
STATUTORY INSTRUMENTS

2005 No. 678

PENSIONS

**The Occupational Pension Schemes
(Employer Debt) Regulations 2005**

Made - - - - *11th March 2005*
Laid before Parliament *16th March 2005*
Coming into force - - *6th April 2005*

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 40(1) and (2), 49(2) and (3), 57(2) and (4), 60(2), 68(2)(e), 75(1)(b), (5), (6D)(b)(i) and (10), 75A(1) to (4), 89(2), 118(1), 119, 124(1), 125(3) and 174(2) and (3) of the Pensions Act 1995^{M1} and of all other powers enabling him in that behalf, by this instrument, which is consequential on section 271 of the Pensions Act 2004^{M2}, and is made before the end of the period of six months beginning with the coming into force of that section, hereby makes the following Regulations:

Marginal Citations

- M1** 1995 c. 26. Section 75 is amended by s.271 of the [Pensions Act 2004 \(c. 35\)](#). Section 75A is inserted by s.272 of the Pensions Act 2004. Section 89(2) is amended by paragraph 66 of Schedule 12 to the Pensions Act 2004. Section 124(1) is cited for the meaning it gives to “prescribed” and “regulations”.
- M2** 2004 c. 35. See section 120 of the Pensions Act 1995 which provides that the Secretary of State must consult such persons as he may consider appropriate before making regulations for the purposes of the provisions for the purposes of which these Regulations are made. This duty does not apply where regulations are made before the end of the period of six months beginning with the coming into force of any enactment on which the regulations are consequential.

Preliminary

Citation, commencement, application and extent

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Employer Debt) Regulations 2005.

(2) These Regulations come into force on 6th April 2005.

(3) These Regulations do not apply to—

- (a) any scheme other than a money purchase scheme if a debt to the trustees or managers of the scheme has been treated as arising under section 75(1) of the 1995 Act before that date;

Status: Point in time view as at 01/04/2006.

Changes to legislation: There are currently no known outstanding effects for the The Occupational Pension Schemes (Employer Debt) Regulations 2005. (See end of Document for details)

- (b) any scheme which immediately before that date was regarded by virtue of regulation 2 of the Occupational Pension Schemes (Winding Up) Regulations 1996^{M3} as having begun to be wound up before that date for the purposes of those Regulations; or
 - (c) any scheme which according to the rules in section 124(3A) to (3E) of the 1995 Act^{M4} began to wind up before that date.
- (4) These Regulations extend to England and Wales and Scotland.

Marginal Citations

M3 [S.I. 1996/3126](#).

M4 Subsections (3) to (3E) were inserted in section 124 by section 49(2) of the [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#).

Interpretation

2.—(1) In these Regulations—

“the 1993 Act” means the Pension Schemes Act 1993^{M5};

“the 1995 Act” means the Pensions Act 1995;

“the 2004 Act” means the Pensions Act 2004;

“the 1996 Regulations” means the Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations 1996^{M6};

“the actuary” means the actuary appointed for the scheme in pursuance of subsection (1)(b) of section 47 of the 1995 Act or, in the case of a scheme to which that provision does not apply by virtue of regulations made under subsection (5) of that section, an actuary otherwise authorised by the trustees or managers to provide such valuations or certifications as may be required under these Regulations;

“the applicable time” means the time as at which the value of the assets of a scheme and the amount of its liabilities are to be determined, calculated and verified for the purposes of section 75 of the 1995 Act;

“employer” has the same meaning as in section 75 of the 1995 Act (but see paragraph (2) and regulations 9 and 13);

“employment-cessation event” has the meaning given in regulation 6(4);

“the MFR Regulations” means the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996^{M7};

“money purchase scheme” means an occupational pension scheme under which all the benefits that may be provided other than death benefits are money purchase benefits;

“multi-employer scheme” means a scheme in relation to which there is more than one employer (including, except in regulation 8, any section of a scheme treated under that regulation as a scheme if there is more than one employer in relation to that section);

“the tax condition”, in relation to a scheme, means—

(a) that the scheme has been approved by the Commissioners of the Board of Inland Revenue for the purposes of section 590 or 591 of the Taxes Act at any time before 6th April 2006; or

(b) that the scheme is registered under section 153 of the Finance Act 2004^{M8};

“the Taxes Act” means the Income and Corporation Taxes Act 1988^{M9}.

[^{F1}“withdrawal arrangement” and “approved withdrawal arrangement” are to be read in accordance with paragraph 1(1) of Schedule 1A to these Regulations.]

(2) In these Regulations “scheme” must be read in appropriate cases in accordance with the modifications of section 75 of the 1995 Act made by regulation 8, 14 or 15, as the case may be; and “employer” and “member” must be read accordingly.

(3) References in these Regulations to the guidance in GN19 are to the guidelines on winding up and scheme asset deficiency (GN19), prepared and published by the Institute of Actuaries and the Faculty of Actuaries ^{M10} and approved for the purposes of these Regulations by the Secretary of State, with such revisions as have been so approved at the applicable time.

(4) References in these Regulations to the guidance in GN 27 are to the guidelines on minimum funding requirement (GN 27), prepared and published by the Institute of Actuaries and the Faculty of Actuaries and approved for the purposes of the MFR Regulations by the Secretary of State, with such revisions as have been so approved at the applicable time.

(5) Subject to the previous provisions of this regulation, expressions used in these Regulations have the same meaning as in Part 1 of the 1995 Act (see section 124).

Textual Amendments

- F1** Words in [reg. 2\(1\)](#) added (2.9.2005) by [The Occupational Pension Schemes \(Employer Debt etc.\) \(Amendment\) Regulations 2005 \(S.I. 2005/2224\)](#), [regs. 1\(2\), 2\(1\)](#)

Marginal Citations

- M5** 1993 c. 48.
M6 S.I. 1996/3128.
M7 S.I. 1996/1536.
M8 2004 c. 12.
M9 1988 c. 1.
M10 The publications GN19 and GN27 may be obtained from the Institute of Actuaries, Staple Inn Hall, High Holborn, London WC1V 7QJ and from the Faculty of Actuaries, Maclaurin House, 18 Dublin Street, Edinburgh EH1 3PP.

Disapplication of the 1996 Regulations

3. The 1996 Regulations do not apply in any case where these Regulations apply (and accordingly they only apply to a scheme as respects which regulation 1(3)(a), (b) or (c) applies).

