
STATUTORY INSTRUMENTS

2008 No. 731

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

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 19th December 1996 and before 6th April 1997, ceased to be a person employing persons in the description or category of employment to which the scheme related and was not regarded as a “former participator” for the purposes of the 1996 Regulations by virtue of regulation 6 of those Regulations (ceasing to participate: transitional provision);
 - (ii) on or after 6th April 1997 and before 6th April 2008, ceased to be a person employing persons in the description or category of employment to which the scheme related and one of conditions A to I is met; or
 - (iii) on or after 6th April 2008 and before the applicable time, ceased to be a person employing persons in the description or category of employment to which the scheme related or an employment-cessation event or insolvency event occurs in respect of him and one of conditions A to I is met; or

- (d) in relation to a frozen scheme, at a time on or after 6th April 2008, after the freezing event, when the scheme had not commenced winding-up and before the applicable time, he ceased to be a person employing persons in the description or category of employment to which the scheme related or an employment-cessation event or insolvency event occurred in respect of him and one of conditions 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 6th April 2005, under section 75(1) of that Act).

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

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

(9) Condition D is that in accordance with a withdrawal arrangement a debt 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 6th April 2005—

- (a) section 75(1) of the 1995 Act ^{M1} 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 ^{M2}.”.

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Marginal Citations

- M1** That is, as it applied before it was amended by section 271 of the [Pensions Act 2004 \(c.35\)](#).
M2 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.

Changes to legislation:

There are currently no known outstanding effects for the The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2008, Section 10.