

2010 No. 111

PENSIONS

**The Occupational Pension Schemes
(Employer Debt and Miscellaneous Amendments)
Regulations (Northern Ireland) 2010**

Made - - - -

16th March 2010

Coming into operation -

6th April 2010

The Department for Social Development makes the following Regulations in exercise of the powers conferred by Articles 68(2)(e), 75(5), (6D)(b)(i) and (10), 75A(1) to (4) and (5)(a), 116, 122(3) and 166(1) to (3) of the Pensions (Northern Ireland) Order 1995(a), and now vested in it(b), and Articles 2(5)(a), 64(2)(a), 110(5), 280(1)(b) and (2)(b) and 287(2) and (3) of the Pensions (Northern Ireland) Order 2005(c).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations (Northern Ireland) 2010 and shall come into operation on 6th April 2010.

(2) In these Regulations “the 2005 Regulations” means the Occupational Pension Schemes (Employer Debt) Regulations (Northern Ireland) 2005(d).

Amendment of the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations

2. In regulation 1(3) of the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations (Northern Ireland) 2005(e) (interpretation)—

(a) in sub-paragraphs (a) and (b) for “C or D” substitute “C, D or E”;

(b) in sub-paragraph (a) after head (iv) add—

“(v) condition E is that—

(aa) there is a restructuring within regulation 6ZB or 6ZC(f) of the Occupational Pension Schemes (Employer Debt) Regulations (Northern Ireland) 2005 (employment-cessation events: exemptions);

(a) S.I. 1995/3213 (N.I. 22); Article 75 was amended by Article 248 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)) and is modified by S.R. 2005 No. 168; Article 75A was inserted by Article 249 of that Order; Article 116 was amended by paragraph 62 of Schedule 10 and Schedule 11 to that Order and paragraph 6 of Schedule 5 to the Pensions Act (Northern Ireland) 2008 (c. 1 (N.I.))

(b) See Article 8(b) of S.R. 1999 No. 481

(c) S.I. 2005/255 (N.I. 1)

(d) S.R. 2005 No. 168; relevant amending Regulations are S.R. 2008 Nos. 132 and 178

(e) S.R. 2005 No. 91; regulation 1(3) was substituted by regulation 3(2)(b) of S.R. 2005 No. 357

(f) Regulations 6ZA to 6ZD are inserted by regulation 7 of these Regulations

- (bb) in that restructuring, the employer was the exiting employer for the purposes of those Regulations (see the definition of “exiting employer” in regulation 2(3A)(a) of those Regulations), and
- (cc) regulation 6ZA(3) or (4) of those Regulations (employment-cessation events: general) does not apply in relation to that restructuring;”;
- (c) in sub-paragraph (b) after head (iv) add—
 - “(v) condition E is that—
 - (aa) there is a restructuring within regulation 6ZB or 6ZC of the Occupational Pension Schemes (Employer Debt) Regulations (Northern Ireland) 2005;
 - (bb) in that restructuring, the employer was the exiting employer for the purposes of those Regulations (see the definition of “exiting employer” in regulation 2(3A) of those Regulations), and
 - (cc) regulation 6ZA(3) or (4) of those Regulations does not apply in relation to that restructuring.”.

Amendment of the Pension Protection Fund (Entry Rules) Regulations

3.—(1) The Pension Protection Fund (Entry Rules) Regulations (Northern Ireland) 2005(**b**) are amended in accordance with paragraphs (2) and (3).

(2) In regulation 1(4)(c) (interpretation)—

- (a) in sub-paragraphs (a) and (b) for “C or D” substitute “C, D or E”;
- (b) in sub-paragraph (a) after head (iv) add—

“(v) condition E is that—

- (aa) there is a restructuring within regulation 6ZB or 6ZC of the Occupational Pension Schemes (Employer Debt) Regulations (Northern Ireland) 2005 (employment-cessation events: exemptions);
- (bb) in that restructuring, the employer was the exiting employer for the purposes of those Regulations (see the definition of “exiting employer” in regulation 2(3A) of those Regulations), and
- (cc) regulation 6ZA(3) or (4) of those Regulations (employment-cessation events: general) does not apply in relation to that restructuring;”;

(c) in sub-paragraph (b) after head (iv) add—

“(v) condition E is that—

- (aa) there is a restructuring within regulation 6ZB or 6ZC of the Occupational Pension Schemes (Employer Debt) Regulations (Northern Ireland) 2005;
- (bb) in that restructuring, the employer was the exiting employer for the purposes of those Regulations (see the definition of “exiting employer” in regulation 2(3A) of those Regulations), and
- (cc) regulation 6ZA(3) or (4) of those Regulations does not apply in relation to that restructuring.”.

(3) In regulation 2(4)(d) (schemes which are not eligible schemes) after sub-paragraph (d) add—

“(e) a restructuring within regulation 6ZB or 6ZC of those Regulations (employment-cessation events: exemptions).”.

