STATUTORY INSTRUMENTS

2024 No. 462

The Occupational Pension Schemes (Funding and Investment Strategy and Amendment) Regulations 2024

PART 2

FUNDING AND INVESTMENT STRATEGY

Strength of the employer covenant

7.—(1) For the purposes of these Regulations, the strength of the employer covenant has the meaning given in paragraph (2) and is assessed in accordance with paragraphs (3) to (6).

(2) The strength of the employer covenant means—

(a) the financial ability of the employer, in relation to its legal obligations to the scheme, to support the scheme, and

(b) the expected level of support for the scheme from any contingent assets (whether from the employer in relation to the scheme, group undertakings or other persons), to the extent the trustees or managers of the scheme could reasonably expect the contingent assets to be—

(i) legally enforceable by them, and

(ii) sufficient to provide that support at such time as the trustees or managers may be required to enforce the support to the scheme.

(3) The strength of the employer covenant is assessed in relation to an assessment of the difference between the value of the assets of the scheme and the value of its liabilities.

(4) For the purposes of paragraph (2)(a), the matters to be considered in assessing the financial ability of the employer, in relation to its legal obligations to the scheme, to support the scheme are—

(a) the cash flow, and expected future cash flow, of the employer,

(b) other matters which are likely to affect the employer's future ability to support the scheme including but not limited to the performance, future development and resilience of the employer's business, and the likelihood of an insolvency event[1] occurring in relation to that employer,

(c) for how long the trustees or managers of the scheme can be reasonably certain that they can rely on an assessment of the matters in sub-paragraphs (a) and (b), and

(d) for how long the trustees or managers of the scheme can be reasonably certain that the employer will be able to continue to support the scheme.

(5) For the purposes of paragraph (3)—

(a) the assessment of the difference between the value of the assets of the scheme and the value of its liabilities is to be assessed by reference to—

(1) "Insolvency event" is defined by section 121 of the Act.

(i) the actuary's(**2**) estimate of the value of the liabilities calculated on a low dependency funding basis, and

(ii) the actuary's estimate of the solvency of the scheme, as defined by regulation 7(6) of the Occupational Pension Schemes (Scheme Funding) Regulations 2005 (actuarial valuations and reports)(**3**), and

(b) in considering how much weight is to be given to each of the estimates referred to in sub-paragraph (a) for the purposes of the assessment, account is to be given to the likelihood of an event occurring which would result in an amount being treated as a debt due from the employer to the trustees or managers of the scheme under section 75 of the Pensions Act 1995 (deficiencies in the assets)(**4**).

(6) Where an assessment of the strength of the employer covenant is being carried out for the purposes of a determination, review or revision of a funding and investment strategy, or the subsequent preparation, review or revision of a statement of strategy setting out that funding and investment strategy, the actuary's estimates referred to in paragraph (5) are the estimates set out in the actuarial valuation to which the funding and investment strategy relates.

(**2**) By virtue of section 233 of the Act, "actuary" is defined by section 47 of the Pensions Act 1995 (c. 26).

(**3**) S.I. 2005/3377.

(**4**) 1995 c. 26. Section 75 is amended by section 271 of the Pensions Act 2004, paragraph 8 of Schedule 3 to the Pension Schemes Act 2021, S.I. 2016/1034 and S.I. 2017/540.