

SCHEDULE

Regulation 2(5)

Schedules inserted in the 2005 Regulations

“SCHEDULE 1A

Multi-employer schemes: employer-cessation events and approved withdrawal arrangements

Withdrawal arrangements

- 1.—(1) For the purposes of these Regulations—
- (a) a withdrawal arrangement is an arrangement that meets the conditions specified in sub-paragraph (2), and
 - (b) a withdrawal arrangement is approved if the details—
 - (i) of the arrangement, and
 - (ii) if the arrangement is amended, of any amendments of the arrangement,are approved by the Authority.
- (2) The conditions are that—
- (a) the arrangement consists of an agreement to which the trustees of the scheme and the cessation employer are parties;
 - (b) the agreement is enforceable under the law of England and Wales, and the parties to the agreement have agreed that—
 - (i) that law applies to the agreement; and
 - (ii) they are subject to the jurisdiction of the court in England and Wales as respects the agreement;
 - (c) the agreement provides that at or before a time specified in the agreement the cessation employer will pay an amount equal to or greater than the amount that is amount A for the purposes of regulation 7(3)(a);
 - (d) the agreement—
 - (i) provides that if an event specified in sub-paragraph (3) occurs whilst the agreement is in force the parties to the agreement who are specified in the agreement as the persons who are the guarantors for the purposes of regulation 7 (the “guarantors”) (who may be or include the cessation employer) will pay an amount equal to the amount that is amount B for the purposes of regulation 7(3)(b) (but without prejudice to their powers to make a payment on account of that amount at any earlier time);
 - (ii) if there are two or more guarantors, provides whether or not the guarantors are to be jointly and severally liable for that amount for those purposes; and
 - (iii) provides whether or not that amount is to be the amount provided for under regulation 7B(2);
 - (e) the agreement provides that an amount payable under paragraph (c) or (d) is payable—
 - (i) to the trustees of the scheme; or
 - (ii) if the Board of the Pension Protection Fund has assumed responsibility for the scheme in accordance with Chapter 3 of Part 2 of the 2004 Act (pension protection), to the Board on behalf of the trustees of the scheme;

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- (f) the agreement provides that one or more of the parties to the agreement other than the trustees of the scheme are to bear any expenses incurred by the parties in connection with—
 - (i) the making of the agreement; or
 - (ii) the making of any calculations by the actuary for the purposes of the agreement;
 - (g) the agreement will continue in force until—
 - (i) the winding up of the scheme is completed;
 - (ii) the Authority issue a notice to the parties to the agreement stating that the Authority consider that the agreement is no longer required; or
 - (iii) the agreement is replaced by another agreement that is approved by the Authority as an approved withdrawal arrangement,whichever occurs first.
- (3) The events are that—
- (a) the scheme begins to be wound up;
 - (b) an event occurs as a result of which there is no person who is an employer in relation to the scheme for the purposes of these Regulations in relation to whom a relevant event has not occurred for the purposes of section 75 of the 1995 Act (see section 75(6A) of that Act⁽¹⁾);
 - (c) the Authority issue a notice to the parties to the agreement stating that they consider that the amount referred to in sub-paragraph (2)(d)(i) should be paid.
- (4) The Authority may not issue such a notice at any time unless the Authority consider that it is reasonable for the guarantors to be required to pay that amount at that time.
- (5) In forming an opinion for the purposes of sub-paragraph (4), the Authority must have regard to such matters as the Authority consider relevant including—
- (a) whether the guarantors have taken reasonable steps to comply with the approved withdrawal arrangement;
 - (b) whether the guarantors have complied with their obligations under paragraph 5; and
 - (c) the guarantors' financial circumstances.

Approval of withdrawal arrangements

2.—(1) Approval by the Authority of an agreement as a withdrawal arrangement is to be given in a notice issued by the Authority.

(2) Such an approval may be given subject to such conditions as the Authority consider appropriate.

(3) The Authority may not approve an agreement as a withdrawal arrangement unless they are satisfied that—

- (a) the agreement meets the conditions in paragraph 1(2); and
- (b) the guarantors have or will have such resources that the debt becoming due under section 75 of the 1995 Act is more likely to be met if the agreement is approved.

(1) Subsection (6A) was inserted in section 75 by section 271(5) of the Pensions Act 2004.

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3.—(1) Nothing in this Schedule prevents the Authority from approving as a withdrawal arrangement an agreement that will take effect only if an employment-cessation event occurs in relation to an employer.

(2) And in the case of such an approval, references in paragraphs 1 and 2 to that event and debt must be read accordingly.

(3) But, subject to that, references in these Regulations to an approved withdrawal arrangement only include references to an arrangement approved under this paragraph if the agreement has taken effect.

4.—(1) Paragraphs 1, 2 and 5 of this Schedule apply to any arrangement replacing an approved withdrawal arrangement as they applied to the replaced arrangement.

(2) No directions may be issued under regulation 7(2) as a result of a notification about an arrangement that is to replace another arrangement if—

- (a) directions have been issued under that regulation as a result of a notification about the replaced arrangement; and
- (b) the replaced arrangement is an approved withdrawal arrangement that has come into force.

(3) But if an approved withdrawal arrangement replaces another such arrangement—

- (a) any directions issued under regulation 7(2) as a result of a notification about the replaced arrangement continue to apply, and
- (b) after the replacing arrangement comes into force the references to the approved withdrawal arrangement in regulations 7(3)(b), (4) and (6) and 7B(1) to (3) and in regulation 6(6)(b), as inserted by regulation 7A(5)(b), are to be taken as references to the replacing arrangement.

