

**2005 No. 678****PENSIONS****The Occupational Pension Schemes (Employer Debt)  
Regulations 2005**

<i>Made - - - -</i>	<i>11th March 2005</i>
<i>Laid before Parliament</i>	<i>16th March 2005</i>
<i>Coming into force -</i>	<i>6th April 2005</i>

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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(a) and of all other powers enabling him in that behalf, by this instrument, which is consequential on section 271 of the Pensions Act 2004(b), 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:

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- (a) 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".
  - (b) 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—

- ▶<sup>1</sup>(a) any employer in relation to any debt which has arisen under section 75(1) of the 1995 Act to the trustees or managers of the scheme before that date; ◀
- (b) any scheme which immediately before that date was regarded by virtue of regulation 2 of the Occupational Pension Schemes (Winding Up) Regulations 1996(a) 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(b) began to wind up before that date.

<sup>1</sup>Reg. 1(3)(a) substituted by reg. 4(1)(a) of S.I. 2008/731 as from 6.4.08.

(4) These Regulations extend to England and Wales and Scotland.

**Interpretation**

2.—(1) In these Regulations—

“the 1993 Act” means the Pension Schemes Act 1993(c);

“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(d);

“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;

▶<sup>2</sup>“actuarial valuation” has the same meaning as in Part 3 of the 2004 Act;

“amount A” means the amount calculated in accordance with paragraph 4 of Schedule 1A;

“amount B” means the amount calculated in accordance with either sub-paragraph (2) or (3) of paragraph 5 of Schedule 1A: ◀

“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;

▶<sup>2</sup>“approved withdrawal arrangement” means an arrangement that meets the funding test and is approved by the authority under regulation 7;

“approved withdrawal arrangement share” means an amount that is—

- (a) a cessation employer’s share of the difference,
- (b) less than amount A, and
- (c) payable by a cessation employer pursuant to an approved withdrawal arrangement;

“assessment period” has the meaning given in section 132 of the 2004 Act (assessment periods); ◀

<sup>2</sup>Various definitions inserted in reg. 2(1) by reg. 4(2)(e) of S.I. 2008/731 as from 6.4.08.

(a) S.I. 1996/3126.

(b) 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).

(c) 1993 c. 48.

(d) S.I. 1996/3128.

## Reg. 2

<sup>1</sup>Defn. of “the Board for Actuarial Standards” omitted by reg. 7(a)(i) of S.I. 2012/1817 as from 9.8.12.

<sup>2</sup>Defns. of “the Board of the PPF” & “defined benefits” inserted. Defn. of “Employment-cessation event” substituted & defn. of “PPF” omitted by reg. 4(2)(a)-(d) of S.I. 2010/725 as from 6.4.10.

<sup>3</sup>Various definitions inserted in reg. 2(1) by reg. 4(2)(a)-(e) of S.I. 2008/731 as from 6.4.08.

<sup>4</sup>Defn. of “flexible apportionment arrangement” inserted & words in “liability proportion” and “liability share” substituted by reg. 4(2)(a)-(c) of S.I. 2011/2973 as from 27.1.12.

►<sup>1</sup>◄

►<sup>2</sup>“the Board of the PPF” means the Board of the Pension Protection Fund(a);◄

►<sup>3</sup>“cessation employer” means an employer in relation to the scheme in respect of whom an employment-cessation event has occurred;

“cessation expenses” are all expenses which, in the opinion of the trustees or managers of a scheme, are likely to be incurred by the scheme in connection with an employment-cessation event occurring to an employer in relation to the scheme;

“the corresponding assets” means the assets transferred in connection with the transfer from the scheme in respect of any relevant transfer liabilities;◄

►<sup>2</sup>“defined benefits”, in relation to a member of an occupational pension scheme, means benefits which are not money purchase benefits (but the rate or amount of which is calculated by reference to earnings or service of the member or any other factor other than an amount available for their provision);◄

►<sup>3</sup>“defined contribution employer” means an employer all the liabilities attributable to whom in relation to a scheme are liabilities in respect of money purchase benefits as defined in section 181(1) of the 1993 Act or in respect of supplementary benefits provided on an ancillary basis in the form of payments on death;

“departing employer” means—

(a) a cessation employer; or

(b) an employer in respect of whom an insolvency event has occurred;◄

“employer” has the same meaning as in section 75 of the 1995 Act (but see paragraph (2) and regulations ►<sup>3</sup>6,◄<sup>9</sup> and 13);

►<sup>2</sup>“employment-cessation event” has the meaning given in regulation 6ZA;◄

►<sup>4</sup>“flexible apportionment arrangement” means an arrangement that takes effect in accordance with regulation 6E;◄

►<sup>3</sup>“frozen scheme” means a scheme which has ceased to have active members;

“guarantors” means such one or more of the parties to a withdrawal arrangement or an approved withdrawal arrangement as are specified in the arrangement as the persons who have given guarantees in relation to amount B for the purposes of the arrangement;

“the guarantee time” means the earliest time when an event specified in paragraph 3 of Schedule 1A occurs;

“liability proportion” means ►<sup>4</sup>K divided by L◄ where—

(a) “K” equals the amount of a scheme’s liabilities attributable to an employer in accordance with paragraph (4) of regulation 6; and

(b) “L” equals the total amount of the scheme’s liabilities attributable to employment with the employers;

“liability share” means an amount equal to the liability proportion ►<sup>4</sup>multiplied by the total◄ difference between the value of the assets and the amount of the liabilities of the scheme;◄

“the MFR Regulations” means the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996(b);

“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;

►<sup>3</sup>“multi-employer scheme” means a scheme (or a section of a scheme treated pursuant to regulation 8 as a separate scheme) in relation to which there is more than one employer;◄

►<sup>2</sup>◄

►<sup>3</sup>“the PPF Valuation Regulations” means the Pension Protection Fund (Valuation) Regulations 2005(c);

“protected liabilities” has the same meaning as for the purposes of a valuation under section 179 of the 2004 Act (valuations to determine scheme under funding);◄

(a) The Board of the Pension Protection Fund is established under section 107 of the Pensions Act 2004.

(b) S.I. 1996/1536.

(c) S.I. 2005/672, amended by S.I. 2005/993 and 2113, 2006/580 and 2007/782.

## Reg. 2

►<sup>1</sup>“recovery plan” means a recovery plan that complies with the requirements in section 226 of the 2004 Act and the Scheme Funding Regulations;

“regulated apportionment arrangement” is an arrangement under the scheme rules that—

- (a) provides for the amount that would have been the employer's liability share to be changed;
- (b) where the employer's liability share is reduced, apportions all or part of the amount that would have been the employer's liability share to one or more of the remaining employers and may provide for when the amount apportioned is to be paid;
- (c) may provide for when the amount apportioned is to be paid;
- (d) is entered into before, on or after the applicable time;
- (e) sets out the amount of an employer's regulated apportionment arrangement share; and
- (f) meets the conditions in regulation 7A;

“regulated apportionment arrangement share” means the amount under a regulated apportionment arrangement that is an employer's share of the difference;

“relevant accounts” means the audited accounts for the scheme that comply with the requirements imposed under section 41 of the 1995 Act (provision of documents to members)(a);

“the relevant transfer deduction” means the amount of the relevant transfer liabilities less the value of the corresponding assets;

“the relevant transfer liabilities” means the liabilities attributable to a departing employer that are transferred after the applicable time to an occupational or personal pension scheme or are otherwise secured;

“schedule of contributions” means the most recent schedule of contributions that is adopted in relation to the scheme for the purposes of Part 3 of the 2004 Act;

“scheme apportionment arrangement” means an arrangement under the scheme rules that—

- (a) provides for the employer to pay a scheme apportionment arrangement share instead of the employer's liability share;
- (b) where that amount is less than the employer's liability share, apportions all or part of the amount that would have been the employer's liability share to one or more of the remaining employers;
- (c) may provide for when the amount apportioned is to be paid;
- (d) is entered into before, on or after the applicable time;
- (e) sets out the amount of an employer's scheme apportionment arrangement share;

►<sup>2</sup>(f) each of the following persons consents to—

- (i) the trustees or managers, and either
- (ii) (where the circumstances referred to in paragraph (b) apply) any remaining employer to whom all or part of the amount that would have been the employer's liability share is being apportioned, or
- (iii) (where the circumstances referred to in paragraph (b) do not apply) the employer; and◀

(g) meets the funding test;

“scheme apportionment arrangement share” means the amount under a scheme apportionment arrangement that is an employer's share of the difference;

“scheme's apportionment rule” means a scheme rule which makes provision for the difference between the value of a scheme's assets and the amount of its liabilities to be apportioned among the employers in different proportions from those which would otherwise arise;◀

<sup>1</sup>Various definitions inserted in reg. 2(1) by reg. 4(2)(e) of S.I. 2008/731 as from 6.4.08.

<sup>2</sup>Para. (f) substituted in defn. of “scheme apportionment arrangement” by reg. 2 of S.I. 2008/1068 as from 15.4.08.

(a) Section 41 was amended by section 1 of the Employment Rights (Dispute Resolution) Act 1998 (c. 8), paragraph 12(1) of Schedule 5 to the Child Support Pensions and Social Security Act 2000 (c. 19), paragraph 52 of Schedule 12 to the Pensions Act 2004 and S.I. 2005/2053.

**Reg. 2**

<sup>1</sup>Various definitions inserted in reg. 2(1) by reg. 4(2)(a)-(e) of S.I. 2008/731 as from 6.4.08.

<sup>2</sup>Defns. of “statutory funding objective” & “updated actuarial assessments” omitted, defns. of “technical provisions” & “updated liabilities assessments” inserted & para. (3A) added by regs. 4(e)-(3) of S.I. 2010/725 as from 6.4.10.

►<sup>1</sup>“the Scheme Funding Regulations” means the Occupational Pension Schemes (Scheme Funding) Regulations 2005(a);

“share of the difference” means the amount calculated as at the applicable time that is an employer’s share of the total difference between the value of the assets and the amount of the liabilities of a scheme;

►<sup>2</sup>◄◄

“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(b);

“the Taxes Act” means the Income and Corporation Taxes Act 1988(c).

►<sup>2</sup>“technical provisions” has the meaning given by section 222(2) of the 2004 Act;◄

►<sup>1</sup>►<sup>2</sup>◄

“updated asset assessment” means an update (whether or not audited) of the value of the assets of the scheme identified in the most recent relevant accounts received by the trustees or managers which–

(a) is prepared by the trustees or managers, and

(b) estimates where they consider appropriate any alteration in the value of the assets of the scheme between the date by reference to which those accounts are prepared and the applicable time;

►<sup>2</sup>“updated liabilities assessment” means the actuary’s assessment of any changes in the liabilities of the scheme in respect of pensions and other benefits between–

(a) the effective date of the actuary’s estimate of the solvency of the scheme (as defined in regulation 7(6) of the Scheme Funding Regulations) included in the most recent actuarial valuation of the scheme received by the trustees or managers–

(i) under section 224 of the 2004 Act (actuarial valuations and reports); or

(ii) where the trustees or managers have not received an actuarial valuation under section 224, which the actuary thinks it is appropriate to use, and

(b) the applicable time;◄

“withdrawal arrangement share” means an amount that is–

(a) a cessation employer’s share of the difference,

(b) equal to or, where the employer agrees, greater than amount A, and

(c) payable by a cessation employer pursuant to a withdrawal arrangement;◄

►<sup>1</sup>“withdrawal arrangement” means an arrangement that meets the conditions specified in paragraph 1 of Schedule 1A and meets the funding test.◄

(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.

<sup>3</sup>Reg. 2(3) substituted by para. 7(a)(iii) of Sch. to S.I. 2012/1817 as from 9.8.12.

