

**2012 No. 1**

**PENSIONS**

**The Occupational Pension Schemes  
(Employer Debt and Miscellaneous Amendments) Regulations  
(Northern Ireland) 2012**

*Made* - - - - *4th January 2012*

*Coming into operation* - *27th January 2012*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by Articles 75(5) and (10), 75A(1) to (4) and (5)(a), 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), 211, 280(1)(b) and (2)(b) and 287(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) 2012 and shall come into operation on 27th January 2012.

(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, D or E” substitute “C, D, E or F”;

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

“(vi) condition F is that a flexible apportionment arrangement has taken effect in accordance with regulation 6E(f) of the Occupational Pension Schemes (Employer Debt) Regulations (Northern Ireland) 2005 where the employer was the leaving employer within the meaning given in paragraph (7) of that regulation;”;

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(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 the Pensions (Northern Ireland) Order 2005

(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 No. 132 and S.R. 2010 No. 111

(e) S.R. 2005 No. 91; regulation 1(3) was substituted by regulation 3(2)(b) of S.R. 2005 No. 357 and amended by regulation 2 of S.R. 2010 No. 111

(f) Regulation 6E is inserted by regulation 10 of these Regulations

- (c) in sub-paragraph (b) after head (v) add—
- “(vi) condition F is that a flexible apportionment arrangement has taken effect in accordance with regulation 6E of the Occupational Pension Schemes (Employer Debt) Regulations (Northern Ireland) 2005 where the employer was the leaving employer within the meaning given in paragraph (7) of that regulation.”.

### **Amendment of the Pension Protection Fund (Entry Rules) Regulations**

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

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

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

“(vi) condition F is that a flexible apportionment arrangement has taken effect in accordance with regulation 6E of the Occupational Pension Schemes (Employer Debt) Regulations (Northern Ireland) 2005 where the employer was the leaving employer within the meaning given in paragraph (7) of that regulation;”;

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

“(vi) condition F is that a flexible apportionment arrangement has taken effect in accordance with regulation 6E of the Occupational Pension Schemes (Employer Debt) Regulations (Northern Ireland) 2005 where the employer was the leaving employer within the meaning given in paragraph (7) of that regulation.”.

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

“(f) a flexible apportionment arrangement within regulation 6E of those Regulations.”.

### **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 “employment-cessation event”(d) insert—

““flexible apportionment arrangement” means an arrangement that takes effect in accordance with regulation 6E;”;

- (ii) in the definition of “liability proportion”(e) for ““K/L”” substitute “K divided by L”;
- (iii) in the definition of “liability share” for “of the total” substitute “multiplied by the total”;

(b) in paragraph (4A)(f)—

(i) after “regulations 6B, 6C” insert “, 6E”;

(ii) in sub-paragraph (a) after “the applicable time” insert “(or, in the case of a flexible apportionment arrangement, after the time that arrangement takes effect)”;

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(a) S.R. 2005 No. 126; relevant amending Regulations are S.R. 2005 No. 357, S.R. 2008 No. 132 and S.R. 2010 No. 111

(b) Regulation 1(4) was substituted by regulation 4(b) of S.R. 2005 No. 357 and amended by regulation 3(2) of S.R. 2010 No. 111

(c) Regulation 2(4) was substituted by regulation 18 of S.R. 2008 No. 132 and amended by regulation 3(3) of S.R. 2010 No. 111

(d) The definition of “employment-cessation event” was substituted by regulation 4(a)(ii) of S.R. 2010 No. 111

(e) The definitions of “liability proportion” and “liability share” were inserted by regulation 4(2)(h) of S.R. 2008 No. 132

(f) Paragraphs (4A) to (4D) were inserted by regulation 4(4) of S.R. 2008 No. 132

- (iii) in sub-paragraph (b) after “under regulation 6B” insert “or a flexible apportionment arrangement under regulation 6E”;
- (c) in paragraph (4B)—
  - (i) after “the applicable time” insert “(or, in the case of a flexible apportionment arrangement, at the time that arrangement takes effect)”;
  - (ii) in substituted paragraph (4A) after “regulations 6B, 6C” insert “, 6E”.

