
STATUTORY INSTRUMENTS

2005 No. 2159

**The Occupational Pension Schemes (Winding Up)
(Modification for Multi-employer Schemes and
Miscellaneous Amendments) Regulations 2005**

Modification for multi-employer schemes of rules about reduction of benefits during winding up period

2.—(1) This paragraph applies to an occupational pension scheme at any time (“the relevant time”) if—

- (a) section 73 of the 1995 Act (preferential liabilities on winding up) applies to the scheme;
- (b) the scheme has been a relevant multi-employer scheme at any time after 5th April 2005;
- (c) at a time after that date when the scheme was such a scheme an event that is an insolvency event for the purposes of Part 2 of the 2004 Act (see section 121 of that Act: insolvency event, insolvency date and insolvency practitioner) has occurred in relation to a person who immediately before the event was an employer in relation to the scheme; and
- (d) the trustees or managers of the scheme have reasonably determined not more than 3 months before the relevant time that it is probable that an assessment period will begin in relation to the scheme not more than 12 months after the time of the determination.

(2) In paragraph (1) “relevant multi-employer scheme” means an occupational pension scheme—

- (a) in relation to which there are 2 or more employers; and
- (b) the rules of which do not provide for the partial winding up of the scheme if one of the employers ceases to participate in the scheme.

(3) If paragraph (1) applies to a scheme, section 73A(2)(a) of the 1995 Act (which requires the trustees or managers during the winding up period to secure that pensions or other benefits paid in respect of members are reduced so far as is necessary to reflect the liabilities in respect of the members which will be satisfied in accordance with section 73 of that Act) applies to the scheme with the modification specified in paragraph (4).

(4) The modification is that section 73A(2)(a) applies as if the reference to the liabilities in respect of the members which will be satisfied in accordance with section 73 of the 1995 Act were a reference to those liabilities or, if the trustees or managers consider it appropriate, to the liabilities in respect of the members which would be satisfied in accordance with that section on the assumption that—

- (a) the liabilities mentioned in paragraphs (a) and (b) of section 73(4) of that Act (liabilities under certain pre-1997 contracts of insurance and liabilities for pensions or other benefits) will be fully satisfied (but in the case of the liabilities mentioned in section 73(4)(b) only to the extent that they do not exceed the corresponding PPF liability, as defined in section 73(5) of that Act); and
- (b) the liabilities mentioned in paragraphs (c) and (d) of section 73(4) of that Act will not be satisfied in whole or in part.

(5) If—

- (a) the trustees or managers of a scheme have made payments in accordance with the requirement in section 73A(2)(a) of the 1995 Act on the assumption mentioned in paragraph (4); and
- (b) subsequently paragraph (1) ceases to apply to the scheme because the condition in paragraph (1)(d) ceases to be met,

section 73A(2)(b) (which for the purposes of section 73A(2)(a) permits the recovery of overpayments and payment of shortfalls) applies as if the reference to the purposes of section 73A(2)(a) included a reference to the purpose of recovering any overpayment or paying any shortfall that has occurred as a result of payments having been made on that assumption.

(6) In any case where, by virtue of regulation 12, 12A or 12B of the 1996 Regulations (winding up of sectionalised schemes, schemes with partial government guarantee and partly foreign schemes), sections 73 to 74 of the 1995 Act (winding up provisions) apply to a scheme as if different parts of the scheme were separate schemes—

- (a) this regulation (apart from this paragraph) also so applies; and
- (b) references to schemes, employers and members must be read accordingly.