

## STATUTORY INSTRUMENTS

# 2008 No. 731

## The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2008

### Citation and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2008.

(2) In these Regulations —

“the 1995 Act” means the Pensions Act 1995;

“the 2004 Act” means the Pensions Act 2004;

“the Employer Debt Regulations” means the Occupational Pension Schemes (Employer Debt) Regulations 2005 <sup>M1</sup>;

“the Multi-Employer Regulations” means the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations 2005 <sup>M2</sup>;

“the Entry Rules Regulations” means the Pension Protection Fund (Entry Rules) Regulations 2005 <sup>M3</sup>;

“the FSD Regulations” means the Pensions Regulator (Financial Support Directions etc.) Regulations 2005 <sup>M4</sup>;

“the Scheme Funding Regulations” means the Occupational Pension Schemes (Scheme Funding) Regulations 2005 <sup>M5</sup>.

### Marginal Citations

**M1** [S.I. 2005/678](#), amended by [S.I. 2005/993](#), 2224, 3377 and 3378, 2006/467 and 558 and 2007/60.

**M2** [S.I. 2005/441](#), the relevant amending instrument is [S.I. 2005/2113](#).

**M3** [S.I. 2005/590](#), the relevant amending instruments are [S.I. 2005/993](#) and 2153, 2006/580 and 2007/782.

**M4** [S.I. 2005/2188](#).

**M5** [S.I. 2005/3377](#), amended by [S.I. 2005/3380](#), 2006/1733 and 2007/60 and 814.

### Commencement and transitional provisions

2.—(1) Subject to the transitional provisions in paragraphs (3) to (8), these Regulations shall come into force on 6<sup>th</sup> April 2008 (“the commencement date”).

(2) Notwithstanding those provisions, regulation 5(12) of the Employer Debt Regulations, as substituted by these Regulations, shall apply when the amount of a debt arising under section 75(2) or (4) of the 1995 Act falls to be calculated after the commencement date.

(3) Paragraph (4) shall apply where before the commencement date—

- (a) a person ceased to employ at least one active member in relation to a scheme at a time when at least one other person continued to employ persons in the description of employment to which the scheme related, and

- (b) that event was not an employment-cessation event, under regulation 6(4) of the old Regulations, in relation to the scheme<sup>[F1]</sup>, and
  - (c) the scheme had not ceased to have active members.]
- (4) The definition of “employment-cessation event”<sup>[F2]</sup>referred to in paragraph (4A)] shall continue to apply after the commencement date, in the case of a person to whom paragraph (3) applies, until—
- (a) immediately after such time as that person has ceased to employ 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, or
  - (b) such time as that person employs an active member.
- <sup>[F3]</sup>(4A) The definition referred to in this paragraph is the definition of “employment-cessation event” as it appeared in regulation 6(4) of the old Regulations but with “who is not a defined contribution employer” inserted after “when at least one other person”.]
- (5) The old Regulations shall continue to apply on and after the commencement date in relation to a debt arising under section 75(2) or (4) of the 1995 Act where—
- (a) the applicable time, in relation to the debt arising under section 75(2) or (4) of the 1995 Act, is before the commencement date, or
  - (b) the employment-cessation event occurred before the commencement date.
- (6) The old Regulations shall continue to apply on and after the commencement date where a scheme commenced winding-up before the commencement date.
- (7) Paragraph (8) shall apply where—
- (a) an agreement is entered into before, on or within 12 months after the commencement date on the basis that a scheme's apportionment rule will apply after the commencement date in relation to a specific employment-cessation event, or in relation to a debt arising as a result of the commencement of winding-up of the scheme;
  - (b) the scheme's apportionment rule was in force before the date on which these Regulations were laid before Parliament; and
  - (c) the transaction to which the agreement related was considered before that date by the managing body of at least one of the parties to the agreement or of a connected or associated person of such a party.
- (8) The old Regulations shall continue to apply on and after the commencement date in relation to that employment-cessation event, or in relation to the winding-up of the scheme, where the employment-cessation event, or the commencement of winding-up, takes place during the period of 12 months beginning on the commencement date .
- (9) In paragraph (7)—
- (a) a “scheme's apportionment rule” means a scheme rule for the purposes of regulation 6(2) (b) of the old Regulations, 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;
  - (b) “managing body” means—
    - (i) in relation to a company or other corporate body, its board of directors or governing body;
    - (ii) in relation to a partnership, its partners;
    - (iii) in relation to an individual, that individual;

