrators) has started to become more competitive. Scheme administrators are increasingly aware of the need to dedicate more resources in order to progress scheme wind up.

3.3 In some cases, there may still be valid reasons for delays in winding up a scheme. For example, there may be an ongoing court case. But the progress Government has made in recent years, and other recent developments, should have a significant effect on the time it takes to wind up a scheme, thereby having a positive effect on the funds available for members' pensions. Members should also expect to receive their pension rights more quickly, and this should lessen the anxiety experienced by them.

3.4 The Government will focus on the actions that Government can take to reduce to 2 years the length of time it should take complete the key activities of winding up a DB scheme. The Government also believes it is important for the pensions industry to do all it can to match the

Government's desire to speed up the winding up of pension schemes for the benefit of all scheme members.

3.5 In order to support its goal that the key activities in the winding up process should, at most, be completed in two years, the Government and the Pensions Regulator will lead changes in four areas:

- *Interventions by the Regulator*
- *Provision of appropriate guidance and regulatory support for trustees and administrators by the Regulator*
- *Speeding up the reconciliation of scheme records and HM Revenue and Customs data*
- *Legislative changes to speed up wind up*

Further details on each of these areas are set out below.

Interventions by the Regulator

3.6 The approach that professional trustees and scheme administrators take during a winding up is vital to how effectively the process is completed. However, some trustees, administrators and scheme professionals may be responsible for delaying the winding up process unduly. A variety of reasons for this have been put forward such as a lack of expertise on winding up or a lack of resources.

3.7 The Pensions Regulator takes a risk based approach to all its business. It focuses on schemes where members are subject to the greatest level of risk losing some or all of their benefits. These are frequently identified initially either by a whistleblower report or member complaint. The Regulator's approach is to seek to educate and advise in the first instance and only to sanction or punish if that approach fails. In practice the threat of the use of its powers (see table 2 below) often produces the desired result.

Table 2 – Powers of the Pensions Regulator

The Pensions Regulator has powers to:

- punish breaches of pensions legislation, by fines;
- remove or appoint scheme trustees;
- direct action to be taken by those responsible if they consider that the winding up is being unreasonably delayed;
- modify a scheme so that it can be wound up; and
- direct that a scheme is wound up.

3.8 The Pensions Regulator will now concentrate the use of its current powers to address significant impediments to winding up schemes and in particular take action where schemes have been winding up for too

long. Rather than solely relying on whistle blowers and complainants to initiate action when a scheme is winding up, the Regulator will now take a more targeted approach and will use reports under section 72A of the Pensions Act 1995 and data from NISPI to identify contracted-out schemes that appear to have been winding up for too long; intervening on a case by case basis. Once the Pensions Regulator has full data from the new scheme returns in 2008, it will be able extend its focus to all schemes that have been winding up for too long, not just those that were contracted-out.

3.9 The Regulator will now also target administrators and/or providers that hold significant portfolios of schemes that are winding up and where those schemes seem to have been winding up for the longest amount of time.

3.10 Because of past limitations of Pensions Registry data, it is not yet possible to provide firm information on the amount of time it takes to wind up pension schemes. In order to obtain more reliable data, the Pensions Regulator, through the scheme return, now asks the commencement and completion dates of wind up. In addition, the return requests information on the scheme's registration and approval, details of membership, advisers and service providers, and financial information relating to the scheme.

3.11 The Regulator will consider publishing information on the time schemes are taking to wind up when the scheme return cycle is complete (in 2008), although it may be able to publish such information on DB schemes a year earlier.

3.12 Where it judges it appropriate to do so, it will also consider publishing reports of individual investigations and outcomes under section 89 of the Pensions Act 2004.

3.13 The Pensions Regulator will now ensure that, where it appoints an independent trustee to oversee a winding up, the trustee does so effectively and in a timely fashion. Where a trustee consistently fails to do so then the Pensions Regulator will, where it judges it appropriate, use its powers to remove the trustee from both the scheme(s) involved and its register of independent trustees.

3.14 The Pensions Regulator has made clear that it will not be afraid to use its powers particularly in relation to directions, improvement and third party notices, and its section 89 powers to publish reports of individual investigations where it considers it the best way to bring wind up to a conclusion.

Provision of appropriate guidance and regulatory support for trustees and administrators by the Regulator

3.15 Trustees and administrators need to understand, clearly, what their roles and responsibilities are during a winding up. To support trustees and administrators the Pensions Regulator will provide appropriate guidance and regulatory support.

