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STATUTORY INSTRUMENTS

2008 No. 1068

PENSIONS

The Occupational Pension Schemes (Employer Debt – Apportionment Arrangements) (Amendment) Regulations 2008

<i>Made</i>	- - - -	<i>11th April 2008</i>
<i>Laid before Parliament</i>		<i>14th April 2008</i>
<i>Coming into force</i>	- -	<i>15th April 2008</i>

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 68(2)(e), 75(5), 75A(1) to (8), 124(1) and 174(2) and (3) of the Pensions Act 1995(1).

These Regulations were not subject to consultation, because in this case it appeared to the Secretary of State that by reason of urgency consultation was inexpedient(2).

Citation and commencement

1. These Regulations may be cited as the Occupational Pension Schemes (Employer Debt – Apportionment Arrangements) (Amendment) Regulations 2008 and shall come into force on 15th April 2008.

Amendment of the Occupational Pension Schemes (Employer Debt) Regulations 2005

2.—(1) The Occupational Pension Schemes (Employer Debt) Regulations 2005(3) are amended as follows.

(2) In regulation 2(1) (interpretation), for paragraph (f) of the definition of “scheme apportionment arrangement”(4), substitute—

- “(f) each of the following persons consents to—
(i) the trustees or managers, and either

(1) 1995 c.26. Section 75 was amended by section 271 of the Pensions Act 2004 (c.35) and section 75A was inserted by section 272 of that Act. Section 124(1) is cited for the meaning there given to “prescribed” and “regulations”.
(2) See section 120(2)(b) of the Pensions Act 1995.
(3) S.I. 2005/678, relevant amending instrument is S.I. 2008/731.
(4) This definition was inserted by regulation 4(2)(e) of S.I. 2008/731.

- (ii) (where the circumstances referred to in paragraph (b) apply) any remaining employer to whom all or part of the amount that would have been the employer's liability share is being apportioned, or
 - (iii) (where the circumstances referred to in paragraph (b) do not apply) the employer; and”.
- (3) For regulation 7A(1)(b) (regulated apportionment arrangements)(**5**), substitute—
- “(b) where an assessment period has not already commenced, each of the following persons agrees to the arrangement—
 - (i) the trustees of the scheme, and either
 - (ii) where the employer's liability share is increased, the employer, or
 - (iii) where the employer's liability share is reduced, any remaining employer to whom all or part of the amount that would have been the employer's liability share is being apportioned;”.
- (4) In regulation 16(2) (modification of schemes: apportionment of section 75 debt)(**6**), for “regulation 6(2)”, substitute “regulation 6(2)(a) or (b)”.

Signed by authority of the Secretary of State for Work and Pensions.

11th April 2008

Mike O'Brien
Minister of State,
Department for Work and Pensions

(5) Regulation 7A was substituted by regulation 8 of S.I. 2008/731.
(6) Regulation 16(2) was substituted by regulation 12 of S.I. 2008/731.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Occupational Pension Schemes (Employer Debt) Regulations 2005 (S.I. 2005/678) (“the 2005 Regulations”). The 2005 Regulations make provision where debts arise under section 75 of the Pensions Act 1995 in respect of occupational pension schemes.

The 2005 Regulations were amended by the Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2008 (S.I. 2008/731) (“the 2008 Regulations”), which came into force on 6th April 2008. These Regulations correct an omission from the 2008 Regulations identified after they were laid, and amend a cross-reference in one regulation with a view to clarifying its intention as a result of concerns expressed.

Regulation 2(2) amends the definition of “scheme apportionment arrangement” in regulation 2(1) of the 2005 Regulations so as to provide that the employer, or in an applicable case any employer to whom all or part of the employer’s liability has been apportioned, must consent to the arrangement.

Regulation 2(3) inserts the same provision for the agreement of those employers in the case of a regulated apportionment arrangement relating to a scheme in relation to which the Pension Protection Fund assessment period has not yet commenced, by amending regulation 7A(1)(b) of the 2005 Regulations (which is where the requirement for the trustees’ agreement to the arrangement is found).

Regulation 2(4) amends the reference to “regulation 6(2)” in regulation 16(2) of the 2005 Regulations to a reference to “regulation 6(2)(a) or (b)”, to clarify that regulation 16 permits a modification to scheme rules for the purposes of enabling a scheme apportionment arrangement or a regulated apportionment arrangement.

These Regulations were not subject to consultation, because the Secretary of State considered that consultation was inexpedient because of urgency.

A full impact assessment has not been published for this instrument as it has only a negligible regulatory impact on the private and voluntary sectors.