Schemes to which section 75 of the 1995 Act does not apply

- 4.—**(1) Section 75 of the 1995 Act does not apply to any scheme which is—
- (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 ^{M11} (superannuation of persons employed in local government etc.) and provides pensions to local government employees;
 - (c) a scheme which is made under section 2 of the Parliamentary and Other Pensions Act 1987 ^{M12} (power to provide for pensions for Members of the House of Commons etc.);

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Changes to legislation: There are currently no known outstanding effects for the The Occupational Pension Schemes (Employer Debt) Regulations 2005. (See end of Document for details)

- (d) a scheme in respect of which a relevant public authority, as defined in section 307(4) of the 2004 Act, 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;
- (e) a scheme which does not meet the tax condition;
- (f) a scheme which—
 - (i) has been categorised by the Commissioners of the Board of Inland Revenue for the purposes of its approval as a centralised scheme for non-associated employers;
 - (ii) which is not contracted-out; 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;
- (g) a scheme with such a superannuation fund as is mentioned in section 615(6) of the Taxes Act (fund established to provide superannuation benefits in respect of persons' employment in a trade or undertaking wholly outside the United Kingdom);
- (h) a scheme with fewer than two members;
- (i) a scheme with fewer than twelve members where all the members are trustees of the scheme and either—
 - (i) the rules of the scheme provide that all decisions are made only by the trustees who are members of the scheme by unanimous agreement; 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 ^{M13} (power to appoint independent trustees) (see subsection (3) of that section) and is registered in the register maintained by the Authority in accordance with regulations made under subsection (4) of that section;
- (j) a scheme with fewer than twelve members where all the members are directors of a company which is the sole trustee of the scheme and either—
 - (i) the rules of the scheme provide that all decisions are made only by the members of the scheme by unanimous agreement, 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 Authority in accordance with regulations made under subsection (4) of that section;
- (k) the Chatsworth Settlement Estate Pension Scheme; or

^{F2}(l)

(2) Before 6th April 2006 paragraph (1)(e) applies with the addition at the end of the words “and is not a relevant statutory scheme providing relevant benefits”; and for the purposes of that paragraph “relevant statutory scheme” and “relevant benefits” have the same meaning as in Chapter 1 of Part 14 of the Taxes Act (see sections 611A and 612(1) of that Act).

Textual Amendments

F2 Reg. 4(1)(l) omitted (2.9.2005) by virtue of [The Occupational Pension Schemes \(Employer Debt etc.\) \(Amendment\) Regulations 2005 \(S.I. 2005/2224\)](#), regs. 1(2), **4(1)**

Marginal Citations

- M11** 1972 c. 11.
- M12** 1987 c. 45.

M13 Section 23 is substituted by section 36(3) of the Pensions Act 2004.

Valuations

Calculation of the value of scheme liabilities and assets: defined benefit schemes

5.—(1) The liabilities and assets of a scheme which are to be taken into account for the purposes of section 75(2) and (4) of the 1995 Act and their amount or value must be determined, calculated and verified by the actuary as at the applicable time—

- (a) in the case of liabilities in respect of pensions or other benefits, on the assumption that the liabilities will be discharged by the purchase of annuities of the kind described in section 74(3)(c) of the 1995 Act (discharge of liabilities: annuity purchase);
- (b) subject to sub-paragraph (a), on the general assumptions specified in regulation 3(2)(a) to (c) and (3) of the MFR Regulations (determination, valuation and verification of assets and liabilities: general);
- (c) subject to sub-paragraph (a) and paragraphs (2), (3), [F³(3A),] (5) and (6), in accordance with regulations 4 to 8 of the MFR Regulations (determination and valuation of assets and liabilities);
- (d) subject to sub-paragraph (e), so far as the guidance given in GN 27 applies as respects regulations 3(2)(a) to (c) and (3) and 4 to 8 of the MFR Regulations or as respects sub-paragraph (a) and paragraphs (2) and (3) of this regulation, in accordance with that guidance; and
- (e) in accordance with the guidance given in GN 19 so far as that guidance applies for the purposes of these Regulations.

(2) For the purposes of paragraph (1)(a) the actuary must estimate the cost of purchasing the annuities.

(3) The liabilities of a scheme which are to be taken into account under paragraph (1) include all expenses (except the cost of the annuities referred to in paragraph (1)(a)) which, in the opinion of the trustees or managers of the scheme, are likely to be incurred in connection with the winding up of the scheme.

[F⁴(3A) If the modification specified in regulation 7(3) has applied in the case of an employment-cessation event that occurred in relation to an employer before the applicable time—

- (a) the liabilities of the scheme that are attributable to employment with that employer, and
- (b) the debts treated as due under section 75(4) of the 1995 Act in accordance with that modification,

are not to be taken into account under paragraph (1).]

(4) Where in these Regulations (or in the MFR Regulations as applied by this regulation) there is a reference to the value of any asset or the amount of any liability being calculated or verified in accordance with the opinion of the actuary or as he thinks appropriate, he must comply with any relevant provision in the guidance given in GN 27 or, as the case may be, GN 19 in making that calculation or verification.

(5) The value of the assets and the amount of the liabilities of a scheme which are to be taken into account for the purposes of section 75(2) and (4) of the 1995 Act must be certified by the actuary in the form set out in Schedule 1 to these Regulations, but if the scheme is being wound up on the date as at which the valuation is made, the actuary must modify the note at the end of the certificate by omitting the words from “if the scheme” onwards.

(6) For the purposes of this regulation—

Status: Point in time view as at 01/04/2006.

Changes to legislation: There are currently no known outstanding effects for the The Occupational Pension Schemes (Employer Debt) Regulations 2005. (See end of Document for details)

- (a) references in regulations 3(2), 4, 5, 7 and 8 of the MFR Regulations to the relevant date are to be taken as references to the applicable time;
- (b) regulations 4(1), 7(1) and 8(2) of the MFR Regulations have effect with the substitution for the words “the minimum funding requirement is met” of the words “the value of the assets of the scheme is less than the amount of the liabilities of the scheme”;
- (c) regulation 6(1)(b) of the MFR Regulations has effect with the addition at the end of the words “(and any amount treated as a debt due to the trustees or managers of the scheme under section 75(2) or (4) by virtue of the valuation in question)”.

(7) In its application for the purposes of this regulation in a case where the applicable time falls after the scheme has begun to be wound up, regulation 6(1) of the MFR Regulations^{M14} has effect with the addition after sub-paragraph (c) of the words— “; and for the purposes of sub-paragraph (a), regulation 5(1)(a) of the Occupational Pension Schemes (Investment) Regulations 1996 (exclusion of employer-related investments over 5 per cent. of current market value) shall be disregarded. ”.

(8) This regulation has effect subject to regulation 7 (multi-employer schemes: [F5employment-cessation events and withdrawal arrangements]).