3.16 By autumn 2007 the Pensions Regulator will:

- introduce an e-learning module on wind up, to form part of the suite on trustees' knowledge and understanding - an extension of the current e-learning programme, principally aimed at those trustees who are not experts on winding up; and
- issue regulatory guidance, which will explain how it will regulate schemes winding up and lay out what it considers to be best practice - providing model winding up plans for different types of scheme (for example both contracted-out and contracted-in schemes, defined benefit and defined contribution schemes) and indicative timeframes for the different stages of winding up.

Speeding up reconciliation of scheme records and HM

Revenue and Customs data

3.17 The main Government organisation whose work affects the process of winding up is NISPI, because of its role in reconciliation of Guaranteed Minimum Pensions (GMPs) for schemes that were contracted out of the state additional pension (SERPS) before 1997.

3.18 GMP reconciliation is the process where the trustee checks a scheme's records for GMP liabilities against the Government's records. There is no legal requirement to do this but it is considered by pension professionals to be essential. There can often be differences in the two sets of records which if not reconciled at the time of wind up can lead to considerable problems.

3.19 In order to enable this check to be performed, trustees need membership information held by the National Insurance Recording System (NIRS) computer. One of NISPI's first activities is to initiate action to provide pension scheme administrators with a paper schedule setting out their membership listings according to information held on NIRS. As some schemes have several thousand members, this can result in the issue of a huge amount of paper and it is understandable that reconciliation action can take some time to complete.

3.20 The length of time it takes to complete the data reconciliation process is often cited as a major cause of delay in a scheme wind up. It is a far from simple process, as the amount of GMP a scheme is liable for is based on past earnings records for tax years up to and including 5 April 1997, and there are often many discrepancies between the records held by administrators and those held on the NI accounts. However, reconciliation timescales have generally improved in recent years.

3.21 For a number of years, NISPI has been seeking ways in which to provide output in an electronic format. Following advances in technology, NISPI is involved in an HMRC departmental pilot of a 'Shared Workspace' concept. This involves using a secure HMRC server as a means of exchanging data electronically with pension scheme administrators - a new collaborative way of working and communicating with administrators of schemes that have ceased to contract out and are winding up, allowing information to flow between them and NISPI much more speedily.

3.22 NISPI's Shared Workspace pilot will improve the GMP reconciliation process. It will aid clarification and reconciliation of past and present scheme members that must be addressed to ensure that pension rights are preserved for everyone in the scheme.

3.23 The expectation is that: communications will improve; data storage and handling will be more efficient; NISPI's staff will be able to view and work on the data in collaboration with their administrator counterparts; and the overall time it takes to reconcile the NI accounts and ultimately wind up a contracted-out scheme will improve.

3.24 The Association of British Insurers, the National Association of Pension Funds, the Society of Pension Consultants, and Legal & General (NISPI's first pilot partner) all support the initiative. Legal & General was the first administrator to participate in the pilot exercise. The pilot was restricted to one company until the functionality was proven. The pilot is progressing extremely well and in November 2006 NISPI will increase the capacity to include a further nine schemes with 12,000 members and has plans in hand to raise the limit on data volumes on evaluation of the pilot phase (expected early 2007).

3.25 In recent years NISPI has introduced a number of other initiatives aimed at speeding up scheme cessation and winding up. In order to increase visibility, improve customer relations and help reduce the time taken to clear scheme cessation cases, NISPI introduced 'roadshows' several years ago. These were to provide scheme administrators with another forum to discuss the requirements needed when a scheme

ceases to contract out or winds up. In addition, NISPI introduced a customer account management regime in 2001 that covers approximately 80% of the schemes with which it deals. This enables scheme administrators to deal with the same people every time they need to contact NISPI and has been instrumental in the drawing up of joint action plans to assist in the early closure of cases.