►<sup>3</sup>(3) References in these Regulations to FRC standards are to actuarial standards or winding up and scheme asset deficiency adopted or prepared, and from time to time revised, by the Financial Reporting Council Limited.

►<sup>2</sup>(3A) For the purposes of a restructuring within regulations 6ZB or 6ZC– “exiting employer” means an employer–

(a) in relation to a multi-employer scheme,

(b) who employs at least one active member of the scheme in respect of whom defined benefits are accruing, and

(c) in respect of whom a relevant event has not occurred; and

(a) S.I. 2005/3377, amended by S.I. 2005/3380, 2006/1733 and 2007/60 and 814.

(b) 2004 c. 12.

(c) 1988 c. 1.



“receiving employer” means an employer who, on the date on which there is a restructuring within regulation 6ZB or 6ZC, is—

- (a) an employer in relation to the same multi-employer scheme as the exiting employer,
- (b) either—
  - (i) associated (within the meaning in section 435 of the Insolvency Act 1986<sup>(a)</sup> or section 74 of the Bankruptcy (Scotland) Act 1985<sup>(b)</sup>) with the exiting employer, or
  - (ii) the new legal status of the exiting employer,
- (c) employing at least one active member of the scheme in respect of whom defined benefits are accruing, and
- (d) an employer in respect of whom a relevant event has not occurred.◀

(4)

(4A) For the purposes of regulations 6B, 6C<sup>1</sup>, 6E◀ and 7, an arrangement relating to a scheme meets the funding test where the trustees or managers are reasonably satisfied that—

- (a) when the arrangement takes effect, the remaining employers will be reasonably likely to be able to fund the scheme so that after the applicable time ▶<sup>1</sup>(or, in the case of a flexible apportionment arrangement, after the time that arrangement takes effect)◀ it will have sufficient and appropriate assets to cover its technical provisions, taking account of any change in those provisions which will in the opinion of the trustees or managers be necessary as a result of the arrangement, and
- (b) in the case of a scheme apportionment arrangement under regulation 6B ▶<sup>1</sup> or a flexible apportionment arrangement under regulation 6E◀, the effect of the arrangement will not be to adversely affect the security of members' benefits as a result of any—
  - (i) material change in legal, demographic or economic circumstances, as described in regulation 5(4)(d) of the Scheme Funding Regulations, that would justify a change to the method or assumptions used on the last occasion on which the scheme's technical provisions were calculated, or
  - (ii) material revision to any existing recovery plan made in accordance with section 226 of the 2004 Act.

(4B) For the purposes of paragraph (4A), where at the applicable time ▶<sup>1</sup>(or, in the case of a flexible apportionment arrangement, at the time that arrangement takes effect)◀ the trustees or managers of the scheme have not received its first actuarial valuation under Part 3 of the 2004 Act, that paragraph shall apply as if for that paragraph there were substituted—

“(4A) For the purposes of regulations 6B, 6C<sup>1</sup>, 6E◀ and 7, an arrangement relating to a scheme meets the funding test where the trustees or managers are reasonably satisfied that, after taking account of the financial resources of the remaining employers, the arrangement is unlikely to adversely affect the security of the members' benefits under the scheme.”.

(4C) The trustees or managers may consider that the test in paragraph (4A)(a) is met if in their opinion the remaining employers are able to meet the relevant payments as they fall due under the schedule of contributions for the purposes of section 227 of the 2004 Act, taking into account any revision of that schedule that they think will be necessary when the arrangement takes effect.

(4D) In paragraphs (4A) and (4C), references to “remaining employers” may in relevant circumstances be read as referring only to the employer or employers to whom all or part of the liability share is apportioned under the scheme rules.◀

(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).

(a) 1986 c. 45.

(b) 1985 c. 66.

<sup>1</sup>Words inserted in reg. 2(4A), sub-para. (a), (b), (4B) & substituted para. (4A) by reg. 4(3) & (4) of S.I. 2011/2973 as from 27.1.12.

**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<sup>(a)</sup> (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<sup>(b)</sup> (power to provide for pensions for Members of the House of Commons etc.);
- ▶<sup>1</sup>(ca) a scheme, provision for which is made by virtue of section 81(3) of the Scotland Act 1998 (remuneration of members of the Parliament and Executive);◀
- (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 ▶<sup>2</sup>was not contracted-out at any time before the second abolition date;◀ 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;
- ▶<sup>3</sup>(g) a scheme—
  - (i) which has such a superannuation fund as is mentioned in section 615(6) of the Taxes Act (exemption from tax in respect of certain pensions); and
  - (ii) in relation to which the trustees or managers are not—
    - (aa) authorised under section 288 of the 2004 Act (general authorisation to accept contributions from European employer); or
    - (bb) approved under section 289 of the 2004 Act (approval in relation to particular European employer) in relation to a European employer);◀
- (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<sup>(c)</sup> (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;

<sup>1</sup>Reg. 4(1)(ca) inserted by para. 3 of Sch. to S.I. 2009/1906 as from 1.9.09.

<sup>2</sup>Words in reg. 4(1)(f)(ii) substituted by art. 22(a) of S.I. 2016/200 as from 6.4.16.

<sup>3</sup>Sub-para. (g) of reg. 4(1) substituted by reg. 6(2) of S.I. 2006/467 as from 20.3.06.

(a) 1972 c. 11.

(b) 1987 c. 45.

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



- (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

(l) ►<sup>1</sup>◄

<sup>1</sup>Sub-para. (l) omitted from reg. 4(1) by reg. 4(1) of S.I. 2005/2224 as from 2.9.05.

(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).

►<sup>2</sup>(3) In this regulation—

“contracted-out” is to be construed in accordance with section 7B(2) (meaning of “contracted-out scheme” etc.) of the Pension Schemes Act 1993; and “the second abolition date” has the meaning given in section 181(1) (general interpretation) of the Pension Schemes Act 1993. ◄

<sup>2</sup>Reg. 4(3) inserted by art. 22(b) of S.I. 2016/200 as from 6.4.16.

#### *Valuations*

#### ►<sup>3</sup>Calculation of the amount of scheme liabilities and value of scheme assets

<sup>3</sup>Reg. 5 substituted by reg. 5 of S.I. 2008/731 as from 6.4.08.

5.—(1) The value of the assets which are to be taken into account for the purposes of section 75(2) and (4) of the 1995 Act shall be determined, calculated and verified by the trustees or managers.

(2) The liabilities which are to be taken into account for the purposes of section 75(2) and (4) of the 1995 Act shall be determined by the trustees or managers and the amount of those liabilities shall be calculated and verified by the actuary.

►<sup>4</sup>(3) The assets of the scheme are to be valued, the liabilities of the scheme are to be determined and the amounts of those liabilities are to be calculated by reference to the same date. ◄

<sup>4</sup>Reg. 5(3) substituted by reg. 5(2) of S.I. 2011/2973 as from 27.1.12.

(4) Subject to paragraph (15), the assets of a scheme to be taken into account by the trustees or managers are the assets attributable to the scheme in the relevant accounts, excluding—

- (a) any resources invested (or treated as invested by or under section 40 of the 1995 Act) in contravention of section 40(1) of the 1995 Act (employer-related investments);

►<sup>5</sup>(b) any amounts which are—

- (i) treated as a debt due to the trustees or managers under—
  - (aa) section 75(2) or (4) of the 1995 Act (deficiencies in assets);
  - (bb) section 228(3) of the 2004 Act (amounts due in accordance with a schedule of contributions);
  - (cc) sections 59(2) (determination of contributions: supplementary) or 60(5) (serious underprovision) of the 1995 Act as they were in force before 30th December 2005;
  - (dd) section 75(1) of the 1995 Act as it was in force before 6th April 2005; or
  - (ee) section 144(1) of the 1993 Act (deficiencies in the assets of a scheme on winding up) as it was in force before 6th April 1997, and
- (ii) unlikely to be recovered without disproportionate cost or within a reasonable time; ◄

<sup>5</sup>Regs. 5(4)(b)(2) substituted by reg. 5 of S.I. 2010/725 as from 6.4.10.

## Reg. 5

- (c) where it appears to the actuary that the circumstances are such that it is appropriate to exclude them, any rights under an insurance policy; and
- (d) assets representing the value of any rights to money purchase benefits under the scheme; and

where arrangements are being made by the scheme for the transfer to or from it of any accrued rights and any pension credit rights, until such time as the trustees or managers of the scheme to which the transfer is being made ("the receiving scheme") have received the assets of the full amount agreed by them as consideration for the transfer, it shall be assumed that any assets transferred in respect of the transfer of those rights are assets of the scheme making the transfer and not assets of the receiving scheme.

- (5) An updated asset assessment may be used for the purposes of paragraph (4) if–
  - (a) the trustees or managers, after consulting the cessation employer and other scheme employers, so decide; and
  - (b) section 75(4) of the 1995 Act applies by virtue of an employment-cessation event.
- (6) The value to be given to the assets of a scheme by the trustees or managers is–
  - (a) the value given to those assets in the relevant accounts or in the updated asset assessment less, in either case, the amount of the external liabilities;
  - (b) in the case of any rights under an insurance policy taken into account notwithstanding paragraph (4)(c), the value the actuary considers appropriate in the circumstances of the case.

<sup>1</sup>Regs. 5(7) substituted by reg. 5(3) of S.I. 2010/725 as from 6.4.10.

- <sup>1</sup>(7) For the purposes of paragraph (6)–
  - (a) "external liabilities" means such liabilities of the scheme as are shown in–
    - (i) the net assets statement in the relevant accounts; or
    - (ii) an estimate used for the purposes of an updated asset statement,

except that the liabilities in paragraph (8) are to be disregarded; and

- (b) the amount of the external liabilities is–
  - (i) where sub-paragraph (a)(i) applies, the amount shown in the statement referred to in that sub-paragraph in respect of the external liabilities; or
  - (ii) where sub-paragraph (a)(ii) applies, the amount shown in the estimate referred to in that sub-paragraph in respect of the external liabilities. ◀

<sup>2</sup>Words substituted in reg. 5(8) by reg. 5(3) of S.I. 2011/2973 as from 27.1.12.

(8) Subject to paragraphs (9), (13) and ►<sup>2</sup>(14)◀, the liabilities of a scheme to be taken into account by the trustees or managers are any liabilities–

- (a) in relation to a member of the scheme by virtue of–
  - (i) any right that has accrued to or in respect of him to future benefits under the scheme rules,
  - (ii) any entitlement to the present payment of a pension or other benefit which he has under the scheme rules, and
- (b) in relation to the survivor of a member of the scheme, by virtue of any entitlement to benefits, or right to future benefits which he has under the scheme rules in respect of the member.

(9) The liabilities of a scheme to be excluded from paragraph (8) are–

- (a) liabilities secured by an insurance policy the rights under which are excluded under paragraph (4)(a)(iii); and
- (b) liabilities representing the value of any rights to money purchase benefits under the scheme.

(10) For the purposes of paragraph (8)–

- (a) where arrangements are being made by the scheme for the transfer to or from it of accrued rights and any pension credit rights, until such time as the trustees or managers of the scheme to which the transfer is being made ►<sup>3</sup>◀ have received the assets of the full amount agreed by them as consideration for the transfer, it shall be assumed that the rights have not been transferred;
- (b) it shall be assumed that all pensionable service under the scheme ceased before the applicable time; and
- (c) the following definitions shall apply–
  - "right" includes a pension credit right; and

<sup>3</sup>Words omitted in para. (10)(a) by reg. 5(4) of S.I. 2010/725 as from 6.4.10.

