
STATUTORY INSTRUMENTS

2018 No. 237

The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2018

Insertion of new regulation 6F

7. After regulation 6E insert—

“Deferred debt arrangement

6F.—(1) A deferred debt arrangement takes effect on the date on which the trustees or managers of the scheme, being satisfied that the conditions in paragraphs (2) and (3) are met, consent in writing to the arrangement.

- (2) The condition in this paragraph is that an employment-cessation event—
- (a) has occurred in relation to the deferred employer before the date on which the conditions in paragraph (3) are met; or
 - (b) would have occurred in relation to the deferred employer if the deferred employer had not entered into and remained in a period of grace in accordance with regulation 6A until immediately before the date on which the deferred debt arrangement is to take effect.
- (3) The conditions in this paragraph are—
- (a) the scheme is not in an assessment period within the meaning of Part 2 of the 2004 Act (the Board of the Pension Protection Fund) or being wound up; and
 - (b) the trustees or managers of the scheme are satisfied that—
 - (i) an assessment period is unlikely to begin in relation to the scheme within the period of 12 months beginning with the date on which the trustees or managers expect the deferred debt arrangement to take effect; and
 - (ii) the deferred employer’s covenant with the scheme is not likely to weaken materially within the period of 12 months beginning with the date on which the trustees or managers expect the deferred debt arrangement to take effect.
- (4) A deferred employer must be treated during the period that the deferred debt arrangement is in place—
- (a) as if employing at least one person who is an active member of the scheme; and
 - (b) for the purposes of these Regulations and regulation 16 of the FSD Regulations (multi-employer schemes), as an employer in relation to the scheme.
- (5) Where a deferred debt arrangement is in place the deferred employer must be treated as if the employment-cessation event in paragraph (2) had not, or would not have, occurred.
- (6) The deferred debt arrangement terminates on the first date on which one of the following events occurs—
- (a) the deferred employer commences employing a person who is an active member of the scheme;

- (b) the deferred employer and the trustees or managers of the scheme agree that an employment-cessation event shall be treated as having occurred for the purposes of bringing the deferred debt arrangement to an end in relation to the deferred employer;
 - (c) a relevant event occurs in relation to the deferred employer;
 - (d) all the employers in the scheme have experienced a relevant event or have become deferred employers;
 - (e) the scheme commences winding up;
 - (f) the deferred employer restructures, unless—
 - (i) the restructuring falls within either regulation 6ZB (employment-cessation events: exemptions) or regulation 6ZC; and
 - (ii) where the receiving employer is a deferred employer, the trustees or managers of the scheme are satisfied that the conditions in paragraph (3) are met;
 - (g) a freezing event as defined in regulation 9(2)(b)(frozen schemes and former employers) occurs in relation to the scheme;
 - (h) the trustees or managers of the scheme serve a notice on the deferred employer stating that the deferred debt arrangement has come to an end on the grounds that the trustees or managers of the scheme are reasonably satisfied that—
 - (i) the deferred employer has failed to comply materially with its duties under the Scheme Funding Regulations;
 - (ii) the deferred employer's covenant with the scheme is likely to weaken materially in the next 12 months; or
 - (iii) the deferred employer has failed to comply materially with its duties under regulation 6 (duty to disclose information) of the Occupational Pension Schemes (Scheme Administration) Regulations 1996(1).
- (7) For the purposes of these Regulations where—
- (a) an event referred to in paragraph (6)(a) or (e) of this regulation occurs, the deferred employer must be treated as if the employment-cessation event in paragraph (2) had not, or would not have, occurred;
 - (b) an event referred to in paragraph (6)(b), (c), (d) or (h) of this regulation occurs, the date of that event must be treated as the date of the employment-cessation event in relation to the deferred employer;
 - (c) the deferred employer restructures in circumstances where—
 - (i) paragraph (6)(f) of this regulation does not apply, the date of the restructuring must be treated as the date of the employment-cessation event in relation to the deferred employer;
 - (ii) paragraph (6)(f) of this regulation applies—
 - (aa) if the receiving employer is not a deferred employer, paragraph (6) (a) of this regulation applies to the receiving employer; and
 - (bb) if the receiving employer is a deferred employer, the deferred debt arrangement must continue;
 - (d) a freezing event referred to in paragraph (6)(g) of this regulation occurs, the deferred employer—

- (i) becomes a former employer in relation to the scheme for the purposes of regulation 9 (frozen schemes and former employers); and
- (ii) must be treated as if the employment-cessation event referred to in paragraph (2)(a) had not, or would not have, occurred and the deferred debt arrangement had never taken effect.”.