3.26 In addition HMRC, working with other interested parties, intends by the end of 2006 to:

- set up a pilot exercise with a small number of schemes, bringing together all the interested parties (scheme administrator, trustees the Pensions Regulator and NISPI) at the earliest stage of scheme cessation/wind up to agree a timeline and strengthen communications for the future. The objective is to ensure that all key players are brought together at the outset so that everyone is fully aware of their role and associated tasks. NISPI aims to drive out realistic and aggressive (where necessary) priorities and timescales to ensure that the scheme cessation/winding-up is carried out as speedily as possible.
- further publicise NISPI services, both through the NISPI Newsletter to providers and the NISPI website. This will highlight the services NISPI offers to schemes including the:

- Accrued GMP Liability Service (AGLS): a service where administrators can request up to date details of the GMP accrued for past and present members; and
 - Contracted Out Contribution Information Service (COCIS): a service where administrators can request details of contracted out contributions/earnings recorded for members.
- streamline internal processes within the Audit and Pensions Scheme Services (APSS) for the cancellation of contracting-out certificates (in particular speeding up the exchange of information with NISPI) – where it may be possible to save a significant amount of time from the current process; and
 - continue to test, evaluate and extend the scope of the Shared Workspace pilot.

Legislative changes to speed up wind up

3.27 In April 2002, the Government introduced legislation² designed to speed up the winding up process. The provisions:

- required trustees to make regular progress reports to the Pensions Regulator;

² Sections 72A and 72B of the Pensions Act 1995, as inserted by sections 49 to 50 of the Child Support, Pensions and Social Security Act 2000 and the Occupational Pension Schemes (Winding Up Notices and Reports etc) Regulations 2002.

- allowed the Pensions Regulator to direct that action is taken by those responsible if it considers that the winding up is being unreasonably delayed;
- required other people involved in running the scheme to inform the Pensions Regulator if there are no trustees so that consideration can be given to appointing a trustee; and
- allowed trustees to apply to the Pensions Regulator for an order to modify the scheme to enable it to be wound up properly.

3.28 The review considered the impact of these provisions in particular – an assessment of their impact is contained in *Annex 3*. In brief, it is likely that those regulations have been of some help, although firm quantified evidence is not available for reasons discussed at paragraph 3.10 above. However, the Government is aware that some practitioners believe that further legislative changes could reduce delays in winding up schemes.

3.29 The Government will bring forward an amendment to the Occupational Pension Schemes (Winding Up Notices and Reports etc) Regulations 2002, on which it will consult early in 2007, so that reports to the Pensions Regulator (under Section 72A of the Pensions Act 1995) should be made after **two** rather than three years. This will give

the Pensions Regulator evidence at an earlier stage to support any action it may decide to take.

3.30 The Government also proposes to amend legislation to give trustees more discretion to discharge relatively small (“trivial”) pension rights by means of lump sum payments (by allowing trustees to modify the scheme where it is not currently possible to do so for some older schemes with smaller benefits). The Government will continue to work closely over the coming weeks with pensions industry specialists in winding up with a view to consulting on draft amending legislation early in 2007.

Chapter 4: Conclusion

4.1. Winding up a DB scheme remains a very complex process that, for good reason, may take time to complete properly. The proposals put forward in this report are, however, intended to build on the ongoing work across Government designed to speed up this process.

4.2 The proposals are intended to make a difference where the Government **can** make a difference. In the light of these proposals, the Government considers it reasonable to expect the pensions industry, including scheme trustees and administrators, to play their part in completing the key activities of winding up of schemes within a two year period, for the benefit of all scheme members.

4.3 Following on from this report, the Department for Work and Pensions will continue to work across Government, with colleagues at the Pensions Regulator, PPF, NISPI and APSS to implement the proposals in this report, and evaluate their effectiveness and the need for further action.

4.4 The Government is grateful for the help it has had in the review from trustees, scheme professionals and others involved in scheme winding up and would appreciate further contributions on how winding up can be

made to work as effectively as possible. If you wish to give your views on the proposals contained within this report, or if you have ideas about how to speed up winding up, please write by **Thursday 14 December** to:

The Review of Winding Up
Private Pensions Policy and Regulation Division
Department for Work and Pensions
3rd Floor, The Adelphi
1-11 John Adam Street
London WC2N 6HT

or e-mail them to:

Winding-up@dwp.gsi.gov.uk

Annex 1: People and Organisations involved in the Wind up Process

1. The main people and organisations involved in a scheme wind up are:

- the employer;
- the scheme trustees (who, on behalf of the scheme members, control the assets of the scheme and are responsible for its administration and operation);
- professionals appointed by the trustees (including actuaries, auditors, lawyers and fund managers);
- scheme administrators (who run the day-to-day administration of the scheme);
- insurance companies;
- HM Revenue and Customs National Insurance Services to Pensions Industry (NISPI) (if the scheme is contracted-out);
- HM Revenue and Customs Audit and Pension Scheme Services (APSS), Nottingham; and
- Insolvency Practitioners (if the employer is insolvent).