#### **Amendment of regulation 5 of the 2005 Regulations**

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

- (a) for paragraph (3) substitute—
 

“(3) The assets of the scheme shall be valued, the liabilities of the scheme shall be determined and the amounts of those liabilities shall be calculated by reference to the same date.”;
- (b) in paragraph (8) for “(15)” substitute “(14)”;
- (c) for paragraph (15) substitute—
 

“(15) An amount B is an asset of the scheme to be taken into account by the trustees or managers only if—

  - (a) the scheme has not commenced winding-up at the applicable time;
  - (b) the amount B is part of a withdrawal arrangement or an approved withdrawal arrangement which is in force before the applicable time, and
  - (c) the trustees or managers are reasonably satisfied that the guarantors have sufficient financial resources at the applicable time to be likely to pay the amount B.”.

#### **Amendment of regulation 6 of the 2005 Regulations**

**6.** In regulation 6(4)(b) of the 2005 Regulations (multi-employer schemes: general)—

- (a) after sub-paragraph (aa) insert—
 

“(ab) where a flexible apportionment arrangement has taken effect, the liabilities to be attributed to Employer A must include the liabilities for which Employer A—

  - (i) has taken over responsibility under that arrangement, or
  - (ii) is treated for all purposes as being responsible under that arrangement;”;
  - (b) for sub-paragraph (b) substitute—
 

“(b) subject to sub-paragraph (c), the liabilities to or in respect of any member which arose during or as a result of pensionable service with Employer A (including any liabilities attributable to a transfer in respect of that member received by the scheme during that period or periods of pensionable service) are attributable to Employer A, and”.

#### **Amendment of regulation 6ZA of the 2005 Regulations**

**7.** In regulation 6ZA(c) of the 2005 Regulations (employment-cessation events: general)—

- (a) in paragraph (1) for “paragraphs (2) to (6)” substitute “paragraphs (2) to (7)”;

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(a) Regulation 5 was substituted by regulation 5 of S.R. 2008 No. 132 and amended by regulation 5 of S.R. 2010 No. 111  
 (b) Paragraphs (2) to (5) of regulation 6 were substituted by regulation 6 of S.R. 2008 No. 132 and paragraph (4) was amended by regulation 6(b) of S.R. 2010 No. 111  
 (c) Regulations 6ZA to 6ZD were inserted by regulation 7 of S.R. 2010 No. 111

(b) after paragraph (6) add—

“(7) An employment-cessation event does not occur in respect of the leaving employer within the meaning given in regulation 6E(7) where—

- (a) the conditions in regulation 6E(2) are met, and
- (b) before the end of the period of 28 days beginning with the day on which those conditions were met, an event occurs in relation to that employer which meets the requirements of paragraph (1)(a) to (c) of this regulation.”.

#### **Amendment of regulation 6ZB of the 2005 Regulations**

**8.** In regulation 6ZB(17) of the 2005 Regulations (employment-cessation events: exemptions)—

- (a) in sub-paragraph (f)(ii) for “plan, and” substitute “plan;”;
- (b) after sub-paragraph (g) add—
  - “(h) liabilities for which the employer—
    - (i) has taken over responsibility under a flexible apportionment arrangement, or
    - (ii) is treated for all purposes as being responsible under such an arrangement, and
  - (i) actual and contingent liabilities.”.

