

SCHEDULE 1

Regulation 13

Amendment of the Employer Debt Regulations

For Schedule 1 to the Employer Debt Regulations substitute the following—

“SCHEDULE 1

Regulation 5(18) and 6(8)

Actuary's Certificate of Total difference between Scheme Assets and Liabilities [and Liability share debt of Employer in a Multi-Employer Scheme] [delete as appropriate]

Given for the purposes of regulation 5(18) and regulation 6(8) of the Occupational Pension Schemes (Employer Debt) Regulations 2005 (“the Employer Debt Regulations”)

This certificate is subject to the Notes below

Name of scheme
Date used as the applicable time for purposes of calculations
1 Comparison of value of scheme assets with amount of scheme liabilities
In my opinion, at the applicable time, the value of the assets of the scheme was less than the amount of the liabilities of the scheme.
The amount of the total liabilities was [approximately]
The amount of the total difference between the value of the assets in scheme and the amount of the liabilities of the scheme was [approximately]
2 Multi-Employer Schemes: Employer's share of the difference on the liability share basis
[name of Employer]'s debt was calculated on the liability share basis, where—
amount K was [£x]
amount L was [£y], and
[Employer's] debt (that is, Employer's liability share [after the relevant transfer deduction][delete as appropriate]) was [£z] [delete as appropriate]
3 Valuation principles
The scheme's assets and liabilities are valued in accordance with section 74(5) of the Pensions Act 1995, regulations 5 and 6 of the Employer Debt Regulations and any relevant FRS standards.
4 Approximations
With the agreement of the trustees or managers of the scheme, approximate calculations were used in arriving at the amount of the liabilities at [] [specify above] [Delete as appropriate]
Signature
Date
Name
Qualification

Address

Name of employer

(if applicable)

Notes:

The references to—

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

“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 of the Employer Debt Regulations, and

(b) “L” equals the total amount of the scheme's liabilities attributable to employment with the employer;

“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;

“multi-employer scheme” means a scheme (or a section of a scheme treated pursuant to regulation 8 of the Employer Debt Regulations as a separate scheme) in relation to which there is more than one employer;

“relevant transfer deduction” means the amount of the relevant transfer liabilities less the value of the corresponding assets, by which the liability share is to be reduced by virtue of regulation 6(6)(a) of the Employer Debt Regulations;

“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 the scheme.

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] [delete if scheme had commenced winding-up on the applicable date].

The value of the assets was provided by the trustees or managers of the scheme.

The value of the assets was provided by the trustees or managers of the scheme by relying on an updated asset assessment, that they decided to use in accordance with the conditions in regulation 5(3) of the Employer Debt Regulations [delete as appropriate].

The liabilities were calculated and verified by relying on an updated actuarial assessment which the trustees or managers of the scheme decided to use in accordance with the conditions in regulation 5(14) of the Employer Debt Regulations [delete as appropriate].

Where approximate calculations are used in arriving at the amount of liabilities, the amount calculated on a more accurate basis may be significantly different.

In the case of multi-employer schemes:

The amount of the liabilities attributed to each of the employers was determined by the trustees or managers of the scheme in accordance with regulation 6(4) of the Employer Debt Regulations.

The liability share amount was reduced to reflect a relevant transfer deduction under regulation 6(6) of the Employer Debt Regulations [delete as appropriate].

SCHEDULE 2

Regulation 14

Amendment of the Employer Debt Regulations

For Schedule 1A to the Employer Debt Regulations substitute the following—

“SCHEDULE 1A

Regulation 6C(4) and 7(11)

Withdrawal Arrangements and Approved Withdrawal Arrangements

Conditions for withdrawal arrangements and approved withdrawal arrangements

1. The conditions a withdrawal arrangement, or a withdrawal arrangement after it has been approved by the Authority, must comply with are—

