

2018 No. 49

PENSIONS

**The Occupational Pension Schemes
(Employer Debt and Miscellaneous Amendments) Regulations
(Northern Ireland) 2018**

Made - - - - *13th March 2018*

Coming into operation - *6th April 2018*

The Department for Communities(a) 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(b), and now vested in it(c), and Articles 2(5)(a), 64(2), 211, 280(1)(b) and (2)(ba) and 287(2) and (3) of the Pensions (Northern Ireland) Order 2005(d).

Citation and commencement

1. These Regulations may be cited as the Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations (Northern Ireland) 2018 and shall come into operation on 6th April 2018.

Amendment of the Occupational Pension Schemes (Employer Debt) Regulations

2. The Occupational Pension Schemes (Employer Debt) Regulations (Northern Ireland) 2005(e) are amended in accordance with regulations 3 to 10.

Amendment of regulation 2

3. In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) after the definition of “the corresponding assets”(f) insert—

““deferred debt arrangement” means an arrangement that takes effect in accordance with regulation 6F(g);”;

(ii) in the definition of “employer”(h) after “6,” insert “6A, 6F,”;

(a) See section 1(7) of the Departments Act (Northern Ireland) 2016 (c. 5 (N.I.))

(b) 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)); Article 75A was inserted by Article 249 of that Order; Article 122(3) was amended by Article 217(1) of that Order

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

(d) S.I. 2005/255 (N.I. 1); Article 280(2)(ba) was inserted by section 29(2) of the Pensions Act (Northern Ireland) 2012 (c. 3 (N.I.))

(e) S.R. 2005 No. 168; relevant amending Regulations are S.R. 2008 No. 132, S.R. 2010 No. 111 and S.R. 2012 No. 1

(f) The definition of “the corresponding assets” was inserted by regulation 4(2)(d) of S.R. 2008 No. 132

(g) Regulation 6F is inserted by regulation 7 of these Regulations

(h) The definition of “employer” was amended by regulation 4(2)(f) of S.R. 2008 No. 132

- (iii) after the definition of “frozen scheme”(a) insert—
 - ““the FSD Regulations” means the Pensions Regulator (Financial Support Directions, etc.) Regulations (Northern Ireland) 2005(b);”;
- (b) in paragraph (3A)(c) in the definition of “receiving employer” in paragraph (b) for subparagraph (ii) substitute—
 - “(ii) not associated but falls within paragraph (3B);”;
- (c) after paragraph (3A) insert—
 - “(3B) An employer falls within this paragraph where it is—
 - (a) a limited company, limited partnership or limited liability partnership;
 - (b) a charitable company, or
 - (c) a CIO.
 - (3C) For the purposes of paragraph (3B)—
 - “charitable company” has the meaning given in section 95(6) of the Charities Act (Northern Ireland) 2008(d);
 - “CIO” has the meaning given in Part 11 of the Charities Act (Northern Ireland) 2008;
 - “limited company” has the meaning given in section 3(1) of the Companies Act 2006(e);
 - “limited liability partnership” has the meaning given by section 1(2) of the Limited Liability Partnerships Act 2000(f);
 - “limited partnership” has the meaning given by section 4 of the Limited Partnerships Act 1907(g).
 - (3D) Where regulation 6F(6)(f) applies, the definitions of “exiting employer” and “receiving employer” in paragraph (3A) shall be deemed to include deferred employers.”.
- (d) after paragraph (4D)(h) insert—
 - “(4E) For the purposes of these Regulations, “deferred employer” in relation to a multi-employer scheme means a person—
 - (a) who formerly employed at least one active member of the scheme in respect of whom defined benefits were accruing;
 - (b) in respect of whom a relevant event has not occurred, and
 - (c) who—
 - (i) has proposed to the trustees or managers of the scheme to enter into a deferred debt arrangement, and
 - (ii) having made that proposal, is participating in a deferred debt arrangement.”.

Amendment of regulation 6ZA

4. In regulation 6ZA(1)(c)(i) (employment-cessation events: general) for “regulation 6A” substitute “regulations 6A and 6F”.