Textual Amendments

- F3** Word in reg. 5(1)(c) inserted (2.9.2005) by *The Occupational Pension Schemes (Employer Debt etc.) (Amendment) Regulations 2005 (S.I. 2005/2224)*, regs. 1(2), **2(2)(a)**
- F4** Reg. 5(3A) inserted (2.9.2005) by *The Occupational Pension Schemes (Employer Debt etc.) (Amendment) Regulations 2005 (S.I. 2005/2224)*, regs. 1(2), **2(2)(b)**
- F5** Words in reg. 5(8) substituted (2.9.2005) by *The Occupational Pension Schemes (Employer Debt etc.) (Amendment) Regulations 2005 (S.I. 2005/2224)*, regs. 1(2), **2(2)(c)**

Marginal Citations

- M14** Regulation 6(1)(c) is substituted by regulation 8(2) of *S.I. 1997/786*.

Multi-employer schemes

Multi-employer schemes: general

6.—(1) In its application to a multi-employer scheme, section 75 of the 1995 Act has effect in relation to each employer as if—

- (a) the reference in section 75(2)(a) to a time which falls before any relevant event in relation to the employer which occurs while the scheme is being wound up were a reference to a time which falls before relevant events have occurred in relation to all the employers;
- (b) the reference in section 75(2) to an amount equal to the difference being treated as a debt due from the employer were a reference to an amount equal to that employer's share of the difference being treated as a debt due from that employer;
- (c) the references in section 75(3)(a)(i) and (b) to no relevant event of the kind there mentioned occurring in relation to the employer were references to no event of that kind occurring in relation to all the employers;
- (d) the reference in section 75(4)(a) to a relevant event (“the current event”) occurring in relation to the employer were a reference to a relevant event or an employment-cessation event occurring only in relation to that employer;
- (e) the reference in section 75(4) to an amount equal to the difference being treated as a debt due from the employer were—

- (i) in a case where the difference is ascertained immediately before a relevant event occurs in relation to the employer, a reference to an amount equal to the employer's share of the difference being treated as a debt due from the employer; and
 - (ii) in a case where the difference is ascertained immediately before an employment cessation event occurs in relation to the employer, a reference to an amount equal to the sum of the cessation expenses attributable to the employer and the employer's share of the difference being treated as a debt due from the employer; and
- (f) section 75(4)(d) and (e) were omitted.
- (2) For the purposes of paragraph (1), an employer's share of the difference is—
- (a) such proportion of the total difference as, in the opinion of the actuary after consultation with the trustees or managers, the amount of the scheme's liabilities attributable to employment with that employer bears to the total amount of the scheme's liabilities attributable to employment with the employers; or
 - (b) if the scheme provides for the total amount of that debt to be otherwise apportioned amongst the employers, the amount due from that employer under that provision.
- (3) For the purposes of paragraph (2)—
- (a) the total amount of the scheme's liabilities which are attributable to employment with the employers; and
 - (b) the amount of the liabilities attributable to employment with any one employer,
- are such amounts as are determined, calculated and verified by the actuary in accordance with the guidance given in GN 19; and a determination under this paragraph must be certified by the actuary as being in accordance with that guidance.
- (4) For the purposes of these Regulations an employment-cessation event occurs in relation to an employer if he ceases to be an employer employing persons in the description of employment to which the scheme relates at a time when at least one other person continues to employ such persons.
- (5) For the purposes of paragraph (1), the cessation expenses attributable to an employer are all expenses which, in the opinion of the trustees or managers of the scheme, are likely to be incurred in connection with the employment-cessation event occurring in relation to the employer.

[F6] Multi-employer schemes: employment-cessation events and withdrawal

- 7.—(1) This regulation applies where—
- (a) section 75 of the 1995 Act applies to a trust scheme with the modifications referred to in regulation 6 (multi-employer schemes: general); and
 - (b) as a result of the occurrence of an employment-cessation event in relation to an employer, a debt (“the cessation debt”) calculated on the basis of assets and liabilities valued in accordance with regulation 5 is treated as due from the employer (“the cessation employer”) under section 75(4) of that Act.
- (2) If the cessation employer notifies the Authority in writing that he proposes to enter into a withdrawal arrangement—
- (a) the Authority may issue a direction that the cessation debt is to be unenforceable for such period as the Authority may specify in the direction, and where such a direction has been issued the debt is unenforceable for that period; and
 - (b) the Authority may issue a direction that if an approved withdrawal arrangement has come into force within that period, section 75 of the 1995 Act is to apply in the case of the employment-cessation event with the modification specified in paragraph (3) instead of

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the modification referred to in regulation 6(1)(e)(ii), and where such a direction has been issued and such an arrangement has so come into force, that modification so applies.

(3) The modification is that section 75 of the 1995 Act has effect as if the reference in section 75(4) to an amount equal to the difference being treated as a debt due from the employer were a reference to—

- (a) amount A being treated as a debt due from the employer; and
- (b) unless and until the Authority issue a direction that it is not to be so treated, amount B being treated as a debt due from the guarantors at the guarantee time for which (if there is more than one guarantor) they are jointly or, if the approved withdrawal arrangement so provides, jointly and severally liable,

where amount A is calculated in accordance with regulation 7A and amount B is calculated in accordance with regulation 7B.

(4) In this regulation—

“the guarantee time” means the earliest time when an event specified in paragraph 1(3) of Schedule 1A to these Regulations occurs; and

“the guarantors” means such one or more of the parties to the approved withdrawal arrangement as are specified in the arrangement as the persons who are the guarantors for the purposes of this regulation.

(5) The Authority may issue a direction extending the period mentioned in paragraph (2)(a) by such further period as they may specify (so that the debt is unenforceable for the extended period).

(6) The Authority may only issue a direction under paragraph (3)(b)—

- (a) before the guarantee time, and
- (b) if the Authority consider that the approved withdrawal arrangement is no longer required.

(7) Schedule 1A to these Regulations applies for the purpose of making further provision in cases where this regulation applies; and in that Schedule and regulations 7A and 7B “the cessation employer” has the same meaning as in this regulation.]

Textual Amendments

F6 Reg. 7 substituted and reg. 7A-7B added (2.9.2005) by [The Occupational Pension Schemes \(Employer Debt etc.\) \(Amendment\) Regulations 2005 \(S.I. 2005/2224\)](#), regs. 1(2), **2(3)**

[^{F6}Calculation of amounts due from cessation employer by virtue of regulation 7

7A.—(1) For the purposes of regulation 7(3), amount A depends on whether or not a debt (a “scheme funding basis debt”) would have been treated as due from the cessation employer under section 75(4) of the 1995 Act if—

- (a) regulation 5 had applied with the modifications specified in paragraph (4); and
- (b) section 75(4) had applied in accordance with regulation 6(1)(d) and (e) but subject to the modifications of regulation 6 specified in paragraph (5) (instead of in accordance with the modification specified in regulation 7(3)).