- (a) the trustees or managers, the cessation employer and the guarantor are parties;
- (b) it provides the date on which it is to come into force;
- (c) it provides that at or before the time specified the cessation employer will pay—
 - (i) in the case of a withdrawal arrangement, the withdrawal arrangement share; or
 - (ii) in the case of an approved withdrawal arrangement, the approved withdrawal arrangement share;
- (d) where the withdrawal arrangement share or approved withdrawal arrangement share will be paid in instalments, the dates for payment of such instalments;
- (e) it provides that the guarantors will pay an amount or amounts equal to amount B;
- (f) it provides that if an event specified in paragraph 3 of this Schedule occurs before amount B has been paid and while the agreement is still in force, the guarantors will pay amount B;
- (g) it specifies whether amount B is calculated under either sub-paragraph (2) or (3) of paragraph 5 of this Schedule;
- (h) specifies where there is more than one guarantor, whether the guarantors are jointly or jointly and severally liable;
- (i) provides details of any relevant transfer deduction which may apply, the anticipated relevant transfer liabilities, the anticipated corresponding assets and the anticipated time scale for finalisation of the relevant transfer deduction;
- (j) it provides that amounts payable under the withdrawal arrangement or approved withdrawal arrangement are payable to the trustees or managers of the scheme;
- (k) it provides that one or more parties to the withdrawal arrangement or approved withdrawal arrangement are to meet any expenses incurred by the parties in connection with one or both of the following—
 - (i) the making of the arrangement;
 - (ii) the making of any calculations by the actuary for the purpose of the arrangement;
- (l) the arrangement will continue in force until—
 - (i) the winding up of the scheme is completed;
 - (ii) in the case of an approved withdrawal arrangement, the Authority issue a notice to the parties to the arrangement stating that the Authority consider that the arrangement is no longer required; or

- (iii) the arrangement is replaced by another arrangement that is in the case of an approved withdrawal arrangement approved by the Authority as an approved withdrawal arrangement,
whichever occurs first.

Actuarial certificates

- 2. The amount of the liabilities of a scheme which are to be taken into account—
 - (a) for the purposes of a withdrawal arrangement share or an approved withdrawal arrangement share must be certified by the actuary in the form set out in Schedule 1C to these Regulations;
 - (b) to determine amount B under sub-paragraph (3) of paragraph 5 of this Schedule must be certified by the actuary in the form set out in Schedule 1D to these Regulations;
 - (c) to determine amount B under sub-paragraph (2) of paragraph 5 of this Schedule must be certified by the actuary after the guarantee time in the form set out in Schedule 1D to these Regulations.

Events for payment of amount B

- 3. The events where amount B must be paid are—
 - (a) the scheme commences winding-up;
 - (b) a relevant event occurs in relation to the last remaining employer in relation to the scheme (where the last remaining employer is the only employer remaining who has not had a relevant event);
 - (c) in the case of an approved withdrawal arrangement, the Authority issue a notice to the parties to the arrangement stating that they consider that amount B (or the balance remaining) should be paid; or
 - (d) the occurrence of the date on which the guarantors have agreed to pay and the trustees or managers have agreed to receive payment of amount B.

Calculation of amount A

- 4.—(1) Amount A shall be equal to either of the following amounts—
 - (a) where a relevant transfer deduction does not apply to a withdrawal arrangement share or an approved withdrawal arrangement share, the liability proportion of the scheme shortfall amount; or
 - (b) where a relevant transfer deduction applies to a withdrawal arrangement share or an approved withdrawal arrangement share, the liability proportion of the scheme shortfall amount minus the relevant transfer deduction.
- (2) For the purposes of sub-paragraph (1)(b), the relevant transfer deduction shall be determined by calculating the relevant transfer liabilities and the corresponding assets in accordance with regulation 5.
- (3) The scheme shortfall amount is the amount of the difference as at the applicable time between the value of the assets and the amount of the liabilities of the scheme determined, calculated and verified in accordance with sub-paragraph (4).
- (4) The scheme shortfall amount and, for the purposes of this paragraph, the relevant transfer deduction shall be determined, calculated and verified as follows—

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- (a) where at the applicable time the trustees or managers of the scheme have received its first actuarial valuation under Part 3 of the 2004 Act, in accordance with regulation 5, but that regulation shall apply as if—
 - (i) paragraph (11) provided the following—
 - “(11) The amount of the liabilities in respect of pensions and other benefits are to be calculated and verified by the actuary using the same methods and assumptions as were set out in the most recent statement of funding principles under Part 3 of the 2004 Act.”, and
 - (ii) paragraph (12) were omitted;
- (b) 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, in accordance with sub-paragraph (5).