“the survivor” of a member is a person who has survived the member and has any entitlement to benefit, or right to future benefits, under the scheme on account of the member.

(11) The amount of the liabilities in respect of pensions and other benefits are to be calculated and verified by the actuary on the assumption that they 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) and for this purpose the actuary must estimate the cost of purchasing annuities.

(12) <sup>1</sup>For the purposes of paragraph (11), <sup>2</sup>The actuary must estimate the cost of purchasing the annuities—

- (a) on terms the actuary considers consistent with those in the available market and which he considers would be sufficient to satisfy the scheme's liabilities in respect of pensions and other benefits, or
- (b) where the actuary considers that it is not practicable to make an estimate in accordance with sub-paragraph (a), in such manner as the actuary considers appropriate in the circumstances of the case.

<sup>1</sup>Words inserted in para. (12) & substituted in paras. (14) & (17)(b) by reg. 5(5)-(6) of S.I. 2010/725 as from 6.4.10.

(13) The liabilities shall include all expenses (except the cost of the annuities) 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.

(14) An <sup>1</sup>updated liabilities assessment<sup>2</sup> may be prepared by the actuary for the purposes of paragraph (8) if—

- (a) the trustees or managers, after consulting the actuary and the cessation employer, so decide; and
- (b) section 75(4) of the 1995 Act applies by virtue of an employment-cessation event.

<sup>2</sup>(15) An amount B is an asset of the scheme to be taken into account by the trustees or managers only if—

- (a) the scheme has not commenced winding-up at the applicable time;
- (b) the amount B is part of a withdrawal arrangement or an approved withdrawal arrangement which is in force before the applicable time; and
- (c) the trustees or managers are reasonably satisfied that the guarantors have sufficient financial resources at the applicable time to be likely to pay the amount B.

<sup>2</sup>Reg. 5(15) substituted by reg. 5(4) of S.I. 2011/2973 as from 27.1.12.

(16) For the purposes of paragraph (15), amount B shall be determined by the trustees or managers and calculated by the actuary as if it had become due at the applicable time.

(17) Where in these Regulations there is a reference to—

- (a) the amount of any liability being calculated or verified in accordance with the opinion of the actuary or as he thinks appropriate, or
- (b) the actuary preparing an <sup>1</sup>updated liabilities assessment<sup>2</sup>,

he must apply any relevant <sup>3</sup>FRC standards<sup>4</sup> in making that calculation or verification, or preparing that update.

<sup>3</sup>Words substituted in reg. 5(17) by para. 7(b) of Sch. to S.I. 2012/1817 as from 9.8.12.

(18) 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.

(19) This regulation is subject to regulation 6 (multi-employer schemes: general), regulation 6C (withdrawal arrangements) and regulation 7 (approved withdrawal arrangements).

#### *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—

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- (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 ►<sup>1</sup>the sum of any unpaid expenses which were incurred by the scheme in connection with a previous employment-cessation event occurring to the employer and ◀ 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.

<sup>1</sup>Words inserted in reg. 6(1)(e)(i) by reg. 6(2) of S.I. 2010/725 as from 6.4.10.

<sup>2</sup>Reg. 6(2)-(8) substituted by reg. 6 of S.I. 2008/731 as from 6.4.08.

►<sup>2</sup>(2) For the purposes of paragraph (1), an employer's share of the difference is the liability share unless the conditions are met for it being one of the following—

- (a) the scheme apportionment arrangement share;
- (b) the regulated apportionment arrangement share;
- (c) the withdrawal arrangement share; or
- (d) the approved withdrawal arrangement share.

(3) Where—

- (a) the withdrawal arrangement share applies, the modification in regulation 6C(2) of section 75(4) of the 1995 Act shall apply when the withdrawal arrangement comes into force;
- (b) the approved withdrawal arrangement share applies, the modification in regulation 7(6) of section 75(4) of the 1995 Act shall apply when the approved withdrawal arrangement comes into force.

(4) For the purposes of calculating the liability proportion for the purposes of the liability share, the liabilities attributable to employment with any employer ("Employer A") shall be determined by the trustees or managers, after consulting the actuary and Employer A, as follows—

- (a) where a scheme apportionment arrangement (or before 6th April 2008, an exercise of a scheme apportionment rule) or a regulated apportionment arrangement has required certain liabilities to be apportioned to one or more employer in a particular way, those liabilities shall be so attributed;
  - <sup>3</sup>(aa) where there is a restructuring within regulation 6ZB or 6ZC and regulation 6ZA(3) or (4) does not apply in relation to that restructuring, all of the liabilities in relation to the scheme which were attributable to the existing employer shall be attributed to the receiving employer; ◀
  - <sup>4</sup>(ab) where a flexible apportionment arrangement has taken effect, the liabilities to be attributed to Employer A must include the liabilities for which Employer A—

<sup>3</sup>Reg. 6(4)(aa) inserted by reg. 6(3) of S.I. 2010/725 as from 6.4.10.

<sup>4</sup>Reg. 6(4)(ab) inserted by reg. 6(a) of S.I. 2011/2973 as from 27.1.12.

- (i) has taken over responsibility under that arrangement; or
- (ii) is treated for all purposes as being responsible under that arrangement;◀
- ▶<sup>1</sup>(b) subject to sub-paragraph (c), the liabilities to or in respect of any member which arose during or as a result of pensionable service with Employer A (including any liabilities attributable to a transfer in respect of that member received by the scheme during that period or periods of pensionable service) are attributable to Employer A; and◀
- (c) where any of the circumstances in paragraph (5) applies in respect of certain liabilities in respect of any member, those liabilities shall be attributable in accordance with the following sub-paragraphs applied in sequence—
- (i) either—
- (aa) if Employer A is the last employer of any member and the liabilities in respect of that member cannot be attributed to any employer, all of the liabilities to or in respect of any such member shall be attributable to Employer A, or
- (bb) the liabilities in respect of any member which cannot be attributed to any employer shall be attributable in a reasonable manner to one or more employer (which may or may not include Employer A), or
- (ii) if the trustees or managers are unable to determine whether or not Employer A is the last employer of any member and the liabilities in respect of that member cannot be attributed to any employer, the liabilities attributable to any such member shall not be attributable to any employer.
- (5) The circumstances referred to in paragraph 4(c) are—
- (a) where the trustees or managers are unable to determine to whom liabilities in respect of any member should be attributed in accordance with paragraph (4) (b), paragraph (4)(c) shall apply in relation to those liabilities which cannot be attributed to any employer under paragraph (4)(b); or
- (b) where the trustees or managers are able to determine to whom liabilities in respect of any member should be attributed in accordance with paragraph (4)(b), but to do so they expect disproportionate costs will be incurred by the scheme, paragraph (4)(c) shall apply in relation to those liabilities which cannot be attributed to any employer under paragraph (4)(b) except at disproportionate costs.
- (6) Where an employer notifies the trustees that a relevant transfer deduction shall apply to a departing employer's liabilities—
- (a) the departing employer's liability share shall be reduced by the amount of the relevant transfer deduction, provided the relevant transfer liabilities and corresponding assets are transferred out during the period commencing with the applicable time and ending on the day that is 12 months later ("transfer out period"); and
- (b) the liability share shall be calculated after the end of the transfer out period or if all transfers are completed on a date before the end of that period, after that date.
- (7) For the purposes of paragraph (6), the relevant transfer deduction shall be determined by calculating the relevant transfer liabilities and the corresponding assets in accordance with regulation 5.
- (8) The amount of the liabilities attributable to an employer under paragraph (4), the liability proportion, and the amount of the liability share shall be calculated and verified by the actuary in accordance with any relevant ▶<sup>2</sup>FRC standards◀ and shall be certified by him in the form set out in Schedule 1 to these Regulations.◀

<sup>1</sup>Reg. 6(4)(b) substituted by reg. 6(b) of S.I. 2011/2973 as from 27.1.12.

▶<sup>3</sup>**Employment-cessation events: general**

- 6ZA.**—(1) In these regulations, "employment-cessation event" means, subject to ▶<sup>4</sup>paragraphs (2) to (7)◀, an event which—
- (a) occurs in relation to a multi-employer scheme,
- (b) is not a relevant event, and
- (c) subject to regulation 6A, occurs on the date on which—
- (i) an employer has ceased to employ at least one person who is an active member of the scheme, and

<sup>2</sup>Words substituted in reg. 6(8) by para. 7(c) of Sch. to S.I. 2012/1817 as from 9.8.12.

<sup>3</sup>Reg. 6ZA-6ZD inserted by reg. 7 of S.I. 2010/725 as from 6.4.10.

<sup>4</sup>Words substituted in reg. 6ZA(1) by reg. 7(2) of S.I. 2011/2973 as from 27.1.12.



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- (ii) at least one other employer who is not a defined contribution employer continues to employ at least one active member of the scheme.

(2) Subject to paragraphs (3) and (4), an employment-cessation event does not occur where there is a restructuring within regulation 6ZB or 6ZC.

(3) An employment-cessation event occurs where there is a restructuring within regulation 6ZB and within six years of that, it becomes apparent that—

- (a) the exiting employer or receiving employer provided the trustees or managers with—
  - (i) incorrect information, or
  - (ii) incomplete information,

and the trustees or managers are satisfied that they would have made a different decision in step 4 in regulation 6ZB(9) if they had had the correct or complete information,

- (b) step 6 has not been completed in accordance with regulation 6ZB(13) and (14), or
- (c) step 7 has not been completed in accordance with regulation 6ZB(15) and (16).

(4) An employment-cessation event occurs where there is a restructuring within regulation 6ZC and within six years of that, it becomes apparent that—

- (a) step 4 has not been completed in accordance with regulation 6ZC(9) and (10), or
- (b) step 5 has not been completed in accordance with regulation 6ZC(11) and (12).

(5) An employment-cessation event does not occur where—

- (a) there is a restructuring within regulation 6ZB or 6ZC,
- (b) at any time after that, it becomes apparent that any step has not been completed in accordance with regulation 6ZB or 6ZC, and
- (c) paragraphs (3) and (4) of this regulation do not apply.

(6) Where an employment-cessation event occurs in accordance with paragraph (3) or (4)—

- (a) section 75(4) of the 1995 Act applies as if the amount of the debt due from the exiting employer is treated as a debt due from the exiting employer and the receiving employer jointly and severally,
- (b) the date on which the employment-cessation event occurs is the date referred to in paragraph (1)(c), and
- (c) for the purposes of calculating the exiting employer's liability proportion for the purposes of the exiting employer's liability share, the liabilities attributable to employment with the exiting employer shall be determined as if nothing had been done in relation to carrying out any of the steps in regulations 6ZB or 6ZC.

<sup>1</sup>Reg. 6ZA(7) inserted by reg. 7(3) of S.I. 2011/2973 as from 27.1.12.

►<sup>1</sup>(7) An employment-cessation event does not occur in respect of the leaving employer within the meaning given in regulation 6E(7) where—

- (a) the conditions in regulation 6E(2) are met, and
- (b) before the end of the period of 28 days beginning with the day on which those conditions were met, an event occurs in relation to that employer which meets the requirements of sub-paragraphs (a) to (c) of paragraph (1) of this regulation. ◀

### Employment-cessation events: exemptions

**6ZB.**—(1) There is a restructuring within this regulation if each of steps 1 to 6 in the following paragraphs are completed and the date on which there is a restructuring within this regulation is the date on which step 6 has been completed.

(2) Each of steps 2 to 7 can only be carried out if the previous step has been completed.

(3) Step 1 is for the exiting employer to write to the trustees or managers asking them to make a decision for the purposes of this regulation.

(4) The exiting employer decides whether and when to carry out step 1.