The role of the DWP

2. DWP does not have day-to-day responsibility for schemes that are winding up, and it has no actual role in the procedure of winding up a pension scheme (for example, it does not advise trustees, or deal with complaints, or oversee the actions of those involved in a scheme wind up). A scheme's trustees are overseen by the Pensions Regulator and become involved with NISPI if the scheme is contracted out. DWP is, however, responsible for establishing the legislative framework, which is designed to protect members when their schemes start to wind up.

The role of the Pensions Regulator

3. The Pensions Regulator³ is responsible for the regulation of all work based pensions. The Pensions Regulator is not routinely involved in the mechanics of winding a scheme up, but it may become involved, for example, if it is made aware that there is a problem in the winding up either through a report made to the Regulator, a member complaint or a request for assistance from trustees.

³ The Pensions Regulator was established by the Pensions Act 2004 as the successor organisation to the Occupational Pensions Regulatory Authority (Opra)

4. In performing its role the Pensions Regulator uses both legislation specific to scheme wind ups and also that which applies to schemes more generally but may include scheme wind ups. Obligations imposed on schemes by legislation specific to wind up are:

- duties to provide information to the membership of a scheme about the wind up;
- duties to provide information and reports to the regulator about the progress of a wind up;
- duties to comply with the conditions and processes for paying a surplus to the employer for scheme in wind up;
- duties to keep records of winding up decisions;
- duties to comply with directions given by the regulator in connection with the winding up; and
- priority orders in wind up.

Mostly these duties fall on the trustees, but may have an impact on others who may be involved with the scheme such as scheme administrators and insurance companies.

5. The Pensions Regulator has the power to punish breaches of pension legislation by way of civil penalties but could also remove or appoint trustees in certain circumstances.

6. The Pensions Regulator also has the power to modify scheme rules to allow a wind up to take place in certain circumstances - usually on application from the trustees, because the scheme does not have the power to do so itself. The Pensions Regulator can also direct a scheme to wind up in certain circumstances.

7. In order for the Pensions Regulator to exercise most regulatory powers, it needs to issue a notice to the directly affected parties (i.e. usually the trustees and employers but often scheme advisors and sometimes members as well). The notice spells out the facts of the case as the Pensions Regulator understands it, as well as stating the power it is considering using. The parties can then make representations, which the Pensions Regulator will consider before deciding whether or not to exercise the power. Depending on the power to be used, the decision to exercise it may be taken by either the Pensions Regulator itself, or the Determinations Panel⁴. In either case the parties can appeal the decision to the independent Pensions Regulator Tribunal⁵. For this

⁴ In most cases, a determination is carried out by the Determinations Panel. Members of the panel are people with legal, business or pensions knowledge. They are independent of the Regulator and are not involved in investigating cases.

⁵ The Pensions Regulator Tribunal is the independent body set up to hear references on determinations.

reason it is important that where a power is to be exercised in this way the case for doing so is robust and supported by evidence.

The role of NISPI and APSS

8. NISPI works closely with the pensions industry to ensure that the pension rights of people who have contracted-out of the State Second Pension (S2P), formerly the State Earnings Related Pension Scheme (SERPS), are safeguarded and accurately maintained. NISPI is responsible for ensuring that the contracted out rights of all members are fully protected and preserved when a contracted out scheme ceases to contract out or winds up. APSS, Nottingham, is responsible for the registration, maintenance, and cancellation of contracting-out certificates.

9. The role of the Insolvency Service

In an operational capacity, if the official receiver is dealing with a company or partnership which has operated an occupational pension scheme for the benefit of employees, he or she is required under section 120 of the Pensions Act 2004 to send notice of an 'insolvency event' (i.e. the making of the winding-up order) to the Pension Protection Fund, the Pensions Regulator, and the pension scheme trustees or managers.

In a regulatory capacity, the Insolvency Service is responsible for regulating the bodies that authorise individuals to act as insolvency practitioners, and some insolvency practitioners directly. Where an insolvency practitioner is appointed in relation to a pension scheme the Insolvency Service's Insolvency Practitioner Policy Section may consider complaints against the practitioner.