(a) Regulation 2(3A) is inserted by regulation 4(b) of these Regulations
 (b) S.R. 2005 No. 126; relevant amending Regulations are S.R. 2005 No. 357 and S.R. 2008 No. 132
 (c) Paragraph (4) was substituted by regulation 4(b) of S.R. 2005 No. 357
 (d) Paragraph (4) was substituted by regulation 18 of S.R. 2008 No. 132

Amendment of regulation 2 of the 2005 Regulations

4. In regulation 2 of the 2005 Regulations (interpretation)—

(a) in paragraph (1)—

(i) after the definition of “the Deficiency on Winding Up Regulations” insert—

““defined benefits”, in relation to a member of an occupational pension scheme, means benefits which are not money purchase benefits (but the rate or amount of which is calculated by reference to earnings or service of the member or any other factor other than an amount available for their provision);”;

(ii) for the definition of “employment-cessation event”(a) substitute—

““employment-cessation event” has the meaning given in regulation 6ZA;”;

(iii) omit the definition of “statutory funding objective”(b);

(iv) after the definition of the “the tax condition” insert—

““technical provisions” has the meaning given by Article 201(2) of the 2005 Order (the statutory funding objective);”;

(v) omit the definition of “updated actuarial assessment”(c);

(vi) after the definition of “updated asset assessment”(d) insert—

““updated liabilities assessment” means the actuary’s assessment of any changes in the liabilities of the scheme in respect of pensions and other benefits between—

(a) the effective date of the actuary’s estimate of the solvency of the scheme (as defined in regulation 7(6) of the Scheme Funding Regulations(e)) included in the most recent actuarial valuation of the scheme received by the trustees or managers—

(i) under Article 203 of the 2005 Order, or

(ii) where the trustees or managers have not received an actuarial valuation under that Article, which the actuary thinks it is appropriate to use, and

(b) the applicable time;”;

(b) after paragraph (3) insert—

“(3A) For the purposes of a restructuring within regulation 6ZB or 6ZC—

“exiting employer” means an employer—

(a) in relation to a multi-employer scheme;

(b) who employs at least one active member of the scheme in respect of whom defined benefits are accruing, and

(c) in respect of whom a relevant event has not occurred, and

“receiving employer” means an employer who, on the date on which there is a restructuring within regulation 6ZB or 6ZC, is—

(a) an employer in relation to the same multi-employer scheme as the exiting employer;

(b) either—

(i) associated (within the meaning in Article 4 of the Insolvency (Northern Ireland) Order 1989(f)) with the exiting employer, or

(ii) the new legal status of the exiting employer;

(a) The definition of “employment-cessation event” was substituted by regulation 4(2)(g) of S.R. 2008 No. 132

(b) The definition of “statutory funding objective” was inserted by regulation 4(2)(j) of S.R. 2008 No. 132

(c) The definition of “updated actuarial assessment” was inserted by regulation 4(2)(k) of S.R. 2008 No. 132

(d) The definition of “updated asset assessment” was inserted by regulation 4(2)(k) of S.R. 2008 No. 132

(e) The definition of “the Scheme Funding Regulations” was inserted by regulation 4(2)(j) of S.R. 2008 No. 132

(f) S.I. 1989/2405 (N.I. 19); Article 4 was amended by paragraph 80 of Schedule 29 to the Civil Partnership Act 2004 (c. 33), paragraph 6 of the Schedule to S.R. 2005 No. 479 and paragraph 106(5) of Schedule 1 to S.I. 2009/1941

- (c) employing at least one active member of the scheme in respect of whom defined benefits are accruing, and
- (d) an employer in respect of whom a relevant event has not occurred.”;
- (c) after paragraph (6)(a) add—
 - “(7) Notwithstanding section 24(1) of the Interpretation Act (Northern Ireland) 1954(b), any document under regulations 6ZA to 6ZD may be sent by ordinary post.”.

Amendment of regulation 5 of the 2005 Regulations

5. In regulation 5(c) of the 2005 Regulations (calculation of the amount of scheme liabilities and value of scheme assets)—

- (a) in paragraph (4) for sub-paragraph (b) substitute—
 - “(b) any amounts which are—
 - (i) treated as a debt due to the trustees or managers under—
 - (aa) Article 75(2) or (4) (deficiencies in assets);
 - (bb) Article 207(3) of the 2005 Order (amounts due in accordance with a schedule of contributions);
 - (cc) Article 59(2) (determination of contributions: supplementary) or 60(5) (serious underprovision) as they were in operation before 30th December 2005;
 - (dd) Article 75(1) as it was in operation before 6th April 2005, or
 - (ee) section 140(1) of the Pension Schemes Act (deficiencies in the assets of a scheme on winding up) as it was in operation before 6th April 1997, and
 - (ii) unlikely to be recovered without disproportionate cost or within a reasonable time;”;
- (b) for paragraph (7) substitute—
 - “(7) For the purposes of paragraph (6)—
 - (a) “external liabilities” means such liabilities of the scheme as are shown in—
 - (i) the net assets statement in the relevant accounts, or
 - (ii) an estimate used for the purposes of an updated asset statement, except that the liabilities in paragraph (8) are to be disregarded, and
 - (b) the amount of the external liabilities is—
 - (i) where sub-paragraph (a)(i) applies, the amount shown in the statement referred to in that sub-paragraph in respect of the external liabilities, or
 - (ii) where sub-paragraph (a)(ii) applies, the amount shown in the estimate referred to in that sub-paragraph in respect of the external liabilities.”;
- (c) in paragraph (10)(a) omit “(“the receiving scheme”)”;
- (d) in paragraph (12) for “The actuary” substitute “For the purposes of paragraph (11), the actuary”;
- (e) in paragraphs (14) and (17)(b) for “updated actuarial assessment” substitute “updated liabilities assessment”.