(5) Step 2 is for the exiting employer and receiving employer (unless the receiving employer has not yet been created) to provide any information which the trustees or managers—

- (a) may request, and
- (b) are satisfied is necessary to complete step 4.

(6) The trustees or managers must request any information, and the exiting employer and receiving employer must provide any information, for the purposes of completing step 2 without undue delay.

(7) Step 3 is for the trustees or managers to consult—

- (a) the exiting employer about the decision to be made in step 4, and
- (b) the receiving employer about the decision to be made in step 4, unless the receiving employer has not yet been created.

(8) The trustees or managers must complete step 3 without undue delay.

(9) Step 4 is for the trustees or managers to decide whether they are satisfied that the receiving employer will be at least as likely—

- (a) as the exiting employer to meet all the exiting employer's liabilities in relation to the scheme, and
- (b) to meet any liabilities in relation to the scheme which the receiving employer has immediately before step 6 is carried out.

(10) The trustees or managers must—

- (a) complete step 4 without undue delay, and
- (b) consider, when carrying out step 4, factors including, but not limited to, any material change in legal, demographic or economic circumstances, as described in regulation 5(4)(d) of the Scheme Funding Regulations, that would justify a change to the method or assumptions used on the last occasion on which the scheme's technical provisions were calculated.

(11) Step 5 is for the trustees or managers to send—

- (a) the exiting employer, and
- (b) the receiving employer, unless the receiving employer has not yet been created,

their decision in step 4, and the reasons for that decision, in writing.

(12) The trustees or managers must complete step 5 without undue delay.

(13) Step 6 is for—

- (a) the receiving employer to take over responsibility, under a legally enforceable agreement, for all of the exiting employer's—
  - (i) assets,
  - (ii) employees, and
  - (iii) scheme members, and
- (b) all of the exiting employer's liabilities in relation to the scheme to be—
  - (i) taken over by the receiving employer under a legally enforceable agreement so that the receiving employer is responsible for them, or
  - (ii) where it is impossible for the receiving employer to take over the exiting employer's liabilities in relation to the scheme under a legally enforceable agreement, treated for all purposes as being the responsibility of the receiving employer.

(14) The receiving employer decides whether to carry out step 6, but the receiving employer can only carry out step 6—

- (a) where the trustees or managers decided in step 4 that they are satisfied,
- (b) where the trustees or managers are satisfied that there has been no change which would alter that decision in step 4, and
- (c) within the 18 weeks, or such longer period up to a total of 36 weeks as the trustees or managers may choose, after the date of the written decision in step 5.

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(15) Step 7 is for the receiving employer and exiting employer to send the trustees or managers written confirmation—

- (a) that step 6 has been completed, and
- (b) of the date on which step 6 was completed.

(16) The receiving employer and exiting employer must complete step 7 without undue delay.

(17) In this regulation, liabilities in relation to the scheme means all such liabilities including, but not limited to, any—

- (a) liabilities which—
  - (i) have accrued to or in respect of scheme members, and
  - (ii) are attributable to the employer under regulation 6(4),
- (b) amounts treated as a debt due to the trustees or managers of the scheme, including such debts due in accordance with section 75 of the 1995 Act,
- (c) liabilities or amounts which have been apportioned to the employer in—
  - (i) a scheme apportionment arrangement,
  - (ii) an exercise of a scheme apportionment rule before 6th April 2008, or
  - (iii) a regulated apportionment arrangement,
- (d) liabilities which were attributed to the employer as part of a previous restructuring within this regulation or regulation 6ZC,
- (e) amount for which the employer is a guarantor under a withdrawal arrangement or an approved withdrawal arrangement,
- (f) payments which are due to be made by the employer under—
  - (i) the schedule of contributions, or
  - (ii) any recovery plan, ►<sup>1</sup>◀
- (g) liability share of the employer.
- <sup>1</sup>(h) liabilities for which the employer—
  - (i) has taken over responsibility under a flexible apportionment arrangement, or
  - (ii) is treated for all purposes as being responsible under such an arrangement, and
- (i) actual and contingent liabilities.◀

<sup>1</sup>Word omitted in reg. 6ZB(17)(f)(ii) & sub-paras. (h) & (i) inserted by reg. 8(a) & (b) of S.I. 2011/2973 as from 27.1.12.

**6ZC.**—(1) There is a restructuring within this regulation if each of steps 1 to 4 in the following paragraphs are completed and the date on which there is a restructuring within this regulation is the date on which step 4 has been completed.

(2) Each of steps 2 to 5 can only be carried out if the previous step has been completed.

(3) Step 1 is for the exiting employer to write to the trustees or managers asking them to make a decision for the purposes of this regulation.

(4) The exiting employer decides whether and when to carry out step 1.

(5) Step 2 is for the trustees or managers to decide whether they are satisfied that the following four conditions are met—

- (a) the assets of the scheme are at least equal to the protected liabilities of the scheme,
- (b) either—
  - (i) there are only one or two relevant members, or
  - (ii) no more than 3% of the total number of scheme members in respect of whom defined benefits have accrued are relevant members,
- (c) the annual amount of accrued pension in respect of the relevant members does not exceed the maximum amount where—
  - (i) the annual amount of accrued pension includes pensions in payment and pensions not in payment,
  - (ii) the annual amount of accrued pensions in payment means the most recent payment of pension to each relevant member multiplied to produce an estimated annual amount,

- (iii) the annual amount of accrued pensions not in payment means the annual amount of pension to which each relevant member has accrued rights, and
  - (iv) the maximum amount means–
    - (aa) in the year commencing on 6th April 2010, £20,000, and
    - (bb) in any subsequent year, £20,000 plus £500 for each year after the year commencing on 6th April 2010, and
  - (d) if any restructurings within this regulation in relation to the scheme have occurred in the three years before step 4 is completed, those restructurings and the restructuring which occurs when step 4 is completed involve a combined total of–
    - (i) no more than–
      - (aa) five scheme members in respect of whom defined benefits have accrued, or
      - (bb) 7.5% of the total number of scheme members in respect of whom defined benefits have accrued,
- whichever is the higher, and
- (ii) no more than £50,000 of the annual amount of accrued pension as calculated for the purposes of sub-paragraph (c).
- (6) The trustees or managers must complete step 2–
- (a) without undue delay, and
  - (b) using the figures contained in the most recent–
    - (i) actuarial valuation under section 179 of the 2004 Act (valuations to determine scheme underfunding) for the assets and protected liabilities of the scheme, and
    - (ii) scheme return within the meaning in section 65(2) of the 2004 Act (scheme returns: supplementary) for the number of members of the scheme.
- (7) Step 3 is for the trustees or managers to send–
- (a) the exiting employer, and
  - (b) the receiving employer, unless the receiving employer has not yet been created,
- their decision in step 2 in writing.
- (8) The trustees or managers must complete step 3 without undue delay.
- (9) Step 4 is for–
- (a) the receiving employer to take over responsibility, under a legally enforceable agreement, for all of the exiting employer's–
    - (i) assets,
    - (ii) employees, and
    - (iii) scheme members, and
  - (b) all of the exiting employer's liabilities in relation to the scheme (as defined in regulation 6ZB(17)) to be–
    - (i) taken over by the receiving employer under a legally enforceable agreement so that the receiving employer is responsible for them, or
    - (ii) where it is impossible for the receiving employer to take over the exiting employer's liabilities in relation to the scheme under a legally enforceable agreement, treated for all purposes as being the responsibility of the receiving employer.
- (10) The receiving employer decides whether to carry out step 4, but the receiving employer can only carry out step 4–
- (a) where the trustees or managers decided in step 2 that they are satisfied, and
  - (b) within the 18 weeks, or such longer period up to a total of 36 weeks as the trustees or managers may choose, of the date of the written decision in step 3.
- (11) Step 5 is for the receiving employer and exiting employer to send the trustees or managers written confirmation–
- (a) that step 4 has been completed, and

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(b) of the date on which step 4 was completed.

(12) The receiving employer and exiting employer must complete step 5 without undue delay.

(13) In this regulation, “relevant members” means scheme members in respect of whom defined benefits accrued as a result of pensionable service with the exiting employer.

**6ZD.**—(1) The trustees or managers may decide that any costs incurred by them as a result of the steps in regulation 6ZB or 6ZC are to be met by the exiting employer, the receiving employer or both.

(2) The trustees or managers may make a decision under paragraph (1)–

(a) at any time during the steps in regulation 6ZB or 6ZC, or

(b) within one month after the final step in either of those regulations is completed.

(3) Where the trustees or managers make such a decision–

(a) they must write to the exiting employer, the receiving employer or both (as the case may be) with details of their costs, and

(b) the exiting employer, the receiving employer or both (as the case may be) must pay those costs. ◀

<sup>1</sup>Reg. 6A-6D inserted by reg. 7 of S.I. 2008/731 as from 6.4.08.

<sup>2</sup>Words in reg. 6A(1) & para. (a) to the defn. of “period of grace” substituted by reg. 9(2)-(3) of S.I. 2011/2973 as from 27.1.12.

▶<sup>1</sup>**Employment-cessation events: periods of grace**

**6A.**—(1) Where but for this regulation an employment-cessation event would have occurred in relation to an employer (“A”) and before, on, or ▶<sup>2</sup>within 2 months◀ after, the cessation date A gives the trustees or managers of a relevant scheme (“the scheme”) a period of grace notice, A will be treated for a period of grace as if he employed a person who is an active member of the scheme, but–

(a) if by the last day of the period of grace A does not employ a person who is an active member of the scheme, A will be treated as if the period of grace had not applied;

(b) if at any time during the period of grace A no longer intends to employ any person who will be an active member of the scheme, A must notify the trustees or managers of the scheme and A will be treated as if the period of grace had not applied;

(c) if any time during the period of grace A employs an active member (whether before or after giving the period of grace notice), A will be treated as if an employment-cessation event had not occurred in relation to him on the cessation date which applied to the period of grace notice; or

(d) if during the period of grace an insolvency event occurs in relation to A, A will be treated as if the period of grace had not applied.

(2) Where in accordance with paragraph (1) an employer is treated for the period of grace as if he employed at least one person who is an active member of the scheme, he will for the purposes of these Regulations be treated during that period as if he were an employer in relation to the scheme.

(3) For the purposes of this regulation, the following definitions shall apply–

“cessation date” means the date on which the employer ceases to employ at least one person who is an active member of the scheme and at least one other person who is not a defined contribution employer continues to employ at least one person who is an active member of the scheme;

“relevant scheme” means a scheme in relation to which A is not aware of any intention for it to become a frozen scheme during the period of grace;

“period of grace” means a period commencing on the cessation date and ending on the earlier of–

▶<sup>2</sup>(a) the day referred to in paragraph (4), or ◀

(b) the day on which the employer employs a person who is an active member of the scheme;

“period of grace notice” means a notice in writing that an employer intends during the period of grace to employ at least one person who will be an active member of the scheme.

▶<sup>1</sup>(4) The day mentioned in paragraph (a) of the definition of “period of grace” in paragraph (3) is—

- (a) the day which is 12 months after the cessation date; or
- (b) a day which—
  - (i) is more than 12 months after the cessation date;
  - (ii) is less than 36 months after the cessation date; and
  - (iii) the trustees or managers of the scheme choose to nominate in accordance with paragraph (5).

<sup>1</sup>Reg. 6A(4) & (5) added by reg. 9(4) of S.I. 2011/2973 as from 27.1.12.

(5) A nomination mentioned in paragraph (4)(b)(iii) may only be made—

- (a) in writing; and
- (b) before—
  - (i) the end of 12 months after the cessation date, where no day has previously been nominated under paragraph (4)(b)(iii); or
  - (ii) the day previously nominated under paragraph (4)(b)(iii).◀

### Scheme apportionment arrangements

**6B.**—(1) Before the trustees or managers of the scheme enter into a scheme apportionment arrangement, the funding test must be met in relation to it.