(a) The definition of “frozen scheme” was inserted by regulation 4(2)(h) of S.R. 2008 No. 132
 (b) S.R. 2005 No. 378
 (c) Paragraph (3A) was inserted by regulation 4(b) of S.R. 2010 No. 111
 (d) 2008 c. 12 (N.I.)
 (e) 2006 c. 46
 (f) 2000 c. 12
 (g) 1907 c. 24
 (h) Paragraph (4D) was inserted by regulation 4(4) of S.R. 2008 No. 132
 (i) Regulation 6ZA was inserted by regulation 7 of S.R. 2010 No. 111 and amended by regulation 7 of S.R. 2012 No. 1

Amendment of regulation 6A

- 5.** In regulation 6A(a) (employment-cessation events: periods of grace)—
- (a) in paragraph (1)—
 - (i) for “within 2 months” substitute “within 3 months”;
 - (ii) in sub-paragraph (a) after “scheme” insert “or enters into a deferred debt arrangement”;
 - (iii) for sub-paragraph (b) substitute—
 - “(b) if at any time during the period of grace A—
 - (i) no longer intends to employ any person who shall be an active member of the scheme, or
 - (ii) does not intend to enter into a deferred debt arrangement by the last day of the period of grace,A shall notify the trustees or managers of the scheme and A shall be treated as if the period of grace had not applied;”;
 - (b) in paragraph (2) after “these Regulations” insert “and regulation 16 of the FSD Regulations (multi-employer schemes)”.

Amendment of regulation 6E

- 6.** In regulation 6E(b) (flexible apportionment arrangements)—
- (a) in paragraph (1)—
 - (i) for “A flexible” substitute “Except in the case of a frozen scheme, a flexible”;
 - (ii) in sub-paragraph (b)—
 - (aa) in head (i) for “met;” substitute “met, or”;
 - (bb) in head (ii) for “applied, or” substitute “applied.”;
 - (cc) omit head (iii);
 - (b) after paragraph (1) insert—
 - “(1A) Where the scheme is a frozen scheme, the flexible apportionment arrangement takes effect on the date on which the conditions in paragraph (2) are met.”.

Insertion of regulation 6F

- 7.** After regulation 6E insert—

“Deferred debt arrangement

6F.—(1) A deferred debt arrangement takes effect on the date on which the trustees or managers of the scheme, being satisfied that the conditions in paragraphs (2) and (3) are met, consent in writing to the arrangement.

- (2) The condition in this paragraph is that an employment-cessation event(c)—
- (a) has occurred in relation to the deferred employer before the date on which the conditions in paragraph (3) are met, or
 - (b) would have occurred in relation to the deferred employer if the deferred employer had not entered into, and remained in, a period of grace in accordance with regulation 6A until immediately before the date on which the deferred debt arrangement is to take effect.

(a) Regulation 6A was inserted by regulation 7 of S.R. 2008 No. 132 and amended by regulation 9 of S.R. 2012 No. 1

(b) Regulation 6E was inserted by regulation 10 of S.R. 2012 No. 1

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

- (3) The conditions in this paragraph are that—
- (a) the scheme is not in an assessment period^(a) or being wound up, and
 - (b) the trustees or managers of the scheme are satisfied that—
 - (i) an assessment period is unlikely to begin in relation to the scheme within the period of 12 months beginning with the date on which the trustees or managers expect the deferred debt arrangement to take effect, and
 - (ii) the deferred employer’s covenant with the scheme is not likely to weaken materially within the period of 12 months beginning with the date on which the trustees or managers expect the deferred debt arrangement to take effect.
- (4) A deferred employer shall be treated during the period that the deferred debt arrangement is in place—
- (a) as if employing at least one person who is an active member of the scheme, and
 - (b) for the purposes of these Regulations and regulation 16 of the FSD Regulations (multi-employer schemes), as an employer in relation to the scheme.
- (5) Where a deferred debt arrangement is in place, the deferred employer shall be treated as if the employment-cessation event in paragraph (2) had not, or would not have, occurred.
- (6) The deferred debt arrangement terminates on the first date on which one of the following events occurs—
- (a) the deferred employer commences employing a person who is an active member of the scheme;
 - (b) the deferred employer and the trustees or managers of the scheme agree that an employment-cessation event shall be treated as having occurred for the purposes of bringing the deferred debt arrangement to an end in relation to the deferred employer;
 - (c) a relevant event occurs in relation to the deferred employer;
 - (d) all the employers in the scheme have experienced a relevant event or have become deferred employers;
 - (e) the scheme commences winding up;
 - (f) the deferred employer restructures, unless—
 - (i) the restructuring falls within either regulation 6ZB or 6ZC, and
 - (ii) where the receiving employer is a deferred employer, the trustees or managers of the scheme are satisfied that the conditions in paragraph (3) are met;
 - (g) a freezing event as defined in regulation 9(2)(b) occurs in relation to the scheme;
 - (h) the trustees or managers of the scheme serve a notice on the deferred employer stating that the deferred debt arrangement has come to an end on the grounds that the trustees or managers of the scheme are reasonably satisfied that—
 - (i) the deferred employer has failed to comply materially with its duties under the Scheme Funding Regulations;
 - (ii) the deferred employer’s covenant with the scheme is likely to weaken materially in the next 12 months, or
 - (iii) the deferred employer has failed to comply materially with its duties under regulation 6 of the Occupational Pension Schemes (Scheme Administration) Regulations (Northern Ireland) 1997^(b) (duty to disclose information).

