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STATUTORY INSTRUMENTS

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**2005 No. 1986**

**The Financial Assistance Scheme Regulations 2005**

**PART 3**

**QUALIFYING PENSION SCHEMES**

**Qualifying pension schemes**

**9.—(1)** An occupational pension scheme shall be a qualifying pension scheme for the purposes of these Regulations where—

- (a) immediately before the time when the scheme began to wind up, it was neither a money purchase scheme nor a scheme of a description prescribed in regulation 10;
  - (b) [<sup>F1</sup>except where paragraph (1B) [<sup>F2</sup>or (1D)] applies,] the scheme began to wind up during the period beginning on 1<sup>st</sup> January 1997 and ending on 5<sup>th</sup> April 2005;
  - [<sup>F3</sup>(c) either—
    - (i) the employer in relation to that scheme satisfies the condition in regulation 11;
    - (ii) in relation to a multi-employer scheme, the condition in regulation 12 is satisfied;
    - (iii) in relation to a scheme which is not a multi-employer scheme and which began to wind up before 6th April 1997, the condition in regulation 12A(1) is satisfied;
    - (iv) in relation to a multi-employer scheme which began to wind up before 6th April 1997, the condition in regulation 12B(1) or (2) is satisfied;
    - (v) in relation to a scheme which is not a multi-employer scheme and which began to wind up on or after 6th April 1997 but before 11th June 2003, the condition in regulation 12A(2) is satisfied; or
    - (vi) in relation to a multi-employer scheme which began to wind up on or after 6th April 1997, the condition in regulation 12B(3) or (4) is satisfied;]
  - [<sup>F4</sup>(ca) [<sup>F5</sup>where paragraph (i) or (ii) of sub-paragraph (c) applies,] there was, in the opinion of the scheme manager, a relevant link between the commencement of the winding up of the scheme and the fact that the relevant condition mentioned in [<sup>F6</sup>those paragraphs] is satisfied; and]
  - (d) the details prescribed in regulation 14 have been notified to the scheme manager by a person, in the form and manner and before the date prescribed in that regulation.
- [<sup>F7</sup>(1A) The relevant link mentioned in paragraph (1)(ca) is deemed to be established in relation to any employer in respect of which the relevant condition mentioned in paragraph (1)(c) is satisfied before 1st January 2009.]
- [<sup>F8</sup>(1B) This paragraph applies where—
- (a) the scheme began to wind up during the period beginning on 6th April 2005 and ending on 22nd December 2008;

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- (b) paragraph (i) or (ii) of paragraph (1)(c) applies by virtue of an insolvency event which occurred before 6th April 2005; and
- (c) there has not been an insolvency event in relation to the relevant employer which would be a qualifying insolvency event for the purposes of section 127 or Article 111 (duty to assume responsibility for schemes following insolvency event) if the scheme were an eligible scheme.

(1C) In paragraph (1B)—

“eligible scheme” has the meaning given in section 126 or, as the case may be, Article 110 (eligible schemes);

“relevant employer” means the employer in relation to the scheme or, in relation to a multi-employer scheme, any employer or employers in relation to the scheme.]

[<sup>F9</sup>(1D) This paragraph applies where—

- (a) the scheme began to wind up during the period beginning on 23rd December 2008 and ending with the day before the day on which the Financial Assistance Scheme (Qualifying Pension Scheme Amendments) Regulations 2014 come into force;
- (b) paragraph (i) or (ii) of paragraph (1)(c) applies by virtue of an insolvency event which occurred before 6th April 2005;
- (c) there has not been an insolvency event in relation to the relevant employer which would be a qualifying insolvency event for the purposes of section 127 or Article 111 (duty to assume responsibility for schemes following insolvency event) if the scheme were an eligible scheme; and
- (d) the relevant employer ceased to be an employer in relation to the scheme prior to 10th June 2011.

(1E) In paragraph (1D), “relevant employer” means the person who employed persons in the description or category of employment to which the scheme relates or related immediately before the time at which the scheme ceased to have any active members.

(1F) Where a scheme is a qualifying pension scheme for the purposes of these Regulations by virtue of paragraph (1D), that scheme is not an eligible scheme for the purposes of section 126(1)(b) or, as the case may be, Article 110(1)(b) (eligible schemes).]

(2) The following shall be treated as separate schemes for the purposes of these Regulations—

- (a) in relation to an occupational pension scheme which is not a tax approved scheme but contains one or more sections which, by virtue of section 611(3) of the ICTA<sup>M1</sup> (definition of “retirement benefits scheme”), are treated by the Commissioners of HMRC as a tax approved scheme, those sections which are so treated;
- (b) sections of sectionalised multi-employer schemes as defined for the purposes of regulation 12,

and references in these Regulations to schemes shall be construed accordingly.

