

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:

Preliminary

Citation, commencement, application and extent

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

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

(3) These Regulations do not apply to—

- (a) any scheme other than a money purchase scheme if a debt to the trustees or managers of the scheme has been treated as arising under section 75(1) of the 1995 Act before that date;
- (b) any scheme which immediately before that date was regarded by virtue of regulation 2 of the Occupational Pension Schemes (Winding Up) Regulations 1996(c) 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(d) began to wind up before that date.

(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(e);

“the 1995 Act” means the Pensions Act 1995;

“the 2004 Act” means the Pensions Act 2004;

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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.
 - (c) S.I. 1996/3126.
 - (d) 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).
 - (e) 1993 c. 48.

“the 1996 Regulations” means the Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations 1996(a);

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

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

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

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

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

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

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

- (a) that the scheme has been approved by the Commissioners of the Board of Inland Revenue for the purposes of section 590 or 591 of the Taxes Act at any time before 6th April 2006; or
- (b) that the scheme is registered under section 153 of the Finance Act 2004(c);

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

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

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

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

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

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).

(a) S.I. 1996/3128.

(b) S.I. 1996/1536.

(c) 2004 c. 12.

(d) 1988 c. 1.

(e) The publications GN19 and GN27 may be obtained from the Institute of Actuaries, Staple Inn Hall, High Holborn, London WC1V 7QJ and from the Faculty of Actuaries, Maclaurin House, 18 Dublin Street, Edinburgh EH1 3PP.

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^(a) (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^(b) (power to provide for pensions for Members of the House of Commons etc.);
 - (d) a scheme in respect of which a relevant public authority, as defined in section 307(4) of the 2004 Act, has given a guarantee or made any other arrangements for the purposes of securing that the assets of the scheme are sufficient to meet its liabilities;
 - (e) a scheme which does not meet the tax condition;
 - (f) a scheme which—
 - (i) has been categorised by the Commissioners of the Board of Inland Revenue for the purposes of its approval as a centralised scheme for non-associated employers;
 - (ii) which is not contracted-out; and
 - (iii) under the provisions of which the only benefits that may be provided on or after retirement (other than money purchase benefits derived from the payment of voluntary contributions by any person) are lump sum benefits which are not calculated by reference to a member's salary;
 - (g) a scheme with such a superannuation fund as is mentioned in section 615(6) of the Taxes Act (fund established to provide superannuation benefits in respect of persons' employment in a trade or undertaking wholly outside the United Kingdom);
 - (h) a scheme with fewer than two members;
 - (i) a scheme with fewer than twelve members where all the members are trustees of the scheme and either—
 - (i) the rules of the scheme provide that all decisions are made only by the trustees who are members of the scheme by unanimous agreement; or
 - (ii) the scheme has a trustee who is independent in relation to the scheme for the purposes of section 23 of the 1995 Act^(c) (power to appoint independent trustees) (see subsection (3) of that section) and is registered in the register maintained by the Authority in accordance with regulations made under subsection (4) of that section;
 - (j) a scheme with fewer than twelve members where all the members are directors of a company which is the sole trustee of the scheme and either—
 - (i) the rules of the scheme provide that all decisions are made only by the members of the scheme by unanimous agreement, or
 - (ii) one of the directors of the company is independent in relation to the scheme for the purposes of section 23 of the 1995 Act and is registered in the register maintained by the Authority in accordance with regulations made under subsection (4) of that section;
 - (k) the Chatsworth Settlement Estate Pension Scheme; or
 - (l) the scheme established by the Salvation Army Act 1963^(d).

(a) 1972 c. 11.

(b) 1987 c. 45.

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

(d) 1963 c.xxxii.

(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).

Valuations

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

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

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

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

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

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

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

(6) For the purposes of this regulation—

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

(7) In its application for the purposes of this regulation in a case where the applicable time falls after the scheme has begun to be wound up, regulation 6(1) of the MFR Regulations^(a) has effect with the addition after sub-paragraph (c) of the words—

“; and for the purposes of sub-paragraph (a), regulation 5(1)(a) of the Occupational Pension Schemes (Investment) Regulations 1996 (exclusion of employer-related investments over 5 per cent. of current market value) shall be disregarded.”.

(8) This regulation has effect subject to regulation 7 (multi-employer schemes: valuations for employment cessation events).

Multi-employer schemes

Multi-employer schemes: general

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

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

(2) For the purposes of paragraph (1), an employer's share of the difference is—

- (a) such proportion of the total difference as, in the opinion of the actuary after consultation with the trustees or managers, the amount of the scheme's liabilities attributable to employment with that employer bears to the total amount of the scheme's liabilities attributable to employment with the employers; or
- (b) if the scheme provides for the total amount of that debt to be otherwise apportioned amongst the employers, the amount due from that employer under that provision.

