
STATUTORY INSTRUMENTS

2008 No. 731

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

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.”

Changes to legislation:

There are currently no known outstanding effects for the The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2008, Section 7.