(2) If a debt would have been so treated, amount A is the sum of the scheme funding basis debt and the cessation expenses attributable to the employer.

(3) If a debt would not have been so treated, amount A is equal to the amount of the cessation expenses attributable to the employer.

(4) The modifications of regulation 5 are that—

- (a) paragraphs (1)(a) and (2) and the references to those provisions in paragraph (1)(b), (c) and (d) (by virtue of which liabilities for pensions and other benefits are to be valued on the assumption that they will be discharged by the purchase of annuities) are omitted;
 - (b) paragraph (3) and the references to that paragraph in paragraph (1)(c) and (d) (by virtue of which winding up expenses are to be taken into account) are omitted; and
 - (c) in paragraph (5) for the words “for the purposes of section 75(2) and (4) of the 1995 Act” there are substituted the words “for the purposes of section 75(2) of the 1995 Act and for the purposes of section 75(4) of the 1995 Act where no approved withdrawal arrangement has been entered into by the employer”.
- (5) The modifications of regulation 6 are that—
- (a) for paragraph (ii) of paragraph (1)(e) there is substituted—
 - “(ii) in a case where the difference is ascertained immediately before an employment-cessation event occurs in relation to the employer, a reference to an amount equal to the employer’s share of the difference, less the relevant transferred liabilities deduction, being treated as a debt due from the employer;”;
 - (b) after paragraph (5) there is added—
 - “(6) In this regulation “the relevant transferred liabilities deduction” means the amount of any relevant transferred liabilities, less the value of the corresponding assets.
 - (7) For the purposes of paragraph (6)—
 - (a) “corresponding assets”, in relation to relevant transferred liabilities, means the assets transferred from the scheme in connection with the transfer from the scheme of those liabilities; and
 - (b) the value of the corresponding assets is to be determined—
 - (i) in the case of corresponding assets that are assets of the scheme at the applicable time, as at that time; and
 - (ii) in the case of corresponding assets that are not assets of the scheme at that time, as at the date of the transfer of the assets.
 - (8) For the purposes of paragraph (6)—
 - (a) “relevant transferred liabilities” means liabilities in respect of members—
 - (i) which are transferred from the scheme in circumstances where the conditions set out in paragraphs (2)(a) or (b) and (3) of regulation 12 of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 (transfer without consent) are met;
 - (ii) which are so transferred during the period beginning with the applicable time and ending with the date on which the approved withdrawal arrangement is approved (“the relevant period”);
 - (iii) the transfer of which reduces the amount of the scheme’s liabilities attributable to employment with the employer in relation to whom the employment-cessation event has occurred; and
 - (iv) in connection with the transfer of which there is a transfer of corresponding assets during the relevant period; and
 - (b) the amount of the relevant transferred liabilities is to be calculated in accordance with regulation 5 as modified by regulation 7A(4).”.
- (6) The value of the assets and the amount of the liabilities of a scheme which are to be taken into account for the purposes of determining whether a scheme funding basis debt would have been

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treated as due as mentioned in paragraph (1) must be certified by the actuary in the form set out in Schedule 1B to these Regulations, but—

- (a) if the actuary is of the opinion that the value of the assets of the scheme was not less than the amount of the liabilities of the scheme—
 - (i) substituting in the first sentence of the comparison of value of scheme assets with amount of scheme liabilities for the words “was less” the words “was not less”; and
 - (ii) omitting the last sentence of that comparison; and
 - (b) if the scheme is being wound up on the date as at which the valuation is made, omitting from the Note the words from “if the scheme” onwards.
- (7) In this regulation “the cessation expenses attributable to the employer” has the meaning given by regulation 6(5).

Textual Amendments

F6 Reg. 7 substituted and reg. 7A-7B added (2.9.2005) by [The Occupational Pension Schemes \(Employer Debt etc.\) \(Amendment\) Regulations 2005 \(S.I. 2005/2224\)](#), regs. 1(2), 2(3)

Calculation of amounts due from guarantors by virtue of regulation 7

7B.—(1) For the purposes of regulation 7(3), amount B depends on whether the approved withdrawal arrangement provides for amount B to be the amount provided for under paragraph (2).

(2) If the approved withdrawal arrangement so provides, amount B is equal to the amount (if any) that would be the amount of the debt due from the cessation employer under section 75(4) of the 1995 Act if—

- (a) the employment-cessation event had occurred at the guarantee time;
- (b) the cessation employer had not entered into an approved withdrawal arrangement; and
- (c) there were no cessation expenses attributable to the employer.

(3) If the approved withdrawal arrangement does not provide for amount B to be the amount provided for under paragraph (2), amount B is equal to the amount that would be the amount treated as due from the cessation employer under section 75(4) of the 1995 Act if the cessation employer had not entered into an approved withdrawal arrangement, less the sum of—

- (a) the amount that is amount A for the purposes of regulation 7(3);
- (b) if the amount that the approved withdrawal arrangement provides for the cessation employer to pay exceeds that amount, an amount equal to the excess; and
- (c) the relevant transferred liabilities deduction.

(4) The value of the assets and the amount of the liabilities of a scheme which are to be taken into account for the purposes of determining the amount (if any) that would be the amount of the debt due from the cessation employer under section 75(4) of the 1995 Act in the case mentioned in paragraph (2) must be certified by the actuary in the form set out in Schedule 1 to these Regulations, but—

- (a) substituting for the reference to regulation 5 a reference to paragraph (2) of this regulation;
- (b) if the actuary is of the opinion that the value of the assets of the scheme was not less than the amount of the liabilities of the scheme—
 - (i) substituting in the first sentence of the comparison of value of scheme assets with amount of scheme liabilities for the words “was less” the words “was not less”; and
 - (ii) omitting the last sentence of that comparison; and

- (c) if the scheme is being wound up on the date as at which the valuation is made, omitting from the Note the words from “if the scheme” onwards.
- (5) In this regulation—
- “the cessation expenses attributable to the employer” has the meaning given by regulation 6(5); and
- “the relevant transferred liabilities deduction” has the meaning given by regulation 6(6), as inserted by the modification of regulation 6 made by regulation 7A(5)(b), except that for the purposes of this regulation the amount of the relevant transferred liabilities is to be calculated in accordance with regulation 5 without the modifications made by regulation 7A(4).]