- (c) “connected or associated person” has the meaning given by section 123 of the 1995 Act (“connected” and “associated” persons).

(10) In this regulation, references to “the old Regulations” are to the Employer Debt Regulations as they existed before the commencement date.

- |           |  |
|-----------|--|
| <b>F1</b> | Reg. 2(3)(c) and word inserted (6.4.2010) by <a href="#">Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2010 (S.I. 2010/725)</a> , regs. 1(2), <b>22(2)</b> |
| <b>F2</b> | Words in reg. 2(4) substituted (6.4.2010) by <a href="#">Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2010 (S.I. 2010/725)</a> , regs. 1(2), <b>22(3)</b> |
| <b>F3</b> | Reg. 2(4A) inserted (6.4.2010) by <a href="#">Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2010 (S.I. 2010/725)</a> , regs. 1(2), <b>22(4)</b>            |

### **Amendment of the Employer Debt Regulations**

3. The Employer Debt Regulations are amended in accordance with the provisions of regulations 4 to 15.

### **Application and interpretation of the Employer Debt Regulations**

- 4.—(1) For regulation 1(3)(a) (citation, commencement, application and extent) substitute—
- “(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.”.
- (2) In regulation 2(1) (interpretation)—
- (a) in the definition of “employer” after “and regulations” insert “ 6, ”;
- (b) for the definition of “employment-cessation event” substitute—
- ““employment-cessation event” means in relation to a multi-employer scheme an event which is not a relevant event and which, subject to regulation 6A, occurs on the date on which—
- (a) an employer has ceased to employ at least one person who is an active member of the scheme, and
- (b) at least one other employer who is not a defined contribution employer continues to employ at least one active member of the scheme;”;
- (c) for the definition of “multi-employer scheme” substitute—
- ““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;”;
- (d) for the definition of “withdrawal arrangement” substitute—
- ““withdrawal arrangement” means an arrangement that meets the conditions specified in paragraph 1 of Schedule 1A and meets the funding test;”;
- (e) insert in the appropriate alphabetical places—
- ““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 subparagraph (2) or (3) of paragraph 5 of Schedule 1A;
- “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);

“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;

“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;

“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 “K/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 of the total difference between the value of the assets and the amount of the liabilities of the scheme;

“PPF” means the Pension Protection Fund established under Part 2 of the 2004 Act;

“the PPF Valuation Regulations” means the Pension Protection Fund (Valuation) Regulations 2005<sup>M6</sup>;

“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);

“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;
- (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) <sup>M7</sup>;

“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;
- (f) the trustees or managers consent to; 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;

“the Scheme Funding Regulations” means the Occupational Pension Schemes (Scheme Funding) Regulations 2005 <sup>M8</sup>;

“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;

“statutory funding objective” has the same meaning as in Part 3 of the 2004 Act;

“updated actuarial assessment” means—

- (a) 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 under section 224 of the 2004 Act; or
- (b) where the trustees or managers have not received a valuation of the scheme under section 224 of the 2004 Act, the actuary's estimate of the solvency of the scheme included in the most recent actuarial valuation of the scheme received by the trustees or managers, which in the opinion of the actuary is appropriate to use,

adjusted to the applicable time to reflect the actuary's assessment of changes between the effective date of that valuation and the applicable time in the value of the scheme's assets and of the matters set out in regulation 7(6)(a)(i) and (ii) of the Scheme Funding Regulations;

“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;

“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.”.

