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STATUTORY INSTRUMENTS

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**1996 No. 3128**

**The Occupational Pension Schemes (Deficiency  
on Winding Up etc.) Regulations 1996**

*Money purchase schemes*

**Money purchase schemes: deficiency owing to fraud etc.**

7.—(1) Subject to regulation 10, section 75 shall apply to money purchase schemes with the following modifications.

(2) For subsections (1) and (2) substitute —

“(1) If, in the case of an occupational pension scheme which is a money purchase scheme, the value at the applicable time of the unallocated assets of the scheme is less than the amount of any criminal reduction in the aggregate value of the allocated assets of the scheme, then an amount equal to the difference shall be treated as a debt due from the employer to the trustees or managers of the scheme.

(2) In this section —

“allocated assets”, in relation to a scheme, means assets which have been specifically allocated for the provision of benefits to or in respect of members (whether generally or individually) or for the payment of the scheme’s expenses (and “unallocated” shall be construed accordingly);

“the applicable time” means the time immediately after the act or omission to which the criminal reduction is attributable occurs or, if that time cannot be determined, the earliest time when the auditor of the scheme knows that the reduction has occurred;

“criminal reduction” means a reduction which is attributable to an act or omission which constitutes an offence prescribed for the purposes of section 81(1)(c) (or, in the case of an act or omission which occurred outside England and Wales or Scotland, would constitute such an offence if it occurred in England and Wales or in Scotland).”.

(3) Omit subsections (3), (4) and (6).

(4) For the purpose of section 75(1) (as substituted by paragraph (2)), paragraphs (5) to (9) apply instead of regulation 3.

(5) In the case of a scheme other than an ear-marked scheme —

- (a) the value at the applicable time of the unallocated assets of the scheme shall be taken to be the value of those assets as certified in a statement by the scheme’s auditor; and
- (b) the amount of the criminal reduction in the aggregate value of the allocated assets of the scheme is to be calculated by subtracting the actual aggregate value of those assets at the applicable time from the notional aggregate value of those assets.

(6) The notional aggregate value mentioned in paragraph (5)(b) shall be taken to be the sum of the values of the assets —

- (a) as stated in the audited accounts which most immediately precede the relevant act or omission, or

(b) if there are none, as certified in a statement by the scheme’s auditor, adjusted appropriately to take account of any alteration in their values (other than any alteration attributable to that act or omission) between the date as at which those accounts are prepared or, as the case may be, as at which that statement is given and the applicable time.

(7) The actual aggregate value mentioned in paragraph (5)(b) shall be calculated in the same manner as it was calculated for the purposes of the accounts mentioned in paragraph (6)(a) or, as the case may be, the statement mentioned in paragraph (6)(b).

(8) In the case of an ear-marked scheme, the value at the applicable time of the unallocated assets of the scheme and the amount of the criminal reduction in the aggregate value of the allocated assets of the scheme are the amounts certified in a statement by the relevant insurer.

(9) In this regulation —

“ear-marked scheme” means a scheme under which all the benefits are secured by one or more policies of insurance or annuity contracts, being policies or contracts specifically allocated to the provision of benefits for individual members or any other person who has a right to benefits under the scheme; and

“the relevant insurer”, in relation to such a scheme, is the insurer with whom the insurance contract or annuity contract is made.

#### **Multi-employer money purchase schemes**

**8.**—(1) Regulation 4(1) and (3) to (5) does not apply to a money purchase scheme, but in its application to such a scheme in relation to which there is more than one employer, section 75 (as modified by regulation 7) applies with the insertion after subsection (1) of the same subsections as are inserted by regulation 4(2), omitting from subsection (1A) the words “in the opinion of the actuary after consultation with the trustees or managers”.

(2) Where (apart from this paragraph) section 75 does not apply to a money purchase scheme with the modification made by paragraph (1) but, if it did so, subsection (1C) of that section would apply to the scheme, that section shall have effect with the modification made by paragraph (1).

#### **Former employers of money purchase schemes**

**9.** Regulations 5 and 6 shall not apply to a money purchase scheme, but in the application of section 75 and these regulations to such a scheme which has no active members at the applicable time “the employer” includes every person who employed persons in the description or category of employment to which the scheme relates immediately before the occurrence of the event after which the scheme ceased to have any active members.