(a) Paragraph (6) was added by regulation 4(5) of S.R. 2008 No. 132
 (b) 1954 c. 33 (N.I.)
 (c) Regulation 5 was substituted by regulation 5 of S.R. 2008 No. 132

Amendment of regulation 6 of the 2005 Regulations

6. In regulation 6 of the 2005 Regulations (multi-employer schemes: general)—
- (a) in paragraph (1)(e)(i) after “an amount equal to” insert “the sum of any unpaid expenses which were incurred by the scheme in connection with a previous employment-cessation event occurring to the employer and”;
 - (b) in paragraph (4)(a) after sub-paragraph (a) insert—
 - “(aa) where there is a restructuring within regulation 6ZB or 6ZC and regulation 6ZA(3) or (4) does not apply in relation to that restructuring, all of the liabilities in relation to the scheme which were attributable to the exiting employer shall be attributed to the receiving employer;”.

Insertion of regulations 6ZA to 6ZD into the 2005 Regulations

7. After regulation 6 of the 2005 Regulations insert—

“Employment-cessation events: general

6ZA.—(1) In these Regulations “employment-cessation event” means, subject to paragraphs (2) to (6), an event which—

- (a) occurs in relation to a multi-employer scheme;
- (b) is not a relevant event, and
- (c) subject to regulation 6A, occurs on the date on which—
 - (i) an employer has ceased to employ at least one person who is an active member of the scheme, and
 - (ii) at least one other employer who is not a defined contribution employer continues to employ at least one active member of the scheme.

(2) Subject to paragraphs (3) and (4), an employment-cessation event does not occur where there is a restructuring within regulation 6ZB or 6ZC.

(3) An employment-cessation event occurs where there is a restructuring within regulation 6ZB and within 6 years of that, it becomes apparent that—

- (a) the exiting employer or receiving employer provided the trustees or managers with—
 - (i) incorrect information, or
 - (ii) incomplete information,and the trustees or managers are satisfied that they would have made a different decision in step 4 in regulation 6ZB(9) if they had had the correct or complete information;
- (b) step 6 has not been completed in accordance with regulation 6ZB(13) and (14), or
- (c) step 7 has not been completed in accordance with regulation 6ZB(15) and (16).

(4) An employment-cessation event occurs where there is a restructuring within regulation 6ZC and within 6 years of that, it becomes apparent that—

- (a) step 4 has not been completed in accordance with regulation 6ZC(9) and (10), or
- (b) step 5 has not been completed in accordance with regulation 6ZC(11) and (12).

(5) An employment-cessation event does not occur where—

- (a) there is a restructuring within regulation 6ZB or 6ZC;

(a) Paragraph (4) was substituted by regulation 6 of S.R. 2008 No. 132

- (b) at any time after that, it becomes apparent that any step has not been completed in accordance with regulation 6ZB or 6ZC, and
 - (c) paragraphs (3) and (4) of this regulation do not apply.
- (6) Where an employment-cessation event occurs in accordance with paragraph (3) or (4)—
- (a) Article 75(4) applies as if the amount of the debt due from the exiting employer is treated as a debt due from the exiting employer and the receiving employer jointly and severally;
 - (b) the date on which the employment-cessation event occurs is the date referred to in paragraph (1)(c), and
 - (c) for the purposes of calculating the exiting employer's liability proportion for the purposes of the exiting employer's liability share, the liabilities attributable to employment with the exiting employer shall be determined as if nothing had been done in relation to carrying out any of the steps in regulation 6ZB or 6ZC.

Employment-cessation events: exemptions

6ZB.—(1) There is a restructuring within this regulation if each of steps 1 to 6 in the following paragraphs are completed, and the date on which there is a restructuring within this regulation is the date on which step 6 has been completed.