▶<sup>2</sup>(2) Paragraph (1) does not apply where paragraph (3) or (4) applies.◀

▶<sup>2</sup>(3) This paragraph applies where—

- (a) the employer’s scheme apportionment arrangement share will be higher than the liability share, and
- (b) the trustees or managers are satisfied that the employer is able to pay the scheme apportionment arrangement share.

<sup>2</sup>Reg. 6B(2) substituted & paras. (3) & (4) inserted by reg. 8(2) & (3) of S.I. 2010/725 as from 6.4.10.

(4) This paragraph applies where—

- (a) the scheme has commenced winding-up by the date the scheme apportionment arrangement is entered into,
- (b) the employer’s scheme apportionment arrangement share will be lower than that employer’s liability share,
- (c) the trustees or managers are satisfied that it is likely that the employer—
  - (i) will be able to pay the scheme apportionment arrangement share, and
  - (ii) would have been unable to pay the liability share if it applied,
- (d) the trustees or managers are satisfied that it is likely that any of the employers who—
  - (i) are remaining in the scheme, and
  - (ii) are not defined contribution employers,

will be able to pay any amount by which the employer’s scheme apportionment arrangement share will be less than the employer’s liability share,

- (e) the scheme is not in an assessment period, and
- (f) the trustees or managers are satisfied that an assessment period is unlikely to begin in relation to the scheme within the following 12 months.◀

### Withdrawal Arrangements

**6C.**—(1) The trustees or managers may enter into a withdrawal arrangement, before, on or after the applicable time (which applies to an employment-cessation event), provided that—

- (a) the funding test is met, and
- (b) they are satisfied that at the date of the agreement, the guarantors have sufficient financial resources to be likely to be able to pay amount B that would arise on that date (or pay the likely amount B).

(2) ▶<sup>3</sup>Where a◀ withdrawal arrangement comes into force—

- (a) the cessation employer’s share of the difference shall for the purposes of regulation 6(2) be the withdrawal arrangement share, and
- ▶<sup>3</sup>(b) section 75(4) of the 1995 Act shall apply as if amount B is treated as a debt due from the guarantors at the guarantee time for which (if there is more than

<sup>3</sup>Words in reg. 6C(2) & sub-para. (b) substituted by reg. (9)(a) & (b) of S.I. 2010/725 as from 6.4.10.

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one guarantor) they are jointly liable or, if the withdrawal arrangement so provides, jointly and severally liable. ◀

(3) A relevant transfer deduction will apply to a withdrawal arrangement share provided any transfer or transfers of the cessation employer's relevant transfer liabilities and corresponding assets are completed on or before the date which is twelve months after the employment-cessation event.

(4) Schedule 1A makes further provision in relation to withdrawal arrangements.

**Notifiable events**

**6D.** Schedule 1B applies for the purposes of section 69(2)(a) and (3)(a) of the 2004 Act so as to require notice of the events prescribed in that Schedule to be given to the Authority by the persons prescribed in relation to those events, unless the Authority directs otherwise. ◀

<sup>1</sup>Reg. 6E inserted by reg. 10 of S.I. 2011/2973 as from 27.1.12.

**►<sup>1</sup>Flexible apportionment arrangements**

**6E.**—(1) A flexible apportionment arrangement takes effect on the date on which both—

- (a) the conditions in paragraph (2) are met; and
- (b) an employment-cessation event—
  - (i) has occurred in relation to the leaving employer before the date on which the conditions in paragraph (2) are met;
  - (ii) would have occurred in relation to the leaving employer if regulation 6ZA(7) had not applied; or
  - (iii) would have occurred in relation to the leaving employer if the scheme had not become a frozen scheme.

(2) The conditions are that—

- (a) subject to paragraph (4), the funding test is met;
- (b) one or more replacement employers—
  - (i) take over responsibility under a legally enforceable agreement for all the liabilities in relation to the scheme (within the meaning given in regulation 6ZB(17)) of the leaving employer as those liabilities stand immediately before the flexible apportionment arrangement takes effect, taking into account any reduction mentioned in paragraph (5)(c); or
  - (ii) where it is impossible for the replacement employer(s) to take over responsibility for those liabilities under a legally enforceable agreement, are treated for all purposes as being responsible for those liabilities;
- (c) the following persons consent in writing—
  - (i) the trustees or managers of the scheme;
  - (ii) the leaving employer; and
  - (iii) all the replacement employers referred to in sub-paragraph (b);
- (d) the leaving employer is not in a period of grace in accordance with regulation 6A;
- (e) the requirements set out in paragraph (5) are met for any payment of any part of a debt—
  - (i) due as a result of the employment-cessation event referred to in paragraph (1)(b)(i); or
  - (ii) that would have been due as a result of the employment-cessation event referred to in paragraph (1)(b)(ii) that would have occurred if regulation 6ZA(7) had not applied;
- (f) the scheme is not—
  - (i) in an assessment period; or
  - (ii) being wound up; and
- (g) the trustees or managers of the scheme are satisfied that an assessment period is unlikely to begin in relation to the scheme within the period of 12 months beginning with the date on which a flexible apportionment arrangement takes effect.



(3) Where a flexible apportionment arrangement takes effect in accordance with paragraph (1)(b)(i), section 75(4) of the 1995 Act is modified so that no amount is to be treated as a debt due to the trustees or managers of the scheme as a result of the employment-cessation event.

- (4) The funding test does not have to be met where—
- (a) the funding test is met for a different flexible apportionment arrangement;
  - (b) the time when the flexible apportionment arrangement takes effect is or will be, in the opinion of the trustees or managers of the scheme, the same as or similar to the time when the different flexible apportionment arrangement takes effect; and
  - (c) the trustees or managers of the scheme are satisfied that the funding test would be met if it was carried out again.

- (5) The requirements referred to in paragraph (2)(e) are—
- (a) the payment (which in this paragraph means the payment referred to in paragraph (2)(e)) is made to the trustees or managers of the scheme by or on behalf of the leaving employer;
  - (b) the payment is in addition to any amount that is required to be paid under the schedule of contributions;
  - (c) the trustees or managers of the scheme decide to make a reduction of the liabilities in relation to the scheme (within the meaning given in regulation 6ZB(17)) of the leaving employer as a result of the payment; and
  - (d) the reduction of those liabilities relates to the amount of the payment.

(6) The trustees or managers of the scheme may require the leaving employer or the replacement employers (or both) to pay all or part of the costs which the trustees or managers of the scheme have incurred by virtue of this regulation.

- (7) In this regulation—
- “the leaving employer” means an employer—
- (a) in relation to a multi-employer scheme;
  - (b) in respect of whom a relevant event has not occurred; and
  - (c) who—
    - (i) employs at least one active member of the scheme in respect of whom defined benefits are accruing; or
    - (ii) used to employ at least one such active member;
- “replacement employer” means an employer who, on the date on which the flexible apportionment arrangement takes effect—
- (a) is an employer in relation to the same multi-employer scheme as the leaving employer;
  - (b) either—
    - (i) is employing at least one active member of the scheme in respect of whom defined benefits are accruing; or
    - (ii) used to employ at least one such active member and no amount was treated as a debt due to the trustees or managers of the scheme when the last such active member ceased to be employed; and
  - (c) is an employer in respect of whom a relevant event has not occurred. ◀

#### ▶<sup>1</sup>Approved withdrawal arrangements

7.—(1) If a cessation employer notifies the Authority in writing that he proposes to enter into an arrangement under this regulation and proposes to seek the Authority’s approval of the arrangement, the Authority may issue directions that—

- (a) a debt which may be treated as due under section 75(4) of the 1995 Act is to be unenforceable for such period (“suspension period”) as the Authority may specify in the direction;
- (b) the suspension period is to be extended by such further periods as it specifies; and
- (c) if an approved withdrawal arrangement comes into force before the end of the suspension period, section 75(4) of the 1995 Act is to apply with the modifications in paragraph (6).

<sup>1</sup>Regs. 7, 7A & 7B substituted for regs. 7 & 7A by reg. 8 of S.I. 2008/731 as from 6.4.08.

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- (2) The Authority may not approve an arrangement under this regulation unless—
- (a) the amount the cessation employer proposes to pay as its approved withdrawal arrangement share is less than amount A,
  - (b) the trustees have notified the Authority that the funding test is met, and
  - (c) the Authority is satisfied that it is reasonable to do so having regard to such matters as the Authority considers relevant, which may include the following—
    - (i) the potential effect of the employment-cessation event on the method or assumptions used to calculate the scheme's technical provisions;
    - (ii) the financial circumstances of the proposed guarantors;
    - (iii) the amount of the cessation employer's share of the difference under the liability share;
    - (iv) the amount the cessation employer proposes to pay as its approved withdrawal arrangement share (and, where there is likely to be a relevant mate of the amount that the cessation employer will pay if the transfer is completed); and
    - (v) the effect of the proposed arrangement on the security of members' benefits under the scheme.
- (3) Approval by the Authority of an arrangement—
- (a) may be given subject to such conditions as the Authority considers appropriate; and
  - (b) is to be given in a notice issued by the Authority.
- (4) An arrangement may be approved by the Authority in advance of an employment-cessation event occurring (see paragraph 6 of Schedule 1A) or following the occurrence of such an event.
- (5) An arrangement may be approved by the Authority where a departing employer notifies the trustees that a relevant transfer deduction shall apply to the proposed approved withdrawal arrangement share, but such approval will cease to be effective if the transfer or transfers of the cessation employer's liabilities are not completed on or before the date which is twelve months after the employment-cessation event or within such a longer period as the Authority approves.
- (6) If the Authority issues the directions referred to in paragraph (1) and an approved withdrawal arrangement comes into force before the end of the suspension period (referred to in that paragraph)—
- (a) the cessation employer's share of the difference shall for the purposes of regulation 6(2) be the approved withdrawal arrangement share, and
  - (b) section 75(4) of the 1995 Act shall apply as if amount B is 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 provides, jointly and severally liable.
- (7) The Authority may issue a direction that amount B under an approved withdrawal arrangement is not to be treated as a debt due from the guarantors under section 75(4) of the 1995 Act and any such direction must be issued—
- (a) before the guarantee time, and
  - (b) if the Authority considers that the approved withdrawal arrangement is no longer required.
- (8) The Authority may issue a notice that it considers amount B (or the balance remaining) under an approved withdrawal arrangement should be paid but it may not issue such a notice unless it considers that it is reasonable for the guarantors to be required to pay that amount at that time.
- (9) In forming an opinion for the purposes of paragraph (8), the Authority must have regard to such matters as the Authority considers 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 Schedule 1B (notifiable events); and
  - (c) the guarantors' financial circumstances.
- (10) Where the Authority considers that an arrangement no longer requires to be continued in force, it may issue a notice to the parties to that effect.

(11) Schedule 1A makes further provision in relation to approved withdrawal arrangements.

### Regulated apportionment arrangements

**7A.**—(1) The conditions which apply to a regulated apportionment arrangement are as follows—

- (a) the arrangement applies to a trust scheme where—
  - (i) the trustees are of the opinion that there is a reasonable likelihood of an assessment period commencing in relation to the scheme within the following twelve months; or
  - (ii) an assessment period has already commenced in relation to the scheme and has not come to an end;
- ▶<sup>1</sup>(b) (where an assessment period has not already commenced, each of the following persons agrees to the arrangement—
  - (i) the trustees of the scheme, and either
  - (ii) where the employer's liability share is increased, the employer, or
  - (iii) where the employer's liability share is reduced, any remaining employer to whom all or part of the amount that would have been the employer's liability share is being apportioned;◀
- (c) the arrangement and any amendments to the arrangement are approved by the Authority by a notice of approval; and
- (d) the Board of the PPF do not object to the arrangement.