#### Textual Amendments

- F1** Words in reg. 9(1)(b) inserted (23.12.2008) by [The Financial Assistance Scheme \(Amendment\) Regulations 2008 \(S.I. 2008/3069\)](#), regs. 1(1), **2(2)** (with reg. 3)
- F2** Words in reg. 9(1)(b) inserted (28.3.2014) by [The Financial Assistance Scheme \(Qualifying Pension Scheme Amendments\) Regulations 2014 \(S.I. 2014/837\)](#), regs. 1, **2(2)**
- F3** Reg. 9(1)(c) substituted (17.7.2008) by [The Financial Assistance Scheme \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/1903\)](#), regs. 1, **7(1)(a)**

- F4** Reg. 9(1)(ca) inserted (19.12.2007) by [The Financial Assistance Scheme \(Miscellaneous Amendments\) Regulations 2007 \(S.I. 2007/3581\)](#), regs. 1(1), **4(1)(b)**
- F5** Words in reg. 9(1)(ca) inserted (17.7.2008) by [The Financial Assistance Scheme \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/1903\)](#), regs. 1, **7(1)(b)**
- F6** Words in reg. 9(1)(ca) substituted (17.7.2008) by [The Financial Assistance Scheme \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/1903\)](#), regs. 1, **7(1)(c)**
- F7** Reg. 9(1A) inserted (19.12.2007) by [The Financial Assistance Scheme \(Miscellaneous Amendments\) Regulations 2007 \(S.I. 2007/3581\)](#), regs. 1(1), **4(2)**
- F8** Reg. 9(1B)(1C) inserted (23.12.2008) by [The Financial Assistance Scheme \(Amendment\) Regulations 2008 \(S.I. 2008/3069\)](#), regs. 1(1), **2(3)** (with reg. 3)
- F9** Reg. 9(1D)-(1F) inserted (28.3.2014) by [The Financial Assistance Scheme \(Qualifying Pension Scheme Amendments\) Regulations 2014 \(S.I. 2014/837\)](#), regs. 1, **2(3)**

#### Marginal Citations

- M1** Section 611(3) is amended by the Finance Act 1999, section 79 and Schedule 10 and by the [Finance Act 2000 \(c. 17\)](#), [section 61](#) and Schedule 13.

#### Other schemes which are not qualifying pension schemes

- 10.** The following are descriptions of schemes for the purposes of regulation 9(1)(a)—
- (a) a public service pension scheme under the provisions of which there is no requirement for assets related to the intended rate or amount of benefit under the scheme to be set aside in advance (disregarding requirements relating to additional voluntary contributions);
  - (b) a scheme which is made under section 7 of the Superannuation Act 1972 <sup>M2</sup> or under Article 9 of the Superannuation (Northern Ireland) Order 1972 <sup>M3</sup> (superannuation of persons employed in local government service etc.) and provides pensions to persons employed in local government service;
  - (c) a scheme which is made under section 2 of the Parliamentary and Other Pensions Act 1987 <sup>M4</sup> (power to provide for pensions for Members of the House of Commons etc.);
  - (d) a scheme which is established under section 48 of the Northern Ireland Act 1998 <sup>M5</sup> (pensions of members), or which was established under Part 2 of the Ministerial Salaries and Members' Pensions Act (Northern Ireland) 1965 <sup>M6</sup> or Article 3 of the Assembly Pensions (Northern Ireland) Order 1976 <sup>M7</sup>;
  - (e) a scheme in respect of which a relevant public authority has given a guarantee or made any other arrangements for the purposes of securing that the assets of the scheme are sufficient to meet its liabilities;
  - (f) a scheme which provides relevant benefits within the meaning of section 612(1) of the ICTA but which is neither a tax approved scheme nor a relevant statutory scheme within the meaning of section 611A of that Act <sup>M8</sup> (definition of “relevant statutory scheme”);
  - (g) a scheme—
    - (i) which has been categorised before 18<sup>th</sup> April 2005, by the Commissioners of Inland Revenue, and on or after that date, by the Commissioners of HMRC, for the purposes of its approval as a centralised scheme for non-associated employers;
    - (ii) which is not contracted-out in accordance with section 9 of the 1993 Act <sup>M9</sup>; and
    - (iii) under the provisions of which the only benefits that may be provided on or after retirement (other than money purchase benefits derived from the payment of voluntary contributions by any person) are lump sum benefits which are not calculated by reference to a member's salary;

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- (h) a scheme—
  - (i) the only benefits provided by which (other than money purchase benefits) are death benefits; and
  - (ii) under the provisions of which no member has accrued rights (other than rights to money purchase benefits);
- (i) a scheme with such a superannuation fund as is mentioned in section 615(6) of the ICTA<sup>M10</sup> (exemption from tax in respect of certain pensions);
- (j) a scheme which does not have its main place of administration registered in the United Kingdom;
- (k) a scheme with fewer than two members;
- [<sup>F10</sup>(l) a scheme with fewer than 12 members where all the members are trustees of the scheme and either—
  - (i) the provisions of the scheme provide that any decision made by the trustees is made by the unanimous agreement of the trustees who are members of the scheme; or
  - (ii) the scheme has a trustee who is independent in relation to the scheme for the purposes of section 23 of the 1995 Act (power to appoint independent trustees) and is registered in the register maintained by the Pensions Regulator in accordance with regulations made under subsection (4) of that section;]
- [<sup>F10</sup>(m) a scheme with fewer than 12 members where all the members are directors of a company which is the sole trustee of the scheme and either—
  - (i) the provisions of the scheme provide that any decision made by the company in its capacity as trustee is made by the unanimous agreement of the directors of that company who are members of the scheme; or
  - (ii) one of the directors of the company is independent in relation to the scheme for the purposes of section 23 of the 1995 Act and is registered in the register maintained by the Pensions Regulator in accordance with regulations made under subsection (4) of that section.]