- (2) Each of steps 2 to 7 can only be carried out if the previous step has been completed.
- (3) Step 1 is for the exiting employer to write to the trustees or managers asking them to make a decision for the purposes of this regulation.
- (4) The exiting employer decides whether and when to carry out step 1.
- (5) Step 2 is for the exiting employer and receiving employer (unless the receiving employer has not yet been created) to provide any information which the trustees or managers—
 - (a) may request, and
 - (b) are satisfied is necessary to complete step 4.
- (6) The trustees or managers must request any information, and the exiting employer and receiving employer must provide any information, for the purposes of completing step 2 without undue delay.
- (7) Step 3 is for the trustees or managers to consult—
 - (a) the exiting employer about the decision to be made in step 4, and
 - (b) the receiving employer about the decision to be made in step 4, unless the receiving employer has not yet been created.
- (8) The trustees or managers must complete step 3 without undue delay.
- (9) Step 4 is for the trustees or managers to decide whether they are satisfied that the receiving employer will be at least as likely—
 - (a) as the exiting employer to meet all the exiting employer's liabilities in relation to the scheme, and
 - (b) to meet any liabilities in relation to the scheme which the receiving employer has immediately before step 6 is carried out.
- (10) The trustees or managers must—
 - (a) complete step 4 without undue delay, and
 - (b) consider, when carrying out step 4, factors including, but not limited to, any material change in legal, demographic or economic circumstances, as described in regulation 5(4)(d) of the Scheme Funding Regulations, that would justify a change to the method or assumptions used on the last occasion on which the scheme's technical provisions were calculated.

- (11) Step 5 is for the trustees or managers to send—
- (a) the exiting employer, and
 - (b) the receiving employer, unless the receiving employer has not yet been created,
- their decision in step 4, and the reasons for that decision, in writing.
- (12) The trustees or managers must complete step 5 without undue delay.
- (13) Step 6 is for—
- (a) the receiving employer to take over responsibility, under a legally enforceable agreement, for all of the exiting employer's—
 - (i) assets;
 - (ii) employees, and
 - (iii) scheme members, and
 - (b) all of the exiting employer's liabilities in relation to the scheme to be—
 - (i) taken over by the receiving employer under a legally enforceable agreement so that the receiving employer is responsible for them, or
 - (ii) where it is impossible for the receiving employer to take over the exiting employer's liabilities in relation to the scheme under a legally enforceable agreement, treated for all purposes as being the responsibility of the receiving employer.
- (14) The receiving employer decides whether to carry out step 6, but the receiving employer can only carry out step 6—
- (a) where the trustees or managers decided in step 4 that they are satisfied;
 - (b) where the trustees or managers are satisfied that there has been no change which would alter that decision in step 4, and
 - (c) within the 18 weeks, or such longer period up to a total of 36 weeks as the trustees or managers may choose, after the date of the written decision in step 5.
- (15) Step 7 is for the receiving employer and exiting employer to send the trustees or managers written confirmation—
- (a) that step 6 has been completed, and
 - (b) of the date on which step 6 was completed.
- (16) The receiving employer and exiting employer must complete step 7 without undue delay.
- (17) In this regulation, liabilities in relation to the scheme means all such liabilities including, but not limited to, any—
- (a) liabilities which—
 - (i) have accrued to or in respect of scheme members, and
 - (ii) are attributable to the employer under regulation 6(4);
 - (b) amounts treated as a debt due to the trustees or managers of the scheme, including such debts due in accordance with Article 75(a);
 - (c) liabilities or amounts which have been apportioned to the employer in—
 - (i) a scheme apportionment arrangement;
 - (ii) an exercise of a scheme apportionment rule before 6th April 2008, or
 - (iii) a regulated apportionment arrangement;
 - (d) liabilities which were attributed to the employer as part of a previous restructuring within this regulation or regulation 6ZC;

(a) Article 75 was amended by Article 248 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)) and is modified by S.R. 2005 No. 168

- (e) amount for which the employer is a guarantor under a withdrawal arrangement or an approved withdrawal arrangement;
- (f) payments which are due to be made by the employer under—
 - (i) the schedule of contributions, or
 - (ii) any recovery plan, and
- (g) liability share of the employer.

6ZC.—(1) There is a restructuring within this regulation if each of steps 1 to 4 in the following paragraphs are completed, and the date on which there is a restructuring within this regulation is the date on which step 4 has been completed.

(2) Each of steps 2 to 5 can only be carried out if the previous step has been completed.

(3) Step 1 is for the exiting employer to write to the trustees or managers asking them to make a decision for the purposes of this regulation.

(4) The exiting employer decides whether and when to carry out step 1.

(5) Step 2 is for the trustees or managers to decide whether they are satisfied that the following four conditions are met—

- (a) the assets of the scheme are at least equal to the protected liabilities of the scheme;
- (b) either—
 - (i) there are only one or two relevant members, or
 - (ii) no more than 3% of the total number of scheme members in respect of whom defined benefits have accrued are relevant members;
- (c) the annual amount of accrued pension in respect of the relevant members does not exceed the maximum amount where—
 - (i) the annual amount of accrued pension includes pensions in payment and pensions not in payment;
 - (ii) the annual amount of accrued pensions in payment means the most recent payment of pension to each relevant member multiplied to produce an estimated annual amount;
 - (iii) the annual amount of accrued pensions not in payment means the annual amount of pension to which each relevant member has accrued rights, and
 - (iv) the maximum amount means—
 - (aa) in the year commencing on 6th April 2010, £20,000, and
 - (bb) in any subsequent year, £20,000 plus £500 for each year after the year commencing on 6th April 2010, and
- (d) if any restructurings within this regulation in relation to the scheme have occurred in the 3 years before step 4 is completed, those restructurings and the restructuring which occurs when step 4 is completed involve a combined total of—
 - (i) no more than—
 - (aa) five scheme members in respect of whom defined benefits have accrued, or
 - (bb) 7.5% of the total number of scheme members in respect of whom defined benefits have accrued,
 whichever is the higher, and
 - (ii) no more than £50,000 of the annual amount of accrued pension as calculated for the purposes of sub-paragraph (c).

