
STATUTORY INSTRUMENTS

2005 No. 678

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

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 [^{F1}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 [^{F2}section 182(1)(b) of the 2004 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) [^{F3}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);

[^{F4}“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^{M1}.

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

[^{F5}“money purchase schemes” does not include a scheme or a section of a scheme that is a collective money purchase scheme for the purposes of Part 1 of the Pension Schemes Act 2021;]

Textual Amendments

- F1** 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)**
- F2** Words in reg. 10(3)(b)(i) substituted (6.4.2014) by [The Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 2014 \(S.I. 2014/540\)](#), regs. 1, **5**
- F3** 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)**
- F4** 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)**
- F5** Words in [reg. 10](#) inserted (1.8.2022) by [The Occupational Pension Schemes \(Collective Money Purchase Schemes\) \(Modifications and Consequential and Miscellaneous Amendments\) Regulations 2022 \(S.I. 2022/337\)](#), regs. 1(3), **7**

Marginal Citations

- M1** [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^{F6}....

(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.

Textual Amendments

F6 Words in reg. 11(1) omitted (6.4.2008) by virtue of [The Occupational Pension Schemes \(Employer Debt and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/731\)](#), regs. 2(1), **11(1)** (with reg. 2(3)-(8))

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 [^{F7}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) [^{F8}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) [^{F9}the amount of the liabilities attributable to employment with any one employer,]

are such amounts as are determined, calculated and verified by the actuary^{F10}”.

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

Textual Amendments

- F7** 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).
- F8** Reg. 12(1A)(b) omitted (6.4.2008) by virtue of The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2008 (S.I. 2008/731), regs. 2(1), **11(2)(a)** (with reg. 2(3)-(8))
- F9** Reg. 12(1B)(b) omitted (6.4.2008) by virtue of The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2008 (S.I. 2008/731), regs. 2(1), **11(2)(b)** (with reg. 2(3)-(8))
- F10** Words in reg. 12(1) omitted (6.4.2010) by virtue of The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2010 (S.I. 2010/725), regs. 1(2), **11**

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.

Changes to legislation:

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