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

- (a) the total amount of the scheme's liabilities which are attributable to employment with the employers; and
- (b) the amount of the liabilities attributable to employment with any one employer,

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

are such amounts as are determined, calculated and verified by the actuary in accordance with the guidance given in GN 19; and a determination under this paragraph must be certified by the actuary as being in accordance with that guidance.

(4) For the purposes of these Regulations an employment-cessation event occurs in relation to an employer if he ceases to be an employer employing persons in the description of employment to which the scheme relates at a time when at least one other person continues to employ such persons.

(5) For the purposes of paragraph (1), the cessation expenses attributable to an employer are all expenses which, in the opinion of the trustees or managers of the scheme, are likely to be incurred in connection with the employment-cessation event occurring in relation to the employer.

Multi-employer schemes: valuations for employment cessation events

7.—(1) This regulation applies where—

- (a) section 75 applies with the modifications referred to in regulation 6; and
- (b) the amount of the liabilities of a scheme immediately before an employment cessation event is being determined in order to determine whether a debt is to be treated as due from the employer under section 75(4) of the 1995 Act.

(2) Regulation 5 applies—

- (a) with the omission of paragraphs (1)(a) and (2) and the references to those provisions in paragraph (1)(b), (c) and (d) (by virtue of which liabilities for pensions and other benefits are to be valued on the assumption that they will be discharged by the purchase of annuities); and
- (b) with the omission of paragraph (3).

Multi-employer schemes: sectionalised schemes

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

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

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

(2) Condition A is that contributions payable to the scheme by an employer, or by a member in employment under that employer, are allocated to that employer's section (or, if more than one section applies to that employer, to the section which is appropriate in respect of the employment in question).

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

(4) In their application to a scheme—

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

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

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

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

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

Former employers

Former employers

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

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

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

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

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

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

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

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

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 in respect of any money purchase scheme exceeds the value of the unallocated assets of the scheme either—
- (a) at the time when the amount first becomes payable to the Secretary of State; or
 - (b) at a later time designated by the trustees or managers of the scheme for the purposes of this paragraph.
- (3) The criminal reduction conditions are that—
- (a) a reduction in the aggregate value of the allocated assets of the scheme occurs;
 - (b) the reduction is attributable to an act or omission which—
 - (i) constitutes an offence prescribed for the purposes of section 81(1)(c) of the 1995 Act; or
 - (ii) in the case of an act or omission which occurred outside England and Wales or Scotland, would constitute such an offence if it occurred in England and Wales or in Scotland; and
 - (c) immediately after the act or omission or, if that time cannot be determined, at the earliest time when the auditor of the scheme knows that the reduction has occurred, the amount of that reduction exceeds the value of the unallocated assets of the scheme.
- (4) In this section—
- “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);
- “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 and 7.

- (2) In the case of a scheme other than an ear-marked scheme—
- (a) the value at any time of the unallocated assets of the scheme is to be taken to be the value of those assets as certified in a statement by the scheme’s auditor; and
 - (b) the amount of the criminal reduction in the aggregate value of the allocated assets of the scheme at any time is to be calculated by subtracting the actual aggregate value of those assets at that time from the notional aggregate value of those assets.
- (3) The notional aggregate value mentioned in paragraph (2)(b) is to be taken to be the sum of the values of the assets—
- (a) as stated in the audited accounts which most immediately precede the relevant act or omission; or
 - (b) if there are none, as certified in a statement by the scheme’s auditor,

(a) S.I. 2005/626.

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 the actuary, the amount of the scheme’s liabilities attributable to employment with that employer bears to the total amount of the scheme’s liabilities attributable to employment with the employers; or
- (b) if the scheme provides for the total amount of that debt to be otherwise apportioned amongst the employers, the amount due from that employer under that provision.

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

- (a) the total amount of the scheme’s liabilities which are attributable to employment with the employers; and
- (b) the amount of the liabilities attributable to employment with any one employer,

are such amounts as are determined, calculated and verified by the actuary in accordance with the guidance given in GN 19; and a determination under this paragraph must be certified by the actuary as being in accordance with that guidance.”.

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

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 form set out in Schedule 1 may be modified appropriately.