(6) The trustees or managers must complete step 2—

- (a) without undue delay, and

- (b) using the figures contained in the most recent—
 - (i) actuarial valuation under Article 162 of the 2005 Order (valuations to determine scheme underfunding) for the assets and protected liabilities of the scheme, and
 - (ii) scheme return within the meaning in Article 60(2) of the 2005 Order (scheme returns: supplementary) for the number of members of the scheme.
 - (7) Step 3 is for the trustees or managers to send—
 - (a) the exiting employer, and
 - (b) the receiving employer, unless the receiving employer has not yet been created, their decision in step 2 in writing.
 - (8) The trustees or managers must complete step 3 without undue delay.
 - (9) Step 4 is for—
 - (a) the receiving employer to take over responsibility, under a legally enforceable agreement, for all of the exiting employer’s—
 - (i) assets;
 - (ii) employees, and
 - (iii) scheme members, and
 - (b) all of the exiting employer’s liabilities in relation to the scheme (as defined in regulation 6ZB(17)) to be—
 - (i) taken over by the receiving employer under a legally enforceable agreement so that the receiving employer is responsible for them, or
 - (ii) where it is impossible for the receiving employer to take over the exiting employer’s liabilities in relation to the scheme under a legally enforceable agreement, treated for all purposes as being the responsibility of the receiving employer.
 - (10) The receiving employer decides whether to carry out step 4, but the receiving employer can only carry out step 4—
 - (a) where the trustees or managers decided in step 2 that they are satisfied, and
 - (b) within the 18 weeks, or such longer period up to a total of 36 weeks as the trustees or managers may choose, of the date of the written decision in step 3.
 - (11) Step 5 is for the receiving employer and exiting employer to send the trustees or managers written confirmation—
 - (a) that step 4 has been completed, and
 - (b) of the date on which step 4 was completed.
 - (12) The receiving employer and exiting employer must complete step 5 without undue delay.
 - (13) In this regulation “relevant members” means scheme members in respect of whom defined benefits accrued as a result of pensionable service with the exiting employer.
- 6ZD.**—(1) The trustees or managers may decide that any costs incurred by them as a result of the steps in regulation 6ZB or 6ZC are to be met by the exiting employer, the receiving employer or both.
- (2) The trustees or managers may make a decision under paragraph (1)—
 - (a) at any time during the steps in regulation 6ZB or 6ZC, or
 - (b) within one month after the final step in either of those regulations is completed.
 - (3) Where the trustees or managers make such a decision—
 - (a) they must write to the exiting employer, the receiving employer or both (as the case may be) with details of their costs, and

- (b) the exiting employer, the receiving employer or both (as the case may be) must pay those costs.”.

Amendment of regulation 6B of the 2005 Regulations

8. In regulation 6B(a) of the 2005 Regulations (scheme apportionment arrangements)—

- (a) for paragraph (2) substitute—

“(2) Paragraph (1) does not apply where paragraph (3) or (4) applies.”;

- (b) after paragraph (2) add—

“(3) This paragraph applies where—

- (a) the employer’s scheme apportionment arrangement share will be higher than the liability share, and
- (b) the trustees or managers are satisfied that the employer is able to pay the scheme apportionment arrangement share.

(4) This paragraph applies where—

- (a) the scheme has commenced winding-up by the date the scheme apportionment arrangement is entered into;
- (b) the employer’s scheme apportionment arrangement share will be lower than that employer’s liability share;
- (c) the trustees or managers are satisfied that it is likely that the employer—
 - (i) will be able to pay the scheme apportionment arrangement share, and
 - (ii) would have been unable to pay the liability share if it applied;
- (d) the trustees or managers are satisfied that it is likely that any of the employers who—
 - (i) are remaining in the scheme, and
 - (ii) are not defined contribution employers,will be able to pay any amount by which the employer’s scheme apportionment arrangement share will be less than the employer’s liability share;
- (e) the scheme is not in an assessment period, and
- (f) the trustees or managers are satisfied that an assessment period is unlikely to begin in relation to the scheme within the following 12 months.”.

Amendment of regulation 6C of the 2005 Regulations

9. In regulation 6C(2)(b) of the 2005 Regulations (withdrawal arrangements)—

- (a) for “When the” substitute “Where a”;

- (b) for sub-paragraph (b) substitute—

“(b) Article 75(4) shall apply as if amount B is treated as a debt due from the guarantors at the guarantee time for which (if there is more than one guarantor) they are jointly liable or, if the withdrawal arrangement so provides, jointly and severally liable.”.

