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STATUTORY INSTRUMENTS

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**2010 No. 725**

**The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2010**

**Insertion of regulations 6ZA to 6ZD of the 2005 Regulations**

7. After regulation 6 of the 2005 Regulations, insert—

**“Employment-cessation events: general**

**6ZA.**—(1) In these regulations, “employment-cessation event” means, subject to paragraphs (2) to (6), an event which—

- (a) occurs in relation to a multi-employer scheme,
- (b) is not a relevant event, and
- (c) subject to regulation 6A, occurs on the date on which—
  - (i) an employer has ceased to employ at least one person who is an active member of the scheme, and
  - (ii) at least one other employer who is not a defined contribution employer continues to employ at least one active member of the scheme.

(2) Subject to paragraphs (3) and (4), an employment-cessation event does not occur where there is a restructuring within regulation 6ZB or 6ZC.

(3) An employment-cessation event occurs where there is a restructuring within regulation 6ZB and within six years of that, it becomes apparent that—

- (a) the exiting employer or receiving employer provided the trustees or managers with—
  - (i) incorrect information, or
  - (ii) incomplete information,and the trustees or managers are satisfied that they would have made a different decision in step 4 in regulation 6ZB(9) if they had had the correct or complete information,

- (b) step 6 has not been completed in accordance with regulation 6ZB(13) and (14), or
- (c) step 7 has not been completed in accordance with regulation 6ZB(15) and (16).

(4) An employment-cessation event occurs where there is a restructuring within regulation 6ZC and within six years of that, it becomes apparent that—

- (a) step 4 has not been completed in accordance with regulation 6ZC(9) and (10), or
- (b) step 5 has not been completed in accordance with regulation 6ZC(11) and (12).

(5) An employment-cessation event does not occur where—

- (a) there is a restructuring within regulation 6ZB or 6ZC,
- (b) at any time after that, it becomes apparent that any step has not been completed in accordance with regulation 6ZB or 6ZC, and

- (c) paragraphs (3) and (4) of this regulation do not apply.
- (6) Where an employment-cessation event occurs in accordance with paragraph (3) or (4)—
  - (a) section 75(4) of the 1995 Act applies as if the amount of the debt due from the exiting employer is treated as a debt due from the exiting employer and the receiving employer jointly and severally,
  - (b) the date on which the employment-cessation event occurs is the date referred to in paragraph (1)(c), and
  - (c) for the purposes of calculating the exiting employer's liability proportion for the purposes of the exiting employer's liability share, the liabilities attributable to employment with the exiting employer shall be determined as if nothing had been done in relation to carrying out any of the steps in regulations 6ZB or 6ZC.

### **Employment-cessation events: exemptions**

**6ZB.**—(1) There is a restructuring within this regulation if each of steps 1 to 6 in the following paragraphs are completed and the date on which there is a restructuring within this regulation is the date on which step 6 has been completed.

- (2) Each of steps 2 to 7 can only be carried out if the previous step has been completed.
- (3) Step 1 is for the exiting employer to write to the trustees or managers asking them to make a decision for the purposes of this regulation.
- (4) The exiting employer decides whether and when to carry out step 1.
- (5) Step 2 is for the exiting employer and receiving employer (unless the receiving employer has not yet been created) to provide any information which the trustees or managers—
  - (a) may request, and
  - (b) are satisfied is necessary to complete step 4.
- (6) The trustees or managers must request any information, and the exiting employer and receiving employer must provide any information, for the purposes of completing step 2 without undue delay.
- (7) Step 3 is for the trustees or managers to consult—
  - (a) the exiting employer about the decision to be made in step 4, and
  - (b) the receiving employer about the decision to be made in step 4, unless the receiving employer has not yet been created.
- (8) The trustees or managers must complete step 3 without undue delay.
- (9) Step 4 is for the trustees or managers to decide whether they are satisfied that the receiving employer will be at least as likely—
  - (a) as the exiting employer to meet all the exiting employer's liabilities in relation to the scheme, and
  - (b) to meet any liabilities in relation to the scheme which the receiving employer has immediately before step 6 is carried out.
- (10) The trustees or managers must—
  - (a) complete step 4 without undue delay, and
  - (b) consider, when carrying out step 4, factors including, but not limited to, any 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.

- (11) Step 5 is for the trustees or managers to send—
  - (a) the exiting employer, and
  - (b) the receiving employer, unless the receiving employer has not yet been created, their decision in step 4, and the reasons for that decision, in writing.
- (12) The trustees or managers must complete step 5 without undue delay.
- (13) Step 6 is for—
  - (a) the receiving employer to take over responsibility, under a legally enforceable agreement, for all of the exiting employer's—
    - (i) assets,
    - (ii) employees, and
    - (iii) scheme members, and
  - (b) all of the exiting employer's liabilities in relation to the scheme to be—
    - (i) taken over by the receiving employer under a legally enforceable agreement so that the receiving employer is responsible for them, or
    - (ii) where it is impossible for the receiving employer to take over the exiting employer's liabilities in relation to the scheme under a legally enforceable agreement, treated for all purposes as being the responsibility of the receiving employer.
- (14) The receiving employer decides whether to carry out step 6, but the receiving employer can only carry out step 6—
  - (a) where the trustees or managers decided in step 4 that they are satisfied,
  - (b) where the trustees or managers are satisfied that there has been no change which would alter that decision in step 4, and
  - (c) within the 18 weeks, or such longer period up to a total of 36 weeks as the trustees or managers may choose, after the date of the written decision in step 5.
- (15) Step 7 is for the receiving employer and exiting employer to send the trustees or managers written confirmation—
  - (a) that step 6 has been completed, and
  - (b) of the date on which step 6 was completed.
- (16) The receiving employer and exiting employer must complete step 7 without undue delay.
- (17) In this regulation, liabilities in relation to the scheme means all such liabilities including, but not limited to, any—
  - (a) liabilities which—
    - (i) have accrued to or in respect of scheme members, and
    - (ii) are attributable to the employer under regulation 6(4),
  - (b) amounts treated as a debt due to the trustees or managers of the scheme, including such debts due in accordance with section 75 of the 1995 Act,
  - (c) liabilities or amounts which have been apportioned to the employer in—
    - (i) a scheme apportionment arrangement,
    - (ii) an exercise of a scheme apportionment rule before 6th April 2008, or