(3) For regulation 2(3) substitute—

“(3) References in these Regulations to BAS standards are to standards on winding up and scheme asset deficiency adopted or prepared, and from time to time revised, by the Board for Actuarial Standards.”.

(4) Omit regulation 2(4), and insert—

“(4A) For the purposes of regulations 6B, 6C 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 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, 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 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 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.”.

#### Marginal Citations

**M6** S.I. 2005/672, amended by S.I. 2005/993 and 2113, 2006/580 and 2007/782.

**M7** 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.

**M8** S.I. 2005/3377, amended by S.I. 2005/3380, 2006/1733 and 2007/60 and 814.

#### Valuation of assets and liabilities

5. For regulation 5 (calculation of the value of scheme liabilities and assets: defined benefit schemes) substitute—

##### “Calculation of the amount of scheme liabilities and value of scheme assets

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.

(3) The assets of the scheme shall be valued and the amount of the liabilities shall be determined and calculated by reference to the same date.

(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);

(b) any amounts treated as a debt due to the trustees or managers under section 75(2) or (4) of the 1995 Act (deficiencies in assets) or

section 228(3) of the 2004 Act (amounts due in accordance with a schedule of contributions) which are unlikely to be recovered without disproportionate cost or within a reasonable time;

- (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.
- (7) For the purposes of paragraph (6), “external liabilities” means—
  - (a) such liabilities of the scheme as are shown in the net assets statement in the relevant accounts and their amount shall be taken to be the amount shown in that statement in respect of them (and the liabilities in paragraph (8) are not to be included as external liabilities); or
  - (b) an estimate used for the purposes of an updated asset statement.
- (8) Subject to paragraphs (9), (13) and (15), 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)(c); 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 (“the receiving scheme”) 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
  - “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 is 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) 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.

(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 updated actuarial assessment 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.

(15) If at the applicable time the scheme has not commenced winding-up and a withdrawal arrangement or an approved withdrawal arrangement is in force before the applicable time, the amount B treated as a debt due under the arrangement shall be included as an asset of the scheme, provided that the trustees or managers are reasonably satisfied that, as at the applicable time, the guarantors have sufficient financial resources to be likely to pay amount B.

(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 updated actuarial assessment,

he must apply any relevant BAS standards in making that calculation or verification, or preparing that update.

(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).”.

### **Amendment of regulation 6 (multi-employer schemes: general) of the Employer Debt Regulations**

6. For paragraphs (2) to (5) of regulation 6 (multi-employer schemes: general) substitute—

“(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;
- (b) subject to sub-paragraph (c), where liabilities to or in respect of any member arose as a result of pensionable service with more than one employer, the liabilities attributable to Employer A in respect of any such member shall comprise only liabilities which arose during or as a result of pensionable service with Employer A (including any liabilities attributable to a transfer received by the scheme during that period or periods of pensionable service); 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 or managers 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 BAS standards and shall be certified by him in the form set out in Schedule 1 to these Regulations.”.

#### **Employment-cessation events, scheme apportionment arrangements, withdrawal arrangements and notifiable events**

7. After regulation 6 insert—

##### **“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 as soon as possible and in any event within one month 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 at 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—
- (a) the day which is twelve months later, 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.

### **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.
- (2) Paragraph (1) shall not apply where—
- (a) the employer's scheme apportionment arrangement share will be higher than the liability share and the trustees or managers are satisfied that the employer is able to pay the scheme apportionment arrangement share; or
  - (b) at the date of the agreement the scheme had commenced winding-up, and the employer's scheme apportionment arrangement share will be lower than his liability share and the trustees or managers are satisfied that—
    - (i) it is likely that the employer would be unable to pay the liability share if it applied; and
    - (ii) it is likely that the employer will be able to pay the scheme apportionment arrangement share.