#### **Amendment of regulation 6A of the 2005 Regulations**

**9.** In regulation 6A(a) of the 2005 Regulations (employment-cessation events: periods of grace)—

- (a) in paragraph (1) for “as soon as possible and in any event within one month” substitute “within 2 months”;
  - (b) in paragraph (3) in the definition of “period of grace” for paragraph (a) substitute—
    - “(a) the day referred to in paragraph (4), or”;
  - (c) after paragraph (3) add—
    - “(4) The day mentioned in paragraph (a) of the definition of “period of grace” in paragraph (3) is—
      - (a) the day which is 12 months after the cessation date, or
      - (b) a day which—
        - (i) is more than 12 months after the cessation date;
        - (ii) is less than 36 months after the cessation date, and
        - (iii) the trustees or managers of the scheme choose to nominate in accordance with paragraph (5).
- (5) A nomination mentioned in paragraph (4)(b)(iii) may only be made—
- (a) in writing, and
  - (b) before—
    - (i) the end of 12 months after the cessation date, where no day has previously been nominated under paragraph (4)(b)(iii), or
    - (ii) the day previously nominated under paragraph (4)(b)(iii).”.

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(a) Regulations 6A to 6D were inserted by regulation 7 of S.R. 2008 No. 132

## Insertion of regulation 6E into the 2005 Regulations

10. After regulation 6D of the 2005 Regulations (notifiable events) insert—

### “Flexible apportionment arrangements

- 6E.**—(1) A flexible apportionment arrangement takes effect on the date on which both—
- (a) the conditions in paragraph (2) are met, and
  - (b) an employment-cessation event—
    - (i) has occurred in relation to the leaving employer before the date on which the conditions in paragraph (2) are met;
    - (ii) would have occurred in relation to the leaving employer if regulation 6ZA(7) had not applied, or
    - (iii) would have occurred in relation to the leaving employer if the scheme had not become a frozen scheme.
- (2) The conditions are that—
- (a) subject to paragraph (4), the funding test is met;
  - (b) one or more replacement employer—
    - (i) takes over responsibility under a legally enforceable agreement for all the liabilities in relation to the scheme (within the meaning given in regulation 6ZB(17)) of the leaving employer as those liabilities stand immediately before the flexible apportionment arrangement takes effect, taking into account any reduction mentioned in paragraph (5)(c), or
    - (ii) where it is impossible for the replacement employer to take over responsibility for those liabilities under a legally enforceable agreement, is treated for all purposes as being responsible for those liabilities;
  - (c) the following persons consent in writing—
    - (i) the trustees or managers of the scheme;
    - (ii) the leaving employer, and
    - (iii) all the replacement employers referred to in sub-paragraph (b);
  - (d) the leaving employer is not in a period of grace in accordance with regulation 6A;
  - (e) the requirements set out in paragraph (5) are met for any payment of any part of a debt—
    - (i) due as a result of the employment-cessation event referred to in paragraph (1)(b)(i), or
    - (ii) that would have been due as a result of the employment-cessation event referred to in paragraph (1)(b)(ii) that would have occurred if regulation 6ZA(7) had not applied;
  - (f) the scheme is not—
    - (i) in an assessment period, or
    - (ii) being wound up, and
  - (g) the trustees or managers of the scheme are satisfied that an assessment period is unlikely to begin in relation to the scheme within the period of 12 months beginning with the date on which a flexible apportionment arrangement takes effect.

(3) Where a flexible apportionment arrangement takes effect in accordance with paragraph (1)(b)(i), Article 75(4)(a) is modified so that no amount is to be treated as a debt due to the trustees or managers of the scheme as a result of the employment-cessation event.

(4) The funding test does not have to be met where—

- (a) the funding test is met for a different flexible apportionment arrangement;
- (b) the time when the flexible apportionment arrangement takes effect is or will be, in the opinion of the trustees or managers of the scheme, the same as or similar to the time when the different flexible apportionment arrangement takes effect, and
- (c) the trustees or managers of the scheme are satisfied that the funding test would be met if it were carried out again.

(5) The requirements referred to in paragraph (2)(e) are—

- (a) the payment (which in this paragraph means the payment referred to in paragraph (2)(e)) is made to the trustees or managers of the scheme by or on behalf of the leaving employer;
- (b) the payment is in addition to any amount that is required to be paid under the schedule of contributions;
- (c) the trustees or managers of the scheme decide to make a reduction of the liabilities in relation to the scheme (within the meaning given in regulation 6ZB(17)) of the leaving employer as a result of the payment, and
- (d) the reduction of those liabilities relates to the amount of the payment.