Amendment of regulation 7 of the 2005 Regulations

10. In regulation 7(6)(b)(c) of the 2005 Regulations (approved withdrawal arrangements) for “of if” substitute “or if”.

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- (a) Regulation 6B was inserted by regulation 7 of S.R. 2008 No. 132
 - (b) Regulation 6C was inserted by regulation 7 of S.R. 2008 No. 132
 - (c) Regulation 7 was substituted by regulation 8 of S.R. 2008 No. 132

Amendment of regulation 9 of the 2005 Regulations

- 11.** In regulation 9(a) of the 2005 Regulations (frozen schemes and former employers)—
- (a) in paragraph (3)(c)(iii) and (d) for “A to I” substitute “A to J”;
 - (b) in paragraph (13) after “becoming due from him” insert “under Article 75(2) or (4)”;
 - (c) after paragraph (14) insert—
 - “(14A) Condition J is that—
 - (a) as a result of a restructuring occurring within regulation 6ZB or 6ZC, no debt was treated as becoming due from the person under Article 75(2) or (4), and
 - (b) regulation 6ZA(3) or (4) does not apply in relation to that restructuring.”.

Amendment of regulation 12 of the 2005 Regulations

12. In regulation 12(1) of the 2005 Regulations (multi-employer money purchase schemes) in paragraph (1B)(b), as substituted for regulation 10(1) of the 2005 Regulations, omit the words from “in accordance with the guidance given in GN 19” to the end.

Amendment of regulation 14 of the 2005 Regulations

- 13.** In regulation 14 of the 2005 Regulations (schemes covering United Kingdom and foreign employment)—
- (a) in paragraphs (2)(b), (4)(b) and (6)(b) for “form set out in Schedule 1” substitute “forms set out in Schedules 1, 1C and 1D”;
 - (b) in paragraph (4)(a) for “approved and unapproved” substitute “registered and unregistered”.

Amendment of regulation 15 of the 2005 Regulations

14. In regulation 15(2)(b) of the 2005 Regulations (schemes with partial government guarantee) for “form set out in Schedule 1” substitute “forms set out in Schedules 1, 1C and 1D”.

Amendment of regulation 16 of the 2005 Regulations

15. For regulation 16(c) of the 2005 Regulations (modification of schemes: apportionment of Article 75 debts) substitute—

“Modification of schemes: apportionment of Article 75 debts

16.—(1) This regulation prescribes a purpose for which the trustees of a trust scheme (whether or not a money purchase scheme) may by resolution modify the scheme under Article 68(d).

- (2) The purpose is to enable—
- (a) a scheme apportionment arrangement, or
 - (b) a regulated apportionment arrangement,

to be entered into.

(3) No modification may be made for the purpose in paragraph (2) unless the trustees have consulted such employers in relation to the scheme as they think appropriate.”.

(a) Regulation 9 was substituted by regulation 10 of S.R. 2008 No. 132
(b) Paragraph (1B) was amended by regulation 11(2)(b) of S.R. 2008 No. 132
(c) Regulation 16 was substituted by regulation 12 of S.R. 2008 No. 132 and amended by regulation 2(4) of S.R. 2008 No. 178
(d) Article 68 was amended by paragraph 43 of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)) and paragraph 50 of Schedule 10 to the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1))

Amendment of regulation 17 of the 2005 Regulations

16. In regulation 17(1) of the 2005 Regulations (disregard of staying of voluntary winding up of employer for purposes of Article 75) for “Article 75(6D)(i)” substitute “Article 75(6D)(b)(i)”.

Amendment of Schedule 1 to the 2005 Regulations

17. In Schedule 1(a) to the 2005 Regulations (actuary’s certificate of total difference between scheme assets and liabilities and liability share debt of employer in a multi-employer scheme)—

- (a) in the heading for “and Liability share debt of Employer in a Multi-Employer Scheme” substitute “[and Liability share debt of Employer in a Multi-Employer Scheme]”;
- (b) in the certificate—
 - (i) in paragraph 1 (comparison of value of scheme assets with amount of scheme liabilities) for “assets in scheme” substitute “assets of the scheme”;
 - (ii) in paragraph 2 (multi-employer schemes: employer’s share of the difference on the liability share basis)—
 - (aa) in the heading for “2” substitute “[2]”;
 - (bb) for “was [£z].” substitute “was [£z].][delete as appropriate]”;
- (c) in the Notes—
 - (i) omit the third paragraph;
 - (ii) in the fifth paragraph for “updated actuarial assessment” substitute “updated liabilities assessment”;
 - (iii) after the last paragraph insert—

“The total amount of the employer’s debt will be the amount stated in paragraph 2 of the certificate plus any cessation expenses (as defined in regulation 2(1) of the Employer Debt Regulations). See regulation 6(1)(e)(ii) of the Employer Debt Regulations.”.

Amendment of Schedule 1A to the 2005 Regulations

18. In Schedule 1A(b) to the 2005 Regulations (withdrawal arrangements and approved withdrawal arrangements) in paragraph 4(6) renumber the second head (ii) as head (iii).

Amendment of Schedule 1B to the 2005 Regulations

19. In Schedule 1B(c) to the 2005 Regulations (notifiable events)—

- (a) in paragraph 1(2) omit heads (e) and (g);
- (b) in paragraph 3(1) omit “under paragraph 1 or 2” in the first place where it occurs.