Annex 2: Activities during Wind Up

Below is an outline of the main activities during the winding up of a contracted-out defined benefit scheme. The outline will not be appropriate for all schemes, as each type of scheme will have its own peculiarities. Because winding up a pension scheme is a very complex process, trustees and scheme managers should take advice from their professional advisers.

Early Stages

- Announcement to members that the scheme has started to wind up
- Review of the scheme's investment policy
- Section 27 Notices placed in London Gazette to locate 'missing' members and beneficiaries
- Approximate up-to-date financial position of the scheme determined
- Agreement reached on the level of interim claims (retirement benefits, transfers etc) based on the financial position of the scheme
- Contracting out certificate surrendered to APSS, Nottingham
- NISPI advised of position. Membership and GMP information requested from NIRS so that the reconciliation process can begin
- Data cleansing exercise considered and scope agreed with trustees/managers
- Debt on employer calculations carried out, if appropriate
- Trustees or managers decide on whether to carry out GMP equalisation
- Sample membership data submitted to insurers to obtain quotations in order to buyout member's benefits

Progressing Key Tasks

- NISPI GMP reconciliation underway
- Data cleaning exercise underway
- Insurer chosen for buyout purposes

Completion of some key tasks

- Data cleaning exercise completed
- Pensioner Benefits secured
- Reconciliation of GMPs completed
- Final pensioner benefits agreed with insurer
- Debt on employer formally served by the trustees of the scheme
- Regular up-date announcement to members informing them of progress of the wind up

Preparing options for non-pensioners

- Debt on employer paid to scheme
- GMP reconciliation complete
- Format of non-pensioner option letters agreed
- Assets transferred to insurer for non-pensioner buyout

Issuing options to non-pensioners

- Final actuarial valuation performed to enable the precise allocation of assets to individual scheme members
- Option letters issues to scheme members

Processing options

- Questions relating to options (e.g. from IFAs) are dealt with by the trustees/scheme administrators
- Options processed during 3 month statutory deadline for responses
- Default options (for those who have not replied within the specified time) processed after 3 months
- Non-pensioner advised of benefits purchased and issues policy documents

Closure

- Final set of accounts drawn up
- Legal deed drawn up to terminate the scheme
- Authorities advised that wind up complete

Annex 3: Legislation Protecting Scheme Members

Statutory Priority Order

1. Trustees must ensure that the assets of a scheme are applied in accordance with the priority order set out in the wind up clause of a scheme's Trust Deed and, from 6 April 1997, the overriding provisions within the statutory priority order set out in Section 73, 73A and 73B of the Pensions Act 1995, and supporting Regulations.

2. The statutory priority order, introduced on 6 April 1997, was amended for schemes which began winding up on or after 10 May 2004.

Pensioners' future indexation was moved down the priority order to give a better balance between the interests of pensioner and non-pensioner members. The current statutory priority order applies to schemes which commence winding up on or after 6 April 2005 and ensures that members of schemes wound up due to employer insolvency, with sufficient funds to meet more than the benefits provided by the PPF, do not find themselves in a worse position than if the scheme had less funds and was covered by the PPF.

Employer Debt

3. When a DB scheme winds up or its sponsoring employer becomes insolvent, Section 75 of the Pensions Act 1995 states that any deficiency in the fund becomes a 'debt on the employer'. The trustees must calculate the amount of the debt and pursue payment from the employer. From 6 April 1997 the debt due from the employer was that required to take the scheme up to the minimum funding requirement (MFR).

4. Over recent years the debt on employers has gradually increased. There was an increase in the debt where a scheme is winding up with a solvent sponsoring employer in March 2002. Since March 2004 the debt on solvent employers whose scheme is winding up has been calculated on the basis that the scheme should be able to meet the full costs of winding up and the full benefits that scheme members have accrued and expect to receive. These benefits are calculated by using the cost of buying annuities (including indexation). In February 2005 the debt on employers who become insolvent was increased to the same level.

Keeping Scheme Members informed about a Winding Up

5. Trustees must also keep scheme members informed about the progress of a winding up. Regulation 5(10) of the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 requires the trustees of a scheme that starts to wind up to provide certain information to members and beneficiaries at specified intervals during the wind up process.