<sup>1</sup>Para. 7A(1)(b) substituted by reg. 2(3) of S.I. 2008/1068 as from 15.4.08.

(2) A notice of approval is a confirmation, issued by the Authority, that in its opinion in the circumstances described in the application it would be reasonable to issue a notice of approval.◀

### ▶<sup>2</sup>Single employer sections, multi-employer sections, etc

**8.**—(1) Where section 75 of the 1995 Act and these Regulations (apart from this regulation) apply to a scheme in relation to which there is more than one employer they shall apply to each of the following sections or parts of that scheme as if the section or part were a separate scheme—

- (a) a section of a segregated scheme with one employer in relation to the section;
- (b) a section of a segregated scheme with more than one employer in relation to the section;
- (c) a death benefits section of a segregated scheme;
- (d) a frozen section of a segregated scheme.

(2) For the purposes of paragraph (1)—

- (a) subject to sub-paragraph (b), a “segregated scheme” means a scheme in relation to which there is more than one employer and which is divided into two or more sections where—
  - (i) any contributions payable to the scheme by an employer in relation to the scheme or by a member are allocated to that employer's section, if more than one section applies to an employer to the section to which the employment relates, and any contributions to that employer's or member's section; and
  - (ii) a specified proportion of the assets of the scheme is attributable to each section of the scheme and cannot be used for the purposes of any other section;
- (b) when determining whether a scheme is a segregated scheme there shall (for that purpose) be disregarded any provisions of the scheme which—
  - (i) permit contributions or transfers of assets to be used to provide death benefits;
  - (ii) permit any assets of a section of a scheme to be used for the purpose of another section in the event of the winding-up of the scheme or a section;
- (c) a “death benefits section of a segregated scheme” shall mean a section—
  - (i) which provides death benefits only; and
  - (ii) to which contributions or transfers of assets may only be made for the purpose of providing death benefits;

<sup>2</sup>Regs. 8 & 9 substituted by reg. 9 and 10 of S.I. 2008/731 as from 6.4.08.

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- (d) a “frozen section of a segregated scheme” shall mean a section—
- (i) which applies only to members who are no longer in pensionable service in relation to the section (and a period of grace notice has not been given under regulation 6A and a period of grace under that regulation is not in progress); and
  - (ii) where the scheme rules have not been amended to prevent the scheme from otherwise being a segregated scheme.

*Former employers***Frozen schemes and former employers**

**9.**—(1) In the application of section 75 of the 1995 Act to a scheme, subject to paragraph (3), references to employers include former employers.

- (2) For the purposes of this regulation—
- (a) a “former employer” means any person who employed persons in the description of employment to which the scheme relates but at the relevant time has ceased to do so;
  - (b) in relation to a frozen scheme, “freezing event” means the event in consequence of which the scheme became a frozen scheme (this is subject to regulation 6A);
  - (c) “relevant time” means in relation to a scheme which is not a frozen scheme, the applicable time, and in relation to a frozen scheme, the time of occurrence of the freezing event.
- (3) A person shall not be included as a former employer if—
- (a) he is a defined contribution employer;
  - (b) before 19th December 1996, he ceased to be a person employing persons in the description or category of employment to which the scheme related and was not regarded as a “former participator” for the purposes of the 1996 Regulations by virtue of regulation 6 of those Regulations (ceasing to participate: transitional provision);
  - (c) at a time before the relevant time, when the scheme had not commenced winding-up and the scheme continued to have active members, he—
    - (i) on or after 19th December 1996 and before 6th April 1997, ceased to be a person employing persons in the description or category of employment to which the scheme related and was not regarded as a “former participator” for the purposes of the 1996 Regulations by virtue of regulation 6 of those Regulations (ceasing to participate: transitional provision);
    - (ii) on or after 6th April 1997 and before 6th April 2008, ceased to be a person employing persons in the description or category of employment to which the scheme related and one of conditions A to I is met;
    - (iii) on or after 6th April 2008 and before the applicable time, ceased to be a person employing persons in the description or category of employment to which the scheme related or an employment-cessation event or insolvency event occurs in respect of him and one of conditions  $\blacktriangleright^1$ A to K is met; $\blacktriangleleft$
  - (d) in relation to a frozen scheme, at a time on or after 6th April 2008, after the freezing event, when the scheme had not commenced winding-up and before the applicable time, he ceased to be a person employing persons in the description or category of employment to which the scheme related, or an employment-cessation event or insolvency event occurred in respect of him and one of conditions  $\blacktriangleright^2$ A to J $\blacktriangleleft$  is met $\blacktriangleright^1$ ; or
  - (e) in relation to a frozen scheme, the person is the leaving employer within the meaning given in regulation 6E(7) in a flexible apportionment arrangement which has taken effect in accordance with regulation 6E. $\blacktriangleleft$

<sup>1</sup>Words in reg. 9(3)(c)(iii) substituted & sub-para. (e) inserted by reg. 11(2)(a) & (b) of S.I. 2011/2973 as from 27.1.12.

<sup>2</sup>Words in reg. 9(3)(d) substituted by reg. 10(2) of S.I. 2010/725 as from 6.4.10.

(4) In the application of regulation 6 to a frozen scheme which was a multi-employer scheme before the event as a result of which the scheme became a frozen scheme, in relation to a person who before the applicable time was a former employer under this regulation, an employment-cessation event shall be treated as having occurred where notice is given to the trustees or manager by such a person for the purposes of this paragraph.

(5) A notice given for the purposes of paragraph (4) must specify the date on which the employment-cessation event is to be treated as having occurred, being a date not earlier than 3 months before the date on which the notice is given, and not more than 3 months after that date.

(6) Condition A is that as a result of the employment cessation event, insolvency event or assumption of his liabilities by another person, no debt arose under section 75(2) or (4) of the 1995 Act (or, before 6th April 2005, under section 75(1) of that Act).

(7) Condition B is that no debt was treated as becoming due from him under section 75(2) or (4) of the 1995 Act (or, before 6th April 2005, under section 75(1) of that Act).

(8) Condition C is that a debt was treated as becoming due from him under section 75(2) or (4) of the 1995 Act (or, before 6th April 2005, under section 75(1) of that Act) and has been paid by him before the applicable time.

(9) Condition D is that in accordance with a withdrawal arrangement a debt that was treated as becoming due from him under section 75(4) of the 1995 Act and has been paid by him before the applicable time.

(10) Condition E is that in accordance with an approved withdrawal arrangement a debt was treated as becoming due from him under section 75(4) of the 1995 Act and has been paid by him before the applicable time.

(11) Condition F is that in accordance with a scheme apportionment arrangement a debt was treated as becoming due from him under section 75(2) or (4) of the 1995 Act and has been paid by him before the applicable time.

(12) Condition G is that in accordance with a regulated apportionment arrangement a debt was treated as becoming due from him under section 75(2) or (4) of the 1995 Act and has been paid by him before the applicable time.

(13) Condition H is that a debt was treated as becoming due from him <sup>1</sup>under section 75(2) or (4) of the 1995 Act and has not been 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.

<sup>1</sup>Words inserted in reg. 9(13) & para. (14A) added by reg. 10(3) & (4) of S.I. 2010/725 as from 6.4.10.

(14) Condition I is that a debt was treated as becoming due from him under section 75(2) or (4) of the 1995 Act 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.

<sup>1</sup>(14A) Condition J is that—

- (a) as a result of a restructuring occurring within regulation 6ZB or 6ZC, no debt was treated as becoming due from the person under section 75(2) or (4) of the 1995 Act, and
- (b) regulation 6ZA(3) or (4) does not apply in relation to that restructuring.◀

(15) For the purposes of paragraph (6), an “employment-cessation event” shall include circumstances where before 6th April 2005—

- (a) section 75(1) of the 1995 Act(a) applied when a scheme was not being wound-up, and
- (b) an employer ceased to be a person employing persons in the description or category of employment to which the scheme related at a time when at least one other person continued to employ such persons(b).◀

<sup>2</sup>(14B)Condition K is that a flexible apportionment arrangement took effect in accordance with regulation 6E—

- (a) with the result that no debt was treated as due from the person under section 75(4) of the 1995 Act, or
- (b) with the result that no debt arose in respect of the person because regulation 6ZA(7) applied.◀

<sup>2</sup>Reg. 9(14B) inserted by reg. 11(3) of S.I. 2011/2973 as from 27.1.12.

(a) That is, as it applied before it was amended by section 271 of the Pensions Act 2004 (c. 35)

(b) See the event described in section 75(3)(b)(i) of the 1995 Act as substituted by the modification in regulation 4(3) of the 1996 Regulations.



*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 <sup>1</sup>or fraud compensation levy <sup>2</sup>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 <sup>2</sup>section 182(1)(b) of the 2004 Act <sup>4</sup> 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) <sup>3</sup>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);

<sup>3</sup>“the fraud compensation levy” means the levy imposed in accordance with section 189 of the 2004 Act; <sup>4</sup>

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

“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(a).

**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 <sup>4</sup>.

(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.

<sup>1</sup>Words inserted in reg. 10(2) by reg. 12(a) of S.I. 2006/558 as from 1.4.06.

<sup>2</sup>Words in reg. 10(3)(b)(i) substituted by reg. 5 of S.I. 2014/540 as from 6.4.14.

<sup>3</sup>Words substituted and defn. of “the fraud compensation levy” inserted in reg. 10(4) by reg. 12(b) of S.I. 2006/558 as from 1.4.06.

<sup>4</sup>Words omitted in reg. 11(1) by reg. 11(1) of S.I. 2008/731 as from 6.4.08.

(a) S.I. 2005/626.



(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 <sup>1</sup>the trustees or managers<sup>2</sup>, 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) <sup>2</sup>◀

(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) <sup>2</sup>◀

are such amounts as are determined, calculated and verified by the actuary <sup>3</sup>◀.”.

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

<sup>1</sup>Words modified in para. (1A)(a) to reg. 10 ibid by reg. 4(2) of S.I. 2005/2224 as from 2.9.05.

<sup>2</sup>Paras. (1A)(b) & (1B)(b) omitted by reg. 11(2)(a) & (b) of S.I. 2008/731 as from 6.4.08.

<sup>3</sup>Words in para. (1B) omitted by reg. 11 of S.I. 2010/725 as from 6.4.10.

### 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.

*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 ►<sup>1</sup>forms set out in Schedules 1, 1C and 1D◀ 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 ►<sup>1</sup>registered and unregistered◀ parts of the scheme were separate schemes; and
- (b) the reference to the scheme in the ►<sup>1</sup>forms set out in Schedules 1, 1C and 1D◀ 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 ►<sup>1</sup>forms set out in Schedules 1, 1C and 1D◀ may be modified appropriately.

(7) Before 6th April 2006 paragraph (3) applies with the substitution for subparagraph (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.”

<sup>1</sup>Words substituted in regs. 14(2)(a), (4)(a) & (b) & (6)(b) by reg. 12(2) & (3) of S.I. 2010/725 as from 6.4.10.

**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 ►<sup>1</sup>forms set out in Schedules 1, 1C and 1D◀ 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.

<sup>1</sup>Words in regs. 15(2)(b) & 17(1) substituted & reg. 16 substituted by regs. 13-15 of S.I. 2010/725 as from 6.4.10.