(5) Where sub-paragraph (4)(b) applies, the amounts or value of the assets and liabilities of a scheme and, for the purposes of this paragraph the relevant transfer deduction, must be determined, calculated and verified by the trustees or managers of the scheme and the Actuary at the applicable time in accordance with—

- (a) regulation 3 (excluded assets), regulation 4 (contribution notices etc), regulation 5 (valuation of assets), regulation 6 (valuation of protected liabilities) and regulation 7 (alternative valuation of assets and protected liabilities in specific cases) of the PPF Valuation Regulations; and
 - (b) guidance issued by the Board of the PPF.
- (6) For the purposes of sub-paragraph (5), in the PPF Valuation Regulations—
- (i) references to “section 143 valuations” and provisions which relate to section 143 valuations shall be disregarded;
 - (ii) references to “relevant time” shall be read as if they were references to “applicable time”; and
 - (iii) references to “section 179 valuations” shall be read as if they were references to a valuation for the purposes of section 75(4) of the 1995 Act.

Calculation of amount B

5.—(1) Amount B must be calculated in accordance with either sub-paragraph (2) or (3).

(2) Where a withdrawal arrangement or approved withdrawal arrangement provides that amount B is to be calculated in accordance with this sub-paragraph, amount B is equal to the amount (if any) that would be the amount of the liability share due from the cessation employer under section 75(4) of the 1995 Act if—

- (a) the employment-cessation event had occurred at the guarantee time; and
- (b) the cessation employer had not entered into a withdrawal arrangement or an approved withdrawal arrangement.

(3) Where the withdrawal arrangement or approved withdrawal arrangement provides that amount B is to be calculated in accordance with this sub-paragraph, amount B is equal to the amount of the liability share that would have been treated as due from the cessation employer under section 75(4) of the 1995 Act if the cessation employer had not entered into a withdrawal arrangement or approved withdrawal arrangement, less the sum of—

- (a) in the case of a withdrawal arrangement, the withdrawal arrangement share or in the case of an approved withdrawal arrangement, the approved withdrawal arrangement share;

- (b) in the case of a withdrawal arrangement, if the amount that the withdrawal arrangement provides for the cessation employer to pay exceeds the withdrawal arrangement share, an amount equal to that excess.

Approval of withdrawal arrangements in advance

6.—(1) A withdrawal arrangement may be approved by the Authority in advance of an employment-cessation event occurring in relation to an employer and for the purposes of approving a withdrawal arrangement prior to an employment-cessation event occurring in relation to an employer, references in this Schedule and regulation 7 to “cessation employer”, “approved withdrawal arrangement share”, “amount B”, “amount A”, “cessation expenses”, “guarantors” and “relevant transfer deduction” shall be read accordingly.

(2) Where an approved withdrawal arrangement has been approved prior to an employment-cessation event regulation 7 shall apply as if—

- (a) following an employment-cessation event occurring in relation to the employer who is party to the approved withdrawal arrangement, the employer gave the notice required under regulation 7(1);
- (b) the Authority issued the directions under regulation 7(1);
- (c) at the time when the approved withdrawal arrangement comes into force regulation 7(6) applies and the approved withdrawal arrangement share and amount B are treated as debts due.

Replacement withdrawal arrangements

7.—(1) Where a withdrawal arrangement is replaced with an amended withdrawal arrangement or an amended approved withdrawal arrangement, paragraph 1, regulation 6B and regulation 7 shall apply to the amended withdrawal arrangement or amended approved withdrawal arrangement as they applied to the original arrangement.”.

SCHEDULE 3

Regulation 15

Amendment of the Employer Debt Regulations

For Schedule 1B to the Employer Debt Regulations substitute the following—

“SCHEDULE 1B

Regulation 6D

Notifiable Events

1.—(1) Where a withdrawal arrangement or an approved withdrawal arrangement is in force in relation to a scheme, each of the guarantors must give notice to the Authority if such an event as is mentioned in sub-paragraph (2) occurs in relation to that person.

(2) The events referred to in sub-paragraph (1) are—

- (a) any decision by the relevant person to take action which will, or is intended to, result in a debt which is or may become due—
 - (i) to the trustees of the scheme, or
 - (ii) if the Board of the PPF has assumed responsibility for the scheme in accordance with Chapter 3 of Part 2 of the 2004 Act, to the Board,

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not being paid in full;