### **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) When the 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
- (b) section 75(4) of the 1995 Act shall apply as if amount B is treated as a debt due on the guarantee time and the guarantors who are party to the withdrawal arrangement shall be jointly liable unless the withdrawal arrangement provides that they shall be 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 direct otherwise.”.

### **Approved withdrawal arrangements and regulated apportionment arrangements**

**8.** For regulation 7 (multi-employer schemes: employment-cessation events and withdrawal arrangements), regulation 7A (calculation of amounts due from cessation employer by virtue of regulation 7), regulation 7B (calculation of amounts due from guarantors by virtue of regulation 7) substitute—

#### **“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).

(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 are satisfied that it is reasonable to do so having regard to such matters as the Authority consider 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 transfer deduction, an estimate 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 consider 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 approve.
- (6) If the Authority issue 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 consider that the approved withdrawal arrangement is no longer required.
- (8) The Authority may issue a notice that they consider amount B (or the balance remaining) under an approved withdrawal arrangement should be paid but they may not issue such a notice unless they consider 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 consider relevant including—

- (a) whether the guarantors have taken reasonable steps to comply with the approved withdrawal arrangement;
- (b) whether the guarantors have complied with their obligations under Schedule 1B (notifiable events); and
- (c) the guarantors' financial circumstances.

(10) Where the Authority consider that an arrangement no longer requires to be continued in force, they 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;
- (b) where an assessment period has not already commenced, the trustees of the scheme agree to the arrangement;
- (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.

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

### **Single employer sections, multi-employer sections, etc**

**9.** For regulation 8 (multi-employer schemes; sectionalised schemes) substitute—

#### **“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;
- (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**

**10.** For regulation 9 (former employers) substitute—

#### **“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 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 A to I is met; or
- (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 A to I is met.

(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 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.

(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 <sup>M9</sup> 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 <sup>M10</sup>.”.

#### Marginal Citations

**M9** That is, as it applied before it was amended by section 271 of the [Pensions Act 2004 \(c.35\)](#).

**M10** 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.

#### Multi-employer money purchase schemes

**11.**—(1) In regulation 11 (money purchase schemes: valuations etc), in paragraph (1) omit “and 7”.

(2) In regulation 12(1) of the Employer Debt Regulations (multi-employer money purchase schemes)—

- (a) omit sub-paragraph (b) of paragraph (1A), as substituted for paragraph (1) of regulation 10 of the Employer Debt Regulations;
- (b) omit sub-paragraph (b) of paragraph (1B), as substituted for paragraph (1) of regulation 10 of the Employer Debt Regulations.

#### Modification of schemes

**12.** For regulation 16 (modification of schemes: apportionment of section 75 debt) substitute—

“(1) This regulation applies to a trust scheme (whether or not a money purchase scheme) for the purposes of section 68(2)(e) of the 1995 Act (power of trustees to modify schemes by resolution for prescribed purposes).

(2) The trustees of such a trust scheme, after consulting such employers in relation to the scheme as they think appropriate, may by resolution modify the scheme for the purposes of making provision for an employer’s share of the difference for the purposes of

regulation 6(2) to be attributed in a different proportion from that which would otherwise apply by virtue of the liability share.”.

#### **Form of actuary's certificate**

13. Schedule 1 (form of actuary's certificate) shall be substituted by the Schedule specified in Schedule 1 to these Regulations.

#### **Withdrawal arrangements and approved withdrawal arrangements**

14. Schedule 1A (multi-employer schemes: employer cessation events and approved withdrawal arrangements) shall be substituted by Schedule 2 to these Regulations.

#### **Form of actuary's certificate**

15. Schedule 1B (form of actuary's certificate: scheme funding basis debts in approved withdrawal arrangement cases) shall be substituted by the Schedules specified in Schedule 3 to these Regulations.

