
STATUTORY INSTRUMENTS

2005 No. 678

PENSIONS

**The Occupational Pension Schemes
(Employer Debt) Regulations 2005**

Made - - - - *11th March 2005*
Laid before Parliament *16th March 2005*
Coming into force - - *6th April 2005*

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 40(1) and (2), 49(2) and (3), 57(2) and (4), 60(2), 68(2)(e), 75(1)(b), (5), (6D)(b)(i) and (10), 75A(1) to (4), 89(2), 118(1), 119, 124(1), 125(3) and 174(2) and (3) of the Pensions Act 1995^{M1} and of all other powers enabling him in that behalf, by this instrument, which is consequential on section 271 of the Pensions Act 2004^{M2}, and is made before the end of the period of six months beginning with the coming into force of that section, hereby makes the following Regulations:

Marginal Citations

- M1** 1995 c. 26. Section 75 is amended by s.271 of the [Pensions Act 2004 \(c. 35\)](#). Section 75A is inserted by s.272 of the Pensions Act 2004. Section 89(2) is amended by paragraph 66 of Schedule 12 to the Pensions Act 2004. Section 124(1) is cited for the meaning it gives to “prescribed” and “regulations”.
- M2** 2004 c. 35. See section 120 of the Pensions Act 1995 which provides that the Secretary of State must consult such persons as he may consider appropriate before making regulations for the purposes of the provisions for the purposes of which these Regulations are made. This duty does not apply where regulations are made before the end of the period of six months beginning with the coming into force of any enactment on which the regulations are consequential.

Preliminary

Citation, commencement, application and extent

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Employer Debt) Regulations 2005.

(2) These Regulations come into force on 6th April 2005.

(3) These Regulations do not apply to—

[^{F1}(a) any employer in relation to any debt which has arisen under section 75(1) of the 1995 Act to the trustees or managers of the scheme before that date.]

Status: Point in time view as at 06/04/2008.

Changes to legislation: There are currently no known outstanding effects for the The Occupational Pension Schemes (Employer Debt) Regulations 2005. (See end of Document for details)

- (b) any scheme which immediately before that date was regarded by virtue of regulation 2 of the Occupational Pension Schemes (Winding Up) Regulations 1996 ^{M3} as having begun to be wound up before that date for the purposes of those Regulations; or
- (c) any scheme which according to the rules in section 124(3A) to (3E) of the 1995 Act ^{M4} began to wind up before that date.
- (4) These Regulations extend to England and Wales and Scotland.

Textual Amendments

F1 Reg. 1(3)(a) substituted (6.4.2008) by [The Occupational Pension Schemes \(Employer Debt and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/731\)](#), regs. 2(1), **4(1)** (with reg. 2(3)-(8))

Marginal Citations

M3 [S.I. 1996/3126](#).

M4 Subsections (3) to (3E) were inserted in section 124 by section 49(2) of the [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#).

Interpretation

2.—(1) In these Regulations—

^{M5}“the 1993 Act” means the Pension Schemes Act 1993;

“the 1995 Act” means the Pensions Act 1995;

“the 2004 Act” means the Pensions Act 2004;

^{M6}“the 1996 Regulations” means the Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations 1996;

[^{F2}“actuarial valuation” has the same meaning as in Part 3 of the 2004 Act;]

“the actuary” means the actuary appointed for the scheme in pursuance of subsection (1)(b) of section 47 of the 1995 Act or, in the case of a scheme to which that provision does not apply by virtue of regulations made under subsection (5) of that section, an actuary otherwise authorised by the trustees or managers to provide such valuations or certifications as may be required under these Regulations;

[^{F2}“amount A” means the amount calculated in accordance with paragraph 4 of Schedule 1A;]

[^{F2}“amount B” means the amount calculated in accordance with either sub-paragraph (2) or (3) of paragraph 5 of Schedule 1A;]

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

[^{F2}“approved withdrawal arrangement” means an arrangement that meets the funding test and is approved by the Authority under regulation 7;]

[^{F2}“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;]

[^{F2}“assessment period” has the meaning given in section 132 of the 2004 Act (assessment periods);]

[^{F3}“the Board for Actuarial Standards” means the operating body of that name of the Financial Reporting Council;]

[^{F2}“cessation employer” means an employer in relation to the scheme in respect of whom an employment-cessation event has occurred;]