Textual Amendments

- F6** Reg. 7 substituted and reg. 7A-7B added (2.9.2005) by [The Occupational Pension Schemes \(Employer Debt etc.\) \(Amendment\) Regulations 2005 \(S.I. 2005/2224\)](#), regs. 1(2), **2(3)**

Multi-employer schemes: sectionalised schemes

8.—(1) In its application to a multi-employer scheme—

- (a) which is divided into two or more sections; and
- (b) the provisions of which are such that the sections meet conditions A and B,

section 75 of the 1995 Act and the provisions of these Regulations (apart from this regulation) apply as if each section of the scheme were a separate scheme.

(2) Condition A is that contributions payable 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 to that employer, to the section which is appropriate in respect of the employment in question).

(3) Condition B is that a specified part or proportion of the assets of the scheme is attributable to each section and cannot be used for the purposes of any other section.

(4) In their application to a scheme—

- (a) which has been such a scheme as is mentioned in paragraph (1);
- (b) which is divided into two or more sections, one or more of which apply only to members who are not in pensionable service under the section;
- (c) the provisions of which have not been amended so as to prevent conditions A and B being met in relation to two or more sections; and
- (d) in relation to one or more sections of which those conditions have ceased to be met at any time by reason only of there being no members in pensionable service under the section and no contributions which are to be allocated to it,

section 75 of the 1995 Act and the provisions of these Regulations (apart from this paragraph) apply as if any section in relation to which those conditions have ceased to be met were a separate scheme.

(5) For the purposes of paragraphs (1) to (4), any provisions of the scheme by virtue of which contributions or transfers of assets may be made to make provision for death benefits are disregarded.

(6) But if paragraph (1) or (4) applies and, by virtue of any provisions of the scheme, contributions or transfers of assets to make such provision are made to a section (“the death benefits section”) the assets of which may only be applied for the provision of death benefits, the death benefits section is also to be treated as a separate scheme.

Status: Point in time view as at 01/04/2006.

Changes to legislation: There are currently no known outstanding effects for the The Occupational Pension Schemes (Employer Debt) Regulations 2005. (See end of Document for details)

(7) For the purpose of this regulation, any provisions of the scheme by virtue of which assets attributable to one section may on the winding up of the scheme or a section be used for the purposes of another section are disregarded.

Former employers

Former employers

9.—(1) In the application of section 75 of the 1995 Act and these Regulations to a scheme which has no active members, references to employers include every person who employed persons in the description of employment to which the scheme relates immediately before the occurrence of the event after which the scheme ceased to have any active members.

(2) In the application of section 75 of the 1995 Act and these Regulations to a scheme, references to employers include—

- (a) any pre-April 1997 participator (see paragraph (7)); and
- (b) any person who has ceased on or after 6th April 1997 and before the applicable time to be a person employing persons in the description of employment to which the scheme relates, unless—
 - (i) when he so ceased the scheme was not being wound up and continued to have active members; and
 - (ii) [^{F7}condition A, B, BB], C or D is met.

(3) Condition A is that no debt was treated as becoming due from him under section 75(2) or (4) of the 1995 Act (or, if he so ceased before 6th April 2005, under section 75(1) of that Act) by virtue of his so ceasing.

(4) Condition B is that such a debt was treated as becoming due from him and has been paid before the applicable time.

[^{F8(4A)} Condition BB is that such a debt was treated as becoming due from him, the modification in regulation 7(3) applied, and the amount treated as becoming due from him under regulation 7(3) (a) has been paid before the applicable time.]

(5) Condition C is that such a debt was treated as becoming due from him and has not been so paid solely because he was not notified of the debt, and of the amount of it, sufficiently in advance of the applicable time for it to be paid before that time.

(6) Condition D is that such a debt was treated as becoming due from him but at the applicable time it is excluded from the value of the assets of the scheme because it is unlikely to be recovered without disproportionate cost or within a reasonable time.

(7) In this regulation “pre-April 1997 participator” means a person who immediately before 6th April 2005 was regarded as an employer for the purposes of the 1996 Regulations by virtue of regulation 6 of those Regulations (ceasing to participate: transitional provision).

Textual Amendments

- F7** Words in reg. 9(2)(b)(ii) substituted (2.9.2005) by [The Occupational Pension Schemes \(Employer Debt etc.\) \(Amendment\) Regulations 2005 \(S.I. 2005/2224\)](#), regs. 1(2), **2(4)(a)**
- F8** [Reg. 9\(4A\)](#) inserted (2.9.2005) by [The Occupational Pension Schemes \(Employer Debt etc.\) \(Amendment\) Regulations 2005 \(S.I. 2005/2224\)](#), regs. 1(2), **2(4)(b)**

Money purchase schemes

Money purchase schemes: fraud and levy deficiencies etc.

10.—(1) Notwithstanding subsection (1)(a) of section 75 of the 1995 Act, that section applies to money purchase schemes as if—

- (a) subsection (2)—
 - (i) provided that if the levy deficit condition is met the levy deficit is to be treated as a debt due from the employer to the trustees or managers of the scheme; and
 - (ii) was not subject to subsection (3) of that section;
- (b) subsection (4) provided that where the criminal reduction conditions are met the criminal deficit is to be treated as a debt due from the employer to the trustees or managers of the scheme; and
- (c) subsections (4A) to (4C) and (6) were omitted.

(2) The levy deficit condition is that an amount payable by way of general levy [^{F9}or fraud compensation levy] in respect of any money purchase scheme exceeds the value of the unallocated assets of the scheme either—

- (a) at the time when the amount first becomes payable to the Secretary of State; or
- (b) at a later time designated by the trustees or managers of the scheme for the purposes of this paragraph.

(3) The criminal reduction conditions are that—

- (a) a reduction in the aggregate value of the allocated assets of the scheme occurs;
- (b) the reduction is attributable to an act or omission which—
 - (i) constitutes an offence prescribed for the purposes of section 81(1)(c) of the 1995 Act; or
 - (ii) in the case of an act or omission which occurred outside England and Wales or Scotland, would constitute such an offence if it occurred in England and Wales or in Scotland; and
- (c) immediately after the act or omission or, if that time cannot be determined, at the earliest time when the auditor of the scheme knows that the reduction has occurred, the amount of that reduction exceeds the value of the unallocated assets of the scheme.

(4) [^{F10}In this regulation]—

“allocated assets”, in relation to a scheme, means assets which have been specifically allocated for the provision of benefits to or in respect of members (whether generally or individually) or for the payment of the scheme's expenses (and “unallocated” is to be read accordingly);

“the criminal deficit” means the amount of the excess mentioned in paragraph (3)(c);

[^{F11}“the fraud compensation levy” means the levy imposed in accordance with section 189 of the 2004 Act;]

“the general levy” means the levy imposed under section 175 of the 1993 Act by regulation 3(1) or (2) of the Occupational and Personal Pension Schemes (General Levy) Regulations 2005^{M15}.