- (b) a decision by the relevant person to cease to carry on business (including any trade or profession) in the United Kingdom or, if the relevant person ceases to carry on such business without taking such a decision, his doing so;
- (c) where applicable, receipt by the relevant person of advice that the person is trading wrongfully within the meaning of section 214 of the Insolvency Act 1986 (wrongful trading), or circumstances occurring in which a director or former director of the company knows that there is no reasonable prospect that the company will avoid going into insolvent liquidation within the meaning of that section, and for this purpose section 214(4) of that Act applies;
- (d) any breach by the relevant person of a covenant in an agreement between the relevant person and a bank or other institution providing banking services, other than where the bank or other institution agrees with the relevant person not to enforce the covenant;
- (e) any change in the relevant person's credit rating, or the relevant person ceasing to have a credit rating;
- (f) where the relevant person is a company, a decision by a controlling company to relinquish control of the relevant person or, if the controlling company relinquishes such control without taking such a decision, its doing so;
- (g) two or more changes in the holders of any key relevant person posts within a period of 12 months;
- (h) where the relevant person is a company or partnership, the conviction of an individual, in any jurisdiction, for an offence involving dishonesty, if the offence was committed while the individual was a director or partner of the relevant person;
- (i) an insolvency event occurring in relation to the relevant person for the purposes of Part 2 of the 2004 Act (see section 121 of that Act: insolvency event, insolvency date and insolvency practitioner).

(3) A notice under sub-paragraph (1) must be given in writing as soon as reasonably practicable after the relevant person becomes aware of the event.

(4) In this paragraph—

“control” has the meaning given in section 435(10) of the Insolvency Act 1986 (meaning of “associate” - meaning of “control”) and “controlling company” is to be read accordingly;

“director” has the meaning given in section 741(1) of the Companies Act 1985 (meaning of “director” and “shadow director”);

“key relevant person posts” means the Chief Executive and any director or partner responsible in whole or in part for the financial affairs of the relevant person.

2.—(1) The trustees or managers of a scheme must give notice to the Authority of any decision by them to take action which will, or is intended to, result in any entering into a scheme apportionment arrangement on or after the applicable time.

(2) A notice under sub-paragraph (1) must be given in writing as soon as reasonably practicable after the making of the decision.

3.—(1) No duty to which a person is subject under paragraph 1 or 2 is to be regarded as contravened merely because of any information or opinion contained in a notice under paragraph 1 or 2.

(2) But sub-paragraph (1) does not require any person to disclose protected items within the meaning of section 311 of the 2004 Act (protected items).

(3) Section 10 of the 1995 Act (civil penalties) applies to any person who without reasonable excuse fails to comply with an obligation imposed on him under paragraph 1 or 2.

SCHEDULE 1C

paragraph 2(a) of Schedule 1A

Actuary's Certificate for Withdrawal Arrangement Share or Approved Withdrawal Arrangement Share in Multi-Employer Scheme

Given for the purposes of paragraph 2(a) of Schedule 1A to the Occupational Pension Schemes (Employer Debt) Regulations 2005 (“the Employer Debt Regulations”)

This certificate is subject to the Notes below

Name of scheme
Date used as the applicable time for purposes of calculations
1 Comparison of value of scheme assets with amount of scheme liabilities
In my opinion, at the applicable time, the value of the assets of the scheme was less than the amount of the liabilities of the scheme.
The amount of the total liabilities was [approximately]
The amount of the total difference between the value of the assets in the multi-employer scheme and the amount of the liabilities was [approximately]
2 Employer's withdrawal arrangement share or approved withdrawal arrangement share
[name of Employer] [approved] withdrawal arrangement share [after the relevant transfer deduction] [delete as appropriate] was
In the case of an approved withdrawal arrangement share, the amount A which applied for the purposes of determining [name of Employer]'s approved withdrawal arrangement share was
3 Valuation principles
The value of the scheme's assets and the amount of the liabilities are valued in accordance with section 75(5) of the Pensions Act 1995, regulation 5, [regulation 6(C)], regulation 7(5)] [delete as appropriate] of, and paragraph 3 of Schedule 1 to, the Employer Debt Regulations 2005, and with relevant IAS standards.
4 Approximations
With the agreement of the trustees or managers of the scheme, approximate calculations were used in arriving at the amount of the liabilities at [] [specify] above. [delete as appropriate]
Signature
Date
Name
Qualification
Address
Name of employer
(if applicable)