(3) Paragraph (4) applies where—

- (a) a scheme applies to members in employment in the United Kingdom and members in employment outside the United Kingdom;
- (b) paragraph (2) does not apply to the scheme; and
- (c) part of the scheme meets paragraph (b) of the tax condition by virtue of that part having been treated as a separate scheme under section 611(3) of the Taxes Act that is treated as becoming a registered pension scheme under paragraph 1(1) of Schedule 36 to the Finance Act 2004 by virtue of paragraph 1(2) of that Schedule.

(4) If this paragraph applies—

- (a) section 75 of the 1995 Act and these Regulations (apart from this regulation) apply as if the approved and unapproved parts of the scheme were separate schemes; and
- (b) the reference to the scheme in the form set out in Schedule 1 may be modified appropriately.

(5) Paragraph (6) applies where—

- (a) a scheme has been such a scheme as is mentioned in paragraph (1) or (3),
- (b) the scheme is divided into two or more sections, some or all of which apply only to members who are not in pensionable service under the section;
- (c) the provisions of the scheme have not been amended so as to prevent the conditions in paragraph (1) or, as the case may be, paragraph (3) being met in relation to two or more sections; and

- (d) in relation to one or more sections of the scheme those conditions have ceased to be met at any time by reason only of there being no members in pensionable service under the section and, in the case of paragraph (1), no contributions which are to be allocated to it.
- (6) If this paragraph applies—
 - (a) section 75 of the 1995 Act and these Regulations (apart from this regulation) apply as if any section in relation to which those conditions have ceased to be met were a separate scheme; and
 - (b) the reference to the scheme in the form set out in Schedule 1 may be modified appropriately.
- (7) Before 6th April 2006 paragraph (3) applies with the substitution for sub-paragraph (c) of the following paragraph—
 - “(c) part of the scheme meets paragraph (a) of the tax condition by virtue of section 611(3) of the Taxes Act.”

Schemes with partial government guarantee

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

Supplementary

Modification of schemes: apportionment of section 75 debts

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

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

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

SCHEDULE 1

Regulation 5

Form of Actuary's Certificate

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

Name of scheme

Date as at which valuation is made

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

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

The value of the assets of the scheme was

The amount of the liabilities was

The amount of the difference was

2 Valuation principles

The scheme's assets and liabilities are valued in accordance with section 75(5) of the Pensions Act 1995, the Occupational Pension Schemes (Employer Debt) Regulations 2005 and the guidelines on winding up and scheme asset deficiency (GN19) and on minimum funding requirement (GN27) prepared and published by the Institute of Actuaries and the Faculty of Actuaries (so far as those guidelines are applicable).

Signature Date

Name Qualification

Address Name of employer (if applicable)

Note:

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

SCHEDULE 2

Regulation 18

Consequential Amendments

The MFR Regulations

- 1.—(1) The MFR Regulations are amended as follows.
- (2) In regulation 2(2)—
 - (a) for “relevant insolvency event” substitute “relevant event”; and
 - (b) for “same meaning as in section 75” substitute “meaning given in section 75(6A)”.
- (3) In regulation 13 (duty to obtain minimum funding valuations: section 75 debts in multi-employer schemes)—
 - (a) in paragraph (1) for “section 75(1)” substitute “section 75(2) or (4)”; and
 - (b) in paragraph (3) for “has the same meaning as in section 75(3)” substitute “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”.
- (4) In regulation 19 (records) in paragraph (3)(c) for “section 75(1)” substitute “section 75(2) or (4)”.
- (5) In Schedule 4 (methods of securing shortfall in cases of serious underprovision)—
 - (a) in paragraph 1(1) for the definition of “section 75(1) shortfall” substitute—

““section 75 shortfall”, in relation to a scheme, means so much of the amount treated by section 75(2) or (4) as a debt due from the employer to the trustees or managers at the applicable time (as defined in regulation 2(1) of the Occupational Pension Schemes (Employer Debt) Regulations 2005), as is attributable to the value of the scheme assets falling short of the amount of the scheme liabilities by more than 10 per cent;”
 - (b) for “section 75(1) shortfall”, wherever else it occurs, substitute “section 75 shortfall”;
 - (c) in paragraphs 1(2), 2(2)(a), 3(3)(a), 4(2)(b) and (4) for “relevant insolvency event” substitute “relevant event”.

The Occupational Pension Schemes (Winding Up) Regulations 1996

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

The Occupational Pension Schemes (Investment) Regulations 1996

3. In regulation 6 of the Occupational Pension Schemes (Investment) Regulations 1996(a) (investments to which restrictions do not apply) in paragraph (7)(c) for “section 75(1)” substitute “section 75(2) or (4)”.

(a) S.I. 1996/3127.

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.

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