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STATUTORY INSTRUMENTS

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**2005 No. 678**

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

*Former employers*

**[<sup>F1</sup>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 [<sup>F2</sup>and, in the case of a frozen scheme includes any person who employed persons in the description of employment to which the scheme relates immediately before the relevant time,] 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 19<sup>th</sup> 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 19<sup>th</sup> December 1996 and before 6<sup>th</sup> 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 6<sup>th</sup> April 1997 and before 6<sup>th</sup> 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; or
  - (iii) on or after 6<sup>th</sup> 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 [<sup>F3</sup>A to K is met;]
- (d) in relation to a frozen scheme, at a time on or after 6<sup>th</sup> 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 [F4 A to J] is met[F5]; 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.]

[F6(3A) Where a scheme which has one or more deferred employers experiences a freezing event as defined in paragraph (2)(b), the deferred employers must all be treated as if they have ceased to employ persons in the description of employment to which the scheme relates immediately before the relevant time.]

(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 managers 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 6<sup>th</sup> 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 6<sup>th</sup> 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 6<sup>th</sup> 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 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 [F7 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.

(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.

[F8(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.]

[<sup>F9</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.]

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

(a) section 75(1) of the 1995 Act 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.]

#### Textual Amendments

- F1** Reg. 9 substituted (6.4.2008) by [The Occupational Pension Schemes \(Employer Debt and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/731\)](#), regs. 2(1), **10** (with reg. 2(3)-(8))
- F2** Words in reg. 9(2)(a) inserted (6.4.2018) by [The Occupational Pension Schemes \(Employer Debt and Miscellaneous Amendments\) Regulations 2018 \(S.I. 2018/237\)](#), regs. 1(2), **9(2)**
- F3** Words in reg. 9(3)(c)(iii) substituted (27.1.2012) by [The Occupational Pension Schemes \(Employer Debt and Miscellaneous Amendments\) Regulations 2011 \(S.I. 2011/2973\)](#), regs. 1(2), **11(2)(a)**
- F4** Words in reg. 9(3)(d) substituted (6.4.2010) by [The Occupational Pension Schemes \(Employer Debt and Miscellaneous Amendments\) Regulations 2010 \(S.I. 2010/725\)](#), regs. 1(2), **10(2)**
- F5** Reg. 9(3)(e) and word inserted (27.1.2012) by [The Occupational Pension Schemes \(Employer Debt and Miscellaneous Amendments\) Regulations 2011 \(S.I. 2011/2973\)](#), regs. 1(2), **11(2)(b)**
- F6** [Reg. 9\(3A\)](#) inserted (6.4.2018) by [The Occupational Pension Schemes \(Employer Debt and Miscellaneous Amendments\) Regulations 2018 \(S.I. 2018/237\)](#), regs. 1(2), **9(3)**
- F7** Words in reg. 9(13) inserted (6.4.2010) by [The Occupational Pension Schemes \(Employer Debt and Miscellaneous Amendments\) Regulations 2010 \(S.I. 2010/725\)](#), regs. 1(2), **10(3)**
- F8** [Reg. 9\(14A\)](#) inserted (6.4.2010) by [The Occupational Pension Schemes \(Employer Debt and Miscellaneous Amendments\) Regulations 2010 \(S.I. 2010/725\)](#), regs. 1(2), **10(4)**
- F9** [Reg. 9\(14B\)](#) inserted (27.1.2012) by [The Occupational Pension Schemes \(Employer Debt and Miscellaneous Amendments\) Regulations 2011 \(S.I. 2011/2973\)](#), regs. 1(2), **11(3)**

**Changes to legislation:**

There are currently no known outstanding effects for the The Occupational Pension Schemes (Employer Debt) Regulations 2005, Section 9.