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

(b) S.R. 1997 No. 94; regulation 6 was amended by regulation 3(4) of S.R. 2005 No. 421

- (7) For the purposes of these Regulations, where—
- (a) an event referred to in paragraph (6)(a) or (e) occurs, the deferred employer shall be treated as if the employment-cessation event in paragraph (2) had not, or would not have, occurred;
 - (b) an event referred to in paragraph (6)(b), (c), (d) or (h) occurs, the date of that event shall be treated as the date of the employment-cessation event in relation to the deferred employer;
 - (c) the deferred employer restructures in circumstances where—
 - (i) paragraph (6)(f) does not apply, the date of the restructuring shall be treated as the date of the employment-cessation event in relation to the deferred employer;
 - (ii) paragraph (6)(f) applies—
 - (aa) if the receiving employer is not a deferred employer, paragraph (6)(a) applies to the receiving employer, and
 - (bb) if the receiving employer is a deferred employer, the deferred debt arrangement shall continue;
 - (d) a freezing event referred to in paragraph (6)(g) occurs, the deferred employer—
 - (i) becomes a former employer in relation to the scheme for the purposes of regulation 9, and
 - (ii) shall be treated as if the employment-cessation event referred to in paragraph (2)(a) had not, or would not have, occurred and the deferred debt arrangement had never taken effect.”.

Amendment of regulation 8

8. In regulation 8(2)(a)(a) (single employer sections, multi-employer sections, etc.) for head (i) substitute—

“(i) any contributions payable to the scheme by an employer in relation to the scheme, or by a member in employment under that employer, are allocated to that employer’s section, or if more than one section applies to that employer, to the section which is appropriate in respect of the employment in question, and”.

Amendment of regulation 9

9. In regulation 9(b) (frozen schemes and former employers)—

(a) in paragraph (2)(a) after “scheme relates” insert “and, in the case of a frozen scheme includes any person who employed persons in the description of employment to which the scheme relates immediately before the relevant time.”;

(b) after paragraph (3) insert—

“(3A) Where a scheme which has one or more deferred employers experiences a freezing event as defined in paragraph (2)(b), the deferred employers must all be treated as if they have ceased to employ persons in the description of employment to which the scheme relates immediately before the relevant time.”.

(a) Regulation 8 was substituted by regulation 9 of S.R. 2008 No. 132
 (b) Regulation 9 was substituted by regulation 10 of S.R. 2008 No. 132

Amendment of Schedule 1B

10. In paragraph 2 of Schedule 1B(a) (notifiable events)—

- (a) in sub-paragraph (1)—
 - (i) in head (a) for “time, or” substitute “time;”;
 - (ii) in head (b) for “effect.” substitute “effect;”;
 - (iii) after head (b) add—
 - “(c) a deferred debt arrangement taking effect, or;
 - (d) any event which terminates a deferred debt arrangement in accordance with regulation 6F(6).”;
- (b) in sub-paragraph (2) for “the making of the decision” substitute “the trustees or managers of the scheme make the decision or become aware of the event”.

Amendment of the Occupational Pension Schemes (Scheme Funding) Regulations

11. After paragraph 3A of Schedule 2 to the Occupational Pension Schemes (Scheme Funding) Regulations (Northern Ireland) 2005(b) (employers in periods of grace) insert—

“Period of grace followed by a deferred debt arrangement

3B. In a case where a period of grace is immediately followed by a deferred debt arrangement as the result of the trustees or managers of the scheme being satisfied that the conditions in regulation 6F(2)(b) and (3) of the Occupational Pension Schemes (Employer Debt) Regulations (Northern Ireland) 2005 are met, the period of grace and the deferred debt arrangement are to be treated as one continuous period of time for the purposes of Part IV of the Order and these Regulations.

Employers in deferred debt arrangements

3C.—(1) This paragraph applies where a deferred employer is treated under regulation 6F(4) of the Occupational Pension Schemes (Employer Debt) Regulations (Northern Ireland) 2005 as if it 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 a deferred employer.

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

3D. For the purposes of paragraphs 3B and 3C, “deferred debt arrangement” and “deferred employer” have the meanings given in regulation 2 of the Occupational Pension Schemes (Employer Debt) Regulations (Northern Ireland) 2005.”.

(a) Schedule 1B was substituted by regulation 15 of S.R. 2008 No. 132 and paragraph 2 was amended by regulation 13 of S.R. 2012 No. 1

(b) S.R. 2005 No. 568; paragraph 3A was inserted by regulation 15 of S.R. 2012 No. 1

Revocation

12. Regulation 9(a) of Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations (Northern Ireland) 2012^(a) is revoked.