(6) The trustees or managers of the scheme may require the leaving employer or the replacement employer (or both) to pay all or part of the costs which the trustees or managers of the scheme have incurred by virtue of this regulation.

(7) In this regulation—

“the leaving employer” means an employer—

- (a) in relation to a multi-employer scheme;
- (b) in respect of whom a relevant event has not occurred, and
- (c) who—
  - (i) employs at least one active member of the scheme in respect of whom defined benefits are accruing, or
  - (ii) used to employ at least one such active member;

“replacement employer” means an employer who, on the date on which the flexible apportionment arrangement takes effect—

- (a) is an employer in relation to the same multi-employer scheme as the leaving employer;
- (b) either—
  - (i) is employing at least one active member of the scheme in respect of whom defined benefits are accruing, or
  - (ii) used to employ at least one such active member and no amount was treated as a debt due to the trustees or managers of the scheme when the last such active member ceased to be employed, and
- (c) is an employer in respect of whom a relevant event has not occurred.”.

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(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

### **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)—
    - (i) in sub-paragraph (c)(iii) for “A to J is met, or” substitute “A to K is met.”;
    - (ii) after sub-paragraph (d) add—
      - “or
      - (e) in relation to a frozen scheme, the person is the leaving employer within the meaning given in regulation 6E(7) in a flexible apportionment arrangement which has taken effect in accordance with regulation 6E.”;
  - (b) after paragraph (14A) insert—
    - “(14B) Condition K is that a flexible apportionment arrangement took effect in accordance with regulation 6E—
      - (a) with the result that no debt was treated as due from the person under Article 75(4), or
      - (b) with the result that no debt arose in respect of the person because regulation 6ZA(7) applied.”.

### **Amendment of Schedule 1 to the 2005 Regulations**

**12.** In Schedule 1(b) 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) in the Notes—

- (a) in the definition of “liability proportion” for ““K/L”” substitute “K divided by L”;
- (b) in the definition of “liability share” for “of the total” substitute “multiplied by the total”.

### **Amendment of Schedule 1B to the 2005 Regulations**

**13.** In paragraph 2 of Schedule 1B(c) to the 2005 Regulations (notifiable events) in sub-paragraph (1)—

- (a) the words from “any entering” to the end shall become head (a) of that sub-paragraph;
- (b) after head (a) add—
  - “or
  - (b) a flexible apportionment arrangement taking effect.”.

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

**14.** 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, D or E” substitute “condition A, AA, AB, B, C, D, E or F”;
- (b) after sub-paragraph (e) add—
  - “(f) condition F is that a flexible apportionment arrangement has taken effect in accordance with regulation 6E of the Occupational Pension Schemes (Employer

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(a) Regulation 9 was substituted by regulation 10 of S.R. 2008 No. 132 and amended by regulation 11 of S.R. 2010 No. 111  
(b) Schedule 1 was substituted by regulation 13 of S.R. 2008 No. 132 and amended by regulation 17 of S.R. 2010 No. 111  
(c) Schedule 1B was substituted by regulation 15 of S.R. 2008 No. 132 and amended by regulation 19 of S.R. 2010 No. 111  
(d) S.R. 2005 No. 378; regulation 15(2) was amended by regulation 19(b) of S.R. 2008 No. 132 and regulation 22 of S.R. 2010 No. 111

Debt) Regulations (Northern Ireland) 2005(a) where the employer was the leaving employer within the meaning given in paragraph (7) of that regulation.”.

### **Amendment of the Occupational Pension Schemes (Scheme Funding) Regulations**

**15.** After paragraph 3 of Schedule 2 to the Occupational Pension Schemes (Scheme Funding) Regulations (Northern Ireland) 2005(b) (frozen or paid-up schemes) insert—

*“Employers in periods of grace*

**3A.**—(1) This paragraph applies where an employer is treated under regulation 6A(1) of the Occupational Pension Schemes (Employer Debt) Regulations (Northern Ireland) 2005 (employment-cessation events: periods of grace) as if that employer employed at least one person who is an active member of a scheme.