(a) Schedule 1 was substituted by regulation 13 of S.R. 2008 No. 132
(b) Schedule 1A was substituted by regulation 14 of S.R. 2008 No. 132
(c) Schedule 1B was substituted by regulation 15 of S.R. 2008 No. 132

Amendment of Schedule 1C to the 2005 Regulations

20. In Schedule 1C(a) to the 2005 Regulations (actuary's certificate for withdrawal arrangement share or approved withdrawal arrangement share in multi-employer scheme)—

- (a) in the certificate for paragraph 3 (valuation principles) substitute —

“3 Valuation principles

The scheme's assets and liabilities are valued in accordance with—

- (a) Article 75(5) of the Pensions (Northern Ireland) Order 1995(b), and
(b) regulations 5, 6[, 6C(3) and 7(5)] [delete as appropriate] of the Employer Debt Regulations.”;
- (b) in the Notes—
- (i) in the first paragraph for the definition of “relevant transfer deduction” substitute—
““relevant transfer deduction” means the amount of the relevant transfer liabilities less the value of the corresponding assets;”;
- (ii) omit the second paragraph;
- (iii) in the fourth paragraph—
- (aa) for “updated actuarial assessment” substitute “updated liabilities assessment”;
- (bb) after “Employer Debt Regulations” insert “[delete as appropriate]”;
- (iv) after the seventh paragraph add—
“The total amount of the employer's debt will be the amount of the (approved) withdrawal arrangement share stated in paragraph 2 of the certificate plus any cessation expenses (as defined in regulation 2(1) of the Employer Debt Regulations). See regulation 6(1)(e)(ii) of the Employer Debt Regulations.”.

Amendment of Schedule 1D to the 2005 Regulations

21. In Schedule 1D(c) to the 2005 Regulations (actuary's certificate for amount B under a withdrawal arrangement or an approved withdrawal arrangement in a multi-employer scheme) in the Notes—

- (a) in the second paragraph for “had not commenced” substitute “had commenced”;
- (b) omit the third paragraph;
- (c) in the fifth paragraph—
- (i) for “updated actuarial assessment” substitute “updated liabilities assessment”;
- (ii) after “Employer Debt Regulations” insert “[delete as appropriate]”.

Amendment of the Pensions Regulator (Financial Support Directions, etc.) Regulations

22. In regulation 15(2) of the Pensions Regulator (Financial Support Directions etc.) Regulations (Northern Ireland) 2005(d) (former employers)—

- (a) for “condition A, AA, AB, B, C or D” substitute “condition A, AA, AB, B, C, D or E”;

(a) Schedule 1C was substituted by regulation 15 of S.R. 2008 No. 132
(b) S.I. 1995/3213 (N.I. 22); Article 75 was amended by Article 248 of the Pensions (Northern Ireland) Order 2005 and is modified by S.R. 2005 No. 168
(c) Schedule 1D was substituted by regulation 15 of S.R. 2008 No. 132
(d) S.R. 2005 No. 378; regulation 15(2) was amended by regulation 19 of S.R. 2008 No. 132

- (b) after sub-paragraph (d) add—
 - “(e) condition E is that—
 - (i) as a result of a restructuring occurring within regulation 6ZB or 6ZC of the Occupational Pension Schemes (Employer Debt) Regulations (Northern Ireland) 2005 (employment-cessation events: exemptions), no Article 75 debt became due, and
 - (ii) regulation 6ZA(3) or (4) of those Regulations (employment-cessation events: general) does not apply in relation to that restructuring.”.

Amendment of the Occupational Pension Schemes (Scheme Funding) Regulations

23. In paragraph 3(2) of Schedule 2 to the Occupational Pension Schemes (Scheme Funding) Regulations (Northern Ireland) 2005(a) (frozen or paid-up schemes) for “paragraph (1)” substitute “sub-paragraph (1)”.

Amendment of the Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations

24. In regulation 2 of the Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations (Northern Ireland) 2008(b) (commencement and transitional provisions)—

- (a) in paragraph (3)—
 - (i) in sub-paragraph (a) for “related, and” substitute “related;”;
 - (ii) after sub-paragraph (b) add—
 - “and
 - (c) the scheme had not ceased to have active members.”;
- (b) in paragraph (4) for “, as contained in regulation 6(4) of the old Regulations,” substitute “referred to in paragraph (4A)”;
- (c) after paragraph (4) insert—
 - “(4A) The definition referred to in this paragraph is the definition of “employment-cessation event” as contained in regulation 6(4) of the old Regulations but with “who is not a defined contribution employer” inserted after “when at least one other person”.”.

Revocations

25. The following provisions are revoked—

- (a) regulations 4(2)(g), (j) (in so far as it inserts the definition of “statutory funding objective”) and (k) (in so far as it inserts the definition of “updated actuarial assessment”), 12 and 19(a) of the Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations (Northern Ireland) 2008;
- (b) regulation 2(4) of the Occupational Pension Schemes (Employer Debt: Apportionment Arrangements) (Amendment) Regulations (Northern Ireland) 2008(c).