6. Members and beneficiaries of DB schemes should receive an announcement automatically within one month of a scheme starting to wind up advising members:

- of the reason for the winding up;
- to whom any further enquiries about the scheme should be sent; and
- what action is being taken to establish the scheme's liabilities and to recover any assets;
- when it is anticipated final details will be known; and
- (where trustees have sufficient information) an indication of the extent to which, if at all, the actuarial value of accrued rights or benefits to which such person is entitled are likely to be reduced

Annual progress updates should then be provided automatically.

7. Within three months members and beneficiaries should receive information on what trustees are able to do to discharge their liabilities in relation to them in accordance with the applicable winding up rules.

For members that is:

- the amount of benefit which is payable;
- if a benefit is paid periodically, the conditions or provisions (if any) subject to which payment will be continued or altered;
- whether, and if so by how much, the benefits in question are reduced because the scheme's resources are not sufficient to meet its liabilities; and
- who has or will become liable for the payment of benefits.

Annual progress updates should then be provided automatically.

8. Once a transfer has been made the trustees or managers must issue an additional notice to each member, within one month of making the transfer, stating the:

- amount of the payment;
- name and address of the scheme, and
- date it was paid.

Wind Up Procedure Requirement Regulations

9. The Government has introduced new Wind Up Procedure Requirement Regulations to implement Article 16(2)(c) of the European Pensions Directive (Directive 2003/41/EC on the Activities and Supervision of Institutions for Occupational Retirement Provision). The Regulations, amongst other things, require trustees and managers of a DB scheme that winds up when it is in a recovery period to establish a formal wind up procedure, which has to be disclosed to the Pensions Regulator, who will have powers to sanction for non-compliance. This should help to concentrate further trustees' and advisers' efforts.

10. In particular, the Regulations require the trustees and managers of such a scheme to:

- (a) inform the Pensions Regulator;
- (b) establish a procedure to discharge their liabilities by
 - (i) transfer of assets to another occupational pension scheme or a personal pension scheme;
 - (ii) annuity purchase; or
 - (iii) payment of cash lump sum;
- (c) disclose the procedure to the Pensions Regulator; and
- (d) make a general outline of the procedure available to members and, where appropriate, their representatives.

The Regulations came into effect on 24 July 2006.

The Occupational Pension Schemes (Winding Up Notices and Reports etc) Regulations 2002

11. Following an informal consultation with representatives from the pensions industry in 1998, the Government published (in May 1999) a formal consultation document *Winding Up Occupational Pension Schemes: Speeding up the Process*. The consultation proposed new measures to try and speed up the process. This led to legislation in the Child Support, Pensions and Social Security Act 2000 and then the Occupational Pension Schemes (Winding Up Notices and Reports etc) Regulations 2002.

12. The Winding Up Notices and Reports Regulations came into force in April 2002. They place greater visible accountability on those people involved in winding up a pension scheme. The provisions:

- require trustees to report regularly to the Pensions Regulator;
- enable the Pensions Regulator to direct action to be taken by those responsible if they consider that the winding up is being unreasonably delayed;

- require other people involved in running the scheme to tell the Pensions Regulator if there are no trustees so that consideration can be given to appointing a trustee; and
- allow trustees to apply to the Pensions Regulator for an order to modify the scheme so that it can be wound up.

13. The review which led to this report assessed the Winding-up Notices and Reports Regulations against the Government's objectives underlying them.

14. Data collected previously on wind ups does not allow for the comparison of average wind up times. It is therefore difficult to judge whether the 2002 Notices and Reports Regulations in fact have made a significant difference. The Pensions Regulator, however, has some evidence that where it has received reports under the 2002 Regulations and has intervened following an assessment of the risks, it has had some success in removing impasses to wind up and bringing them to swifter conclusions. In general terms impasses often arise through misunderstandings between parties or uncertainties caused by different interpretations of the rules. The Pensions Regulator can and does provide advice or guidance to trustees and occasionally acts as a broker where there are disputes between say the trustees and employer or their advisers. In addition, the Pensions Regulator may get involved as the result of a member complaint or where the scheme advisers whistleblow. There are also circumstances where the impasses exist due to the fact that there is no employer still in existence and sometimes no trustee either. The Pensions Regulator can then assist by appointing a trustee to take the wind up forward.

15. As a result of this review, and with the assistance of professionals in the pensions industry, DWP will take additional steps to monitor how long it takes schemes to wind up. Data sources will include the Pensions Regulator's new scheme return, and the annual Occupational Pension Schemes Survey carried out by the Office for National Statistics (formerly the Government Actuary's Department occupational pension schemes survey).