- (iii) a regulated apportionment arrangement,
- (d) liabilities which were attributed to the employer as part of a previous restructuring within this regulation or regulation 6ZC,
- (e) amount for which the employer is a guarantor under a withdrawal arrangement or an approved withdrawal arrangement,
- (f) payments which are due to be made by the employer under—
  - (i) the schedule of contributions, or
  - (ii) any recovery plan, and
- (g) liability share of the employer.

**6ZC.**—(1) There is a restructuring within this regulation if each of steps 1 to 4 in the following paragraphs are completed and the date on which there is a restructuring within this regulation is the date on which step 4 has been completed.

(2) Each of steps 2 to 5 can only be carried out if the previous step has been completed.

(3) Step 1 is for the exiting employer to write to the trustees or managers asking them to make a decision for the purposes of this regulation.

(4) The exiting employer decides whether and when to carry out step 1.

(5) Step 2 is for the trustees or managers to decide whether they are satisfied that the following four conditions are met—

- (a) the assets of the scheme are at least equal to the protected liabilities of the scheme,
- (b) either—
  - (i) there are only one or two relevant members, or
  - (ii) no more than 3% of the total number of scheme members in respect of whom defined benefits have accrued are relevant members,
- (c) the annual amount of accrued pension in respect of the relevant members does not exceed the maximum amount where—
  - (i) the annual amount of accrued pension includes pensions in payment and pensions not in payment,
  - (ii) the annual amount of accrued pensions in payment means the most recent payment of pension to each relevant member multiplied to produce an estimated annual amount,
  - (iii) the annual amount of accrued pensions not in payment means the annual amount of pension to which each relevant member has accrued rights, and
  - (iv) the maximum amount means—
    - (aa) in the year commencing on 6th April 2010, £20,000, and
    - (bb) in any subsequent year, £20,000 plus £500 for each year after the year commencing on 6th April 2010, and
- (d) if any restructurings within this regulation in relation to the scheme have occurred in the three years before step 4 is completed, those restructurings and the restructuring which occurs when step 4 is completed involve a combined total of—
  - (i) no more than—
    - (aa) five scheme members in respect of whom defined benefits have accrued, or

- (bb) 7.5% of the total number of scheme members in respect of whom defined benefits have accrued,  
whichever is the higher, and
  - (ii) no more than £50,000 of the annual amount of accrued pension as calculated for the purposes of sub-paragraph (c).
- (6) The trustees or managers must complete step 2—
  - (a) without undue delay, and
  - (b) using the figures contained in the most recent—
    - (i) actuarial valuation under section 179 of the 2004 Act (valuations to determine scheme underfunding) for the assets and protected liabilities of the scheme, and
    - (ii) scheme return within the meaning in section 65(2) of the 2004 Act (scheme returns: supplementary) for the number of members of the scheme.
- (7) Step 3 is for the trustees or managers to send—
  - (a) the exiting employer, and
  - (b) the receiving employer, unless the receiving employer has not yet been created,their decision in step 2 in writing.
- (8) The trustees or managers must complete step 3 without undue delay.
- (9) Step 4 is for—
  - (a) the receiving employer to take over responsibility, under a legally enforceable agreement, for all of the exiting employer's—
    - (i) assets,
    - (ii) employees, and
    - (iii) scheme members, and
  - (b) all of the exiting employer's liabilities in relation to the scheme (as defined in regulation 6ZB(17)) to be—
    - (i) taken over by the receiving employer under a legally enforceable agreement so that the receiving employer is responsible for them, or
    - (ii) where it is impossible for the receiving employer to take over the exiting employer's liabilities in relation to the scheme under a legally enforceable agreement, treated for all purposes as being the responsibility of the receiving employer.
- (10) The receiving employer decides whether to carry out step 4, but the receiving employer can only carry out step 4—
  - (a) where the trustees or managers decided in step 2 that they are satisfied, and
  - (b) within the 18 weeks, or such longer period up to a total of 36 weeks as the trustees or managers may choose, of the date of the written decision in step 3.
- (11) Step 5 is for the receiving employer and exiting employer to send the trustees or managers written confirmation—
  - (a) that step 4 has been completed, and
  - (b) of the date on which step 4 was completed.
- (12) The receiving employer and exiting employer must complete step 5 without undue delay.

(13) In this regulation, “relevant members” means scheme members in respect of whom defined benefits accrued as a result of pensionable service with the exiting employer.

**6ZD.**—(1) The trustees or managers may decide that any costs incurred by them as a result of the steps in regulation 6ZB or 6ZC are to be met by the exiting employer, the receiving employer or both.

- (2) The trustees or managers may make a decision under paragraph (1)—
  - (a) at any time during the steps in regulation 6ZB or 6ZC, or
  - (b) within one month after the final step in either of those regulations is completed.
- (3) Where the trustees or managers make such a decision—
  - (a) they must write to the exiting employer, the receiving employer or both (as the case may be) with details of their costs, and
  - (b) the exiting employer, the receiving employer or both (as the case may be) must pay those costs.”.