“the levy deficit” means the amount of the excess mentioned in paragraph (2);

Status: Point in time view as at 01/04/2006.

Changes to legislation: There are currently no known outstanding effects for the The Occupational Pension Schemes (Employer Debt) Regulations 2005. (See end of Document for details)

Textual Amendments

- F9** Words in [reg. 10\(2\)](#) inserted (1.4.2006) by [The Occupational Pension Schemes \(Fraud Compensation Levy\) Regulations 2006 \(S.I. 2006/558\)](#), regs. 1, **12(a)**
- F10** Words in [reg. 10\(4\)](#) substituted (1.4.2006) by [The Occupational Pension Schemes \(Fraud Compensation Levy\) Regulations 2006 \(S.I. 2006/558\)](#), regs. 1, **12(b)(i)**
- F11** Words in [reg. 10\(4\)](#) inserted (1.4.2006) by [The Occupational Pension Schemes \(Fraud Compensation Levy\) Regulations 2006 \(S.I. 2006/558\)](#), regs. 1, **12(b)(ii)**

Marginal Citations

- M15** [S.I. 2005/626](#).

Money purchase schemes: valuations etc.

11.—(1) For the purposes of section 75 of the 1995 Act as applied by regulation 10, this regulation applies instead of regulation 5 and 7.

(2) In the case of a scheme other than an ear-marked scheme—

- (a) the value at any time of the unallocated assets of the scheme is to be taken to be the value of those assets as certified in a statement by the scheme's auditor; and
- (b) the amount of the criminal reduction in the aggregate value of the allocated assets of the scheme at any time is to be calculated by subtracting the actual aggregate value of those assets at that time from the notional aggregate value of those assets.

(3) The notional aggregate value mentioned in paragraph (2)(b) is to be taken to be the sum of the values of the assets—

- (a) as stated in the audited accounts which most immediately precede the relevant act or omission; or
- (b) if there are none, as certified in a statement by the scheme's auditor,

adjusted appropriately to take account of any alteration in their values (other than any alteration attributable to that act or omission) between the date as at which those accounts are prepared or, as the case may be, as at which that statement is given and the time in question.

(4) The actual aggregate value mentioned in paragraph (2)(b) is to be calculated in the same manner as it was calculated for the purposes of the accounts mentioned in paragraph (3)(a) or, as the case may be, the statement mentioned in paragraph (3)(b).

(5) In the case of an ear-marked scheme—

- (a) the value at any time of the unallocated assets of the scheme; and
- (b) the amount of the criminal reduction in the aggregate value of the allocated assets of the scheme,

are the amounts certified in a statement by the relevant insurer.

(6) In this regulation—

“ear-marked scheme” means a scheme under which all the benefits are secured by one or more policies of insurance or annuity contracts, being policies or contracts specifically allocated to the provision of benefits for individual members or any other person who has a right to benefits under the scheme; and

“the relevant insurer”, in relation to such a scheme, is the insurer with whom the insurance contract or annuity contract is made.

Multi-employer money purchase schemes

12.—(1) In its application to a money purchase scheme that is a multi-employer scheme regulation 10 applies with the substitution for paragraph (1) of the following paragraphs —

“(1) Notwithstanding subsection (1)(a) of section 75 of the 1995 Act, that section applies to money purchase schemes as if—

(a) subsection (2)—

(i) provided that if the levy deficit condition is met each employer's share of the levy deficit is to be treated as a debt due from that employer to the trustees or managers of the scheme; and

(ii) was not subject to subsection (3) of that section;

(b) subsection (4) provided that where the criminal reduction conditions are met each employer's share of the criminal deficit is to be treated as a debt due from the employer to the trustees or managers of the scheme; and

(c) subsections (4A) to (4C) and (6) were omitted.

(1A) For the purposes of paragraph (1), an employer's share of the levy deficit or the criminal deficit is—

(a) such proportion of that total deficit as, in the opinion of [^{F12}the trustees or managers], the amount of the scheme's liabilities attributable to employment with that employer bears to the total amount of the scheme's liabilities attributable to employment with the employers; or

(b) if the scheme provides for the total amount of that debt to be otherwise apportioned amongst the employers, the amount due from that employer under that provision.

(1B) For the purposes of paragraph (1A)—

(a) the total amount of the scheme's liabilities which are attributable to employment with the employers; and

(b) the amount of the liabilities attributable to employment with any one employer, are such amounts as are determined, calculated and verified by the actuary in accordance with the guidance given in GN 19; and a determination under this paragraph must be certified by the actuary as being in accordance with that guidance.”.

(2) Regulation 6 does not apply to a money purchase scheme that is a multi-employer scheme.

Textual Amendments

F12 Words in para. (1A)(a) substituted (2.9.2005) by The Occupational Pension Schemes (Employer Debt etc.) (Amendment) Regulations 2005, (S.I. 2005/2224), reg. 4(2).

Former employers of money purchase schemes

13. Regulation 9 does not apply to a money purchase scheme, but in the application of section 75 of the 1995 Act and these Regulations to such a scheme which has no active members references to employers include every person who employed persons in the description of employment to which the scheme relates immediately before the occurrence of the event after which the scheme ceased to have any active members.

Status: Point in time view as at 01/04/2006.

Changes to legislation: There are currently no known outstanding effects for the The Occupational Pension Schemes (Employer Debt) Regulations 2005. (See end of Document for details)

Other schemes treated as more than one scheme

Schemes covering United Kingdom and foreign employment

14.—(1) Paragraph (2) applies where a scheme which applies to members in employment in the United Kingdom and members in employment outside the United Kingdom is divided into two or more sections and the provisions of the scheme are such that—