(4) Once sub-paragraph (2) has applied to an arrangement (“the second arrangement”) that is to replace another arrangement—

- (a) no further directions may be issued under regulation 7(2) as a result of a notification about any arrangement that is to replace the second arrangement or any subsequent replacing arrangement;
- (b) sub-paragraph (3)(a) continues to apply to any directions about the arrangement replaced by the second arrangement notwithstanding the replacement of the second arrangement, or any subsequent replacement, by an approved withdrawal arrangement; and
- (c) if such a replacement of the second arrangement or subsequent replacement occurs, references in sub-paragraph (3)(b) to the replacing arrangement are references to the latest replacing arrangement.

Notifiable events

5.—(1) Where an approved withdrawal arrangement is in force in relation to a scheme, each relevant person must give notice to the Authority if such an event as is mentioned in sub-paragraph (3) occurs in relation to that person.

(2) For the purposes of this paragraph each of the guarantors is a relevant person.

(3) The following are the events referred to in sub-paragraph (1)—

- (a) any decision by the relevant person to take action which will, or is intended to, result in a debt which is or may become due—
 - (i) to the trustees of the scheme, or

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- (ii) if the Board of the Pension Protection Fund has assumed responsibility for the scheme in accordance with Chapter 3 of Part 2 of the 2004 Act, to the Board, not being paid in full;
 - (b) a decision by the relevant person to cease to carry on business (including any trade or profession) in the United Kingdom or, if the relevant person ceases to carry on such business without taking such a decision, his doing so;
 - (c) where applicable, receipt by the relevant person of advice that the person is trading wrongfully within the meaning of section 214 of the Insolvency Act 1986(2) (wrongful trading), or circumstances occurring in which a director or former director of the company knows that there is no reasonable prospect that the company will avoid going into insolvent liquidation within the meaning of that section, and for this purpose section 214(4) of that Act applies;
 - (d) any breach by the relevant person of a covenant in an agreement between the relevant person and a bank or other institution providing banking services, other than where the bank or other institution agrees with the relevant person not to enforce the covenant;
 - (e) any change in the relevant person's credit rating, or the relevant person ceasing to have a credit rating;
 - (f) where the relevant person is a company, a decision by a controlling company to relinquish control of the relevant person or, if the controlling company relinquishes such control without taking such a decision, its doing so;
 - (g) two or more changes in the holders of any key relevant person posts within a period of 12 months;
 - (h) where the relevant person is a company or partnership, the conviction of an individual, in any jurisdiction, for an offence involving dishonesty, if the offence was committed while the individual was a director or partner of the relevant person;
 - (i) an insolvency event occurring in relation to the relevant person for the purposes of Part 2 of the 2004 Act (see section 121 of that Act: insolvency event, insolvency date and insolvency practitioner).
- (4) A notice under sub-paragraph (1) must be given in writing as soon as reasonably practicable after the relevant person becomes aware of the event.
- (5) No duty to which a relevant person is subject is to be regarded as contravened merely because of any information or opinion contained in a notice under this paragraph.
- (6) But sub-paragraph (5) does not require any person to disclose protected items within the meaning of section 311 of the 2004 Act (protected items).
- (7) Section 10 of the 1995 Act (civil penalties) applies to any relevant person who without reasonable excuse fails to comply with an obligation imposed on him under this paragraph.
- (8) In this paragraph—
“control” has the meaning given in section 435(10) of the Insolvency Act 1986 (meaning of “associate”- meaning of “control”) and “controlling company” is to be read accordingly;

(2) 1986 c. 45. Section 214 was modified by section 90 of, and Schedule 15 to, the Building Societies Act 1986 (c. 53) and by section 23 of, and Schedule 10 to, the Friendly Societies Act 1992 (c. 40). Regulation 5 of the Limited Liability Partnerships Regulations 2001 (S.I. 2001/1090) applies section 214 to limited liability partnerships with modifications including that references to a company include references to such partnerships and references to a director include references to a member (see regulation 5(2)(a) and (b)).

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“director” has the meaning given in section 741(1) of the Companies Act 1985(3) (meaning of “director” and “shadow director”);

“key relevant person posts” means the Chief Executive and any director or partner responsible in whole or in part for the financial affairs of the relevant person.

SCHEDULE 1B

Form of Actuary’s certificate: scheme funding basis debts in approved withdrawal arrangement cases

Actuarial Certificate Given for the Purposes of Regulation 7A(6) of the Occupational Pension Schemes (Employer Debt) Regulations 2005

Name of scheme

1 Comparison of value of scheme assets with amount of scheme liabilities

In my opinion, at the above date the value of the assets of the scheme was less than the amount of the liabilities of the scheme.

The value of the assets of the scheme was

The amount of the liabilities was

The amount of the difference was

2 The scheme’s assets and liabilities are valued in accordance with regulation 5 of the Occupational Pension Schemes (Employer Debt) Regulations 2005, subject to the modifications specified in regulation 7A(4) of those Regulations, and the guidelines on winding up and scheme asset deficiency (GN19) and on minimum funding requirement (GN27) prepared and published by the Institute of Actuaries and the Faculty of Actuaries (so far as those guidelines are applicable).

Signature	Date
Name	Qualification
Address	Name of employer (if applicable)

Note:

The valuation of the amount of the liabilities of the scheme may not reflect the actual cost of securing those liabilities by the purchase of annuities if the scheme were to have been wound up on the date as at which the valuation is made.

(3) 1985 c. 6. Under regulation 4 of, and Part 1 of Schedule 2 to, S.I. 2001/1090 section 741 (except subsection (3)) applies to limited liability partnerships with the modifications set out in regulation 4(1).