DRAFT STATUTORY INSTRUMENTS

2014 No.

The Pensions Act 2011(Transitional, Consequential and Supplementary Provisions) Regulations 2014

PART 7

Deficiencies in the assets

Schemes or benefits treated as money purchase falling outside regulations 20 to 22

23.—(1) Subject to paragraph (11), this regulation applies where—

(a) at any time before the appointed day, an occupational pension scheme included benefits which were not money purchase benefits;

(b) if this regulation did not apply, a debt would be due to the trustees or managers of the scheme from an employer in relation to the scheme in accordance with section 75 of the 1995 Act, in relation to a time before the appointed day;

(c) regulations 20 to 22 do not apply in relation to the scheme; and

(d) one or more of the conditions specified in paragraphs (2) to (4) is met in relation to the scheme.

(2) The condition specified in this paragraph is that the trustees or managers of the scheme—

(a) treated the scheme as if it were a money purchase scheme; and

(b) did not, in accordance with section 75 of the 1995 Act, treat a difference between the value of the assets and the amount of the liabilities of the scheme as a debt due from an employer in relation to the scheme.

(3) The condition specified in this paragraph is that the trustees or managers of the scheme—

(a) treated benefits which were not money purchase benefits, death benefits or benefits specified in regulation 21(2) as money purchase benefits; and

(b) excluded assets and liabilities representing the value or amount of rights to any of those benefits from a calculation of the amount of the scheme liabilities and the value of the scheme assets for the purposes of section 75 of the 1995 Act.

(4) The condition specified in this paragraph is that an employer's share of the difference (if any) between the value of the scheme assets and the amount of the scheme liabilities, for the purposes of section 75 of that Act, was determined as if benefits which were not money purchase benefits, death benefits or benefits specified in regulation 21(2) were money purchase benefits.

(5) Subject to paragraph (6), the trustees or managers of a scheme to which this regulation applies, must, as soon as reasonably possible after the appointed day—

(a) secure a valuation of the scheme assets and scheme liabilities, calculated in accordance with regulation 5 of the Employer Debt Regulations (calculation of the amount of scheme liabilities and value of scheme assets)(**1**);

(**1**) Regulation 5 was substituted by S.I. 2008/731 and amended by S.I.s 2011/2973, 2010/725 and 2012/1817.

(b) where the value of the scheme assets at the effective date of that valuation is less than the amount of the scheme liabilities, treat the difference as a debt due from an employer in relation to the scheme; and

(c) designate a time for the purposes of a debt to be imposed in accordance with section 75 of the 1995 Act.

(6) Paragraph (5) does not apply to a scheme which is not in winding up if either of the conditions specified in paragraph (7) and (8) are met.

(7) The condition specified in this paragraph is that an actuarial valuation has been prepared in accordance with section 224 of the 2004 Act (actuarial valuations and reports) in the period of 3 years ending immediately before the appointed day and either—

(a) it appears to the trustees or managers of the scheme that the statutory funding objective was met on the effective date of that actuarial valuation; or

(b) the statutory funding objective was not met on the effective date of the valuation but on the appointed day a recovery plan is in force in relation to the scheme.

(8) The condition specified in this paragraph is that the trustees or managers of the scheme obtain an actuarial valuation in accordance with section 224 of the 2004 Act and either—

(a) it appears to the trustees or managers that the statutory funding objective is met on the effective date of that valuation; or

(b) the statutory funding objective is not met at that time but the trustees or managers ensure, within 6 months beginning with the effective date of the valuation, that a recovery plan in relation to the scheme is in force.

(9) The actuarial valuation mentioned in paragraph (8) must have an effective date within the period of 12 months beginning with the appointed day, and the trustees and managers of the scheme must ensure that they receive that valuation within 15 months beginning with the effective date.

(10) Where—

(a) the trustees or managers of the scheme comply with the requirements of paragraph (5); or

(b) either of the conditions specified in paragraph (7) or (8) is met,

no provision of section 29 of the Act or of these Regulations requires the trustees or managers of the scheme to calculate a debt which was due or would have become due from an employer in relation to the scheme in relation to a time before the appointed day.

(11) This regulation does not apply where regulation 24 (schemes or benefits treated as money purchase falling outside regulations 20 to 22: insolvent employer) applies to the scheme.

(12) Where the trustees or managers of a scheme do not comply with the requirements of paragraph (5), section 10 of the 1995 Act (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

(13) In this regulation—

"recovery plan" is a recovery plan prepared in accordance with section 226 of the 2004 Act; and

"statutory funding objective" is the requirement mentioned in section 222 of that Act.