#### **The Pensions Regulator's functions under the Employer Debt Regulations**

16.—(1) The following functions under the Employer Debt Regulations are regulatory functions of the Pensions Regulator for the purposes of Part 1 of the 2004 Act—

- (a) the power to make a direction under regulation 7(1);
- (b) the power to issue a notice under section 7(3)(b);
- (c) the power to make a direction under regulation 7(7);
- (d) the power to issue a notice under regulation 7(8);
- (e) the power to issue a notice under regulation 7(10);
- (f) the power to issue a notice under regulation 7A(2).

(2) The Pensions Regulator may, if it thinks fit, delegate the functions specified in paragraph (1) to the Determinations Panel established under section 9 of the 2004 Act (the Determinations Panel).

(3) Omit regulation 3 of the Occupational Pension Schemes (Employer Debt etc) (Amendment) Regulations 2005 <sup>M11</sup>.

#### **Marginal Citations**

**M11** [S.I. 2005/2224](#).

#### **Amendment of the Multi-Employer Regulations**

17. Omit regulations 15(3)(a) and 62(3)(a) of the Multi-Employer Regulations (multi-employer sections: approval notices under section 122) <sup>M12</sup>.

#### **Marginal Citations**

**M12** [Regulations 15](#) and [62](#) were substituted by [S.I. 2005/2113](#).

### Amendment of the Entry Rules Regulations

**18.** For paragraph (4) of regulation 2 of the Entry Rules Regulations (schemes which are not eligible schemes) substitute—

“(4) Paragraph (2) shall not apply in relation to an eligible scheme where before the beginning of an assessment period in relation to the scheme any of the following is in place—

- (a) a scheme apportionment arrangement under the Occupational Pension Schemes (Employer Debt) Regulations 2005<sup>M13</sup>;
- (b) a regulated apportionment arrangement under those Regulations;
- (c) a withdrawal arrangement under those Regulations;
- (d) an approved withdrawal arrangement under those Regulations.”.

#### Marginal Citations

**M13** S.I. 2005/678, amended by S.I. 2005/993, 2224, 3377 and 3378, 2006/467 and 558 and 2007/60.

### Amendment of the FSD Regulations

**19.** In paragraph (2) of regulation 15 of the FSD Regulations (former employers)—

- (a) for “condition A, AA, B, C or D” substitute “ A, AA, AB, B, C or D ”;
- (b) for sub-paragraph (aa) substitute—
  - “(aa) condition AA is that—
    - (i) such a debt became due;
    - (ii) under regulation 7 of the Occupational Pension Schemes (Employer Debt) Regulations 2005 an approved withdrawal arrangement came into force and the debt treated as due, as a result of that arrangement, is the approved withdrawal arrangement share and the cessation expenses attributable to the employer within the meaning of those Regulations; and
    - (iii) that debt has been paid;
  - (ab) condition AB is that—
    - (i) such a debt became due;
    - (ii) under regulation 6C of the Occupational Pension Schemes (Employer Debt) Regulations 2005 a withdrawal arrangement came into force and the debt treated as due, as a result of that arrangement, is the withdrawal arrangement share and the cessation expenses attributable to the employer within the meaning of those Regulations; and
    - (iii) that debt has been paid.”.

### Amendment of the Scheme Funding Regulations

**20.** For paragraph 3 of Schedule 2 to the Scheme Funding Regulations (frozen/paid up schemes) substitute—

“**3.**—(1) In the application of Part 3 of the 2004 Act and these Regulations to a scheme which has no active members, references to the employer have effect as if they were references to the

person who was the employer immediately before the occurrence of the event after which the scheme ceased to have any active members (“the freezing event”).

(2) A person shall cease to be treated as an employer under paragraph (1) if after the freezing event he ceases to be treated as a former employer under regulation 9 of the Occupational Pension Schemes (Employer Debt) Regulations 2005.”.

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

Department for Work and Pensions  
12th March 2008

*Mike O'Brien*  
Minister of State,

**Changes to legislation:**

There are currently no known outstanding effects for the The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2008.