#### Textual Amendments

**F10** Reg. 10(l)(m) substituted for reg. 10(l) (19.12.2007) by [The Financial Assistance Scheme \(Miscellaneous Amendments\) Regulations 2007 \(S.I. 2007/3581\)](#), regs. 1(1), **4(3)**

#### Marginal Citations

**M2** 1972 c. 11.

**M3** S.I.1972/1073 (N.I.10).

**M4** 1987 c. 45.

**M5** 1998 c. 47.

**M6** 1965 c. 18 (N.I.).

**M7** S.I.1976/1779.

**M8** Section 611A is inserted by the [Finance Act 1989 \(c. 26\)](#), [section 75](#) and Schedule 6, paragraph 15 and amended by the Finance Act 1999, section 52(1) and Schedule 5, paragraph 5.

**M9** Section 9 is amended by the 1995 Act, section 136(3) and (4), Schedule 5, paragraphs 21 and 24 and by the [Social Security Contributions \(Transfer of Functions\) Act 1999 \(c. 2\)](#), [Schedule 1](#), paragraph 35.

**M10** Section 615(6) has effect in relation to trust based occupational pension schemes established in respect of persons wholly employed in a trade or undertaking outside of the United Kingdom. It was amended by the Finance Act 1999, section 79 and Schedule 10.

### Condition to be satisfied by employer

11.—(1) The condition to be satisfied by the employer for the purposes of [F11]regulation 9(1)(c)(i)], where the scheme is not a multi-employer scheme, is that an insolvency event has occurred in relation to the employer F12 ....

(2) The reference to the employer in paragraph (1)—

- (a) [F13]is to the] person who employed persons in the description or category of employment to which the scheme relates or related immediately before the time when the scheme began to wind up; or
- (b) where the scheme had no active members immediately before the time it began to wind up, [F13]is to the] person who employed persons in the description or category of employment to which the scheme relates or related immediately before the time at which the scheme ceased to have any active members.

#### Textual Amendments

- F11 Words in reg. 11(1) substituted (17.7.2008) by [The Financial Assistance Scheme \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/1903\)](#), regs. 1, 7(2)
- F12 Words in reg. 11(1) omitted (19.12.2007) by virtue of [The Financial Assistance Scheme \(Miscellaneous Amendments\) Regulations 2007 \(S.I. 2007/3581\)](#), regs. 1(1), 4(4)
- F13 Words in reg. 11(2) substituted (16.12.2006) by [The Financial Assistance Scheme \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/3370\)](#), regs. 1(1), 4(2)

### Condition to be satisfied: multi-employer schemes

12.—(1) In relation to a section of a sectionalised multi-employer scheme, the condition to be satisfied for the purposes of [F14]regulation 9(1)(c)(ii)] is that an insolvency event has occurred F15 ...—

[F16](a) in relation to the principal employer in that section; or

- (b) where either there is no principal employer in that section or, where the principal employer is not an employer, there has been no insolvency event in relation to such a principal employer in that section—
  - (i) in relation to the employer in that section; or
  - (ii) where there is more than one employer in that section, in relation to all the employers in that section.]

(2) In relation to a multi-employer scheme which is not a sectionalised multi-employer scheme, the condition to be satisfied for the purposes of [F14]regulation 9(1)(c)(ii)] is that an insolvency event has occurred F15 ...—

(a) in relation to the principal employer; or

- [F17](b) where either there is no principal employer or, where the principal employer is not an employer, there has been no insolvency event in relation to such a principal employer—
  - (i) in relation to the employer; or
  - (ii) where there is more than one employer, in relation to all the employers.]