(2) Where this paragraph applies, Part IV of the Order and these Regulations are modified so that references to “employer” include a reference to the employer referred to in subparagraph (1).

(3) This paragraph ceases to apply where the period of grace referred to in regulation 6A of the Occupational Pension Schemes (Employer Debt) Regulations (Northern Ireland) 2005 in respect of the employer comes to an end in accordance with that regulation.”.

### **Revocations**

**16.** Regulations 2(a), 3(2)(a) and 22(a) of the Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations (Northern Ireland) 2010(c) are revoked.

Sealed with the Official Seal of the Department for Social Development on 4th January 2012

(L.S.)

*Anne McCleary*

A senior officer of the Department for Social Development

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(a) S.R. 2005 No. 168; regulation 6E is inserted by regulation 10 of these Regulations

(b) S.R. 2005 No. 568; paragraph 3 was substituted by regulation 20 of S.R. 2008 No. 132 and amended by regulation 23 of S.R. 2010 No. 111

(c) S.R. 2010 No. 111



## 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 for an employer under Article 75 of the Pensions (Northern Ireland) Order 1995 in respect of occupational pension schemes.

Regulation 10 inserts regulation 6E into the 2005 Regulations to allow an employer in a multi-employer occupational pension scheme to apportion liabilities in relation to the scheme to another employer in the scheme. Regulation 6E provides that the employer who apportions liabilities does not have to pay a debt to the scheme. The employer to whom the liabilities are apportioned becomes responsible for those liabilities. This process is called a flexible apportionment arrangement.

Regulation 6E(2) sets out the conditions which must be met in order for a flexible apportionment arrangement to take effect. This includes a condition that the trustees or managers of the scheme are satisfied that the employers remaining in the scheme are likely to be able to fund the scheme (the funding test).

Regulation 6E(1)(b) contains another condition that the employer reappportioning liabilities must have ceased to employ an active member of the scheme.

Regulation 4(b) and (c) amends the 2005 Regulations to set the time by reference to which the trustees or managers of the scheme must carry out the funding test.

Regulation 7 amends the 2005 Regulations to set out circumstances in which an employer who ceases to employ an active member of the scheme in connection with a flexible apportionment arrangement does not become liable to pay a debt to the scheme.

Regulations 4(a)(i), 6(a), 8, 11 and 13 make consequential amendments to the 2005 Regulations as a result of the flexible apportionment arrangements.

Regulations 2, 3 and 14 make consequential amendments to the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations (Northern Ireland) 2005, the Pension Protection Fund (Entry Rules) Regulations (Northern Ireland) 2005 and the Pensions Regulator (Financial Support Directions etc.) Regulations (Northern Ireland) 2005 as a result of the flexible apportionment arrangements. The amendments made by regulations 2 and 3 change the conditions in which an employer who apportions liabilities can enter the Pension Protection Fund. The amendments made by regulation 14 provide that an employer who apportions liabilities is not treated as an employer for the purposes of the scheme.

The remainder of the amendments made by these Regulations do not relate to flexible apportionment arrangements.

Regulation 9 amends the 2005 Regulations to extend the period in which an employer can employ no active members of the scheme without becoming liable to pay a debt to the scheme (the period of grace). The amendments allow the trustees or managers of the scheme to choose to extend the existing 12 month period to a maximum of 36 months. Regulation 15 makes consequential amendments to the Occupational Pension Schemes (Scheme Funding) Regulations (Northern Ireland) 2005 so that the employer in a period of grace is still liable for making payments to fund the scheme.

Regulations 4(a)(ii) and (iii), 5, 6(b) and 12 make minor amendments to the 2005 Regulations.

Regulation 16 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.legislation.gov.uk/nisr>.

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