- (a) different sections of the scheme apply to members in employment in the United Kingdom and to members in employment outside the United Kingdom (“the United Kingdom section” and “the foreign section”);
 - (b) contributions payable to the scheme in respect of a member are allocated to the section applying to that member's employment;
 - (c) a specified part or proportion of the assets of the scheme is attributable to each section and cannot be used for the purposes of any other section; and
 - (d) the United Kingdom section meets the tax condition and the foreign section does not do so.
- (2) If this paragraph applies—
- (a) section 75 of the 1995 Act and these Regulations (apart from this regulation) apply as if each section of the scheme were a separate scheme; and
 - (b) the reference to the scheme in the form set out in Schedule 1 may be modified appropriately.
- (3) Paragraph (4) applies where—
- (a) a scheme applies to members in employment in the United Kingdom and members in employment outside the United Kingdom;
 - (b) paragraph (2) does not apply to the scheme; and
 - (c) part of the scheme meets paragraph (b) of the tax condition by virtue of that part having been treated as a separate scheme under section 611(3) of the Taxes Act that is treated as becoming a registered pension scheme under paragraph 1(1) of Schedule 36 to the Finance Act 2004 by virtue of paragraph 1(2) of that Schedule.
- (4) If this paragraph applies—
- (a) section 75 of the 1995 Act and these Regulations (apart from this regulation) apply as if the approved and unapproved parts of the scheme were separate schemes; and
 - (b) the reference to the scheme in the form set out in Schedule 1 may be modified appropriately.
- (5) Paragraph (6) applies where—
- (a) a scheme has been such a scheme as is mentioned in paragraph (1) or (3),
 - (b) the scheme is divided into two or more sections, some or all of which apply only to members who are not in pensionable service under the section;
 - (c) the provisions of the scheme have not been amended so as to prevent the conditions in paragraph (1) or, as the case may be, paragraph (3) being met in relation to two or more sections; and
 - (d) in relation to one or more sections of the scheme those conditions have ceased to be met at any time by reason only of there being no members in pensionable service under the section and, in the case of paragraph (1), no contributions which are to be allocated to it.
- (6) If this paragraph applies—

- (a) section 75 of the 1995 Act and these Regulations (apart from this regulation) apply as if any section in relation to which those conditions have ceased to be met were a separate scheme; and
 - (b) the reference to the scheme in the form set out in Schedule 1 may be modified appropriately.
- (7) Before 6th April 2006 paragraph (3) applies with the substitution for sub-paragraph (c) of the following paragraph—
- “(c) part of the scheme meets paragraph (a) of the tax condition by virtue of section 611(3) of the Taxes Act.”

Schemes with partial government guarantee

- 15.**—(1) This regulation applies if a relevant public authority has—
- (a) given a guarantee in relation to any part of a scheme, any benefits payable under the scheme or any member of the scheme; or
 - (b) made any other arrangements for the purposes of securing that the assets of the scheme are sufficient to meet any part of its liabilities.
- (2) Where this regulation applies—
- (a) section 75 of the 1995 Act and these Regulations (apart from this regulation) apply as if the guaranteed part of the scheme and the other part of the scheme were separate schemes; and
 - (b) the reference to the scheme in the form set out in Schedule 1 may be modified appropriately.
- (3) In this regulation—
- “the guaranteed part of the scheme” means the part of the scheme—
- (a) in relation to which the guarantee has been given;
 - (b) which relates to benefits payable under the scheme in relation to which the guarantee has been given; or
 - (c) which relates to benefits payable under the scheme in relation to the liabilities for which those other arrangements have been made; and
- “relevant public authority” has the meaning given in section 307(4) of the 2004 Act.

Supplementary

Modification of schemes: apportionment of section 75 debts

- 16.**—(1) This regulation applies for the purposes of section 68(2)(e) of the 1995 (power of trustees to modify schemes by resolution for prescribed purposes).
- (2) In the case of a trust scheme (whether or not a money purchase scheme) which apart from this regulation could not be modified for the purpose of making provision for the total amount of a debt due under section 75(2) or (4) of the 1995 Act to be apportioned amongst the employers in different proportions from those which would otherwise apply by virtue of regulation 6(2)(a) or, as the case may be, regulation 10(1A) (as it has effect by virtue of regulation 12), for the purposes of section 68(2)(e), such a modification of the scheme is a modification for a prescribed purpose.

Disregard of staying of voluntary winding up of employer for purposes of section 75 of the 1995 Act

- 17.**—(1) This regulation applies for the purposes of section 75(6D)(i) of the 1995 Act (by virtue of which where a members' voluntary winding up of an employer is stayed section 75 of the 1995

Status: Point in time view as at 01/04/2006.

Changes to legislation: There are currently no known outstanding effects for the The Occupational Pension Schemes (Employer Debt) Regulations 2005. (See end of Document for details)

Act has effect as if the resolution for the winding up had never been passed and any debt which arose under that section by virtue of the passing of the resolution had never arisen, except where the winding up is stayed in prescribed circumstances).

(2) The circumstances that are prescribed are where the stay is granted for a limited period.

Consequential amendments

18. The Regulations specified in Schedule 2 are amended as specified in that Schedule.

Signed by authority of the Secretary of State for Work and Pensions.

Malcolm Wicks
Minister of State,
Department for Work and Pensions

SCHEDULE 1

Regulation 5

Form of Actuary's Certificate

Actuarial Certificate Given for the Purposes of Regulation 5 of the Occupational Pension Schemes (Employer Debt) Regulations 2005

Name of scheme

Date as at which valuation is made

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 Valuation principles

The scheme's assets and liabilities are valued in accordance with section 75(5) of the Pensions Act 1995, the Occupational Pension Schemes (Employer Debt) Regulations 2005 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:

Status: Point in time view as at 01/04/2006.

Changes to legislation: There are currently no known outstanding effects for the The Occupational Pension Schemes (Employer Debt) Regulations 2005. (See end of Document for details)

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.

[^{F13}SCHEDULE 1A

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

Textual Amendments

F13 Sch. 1A, Sch. 1B inserted (2.9.2005) by [The Occupational Pension Schemes \(Employer Debt etc.\) \(Amendment\) Regulations 2005 \(S.I. 2005/2224\)](#), regs. 1(2), 2(5), **Sch.**

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);

Status: Point in time view as at 01/04/2006.

Changes to legislation: There are currently no known outstanding effects for the The Occupational Pension Schemes (Employer Debt) Regulations 2005. (See end of Document for details)

- (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;
 - (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);
 - (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.

Modifications etc. (not altering text)

C1 Sch. 1A para. 1(3)(c) modified (2.9.2005) by The Occupational Pension Schemes (Employer Debt etc.) (Amendment) Regulations 2005 (S.I. 2005/2224), regs. 1(2), 3(1)(b)(2)

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.

Status: Point in time view as at 01/04/2006.

Changes to legislation: There are currently no known outstanding effects for the The Occupational Pension Schemes (Employer Debt) Regulations 2005. (See end of Document for details)

(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.

Modifications etc. (not altering text)

C2 Sch. 1A para. 2 modified (2.9.2005) by [The Occupational Pension Schemes \(Employer Debt etc.\) \(Amendment\) Regulations 2005 \(S.I. 2005/2224\)](#), regs. 1(2), **3(1)(c)(2)**

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

(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 (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.

Status: Point in time view as at 01/04/2006.