(3) The references to the employer [F18](other than in the phrase “principal employer”)] in paragraph (1) F19 ...—

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- (a) [<sup>F20</sup>include every person] who employed persons in the description or category of employment to which the section of the scheme relates or related immediately before the time when the scheme began to wind up; or
- (b) where the scheme had no active members immediately before the time it began to wind up, to the person who was the employer of persons in the description or category of employment to which the section of the scheme relates or related immediately before the time when the scheme ceased to have any active members in relation to that section.
- (4) The references to the employer [<sup>F18</sup>(other than in the phrase “principal employer”)] in paragraph(2)<sup>F19</sup>...—
- (a) [<sup>F20</sup>include every person] who employed persons in the description or category of employment to which the scheme relates or related immediately before the time when the scheme began to wind up; or
- (b) where the scheme had no active members immediately before the time it began to wind up, to the person who was the employer of persons in the description or category of employment to which the scheme relates or related immediately before the time when the scheme ceased to have any active members in relation to it.
- (5) The references to the principal employer [<sup>F21</sup>(who may or may not be an employer within the meaning of paragraph (3) or (4)) in paragraphs (1)] and (2) are to [<sup>F22</sup>the person] who was the principal employer immediately before the time when the scheme began to wind up.
- (6) In this regulation—
- “principal employer” means [<sup>F22</sup>the person] who—
- (a) is the principal employer for the purposes of the scheme, or of a section of a sectionalised multi-employer scheme, in accordance with the rules of the occupational pension scheme; or
- (b) has power to act on behalf of all the employers in the scheme, or in a section of a sectionalised multi-employer scheme, in relation to the rules of that scheme;
- “sectionalised multi-employer scheme” means a multi-employer scheme which is divided into two or more sections and the provisions of the scheme are such that—
- (a) different sections of the scheme apply or applied to different employers or groups of employers (whether or not more than one section applies or applied to any particular employer or groups including any particular employer);
- (b) any contributions payable or paid to the scheme by an employer, or by a member in employment under that employer, are allocated to that employer's section (or if more than one section applies or applied to the employer, to the section which is, or was, appropriate in respect of the employment in question); and
- (c) a specified part or proportion of the assets of the scheme is, or was, attributable to each section of the scheme and cannot or could not be used for the purpose of any other section of the scheme.

#### Textual Amendments

- F14** Words in reg. 12(1)(2) substituted (17.7.2008) by [The Financial Assistance Scheme \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/1903\)](#), regs. 1, **7(3)**
- F15** Words in reg. 12(1)(2) omitted (19.12.2007) by virtue of [The Financial Assistance Scheme \(Miscellaneous Amendments\) Regulations 2007 \(S.I. 2007/3581\)](#), regs. 1(1), **4(4)**
- F16** Reg. 12(1)(a)(b) substituted for reg. 12(1)(a)-(c) (16.12.2006) by [The Financial Assistance Scheme \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/3370\)](#), regs. 1(1), **4(3)(a)**

- F17** Reg. 12(2)(b) substituted (16.12.2006) by [The Financial Assistance Scheme \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/3370\)](#), regs. 1(1), **4(3)(b)**
- F18** Words in reg. 12(3)(4) inserted (16.12.2006) by [The Financial Assistance Scheme \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/3370\)](#), regs. 1(1), **4(3)(c)(i)**
- F19** Word in reg. 12(3)(4) omitted (16.12.2006) by virtue of [The Financial Assistance Scheme \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/3370\)](#), regs. 1(1), **4(3)(c)(ii)**
- F20** Words in reg. 12(3)(a)(4)(a) substituted (16.12.2006) by [The Financial Assistance Scheme \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/3370\)](#), regs. 1(1), **4(3)(c)(iii)**
- F21** Words in reg. 12(5) substituted (16.12.2006) by [The Financial Assistance Scheme \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/3370\)](#), regs. 1(1), **4(3)(d)(i)**
- F22** Words in reg. 12(5)-(6) substituted (16.12.2006) by [The Financial Assistance Scheme \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/3370\)](#), regs. 1(1), **4(3)(d)(ii)**

### **[<sup>F23</sup>E]Employer-related condition**

**12A.**—(1) The condition to be satisfied for the purposes of regulation 9(1)(c)(iii) is that the employer discharged the debt due under section 144 of the 1993 Act or that no debt was due under that section when the scheme began to wind up.

(2) The condition to be satisfied for the purposes of regulation 9(1)(c)(v) is that the employer discharged the debt due under section 75 of the 1995 Act or that no debt was due under that section when the scheme began to wind up.

(3) The scheme manager may treat the condition in paragraph (1) or (2) as being satisfied where—

- (a) [<sup>F24</sup>it] is satisfied that an appropriate proportion of the debt was discharged or is likely to be discharged; and
- (b) in [<sup>F25</sup>its] opinion, it was reasonable that the debt due under section 144 of the 1993 Act, or section 75 of the 1995 Act as appropriate, has not been discharged.

(4) In this regulation the reference to the employer shall be interpreted in accordance with regulation 11(2).