Sealed with the Official Seal of the Department for Communities on 13th March 2018

(L.S.)

Anne McCleary
A senior officer of the Department for Communities

^(a) S.R. 2012 No. 1

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations contain provisions about debts arising for an employer under Article 75 of the Pensions (Northern Ireland) Order 1995 (“the 1995 Order”) in respect of occupational pension schemes and also make consequential amendments. In particular, the Regulations introduce a new option for employers managing Article 75 debts namely the “deferred debt arrangement” which permits employers in specified circumstances to defer payment of the Article 75 debt provided certain conditions are met.

These Regulations amend the Occupational Pension Schemes (Employer Debt) Regulations (Northern Ireland) 2005 (“the Employer Debt Regulations”) and the Occupational Pension Schemes (Scheme Funding) Regulations (Northern Ireland) 2005 (“the Scheme Funding Regulations”).

Regulation 3 inserts definitions for “deferred debt arrangement” and “deferred employer” into regulation 2 of the Employer Debt Regulations. In addition regulation 3 provides a clarified definition of “receiving employer”.

Regulation 4 makes a consequential amendment to regulation 6ZA of the Employer Debt Regulations.

Regulation 5 amends to regulation 6A of the Employer Debt Regulations consequential to the relationship between the period of grace and the deferred debt arrangement. In addition, it extends the period for employers to provide a period of grace notice to the trustees or managers of the scheme from within 2 months of the employment-cessation event to within 3 months of the employment-cessation event.

Regulation 6 amends to regulation 6E of the Employer Debt Regulations clarifying the date on which a flexible apportionment arrangement takes place where the scheme in question is a frozen scheme.

Regulation 7 inserts regulation 6F into the Employer Debt Regulations to allow an employer in a multi-employer occupational pension scheme who experiences an employment-cessation event (a “deferred employer”) to defer payment of the Article 75 debt and to continue as an employer in relation to the scheme if certain conditions are met. The deferred employer will remain responsible for the debt and following certain events will be obliged to pay it.

Regulation 6F(1) provides that a deferred debt arrangement commences on the date that the trustees or managers of the scheme, being satisfied that certain conditions set out in regulation 6F(2) and (3) have been met, consent to the arrangement in writing.

Regulation 6F(2) sets out the conditions for a deferred debt arrangement to take place. The arrangement can be entered into by an employer who has experienced an employment-cessation event, including a situation where the employer has previously entered into a period of grace.

Regulation 6F(3) states further conditions that must be met for the arrangement to take place, namely that the scheme is not in an assessment period or being wound up, and that the trustees or managers of the scheme are satisfied that neither a Pension Protection Fund assessment period in relation to the scheme nor a material weakening of the employer’s covenant is likely to occur within 12 months of the date that the arrangement takes place.

Regulation 6F(4) confirms that a deferred employer is treated, for the period that the deferred debt arrangement is in place, as an employer of an active scheme member, and for the purposes of the Employer Debt Regulations and the Pensions Regulator (Financial Support Directions, etc.) Regulations (Northern Ireland) 2005 as an employer in relation to the scheme.

Regulation 6F(5) deals with the effects of the arrangement while it is in place specifying that the deferred employer is treated as if an employment-cessation event had not occurred.

Regulation 6F(6) deals with how a deferred debt arrangement comes to an end.

Regulation 6F(7) deals with how the various ways that the deferred debt arrangement concludes in regulation 6F(6) affect whether and when an employment-cessation event has occurred.

Regulation 8 makes clarifying amendments to regulation 8 of the Employer Debt Regulations.

Regulation 9 makes clarifying and consequential amendments to regulation 9 of the Employer Debt Regulations.

Regulation 10 amends Schedule 1B to the Employer Debt Regulations to make the commencement and conclusion of a deferred debt arrangement a notifiable event to the Pensions Regulator and to impose notification duties on the trustees or managers of the scheme.

Regulation 11 makes amendments to the Scheme Funding Regulations consequential on the deferred debt arrangement.

Regulation 12 makes a consequential revocation.

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 for consultation does not apply by virtue of Article 117(2)(e) of the 1995 Order and Article 289(2)(e) of the Pensions (Northern Ireland) Order 2005.

An assessment of the impact 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 Communities, Social Security Policy and Legislation Division, Level 8, Causeway Exchange, 1-7 Bedford Street, Belfast BT2 7EG or from the website: <https://www.communities-ni.gov.uk/articles/pension-information>. 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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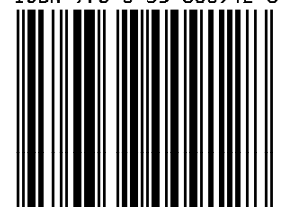
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