*Supplementary***►<sup>1</sup>Modification of schemes: apportionment of section 75 debts**

- 16.**—(1) This regulation prescribes a purpose for which the trustees of a trust scheme (whether or not a money purchase scheme) may by resolution modify the scheme under section 68 of the 1995 Act (power of trustees to modify schemes by resolution).
- (2) The purpose is to enable—
- (a) a scheme apportionment arrangement, or
  - (b) a regulated apportionment arrangement, to be entered into.
- (3) No modification may be made for the purpose in paragraph (2) unless the trustees have consulted such employers in relation to the scheme as they think appropriate.◀

**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 ►<sup>1</sup>section 75(6D)(b)(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 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.

11th March 2005

*Malcolm Wicks*  
Minister of State,  
Department for Work and Pensions

**Sch. 1**

<sup>1</sup>Sch. 1 substituted by Sch. 1 to S.I. 2008/731 as from 6.4.08.

▶<sup>1</sup>**SCHEDULE 1**

**Actuary's Certificate of Total difference between Scheme Assets and Liabilities and Liability share debt of Employer in a Multi-Employer Scheme [delete as appropriate]**

Given for the purposes of regulation 5(18) and regulation 6(8) of the Occupational Pension Schemes (Employer Debt) Regulations 2005 ("the Employer Debt Regulations")

**This certificate is subject to the Notes below**

Name of scheme

Date used as the applicable time for purposes of calculations

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

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

The amount of the total liabilities was [ ]

The amount of the total difference between the value of the ▶<sup>2</sup>assets of the scheme◀ and the amount of the liabilities of the scheme was [approximately]

<sup>2</sup>Words substituted in Sch. 1 by reg. 16(2) of S.I. 2010/725 as from 6.4.10.

**2 Multi-Employer Schemes: employer's share of the difference on the liability share basis**

[Name of Employer]'s debt was calculated on the liability share basis, where—

amount K was [£x];

amount L was [£y]; and

[Employer's] debt (that is, employer's liability share [after the relevant transfer deduction] [delete as appropriate] was [£d].

**3 Valuation principles**

The scheme's assets and liabilities are valued in accordance with section 75(5) of the Pensions Act 1995, regulations 5 and 6 of the Employer Debt Regulations and any relevant ▶<sup>3</sup>FRC standards.◀

<sup>3</sup>Words substituted in Sch. 1 by para. 7(d) of Sch. to S.I. 2012/1817 as from 9.8.12.

**[4 Approximations**

With the agreement of the trustees or managers of the scheme, approximate calculations were used in arriving at the amount of the liabilities at] [[specify] above.] [Delete as appropriate]

Signature

Date

Name

Qualification

Address

Name of employer  
(if applicable)

Notes:

The references to—

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

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“liability proportion” means ►<sup>1</sup>“K divided by L”◄ where—

- (a) “K” equals the amount of a scheme’s liabilities attributable to an employer in accordance with paragraph (4) of regulation 6 of the Employer Debt Regulations; and
- (b) “L” equals the total amount of the scheme’s liabilities attributable to employment with the employers;

“liability share” means an amount equal to the liability proportion ►<sup>1</sup>multiplied by the total◄ difference between the value of the assets and the amount of the liabilities of the scheme;

“multi-employer scheme” means a scheme (or a section of a scheme treated pursuant to regulation 8 of the Employer Debt Regulations as a separate scheme) in relation to which there is more than one employer;

“relevant transfer deduction” means the amount of the relevant transfer liabilities less the value of the corresponding assets, by which the liability share is to be reduced by virtue of regulation 6(6)(a) of the Employer Debt Regulations;

“share of the difference” means the amount calculated as at the applicable time that is an employer’s share of the total difference between the value of the assets and the amount of the liabilities of the scheme.

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] [delete if scheme had commenced winding-up on the applicable date].

►<sup>2</sup>◄

The value of the assets was provided by the trustees or managers of the scheme by relying on an updated asset assessment, that they decided to use in accordance with the conditions in regulation 5(5) of the Employer Debt Regulations [delete as appropriate].

The liabilities were calculated and verified by relying on an ►<sup>2</sup>updated liabilities assessment◄ which the trustees or managers of the scheme decided to use in accordance with the conditions in regulation 5(11) of the Employer Debt Regulations [delete as appropriate].

Where approximate calculations are used in arriving at the amount of liabilities, the amount calculated on a more accurate basis may be significantly different.

►<sup>2</sup>The total amount of the employer’s debt will be the amount stated in paragraph 2 of the certificate plus any cessation expenses (as defined in regulation 2(1) of the Employer Debt Regulations). See regulation 6(1)(e)(ii) of the Employer Debt Regulations.◄

In the case of multi-employer schemes:

The amount of the liabilities attributed to each of the employers was determined by the trustees or managers of the scheme in accordance with regulation 6(4) of the Employer Debt Regulations.

The liability share amount was reduced to reflect a relevant transfer deduction under regulation 6(5) of the Employer Debt Regulations [delete as appropriate].◄

►<sup>1</sup>**SCHEDULE 1A** Regulation 6C(4) and 7(11)

**Withdrawal Arrangements and Approved Withdrawal Arrangements**

Conditions for withdrawal arrangements and approved withdrawal arrangements

**1.** The conditions a withdrawal arrangement, or a withdrawal arrangement after it has been approved by the Authority, must comply with are—

- (a) the trustees or managers, the cessation employer and the guarantor are parties;
- (b) it provides the date on which it is to come into force;
- (c) it provides that at or before the time specified the cessation employer will pay—
  - (i) in the case of a withdrawal arrangement, the withdrawal arrangement share; or
  - (ii) in the case of an approved withdrawal arrangement, the approved withdrawal arrangement share;

<sup>1</sup>Words in defs. of “liability proportion” & “liability share” substituted by reg. 12(a) & (b) of S.I. 2011/2973 as from 27.1.12.

<sup>2</sup>Words omitted, substituted & inserted in Sch. 1 by reg. 16(3)-(5) of S.I. 2010/725 as from 6.4.10.

<sup>1</sup>Sch. 1A substituted by Sch. 2 to S.I. 2008/731 as from 6.4.08.



## Sch. 1A

- (d) where the withdrawal arrangement share or approved withdrawal arrangement share will be paid in instalments, the dates for payment of such instalments;
- (e) it provides that the guarantors will pay an amount or amounts equal to amount B;
- (f) it provides that if an event specified in paragraph 3 of this Schedule occurs before amount B has been paid and while the agreement is still in force, the guarantors will pay amount B;
- (g) it specifies whether amount B is calculated under either sub-paragraph (2) or (3) of paragraph 5 of this Schedule;
- (h) specifies where there is more than one guarantor, whether the guarantors are jointly or jointly and severally liable;
- (i) provides details of any relevant transfer deduction which may apply, the anticipated relevant transfer liabilities, the anticipated corresponding assets and the anticipated time scale for finalisation of the relevant transfer deduction;
- (j) it provides that amounts payable under the withdrawal arrangement or approved withdrawal arrangement are payable to the trustees or managers of the scheme;
- (k) it provides that one or more parties to the withdrawal arrangement or approved withdrawal arrangement are to meet any expenses incurred by the parties in connection with one or both of the following—
  - (i) the making of the arrangement;
  - (ii) the making of any calculations by the actuary for the purpose of the arrangement;
- (l) the arrangement will continue in force until—
  - (i) the winding up of the scheme is completed;
  - (ii) in the case of an approved withdrawal arrangement, the Authority issues a notice to the parties to the arrangement stating that the Authority considers that the arrangement is no longer required; or
  - (iii) the arrangement is replaced by another arrangement that is in the case of an approved withdrawal arrangement approved by the Authority as an approved withdrawal arrangement,

whichever occurs first.

**Actuarial certificates**

- 2. The amount of the liabilities of a scheme which are to be taken into account—
  - (a) for the purposes of a withdrawal arrangement share or an approved withdrawal arrangement share must be certified by the actuary in the form set out in Schedule 1C to these Regulations;
  - (b) to determine amount B under sub-paragraph (3) of paragraph 5 of this Schedule must be certified by the actuary in the form set out in Schedule 1D to these Regulations;
  - (c) to determine amount B under sub-paragraph (2) of paragraph 5 of this Schedule must be certified by the actuary after the guarantee time in the form set out in Schedule 1D to these Regulations.

**Events for payment of amount B**

- 3. The events where amount B must be paid are—
  - (a) the scheme commences winding-up;
  - (b) a relevant event occurs in relation to the last remaining employer in relation to the scheme (where the last remaining employer is the only employer remaining who has not had a relevant event);
  - (c) in the case of an approved withdrawal arrangement, the Authority issues a notice to the parties to the arrangement stating that it considers that amount B (or the balance remaining) should be paid; or
  - (d) a date on which the guarantors agree to pay and the trustees or managers agree to receive payment of amount B.

**Calculation of amount A**

- 4.—(1) Amount A shall be equal to either of the following amounts—
  - (a) where a relevant transfer deduction does not apply to a withdrawal

arrangement share or an approved withdrawal arrangement share, the liability proportion of the scheme shortfall amount; or

- (b) where a relevant transfer deduction applies to a withdrawal arrangement share or an approved withdrawal arrangement share, the liability proportion of the scheme shortfall amount minus the relevant transfer deduction.

(2) For the purposes of sub-paragraph 1(b), the relevant transfer deduction shall be determined by calculating the relevant transfer liabilities and the corresponding assets in accordance with regulation 5.

(3) The scheme shortfall amount is the amount of the difference as at the applicable time between the value of the assets and the amount of the liabilities of the scheme determined, calculated and verified in accordance with paragraph (3).

(4) The scheme shortfall amount and, for the purposes of this paragraph, the relevant transfer deduction shall be determined, calculated and verified as follows—

- (a) where at the applicable time the trustees or managers of the scheme have received its first actuarial valuation under Part 3 of the 2004 Act, in accordance with regulation 5, but that regulation shall apply as if—
- (i) paragraph (11) provided the following—

“(11) The amount of the liabilities in respect of pensions and other benefits are to be calculated and verified by the actuary using the same methods and assumptions as were set out in the most recent statement of funding principles under Part 3 of the 2004 Act.”, and

- (ii) paragraph (12) were omitted.

- (b) where at the applicable time the trustees or managers of the scheme have not received its first actuarial valuation under Part 3 of the 2004 Act, in accordance with paragraph (4).

(5) Where sub-paragraph (b) of paragraph (3) applies, the amounts or value of the assets and liabilities of a scheme and, for the purposes of this paragraph the relevant transfer deduction, must be determined, calculated and verified by the trustees or managers of the scheme and the Actuary at the application time in accordance with—

- (a) regulation 3 (excluded assets), regulation 4 (contribution notices etc), regulation 5 (valuation of assets), regulation 6 (valuation of protected liabilities) and regulation 7 (alternative valuation of assets and protected liabilities in specific cases) of the PPF Valuation Regulations; and
- (b) guidance issued by the Board of the PPF;

(6) For the purposes of paragraph (4), in the PPF Valuation Regulations—

- (i) references to “section 143 valuations” and provisions which relate to section 143 valuations shall be disregarded;
- (ii) references to “relevant time” shall be read as if they were references to “applicable time”; and
- (iii) references to “section 179 valuations” shall be read as if they were references to a valuation for the purposes of section 75(4) of the 1995 Act.

### Calculation of amount B

5.—(1) Amount B must be calculated in accordance with either sub-paragraph (2) or (3).

(2) Where a withdrawal arrangement or approved withdrawal arrangement provides that amount B is to be calculated in accordance with this paragraph, amount B is equal to the amount (if any) that would be the amount of the liability share 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; and
- (b) the cessation employer had not entered into a withdrawal arrangement or an approved withdrawal arrangement.