#### **Textual Amendments**

- F23** Reg. 12A - Reg. 12B inserted (17.7.2008) by [The Financial Assistance Scheme \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/1903\)](#), regs. 1, **7(4)**
- F24** Word in reg. 12A(3)(a) substituted (10.7.2009) by [The Financial Assistance Scheme \(Miscellaneous Provisions\) Regulations 2009 \(S.I. 2009/1851\)](#), regs. 1, **7(1)(a)** (with reg. 37)
- F25** Word in reg. 12A(3)(b) substituted (10.7.2009) by [The Financial Assistance Scheme \(Miscellaneous Provisions\) Regulations 2009 \(S.I. 2009/1851\)](#), regs. 1, **7(2)(a)** (with reg. 37)

### **Employer-related condition: multi-employer schemes**

**12B.**—(1) In relation to a section of a sectionalised multi-employer scheme, the condition to be satisfied for the purposes of regulation 9(1)(c)(iv) is that—

- (a) the debt due under section 144 of the 1993 Act was discharged by all the employers in that section of the scheme; or
- (b) no debt was due under that section of that Act when the scheme began to wind up.

(2) In relation to a multi-employer scheme which is not a sectionalised multi-employer scheme, the condition to be satisfied for the purposes of regulation 9(1)(c)(iv) is that—

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- (a) the debt due under section 144 of the 1993 Act was discharged by all the employers to which the scheme relates; or
  - (b) no debt was due under that section of that Act when the scheme began to wind up.
- (3) In relation to a section of a sectionalised multi-employer scheme, the condition to be satisfied for the purposes of regulation 9(1)(c)(vi) is that—
- (a) the debt due under section 75 of the 1995 Act was discharged by all the employers in that section of the scheme; or
  - (b) no debt was due under that section of that Act when the scheme began to wind up.
- (4) In relation to a multi-employer scheme which is not a sectionalised multi-employer scheme, the condition to be satisfied for the purposes of regulation 9(1)(c)(vi) is that—
- (a) the debt due under section 75 of the 1995 Act was discharged by all the employers to which the scheme relates; or
  - (b) no debt was due under that section of that Act when the scheme began to wind up.
- (5) The scheme manager may treat any condition in paragraphs (1) to (4) as being satisfied where—
- (a) [F26;it] is satisfied that an appropriate proportion of the debt was, or is likely to be, discharged; and
  - (b) in [F27;its] opinion, it was reasonable that the debt due under section 144 of the 1993 Act, or section 75 of the 1995 Act as appropriate, or a proportion of that debt has not been discharged.
- (6) In this regulation—
- (a) the references to the employer in paragraphs (1) and (3) shall be interpreted in accordance with regulation 12(3);
  - (b) the references to the employer in paragraphs (2) and (4) shall be interpreted in accordance with regulation 12(4); and
  - (c) “sectionalised multi-employer scheme” has the meaning given by regulation 12(6).]

#### Textual Amendments

- F23** Reg. 12A - Reg. 12B inserted (17.7.2008) by [The Financial Assistance Scheme \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/1903\)](#), regs. 1, **7(4)**
- F26** Word in reg. 12B(5)(a) substituted (10.7.2009) by [The Financial Assistance Scheme \(Miscellaneous Provisions\) Regulations 2009 \(S.I. 2009/1851\)](#), regs. 1, **7(1)(a)** (with reg. 37)
- F27** Word in reg. 12B(5)(b) substituted (10.7.2009) by [The Financial Assistance Scheme \(Miscellaneous Provisions\) Regulations 2009 \(S.I. 2009/1851\)](#), regs. 1, **7(2)(a)** (with reg. 37)

#### Insolvency events

**13.—**(1) “Insolvency event” shall, for the purposes of regulations 11 and 12, be interpreted in accordance with—

- (a) section 121(2) to (4) (other than subsection (3)(f) of that section); or
- (b) Article 105(2) to (4) and (12) (other than paragraph (3)(f) of that Article),

and the following provisions of this regulation.

(2) Where the employer in relation to an occupational pension scheme is a person specified in paragraph (3), an insolvency event shall be treated as having occurred in relation to that employer for the purposes of regulations 11 and 12 where the scheme manager is satisfied that—



- (a) that employer was unlikely to continue as a going concern; and
- <sup>F28</sup>(b) .....
- (3) The persons specified in this paragraph are—
  - (a) a public body—
    - (i) in relation to which it is not possible for an insolvency event within the meaning of section 121 or Article 105 to occur; and
    - (ii) which is not the employer in relation to an occupational pension scheme in respect of which a relevant public authority has either—
      - (aa) given a guarantee in relation to any part of the scheme, any benefits payable under the scheme or any member of the scheme; or
      - (bb) made any other arrangements for the purposes of securing that the assets of the scheme are sufficient to meet any part of its liabilities;
  - (b) a charity (as construed in accordance with the Charities Act 1993 <sup>M11</sup> or the Charities Act (Northern Ireland) 1964 <sup>M12</sup>) which is not a company or other body corporate; or
  - (c) a trade union within the meaning given in section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992 <sup>M13</sup> or in Article 3(1) of the Industrial Relations (Northern Ireland) Order 1992 <sup>M14</sup> in relation to which it is not possible for an insolvency event within the meaning of section 121 or Article 105 to occur.