Notes:
The references to—
“amount A” means the amount calculated in accordance with paragraph 4 of Schedule 1A to the Employer Debt Regulations;
“applicable time” means the time at which the value of the assets of a scheme and the amount of the liabilities are to be determined, calculated and verified for the purposes of section 75 of the Pensions Act 1995;
“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;
“multi-employer scheme” means a scheme (or a section of a scheme treated pursuant to regulation 9 of the Employer Debt Regulations as a separate scheme) in relation to which there is more than one employer;
“relevant transfer deduction” means, in relation to an approved withdrawal arrangement, the amount of the relevant transfer liabilities less the value of the corresponding assets by which the approved withdrawal arrangement share is to be reduced in accordance with regulation 7(5);
“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 the scheme;
“withdrawal arrangement share” means an amount that is—
(a) a cessation employer's share of the difference,
(b) equal to or greater than amount A, and
(c) payable by a cessation employer pursuant to a withdrawal arrangement.
The value of the assets was provided by the trustees or managers of the scheme.
The value of the assets was provided by the trustees or managers of the scheme by relying on an updated asset assessment, that they decided to use in accordance with the conditions in regulation 5(3) of the Employer Debt Regulations [delete as appropriate].
The liabilities were calculated and verified by relying on an updated actuarial assessment which the trustees or managers of the scheme decided to use in accordance with the conditions in regulation 3(14) of the Employer Debt Regulations [delete as appropriate].
Where approximate calculations are used in arriving at the amount of liabilities, the amount calculated on a more accurate basis may be significantly different.
The withdrawal arrangement share amount was reduced to reflect a relevant transfer deduction under regulation 6(C)(3) of the Employer Debt Regulations [delete as appropriate].
The approved withdrawal arrangement share was calculated by reference to an amount A which was reduced to reflect where the Authority permitted, under regulation 7(5) of the Employer Debt Regulations, a relevant transfer deduction to apply [delete as appropriate].

Changes to legislation: There are currently no known outstanding effects for the The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2008. (See end of Document for details)

SCHEDULE 1D

paragraph 2(b) and (c) of Schedule 1A

Actuary's Certificate for Amount B under a Withdrawal Arrangement
or an Approved Withdrawal Arrangement in a Multi-Employer Scheme

Given for the purposes of sub-paragraph (b) or (c) of paragraph 2 of Schedule 1A to the Occupational Pension Schemes (Employer Debt) Regulations 2005 ("the Employer Debt Regulations")

This certificate is subject to the Notes below

Name of multi-employer scheme

Date used for purposes of calculations

1 Amount B

For the purposes of [sub-paragraph (2)] [sub-paragraph (3)] [delete as appropriate] of paragraph 5 of Schedule 1A to the Employer Debt Regulations, the guarantor's amount B for the purposes of a withdrawal arrangement or an approved withdrawal arrangement was

2 Valuation principles

The value of the scheme's assets and the amount of the liabilities are valued in accordance with section 75(5) of the Pensions Act 1995, regulation 5 of, and paragraph 5(2) or (3) of Schedule 1A to, the Occupational Pension Schemes (Employer Debt) Regulations 2005 and with relevant BAS standards.

Signature

Date

Name

Qualification

Address

Name of employer

(if applicable)

Notes:

The references to—

"amount B" means the amount calculated in accordance with sub-paragraph (2) or (3) of paragraph 5 of Schedule 1A to the Employer Debt Regulations.

"approved withdrawal arrangement" means an arrangement that meets the conditions in paragraph 1 of Schedule 1A to the Employer Debt Regulations and is approved by the Authority under regulation 7 of those Regulations.

"guarantors" means such one or more of the parties to a withdrawal arrangement or an approved withdrawal arrangement who are specified in the arrangement as the persons who have given guarantees in relation to amount B for the purposes of the arrangement.

"withdrawal arrangement" means an arrangement that meets the conditions specified in paragraph 1 of Schedule 1A to the Employer Debt Regulations and meets the test in paragraph (1) of regulation 6C of those Regulations.

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] [delete if scheme had commenced winding-up on the applicable date].

The value of the assets was provided by the trustees or managers of the scheme.

The value of the assets was provided by the trustees or managers of the scheme by relying on an updated asset assessment, that they decided to use in accordance with the conditions in regulation 5(5) of the Employer Debt Regulations [delete as appropriate].

The liabilities were calculated and verified by relying on an updated actuarial assessment which the trustees or managers of the scheme decided to use in accordance with the conditions in regulation 5(14) of the Employer Debt Regulations [delete as appropriate].

A relevant transfer deduction (as defined in regulation 2(1) of the Employer Debt Regulations) applied [delete as appropriate].

Changes to legislation:

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