Changes to legislation: There are currently no known outstanding effects for the The Occupational Pension Schemes (Employer Debt) Regulations 2005. (See end of Document for details)

(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;

“director” has the meaning given in section 741(1) of the Companies Act 1985 (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.]

[^{F13}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.

]

SCHEDULE 2

Regulation 18

Consequential Amendments

The MFR Regulations

^{F14}1.

Textual Amendments

F14 Sch. 2 para. 1 revoked (30.12.2005) by [The Occupational Pension Schemes \(Scheme Funding\) Regulations 2005 \(S.I. 2005/3377\)](#), regs. 1, 21, [Sch. 5](#) (with Sch. 4)

The Occupational Pension Schemes (Winding Up) Regulations 1996

2. In regulation 10(2) of [^{F15}the Occupational Pension Schemes (Winding Up) Regulations 1996] for “relevant insolvency event” and “subsection (4) of section 75 (definition of relevant insolvency events)” substitute “ relevant event ” and “ subsection (6A) of section 75 (definition of relevant events) ” respectively.

Textual Amendments

F15 Words in Sch. 2 para. 2 substituted (2.9.2005) by [The Occupational Pension Schemes \(Employer Debt etc.\) \(Amendment\) Regulations 2005 \(S.I. 2005/2224\)](#), regs. 1(2), **4(3)**

The Occupational Pension Schemes (Investment) Regulations 1996

F16 3.

Textual Amendments

F16 Sch. 2 para. 3 revoked (30.12.2005) by [The Occupational Pension Schemes \(Investment\) Regulations 2005 \(S.I. 2005/3378\)](#), reg. 1(1), reg. 18, **Sch.**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made as a consequence of provisions in the Pensions Act 2004 (c. 35) (“the 2004 Act”) and replace the Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations 1996 (S.I. 1996/3128) (“the 1996 Regulations”) where debts arise under section 75 of the Pensions Act 1995 (c. 26) (“the 1995 Act”) in respect of occupational pension schemes.

Under regulation 1 these Regulations come into force on 6th April 2005, but do not apply in the case of schemes that have begun to wind up before that date or, unless the scheme is a money purchase scheme, if a debt arose under section 75 of the 1995 Act before that date.

Regulation 2 deals with the interpretation of these Regulations.

Regulation 3 provides that the 1996 Regulations do not apply in any case where these Regulations apply and identifies the two Actuarial Guidance Notes that will be used in connection with the calculation of debts.

Regulation 4 makes provision about the schemes that are excluded from section 75 of the 1995 Act and hence from these Regulations. They largely correspond with the schemes that are excluded from being eligible schemes for the purposes of Part 2 of the 2004 Act.

Regulation 5 makes provision about how the assets and liabilities of schemes are to be valued for the purposes of section 75 of the 1995 Act. It provides for all liabilities in respect of pensions or other benefits to be valued on the basis that the trustees or managers will provide for them by buying annuities, but, apart from that, for similar principles to apply as apply for the purpose of minimum funding valuations and for the valuation certificate set out in Schedule 1 to be used. The costs of winding up the scheme are to be included amongst its liabilities.

Regulations 6 to 8 deal with how section 75 of the 1995 Act and these Regulations apply to multi-employer schemes.

Regulation 6 provides that a debt only arises under section 75(2) while a multi-employer scheme is being wound up if a deficit in the scheme assets occurs before a relevant event has occurred in relation to all the employers, and all the employers are then responsible for a share of the debt.

But whether a debt arises under section 75(4) is judged by reference to each of the employers separately and debts under that section are also taken to arise as respects an employer if he ceases

Status: Point in time view as at 01/04/2006.

Changes to legislation: There are currently no known outstanding effects for the The Occupational Pension Schemes (Employer Debt) Regulations 2005. (See end of Document for details)

to have any employees in pensionable service to which the scheme applies. The debt on each employer under section 75(4) is his share of the deficit in the assets.

Regulation 7 modifies the rules in regulation 5 where a debt arises because of an employer in a multi-employer scheme ceasing to have any employees in pensionable service. The provisions about buying annuities and including winding up costs are disapplied.

Regulation 8 provides that section 75 and these Regulations apply as if sections of multi-employer schemes were separate schemes.

Regulation 9 ensures that in the case of a scheme which has no active members section 75 and these Regulations apply as if anyone who was an employer immediately before the scheme ceased to have any active members is treated as an employer and so may be liable for a debt.

Regulations 10 to 12 deal with how section 75 of the 1995 Act and these Regulations apply to money purchase schemes.

Regulation 10 modifies section 75 so that it only applies to money purchase schemes in two cases, which differ from those where it applies for defined benefit schemes. The first is where general levy has not been paid and the second is where there has been a reduction in the scheme's assets because of a crime. Regulation 11 provides special valuation rules for these cases.

Regulation 12 modifies how regulation 10 applies where the money purchase scheme is a multi-employer scheme, apportioning the deficit among the employers in a similar way to regulation 6.

Regulation 13 makes similar provision to regulation 9 for former employers of money purchase schemes.

Regulation 14 provides that sectionalised schemes covering United Kingdom and foreign employment are to be treated as separate schemes.

Regulation 15 provides that where a scheme is partly the subject of a government guarantee, the part that is so subject and the other part are treated as separate schemes.

Regulation 16 enables trustees to modify schemes by resolution for the purpose of apportioning debts under section 75 of the 1995 Act amongst employers in different proportions from those that would otherwise apply.

Regulation 17 prescribes the circumstances in which the staying of the voluntary winding up of an employer is disregarded for the purposes of section 75 of the 1995 Act. Stays for a limited period are prescribed so that the resolution for the winding up and any debt which arose under that section by virtue of the passing of the resolution are not affected by the temporary staying of the winding up.

Regulation 18 introduces Schedule 2 which contains amendments of the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996 (S.I. 1996/1536), the Occupational Pension Schemes (Winding Up) Regulations 1996 (S.I. 1996/3126) and the Occupational Pension Schemes (Investment) Regulations 1996 (S.I. 1996/3127) that are consequential on the changes made to section 75 of the 1995 Act by the 2004 Act.

As these Regulations are made before the expiry of the period of six months beginning with the coming into force of the provisions of the 2004 Act on which they are consequential, the requirement for the Secretary of State to consult such persons as he considers appropriate does not apply.

A full regulatory impact assessment has not been produced on this instrument as it has no impact on the costs of business, charities or the voluntary sector.

Status:

Point in time view as at 01/04/2006.

Changes to legislation:

There are currently no known outstanding effects for the The Occupational Pension Schemes (Employer Debt) Regulations 2005.