[<sup>F29</sup>(3A) Where the scheme manager is satisfied that the employer in relation to an occupational pension scheme is unlikely to continue as a going concern, the scheme manager may treat an insolvency event as having occurred in relation to that employer for the purposes of regulations 11 and 12 where [<sup>F30</sup>it] is satisfied that <sup>F31</sup>... all of the following circumstances applied to that employer—

- (a) no insolvency event referred to elsewhere in this regulation has occurred or is likely to occur in relation to the employer;
- (b) the value of the assets of the employer is less than the amount of its liabilities, taking into account its contingent and prospective liabilities; and
- (c) the employer is unable to pay its debts as they fall due or have fallen due.]

(4) An insolvency event also occurs for the purposes of regulations 11 and 12 where any of the following events occur <sup>F32</sup>...—

- (a) in relation to a company—
  - (i) where an administration order is made—
    - (aa) by the court in relation to the company under, or by virtue of any enactment which applies, Part 2 of the 1986 Act (administration orders) (with or without modification); or
    - (bb) by the High Court in relation to the company under, or by virtue of any statutory provision which applies, Part 3 of the Insolvency (Northern Ireland) Order (administration orders) (with or without modification);
  - (ii) where a resolution is passed for a voluntary winding up of the company with a declaration of solvency under section 89 of the 1986 Act or under Article 75 of the Insolvency (Northern Ireland) Order; or
  - (iii) where notice is published in the Gazette that the company has been struck off the register pursuant to section 652 or 652A of the Companies Act 1985 <sup>M15</sup> or Article 603 or 603A of the Companies (Northern Ireland) Order 1986<sup>M16</sup>;
- (b) in relation to a relevant body, where—

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- (i) any of the events referred to—
    - (aa) in section 121(3) occurs in relation to that body by virtue of the application (with or without modification) of any provision of the 1986 Act or by or under any other enactment; or
    - (bb) in Article 105(3) <sup>M17</sup> (insolvency events) occurs in relation to that body by virtue of the application (with or without modification) of any provision of the Insolvency (Northern Ireland) Order or by or under any other statutory provision; or
  - (ii) an administration order is made by the court in respect of the relevant body by virtue of any enactment which applies Part 2 of the 1986 Act or Part 3 of the Insolvency (Northern Ireland) Order (with or without modification);
  - (c) in relation to a limited liability partnership, where notice has been published in the Gazette that the partnership has been struck off the register pursuant to section 652 or 652A of the Companies Act 1985 <sup>M18</sup> or Article 603 or 603A of the Companies (Northern Ireland) Order 1986 <sup>M19</sup>;
  - (d) in relation to a building society, where there is dissolution by consent of the members under section 87 of the Building Societies Act 1986 <sup>M20</sup> (dissolution by consent);
  - (e) in relation to a friendly society, where there is dissolution by consent of the members under section 20 of the Friendly Societies Act 1992 <sup>M21</sup> (dissolution by consent); and
  - (f) in relation to an industrial and provident society, where there is dissolution by consent of the members under section 58 of the Industrial and Provident Societies Act 1965 <sup>M22</sup> or section 67 of the Industrial and Provident Societies Act (Northern Ireland) 1969 <sup>M23</sup> (instrument of dissolution).
- [<sup>F33</sup>(4A) An insolvency event also occurs for the purposes of regulations 11 and 12 where the scheme manager is satisfied that <sup>F32</sup>...—
- (a) an event has occurred in any jurisdiction outside the United Kingdom, in relation to an employer, that substantially corresponds to any event referred to in—
    - (i) section 121(2) to (4) (other than subsection (3)(f) of that section),
    - (ii) Article 105(2) to (4) and (12) (other than paragraph (3)(f) of that Article), and
    - (iii) paragraph (4) of this regulation; and
  - (b) that employer is unlikely to continue as a going concern.]
- [<sup>F34</sup>(4B) The scheme manager may also, for the purposes of regulations 11 and 12, treat an insolvency event as having occurred in relation to the employer in relation to an occupational pension scheme where—
- (a) the trustees of such a scheme entered into a binding agreement, with the employer against whom it arose, to compromise the debt that arose under section 75 of the 1995 Act, and
  - (b) the scheme manager is satisfied that had that agreement not been entered into—
    - (i) the value of that employer’s assets would have been less than the amount of its liabilities, taking into account its contingent and prospective liabilities, or
    - (ii) the employer would have been unable to pay its debts as they fell due.]
- (5) In this regulation, a reference to Part 2 of the 1986 Act (administration orders) shall, in so far as it relates to a company or society listed in section 249(1) of the Enterprise Act 2002 <sup>M24</sup> (special administration regimes), have effect as if it referred to Part 2 of the 1986 Act as it had effect immediately before the coming into force of section 248 of the Enterprise Act 2002 (replacement of Part 2 of the 1986 Act).