(3) When the withdrawal arrangement or approved withdrawal arrangement provides that amount B is to be calculated in accordance with this paragraph, amount B is equal to the amount of the liability share that would have been treated as due from the cessation employer under section 75(4) of the 1995 Act if the cessation employer had not entered into a withdrawal arrangement or approved withdrawal arrangement, less the sum of—

- (a) in the case of a withdrawal arrangement, the withdrawal arrangement share or

- in the case of an approved withdrawal arrangement, the approved withdrawal arrangement share;
- (b) in the case of a withdrawal arrangement, if the amount that the withdrawal arrangement provides for the cessation employer to pay exceeds the withdrawal arrangement share, an amount equal to that excess.

#### Approval of withdrawal arrangements in advance

6.—(1) A withdrawal arrangement may be approved by the Authority in advance of an employment-cessation event occurring in relation to an employer and for the purposes of approving a withdrawal arrangement prior to an employment-cessation event occurring in relation to an employer, references in this Schedule and regulations 7 to “cessation employer”, “approved withdrawal arrangement share”, “amount B”, “amount A”, “cessation expenses”, “guarantors” and “relevant transfer deduction” shall be read accordingly.

(2) Where an approved withdrawal arrangement has been approved prior to an employment-cessation event regulation 7 shall apply as if—

- (a) following an employment-cessation event occurring in relation to the employer who is party to the approved withdrawal arrangement, the employer gave the notice required under regulation 7(1);
- (b) the Authority issued the directions under regulation 7(1);
- (c) at the time when the approved withdrawal arrangement comes into force regulation 7(6) applies and the approved withdrawal arrangement share and amount B are treated as debts due.

#### Replacement withdrawal arrangements

7.—(1) Where a withdrawal arrangement is replaced with an amended withdrawal arrangement or an amended approved withdrawal arrangement, paragraph 1, regulation 6B and regulation 7 shall apply to the amended withdrawal arrangement or amended approved withdrawal arrangement as they applied to the original arrangement.◀

<sup>1</sup>Sch. 1B substituted for Sch. 1B to 1D by Sch. 3 to S.I. 2008/731 as from 6.4.08.

### ►<sup>1</sup>SCHEDULE 1B

Regulation 6D

#### Notifiable Events

1.—(1) Where a withdrawal arrangement or an approved withdrawal arrangement is in force in relation to a scheme, each of the guarantors must give notice to the Authority if such an event as is mentioned in sub-paragraph (2) occurs in relation to that person.

(2) The events referred to in sub-paragraph (1) are—

- (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 PPF 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) ►<sup>2</sup>◀

(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) ►<sup>2</sup>◀

<sup>2</sup>Paras. 1(2)(e) & (g) omitted from Sch. 1B by reg. 17(2) of S.I. 2010/725 as from 6.4.10.

- (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).

(3) 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.

(4) 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.

2.—(1) The trustees or managers of a scheme must give notice to the Authority of any decision by them to take action which will, or is intended to, result in

▶<sup>1</sup>(a)◀ any entering into a scheme apportionment arrangement on or after the applicable time▶<sup>1</sup>; or

(b) a flexible apportionment arrangement taking effect.◀

(2) A notice under sub-paragraph (1) must be given in writing as soon as reasonably practicable after the making of the decision.

3.—(1) No duty to which a person is subject ▶<sup>2</sup>◀ is to be regarded as contravened merely because of any information or opinion contained in a notice under paragraph 1 or 2.

(2) But sub-paragraph (1) does not require any person to disclose protected items within the meaning of section 311 of the 2004 Act (protected items).

(3) Section 10 of the 1995 Act (civil penalties) applies to any person who without reasonable excuse fails to comply with an obligation imposed on him under paragraph 1 or 2.

<sup>1</sup>Sub-para. (a) created from para. 2(1) & sub-para. (b) added by reg. 13(a) & (b) of S.I. 2011/2973 as from 27.1.12.

<sup>2</sup>Words omitted in para. 3(1) of Sch. 1B by reg. 17(3) of S.I. 2010/725 as from 6.4.10.

**SCHEDULE 1C** Paragraph 2(a) of Schedule 1A

**Actuary’s Certificate for Withdrawal Arrangement Share or Approved Withdrawal Arrangement Share in Multi-Employer Scheme**

Given for the purposes of paragraph 2(a) of Schedule 1A to the Occupational Pension Schemes (Employer Debt) Regulations 2005 (“the Employer Debt Regulations”)

**This certificate is subject to the Notes below**

Name of scheme

Date used as the applicable time for purposes of calculations

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

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

The amount of the total liabilities was [approximately]

The amount of the total difference between the value of the assets in the multi-employer scheme and the amount of the liabilities was [approximately]

## Sch. 1C

**2 Employer's withdrawal arrangement share or approved withdrawal arrangement share**

[name of Employer]'s [approved] withdrawal arrangement share [after the relevant transfer reduction] [delete as appropriate] was

In the case of an approved withdrawal arrangement share, the amount A which applied for the purposes of determining [name of Employer]'s approved withdrawal arrangement share was

<sup>1</sup>Para. 3 of Certificate, substituted by reg. 18(2) of S.I. 2010/725 as from 6.4.10.

**▶<sup>1</sup>3 Valuation principles**

The scheme's assets and liabilities are valued in accordance with—

- (a) section 75(5) of the Pensions Act 1995, and
- (b) regulation 5, 6 [, 6C(3) and 7(5)] [delete as appropriate] of the Employer Debt Regulations.

“relevant transfer deduction” means the amount of the relevant transfer liabilities less the value of the corresponding assets; ◀

**[4 Approximations**

With the agreement of the trustees or managers of the scheme, approximate calculations were used in arriving at the amount of the liabilities at] [[specify] above. [Delete as appropriate]

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

Notes:

The references to—

“amount A” means the amount calculated in accordance with paragraph 4 of Schedule 1A to the Employer Debt Regulations;

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

“approved withdrawal arrangement share” means an amount that is—

- (a) a cessation employer's share of the difference,
- (b) less than amount A, and
- (c) payable by a cessation employer pursuant to an approved withdrawal arrangement;

“multi-employer scheme” means a scheme (or a section of a scheme treated pursuant to regulation 8 of the Employer Debt Regulations as a separate scheme) in relation to which there is more than one employer;

▶<sup>2</sup>“relevant transfer deduction” means the amount of the relevant transfer liabilities less the value of the corresponding assets; ◀

“share of the difference” means the amount calculated as at the applicable time that is an employer's share of the total difference between the value of the assets and the amount of the liabilities of the scheme;

“withdrawal arrangement share” means an amount that is—

- (a) a cessation employer's share of the difference,
- (b) equal to or greater than amount A, and
- (c) payable by a cessation employer pursuant to a withdrawal arrangement.

▶<sup>2</sup>◀.

The value of the assets was provided by the trustees or managers of the scheme by relying on an updated asset assessment, that they decided to use in accordance with the conditions in regulation 5(5) of the Employer Debt Regulations [delete as appropriate].

<sup>2</sup>Defn. of “relevant transfer deduction”, words in para. 4 of notes substituted & para. 2 of notes omitted by reg. 18(3)-(4) of S.I. 2010/725 as from 6.4.10.



The liabilities were calculated and verified by relying on an <sup>1</sup>updated liabilities assessment <sup>2</sup>which the trustees or managers of the scheme decided to use in accordance with the conditions in regulation 5(11) of the Employer Debt Regulations.

<sup>1</sup>Words in para. 4 of notes substituted by reg. 18(5) of S.I. 2010/725 as from 6.4.10.

Where approximate calculations are used in arriving at the amount of liabilities, the amount calculated on a more accurate basis may be significantly different.

The withdrawal arrangement share amount was reduced to reflect a relevant transfer deduction under regulation 6C(3) of the Employer Debt Regulations [delete as appropriate].

The approved withdrawal arrangement share was calculated by reference to an amount A which was reduced to reflect where the Authority permitted, under regulation 7(5) of the Employer Debt Regulations, a relevant transfer deduction to apply [delete as appropriate].

<sup>2</sup>The total amount of the employer’s debt will be the amount of the (approved) withdrawal arrangement share stated in paragraph 2 of the certificate plus any cessation expenses (as defined in regulation 2(1) of the Employer Debt Regulations). See regulation 6(1)(e)(ii) of the Employer Debt Regulations. <sup>3</sup>

<sup>2</sup>Words inserted in notes to Sch. 1C & words substituted in para. 2 of the certificate in Sch. 1D by reg. 18(6) & 19(2) of S.I. 2010/725 as from 6.4.10.

**SCHEDULE 1D**

Paragraph 2(b) and (c) of Schedule 1A

**Actuary’s Certificate for Amount B under a Withdrawal Arrangement or an Approved Withdrawal Arrangement in a Multi-Employer Scheme**

Given for the purposes of sub-paragraph (b) or (c) of paragraph 2 of Schedule 1A to the Occupational Pension Schemes (Employer Debt) Regulations 2005 (“the Employer Debt Regulations”)

**This certificate is subject to the Notes below**

Name of multi-employer scheme

Date used for purposes of calculations

**1 Amount B**

For the purposes of [sub-paragraph (2)] [sub-paragraph (3)] [delete as appropriate] of paragraph 5 of Schedule 1A to the Employer Debt Regulations, the guarantors’ amount B for the purposes of a withdrawal arrangement or an approved withdrawal arrangement was

**2 Valuation principles**

The value of the scheme’s assets and the amount of the liabilities are valued in accordance with section 75(5) of the Pensions Act 1995, regulation 5 of, and paragraph 5(2) or (3) of Schedule 1A to, <sup>2</sup>Employer Debt Regulations <sup>3</sup>and with relevant <sup>3</sup>FRC standards. <sup>4</sup>

<sup>3</sup>Words substituted in Sch. 1 by para. 7(d) of Sch. to S.I. 2012/1817 as from 9.8.12.

Signature

Date

Name

Qualification

Address

Name of employer (if applicable)

Notes:

The references to—

“amount B” means the amount calculated in accordance with sub-paragraph (2) or (3) of paragraph 5 of Schedule 1A to the Employer Debt Regulations;

“approved withdrawal arrangement” means an arrangement that meets the conditions in paragraph 1 of Schedule 1A to the Employer Debt Regulations and is approved by the Authority under regulation 7 of those Regulations;

“guarantors” means such one or more of the parties to a withdrawal arrangement or an approved withdrawal arrangement who are specified in the arrangement as the persons who have given guarantees in relation to amount B for the purposes of the arrangement;

“withdrawal arrangement” means an arrangement that meets the conditions specified in paragraph 1 of Schedule 1A to the Employer Debt Regulations and meets the test in paragraph (1) of regulation 6C of those Regulations;

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] [delete if scheme had not commenced winding-up on the applicable date].

<sup>1</sup>Para. 3 in the notes omitted & words in para. 5 to the notes substituted by reg. 19(3) & (4) of S.I. 2010/725 as from 6.4.10.

►<sup>1</sup>◄

The value of the assets was provided by the trustees or managers of the scheme by relying on an updated asset assessment, that they decided to use in accordance with the conditions in regulation 5(5) of the Employer Debt Regulations [delete as appropriate].

The liabilities were calculated and verified by relying on an ►<sup>1</sup>updated liabilities assessment◄ which the trustees or managers of the scheme decided to use in accordance with the conditions in regulation 5(11) of the Employer Debt Regulations.

A relevant transfer deduction (as defined in regulation 2(1) of the Employer Debt Regulations) applied [delete as appropriate].◄

[Schedule 2 makes various amendments to S.I.’s 1996/1536, 1996/3126 and 1996/3127.]

[Paragraph 1 of Schedule 2 is revoked by S.I. 2005/3377.]

## 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 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.