Sealed with the Official Seal of the Department for Social Development on 16th March 2010

(L.S.)

Anne McCleary
A senior officer of the Department for Social Development

(a) S.R. 2005 No. 568; paragraph 3 was substituted by regulation 20 of S.R. 2008 No. 132
 (b) S.R. 2008 No. 132
 (c) S.R. 2008 No. 178

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Occupational Pension Schemes (Employer Debt) Regulations (Northern Ireland) 2005 (“the 2005 Regulations”) which contain provisions about debts arising under Article 75 of the Pensions (Northern Ireland) Order 1995 in respect of occupational pension schemes.

Regulation 7 inserts regulations 6ZA to 6ZD into the 2005 Regulations to introduce two new circumstances in which an employer in a multi-employer occupational pension scheme can stop participating in the scheme without being required to pay a debt to the scheme (“the 2 changes”). Both apply where two employers who are associated with each other are restructuring the way they are organised.

Regulation 6ZA sets out the circumstances in which an employer who stops participating in a multi-employer occupational pension scheme has to pay a debt to the scheme.

Regulation 6ZB sets out the first of the 2 changes. It prescribes the process to be followed in order for an employer to stop participating in their pension scheme without paying a debt. Paragraph (13) requires that the employer transfers to an employer who is remaining in the scheme all their responsibilities and obligations in respect of the scheme and all their assets. Paragraph (9) requires the trustees or managers of the scheme to be satisfied that the employer who is taking over those responsibilities and obligations will be at least as likely to meet them as the employer leaving the scheme.

Regulation 6ZC sets out the second of the 2 changes. It also prescribes a process to be followed. Paragraph (9) requires the same transfer to take place as regulation 6ZB(13). Paragraph (5) provides that only a small transfer can be made.

Regulation 6ZD allows the trustees or managers of the scheme to recover from the employers any costs they incur under regulation 6ZB or 6ZC.

Regulations 2 and 3 make consequential amendments to the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations (Northern Ireland) 2005 and the Pension Protection Fund (Entry Rules) Regulations (Northern Ireland) 2005 to change the conditions in which an employer who stops participating in the scheme in accordance with the 2 changes can enter the Pension Protection Fund.

Regulations 4, 6(b) and 11, make amendments to the 2005 Regulations which are consequential on the 2 changes.

Regulation 22 also makes a consequential amendment to the Pensions Regulator (Financial Support Directions etc.) Regulations (Northern Ireland) 2005 to provide that an employer who stops participating in the pension scheme under one of the 2 changes is not treated as an employer for the purposes of the scheme.

Regulations 5, 6(a), 8, 9 and 12 to 21 make amendments to the 2005 Regulations which are not connected to the 2 changes and regulations 23 and 24 make amendments to other sets of Regulations which are not connected to the 2 changes.

Regulation 5 makes amendments to the way scheme liabilities and assets are calculated for the purposes of employer debt.

Regulation 8 makes amendments which prevent an employer entering a scheme apportionment arrangement where the scheme is attempting to enter the Pension Protection Fund or is likely to make such an attempt in the next year.

Regulation 9 makes amendments which provide that guarantors can be jointly liable for a debt under a withdrawal arrangement.

Regulation 12 removes a reference to guidance which is no longer published.

Regulation 15 makes amendments which allow schemes to modify their rules so that an apportionment arrangement can be entered into.

Regulations 17, 20 and 21 amend the certificates which an actuary may have to complete for employer debt purposes.

Regulations 6(a), 10, 13, 14, 16, 18 and 19 make minor amendments to the 2005 Regulations.

Regulation 23 makes a minor amendment to the Occupational Pension Schemes (Scheme Funding) Regulations (Northern Ireland) 2005.

Regulation 24 amends the transitional provisions in the Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations (Northern Ireland) 2008 in respect of schemes which have ceased to employ active members.

Regulation 25 makes consequential revocations.

As these Regulations make in relation to Northern Ireland only provision corresponding to provision contained in regulations made by the Secretary of State for Work and Pensions in relation to Great Britain, the requirement to consult under Article 117(1) of the Pensions (Northern Ireland) Order 1995 and Article 289(1) of the Pensions (Northern Ireland) Order 2005 does not apply by virtue of paragraph (2)(e) of each of those Articles.

An assessment of the cost to business of these Regulations is detailed in a Regulatory Impact Assessment, a copy of which has been laid in the Business Office and the Library of the Northern Ireland Assembly. Copies of the Assessment are available from the Department for Social Development, Social Security Policy and Legislation Division, Level 1, James House, 2-4 Cromac Avenue, Gasworks Business Park, Ormeau Road, Belfast BT7 2JA or from the website: <http://www.dsdni.gov.uk/index/ssa/ssani-publications/ssani-pensions-publications.htm>. A copy of the Assessment is also annexed to the Explanatory Memorandum which is available alongside this Statutory Rule on the website: <http://www.opsi.gov.uk/legislation/northernireland/ni-srni.htm>.

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