(6) In this regulation—

“the 1986 Act” means the Insolvency Act 1986 <sup>M25</sup>;

“the Insolvency (Northern Ireland) Order” means the Insolvency (Northern Ireland) Order 1989 <sup>M26</sup>;

“administration order” means an order whereby the management of the company or relevant body, as the case may be, is placed in the hands of a person appointed by the court or, in Northern Ireland, by the High Court;

[<sup>F35</sup>“employer” includes a person who is a principal employer for the purposes of regulation 12;]

“the Gazette” means, in respect of companies or limited liability partnerships registered—

- (a) in England and Wales, the London Gazette;
- (b) in Scotland, the Edinburgh Gazette; or
- (c) in Northern Ireland, the Belfast Gazette;

“public body” means a government department or any non-departmental public body established by—

- (a) in relation to Great Britain, an Act of Parliament or by a statutory instrument made under an Act of Parliament to perform functions conferred on it under, or by virtue of, that Act or instrument or any other Act or instrument;
- (b) in relation to Northern Ireland, a statutory provision to perform functions conferred on it under that statutory provision or any other such statutory provision;

“relevant body” means—

- (a) a credit union within the meaning given in section 31(1) of the Credit Unions Act 1979 <sup>M27</sup> or Article 2(2) of the Credit Unions (Northern Ireland) Order 1985 <sup>M28</sup> (interpretation);
- (b) a limited liability partnership within the meaning given in section 57(6) or Article 53(6) (partnerships and limited liability partnerships);
- (c) a building society within the meaning given in section 119 of the Building Societies Act 1986 (interpretation);
- (d) a person who has permission to act under Part 4 of the FSMA (permission to carry out regulated activities);
- (e) the society of Lloyd's and Lloyd's members who have permission under Part 19 of the FSMA (Lloyd's);
- (f) a friendly society within the meaning given in the Friendly Societies Act 1992; or
- (g) a society which is registered as an industrial and provident society under the Industrial and Provident Societies Act 1965 or under the Industrial and Provident Societies Act (Northern Ireland) 1969;

“statutory provision” has the meaning given in section 1(f) of the Interpretation Act (Northern Ireland) 1954 <sup>M29</sup>.

#### Textual Amendments

**F28** Reg. 13(2)(b) omitted (19.12.2007) by virtue of [The Financial Assistance Scheme \(Miscellaneous Amendments\) Regulations 2007 \(S.I. 2007/3581\)](#), regs. 1(1), **4(5)(a)**

**F29** Reg. 13(3A) inserted (16.12.2006) by [The Financial Assistance Scheme \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/3370\)](#), regs. 1(1), **4(4)**

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- F30** Word in reg. 13(3A) substituted (10.7.2009) by [The Financial Assistance Scheme \(Miscellaneous Provisions\) Regulations 2009 \(S.I. 2009/1851\)](#), regs. 1, **7(1)(a)** (with reg. 37)
- F31** Words in reg. 13(3A) omitted (19.12.2007) by virtue of [The Financial Assistance Scheme \(Miscellaneous Amendments\) Regulations 2007 \(S.I. 2007/3581\)](#), regs. 1(1), **4(5)(b)**
- F32** Words in reg. 13(4)(4A) omitted (19.12.2007) by virtue of [The Financial Assistance Scheme \(Miscellaneous Amendments\) Regulations 2007 \(S.I. 2007/3581\)](#), regs. 1(1), **4(4)**
- F33** Reg. 13(4A) inserted (16.12.2006) by [The Financial Assistance Scheme \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/3370\)](#), regs. 1(1), **4(5)**
- F34** Reg. 13(4B) inserted (19.12.2007) by [The Financial Assistance Scheme \(Miscellaneous Amendments\) Regulations 2007 \(S.I. 2007/3581\)](#), regs. 1(1), **4(5)(c)**
- F35** Words in reg. 13(6) inserted (16.12.2006) by [The Financial Assistance Scheme \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/3370\)](#), regs. 1(1), **4(6)**

### Marginal Citations

- M11** 1993 c. 10.
- M12** 1964 c. 33 (N.I.).
- M13** 1992 c. 52.
- M14** [S.I.1992/807 \(N.I.5\)](#).
- M15** 1985 c. 6. Section 652A is inserted by the [Deregulation and Contracting Out Act 1994 \(c. 40\)](#), **section 13(1)** and Schedule 5, paragraph 2.
- M16** [S.I.1986/1032 \(N.I.6\)](#). Article 603A is inserted by the [Deregulation and Contracting Out Act 1994](#), section 13(2) and Schedule 6, paragraph 2.
- M17** See also Article 105(12).
- M18** Sections 652 and 652A are applied to limited liability partnerships by the [Limited Liability Partnerships Regulations 2001 \(S.I.2001/1090\)](#).
- M19** Articles 603 and 603A are applied to limited liability partnerships by the [Limited Liability Partnerships Regulations \(Northern Ireland\) 2004 \(S.R.2004/307\)](#).
- M20** 1986 c. 53.
- M21** 1992 c. 40.
- M22** 1965 c. 12.
- M23** 1969 c. 24 (N.I.).
- M24** 2002 c. 40.
- M25** 1986 c. 45.
- M26** [S.I.1989/2405 \(N.I.19\)](#).
- M27** 1979 c. 34.
- M28** [S.I.1985/1205 \(N.I.12\)](#).
- M29** 1954 c. 33 (N.I.). Section 1(f) is amended by the [Northern Ireland \(Modification of Enactments No.1\) Order 1999 \(S.I.1999/663\)](#), **Article 2(1)** and Schedule 1, paragraph 9(1).

### Notification of details

14.—(1) Where an occupational pension scheme is winding up, the prescribed details for the purposes of regulation 9(1)(d) are—

- (a) the name of the scheme;
  - (b) the pension scheme registration number which is allocated to that scheme in the register;
  - (c) the name (and if there has been a change of name, the previous name) and address of any employer of earners in employment to which the scheme relates or has related;
  - (d) the name and address of at least one trustee of the scheme.
- (2) The persons who may supply the details in paragraph (1) are—

- (a) any trustee of the scheme including a trustee appointed by the Regulator under section 7 or 23(1) of the 1995 Act <sup>M30</sup>;
  - (b) a member of the scheme or his appointed representative;
  - (c) a surviving spouse or civil partner of a member of the scheme who has died; or
  - (d) any professional adviser in relation to the scheme.
- (3) Where an occupational pension scheme has wound up, the prescribed details for the purposes of regulation 9(1)(d) are—
- (a) the name of the scheme; and
  - (b) the name (and if there has been a change of name, the previous name) and address of any employer of earners in employment to which the scheme related.
- (4) The persons who may supply the details in paragraph (3) are—
- (a) a former trustee or manager of the scheme;
  - (b) a former member of the scheme or his appointed representative;
  - (c) a surviving [<sup>F36</sup>partner] spouse or civil partner of a former member of the scheme who has died;
  - (d) any former professional adviser in relation to the scheme; or
  - (e) any insurance company which is paying annuities to former members of that scheme.
- (5) The details in paragraphs (1) and (3) must—
- (a) be notified in writing; and
  - (b) have been notified to the scheme manager—
    - (i) no earlier than 1<sup>st</sup> September 2005; but
    - (ii) by no later than 28<sup>th</sup> February 2006 or by no later than such later date by which the scheme manager has indicated that [<sup>F37</sup>it] may accept notification of those details in the case of any particular scheme.

#### Textual Amendments

**F36** Word in reg. 14(4)(c) inserted (10.7.2009) by [The Financial Assistance Scheme \(Miscellaneous Provisions\) Regulations 2009 \(S.I. 2009/1851\)](#), regs. 1, **9** (with reg. 37)

**F37** Word in reg. 14(5)(b)(ii) substituted (10.7.2009) by [The Financial Assistance Scheme \(Miscellaneous Provisions\) Regulations 2009 \(S.I. 2009/1851\)](#), regs. 1, **7(1)(a)** (with reg. 37)

#### Marginal Citations

**M30** Section 7 is amended by the Act, Schedule 12, paragraph 36. Section 23 is substituted by section 36(3) of the Act.

### <sup>F38</sup>Working with qualifying pension schemes

**14A.—(1)** The scheme manager may manage, or make arrangements in relation to the management of, the transfer of any property, rights and liabilities of qualifying pension schemes which have not been fully wound up.

- (2) The power conferred by paragraph (1) includes, but is not limited to—
- (a) the preparation of plans or other similar preparatory documentation;

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- (b) undertaking work calculated to assist in ensuring any transfer is carried out effectively and efficiently;
- (c) undertaking work to assess the effect of any action taken in relation to qualifying pension schemes; and
- (d) the inspection, examination and auditing of data or other information relating to qualifying pension schemes.

#### **Textual Amendments**

**F38** Reg. 14A - Reg. 14B inserted (10.7.2009) by [The Financial Assistance Scheme \(Miscellaneous Provisions\) Regulations 2009 \(S.I. 2009/1851\)](#), regs. 1, **10** (with reg. 37)

#### **Payments in relation to administration or other costs**

**14B.**—(1) Where the scheme manager is satisfied that—

- (a) the trustees or managers of a qualifying pension scheme are not able to pay or meet administration or other costs which have been incurred or which are likely to be incurred in relation to that scheme from the assets of the scheme; and
- (b) paying or meeting those administration or other costs is necessary in order to—
  - (i) assist the scheme in winding-up;
  - (ii) keep any reduction in the scheme's assets to a minimum; or
  - (iii) increase the scheme's assets,

the scheme manager may, on an application by the trustees or managers, pay to them such amounts as it considers appropriate for the purpose of enabling the trustees or managers to pay or meet those costs.

(2) The scheme manager may make a payment under paragraph (1) on such terms as the scheme manager thinks fit.]

#### **Textual Amendments**

**F38** Reg. 14A - Reg. 14B inserted (10.7.2009) by [The Financial Assistance Scheme \(Miscellaneous Provisions\) Regulations 2009 \(S.I. 2009/1851\)](#), regs. 1, **10** (with reg. 37)

**Status:**

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