[^{F2}“cessation expenses” are all expenses which, in the opinion of the trustees or managers of a scheme, are likely to be incurred by the scheme in connection with an employment-cessation event occurring to an employer in relation to the scheme;]

[^{F2}“the corresponding assets” means the assets transferred in connection with the transfer from the scheme in respect of any relevant transfer liabilities;]

[^{F2}“defined contribution employer” means an employer all the liabilities attributable to whom in relation to a scheme are liabilities in respect of money purchase benefits as defined in section 181(1) of the 1993 Act or in respect of supplementary benefits provided on an ancillary basis in the form of payments on death;]

[^{F2}“departing employer” means—

- (a) a cessation employer; or
- (b) an employer in respect of whom an insolvency event has occurred;]

“employer” has the same meaning as in section 75 of the 1995 Act (but see paragraph (2) and regulations [^{F4}6,] 9 and 13);

[^{F5}“employment-cessation event” means in relation to a multi-employer scheme an event which is not a relevant event and which, subject to regulation 6A, occurs on the date on which—

- (a) an employer has ceased to employ at least one person who is an active member of the scheme, and
- (b) at least one other employer who is not a defined contribution employer continues to employ at least one active member of the scheme;]

[^{F2}“frozen scheme” means a scheme which has ceased to have active members;]

[^{F2}“guarantors” means such one or more of the parties to a withdrawal arrangement or an approved withdrawal arrangement as are specified in the arrangement as the persons who have given guarantees in relation to amount B for the purposes of the arrangement;

“the guarantee time” means the earliest time when an event specified in paragraph 3 of Schedule 1A occurs;

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

“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;]

^{M7}“the MFR Regulations” means the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996;

“money purchase scheme” means an occupational pension scheme under which all the benefits that may be provided other than death benefits are money purchase benefits;

[^{F6}“multi-employer scheme” means a scheme (or a section of a scheme treated pursuant to regulation 8 as a separate scheme) in relation to which there is more than one employer;]

[^{F2}“PPF” means the Pension Protection Fund established under Part 2 of the 2004 Act;

Status: Point in time view as at 06/04/2008.

Changes to legislation: There are currently no known outstanding effects for the The Occupational Pension Schemes (Employer Debt) Regulations 2005. (See end of Document for details)

“the PPF Valuation Regulations” means the Pension Protection Fund (Valuation) Regulations 2005;

“protected liabilities” has the same meaning as for the purposes of a valuation under section 179 of the 2004 Act (valuations to determine scheme under funding);

“recovery plan” means a recovery plan that complies with the requirements in section 226 of the 2004 Act and the Scheme Funding Regulations;

“regulated apportionment arrangement” is an arrangement under the scheme rules that—

- (a) provides for the amount that would have been the employer's liability share to be changed;
- (b) where the employer's liability share is reduced, apportions all or part of the amount that would have been the employer's liability share to one or more of the remaining employers;
- (c) may provide for when the amount apportioned is to be paid;
- (d) is entered into before, on or after the applicable time;
- (e) sets out the amount of an employer's regulated apportionment arrangement share; and
- (f) meets the conditions in regulation 7A;

“regulated apportionment arrangement share” means the amount under a regulated apportionment arrangement that is an employer's share of the difference;

“relevant accounts” means the audited accounts for the scheme that comply with the requirements imposed under section 41 of the 1995 Act (provision of documents to members);

“the relevant transfer deduction” means the amount of the relevant transfer liabilities less the value of the corresponding assets;

“the relevant transfer liabilities” means the liabilities attributable to a departing employer that are transferred after the applicable time to an occupational or personal pension scheme or are otherwise secured;

“schedule of contributions” means the most recent schedule of contributions that is adopted in relation to the scheme for the purposes of Part 3 of the 2004 Act;

“scheme apportionment arrangement” means an arrangement under the scheme rules that—

- (a) provides for the employer to pay a scheme apportionment arrangement share instead of the employer's liability share;
- (b) where that amount is less than the employer's liability share, apportions all or part of the amount that would have been the employer's liability share to one or more of the remaining employers;
- (c) may provide for when the amount apportioned is to be paid;
- (d) is entered into before, on or after the applicable time;
- (e) sets out the amount of an employer's scheme apportionment arrangement share;
- (f) the trustees or managers consent to; and
- (g) meets the funding test;

“scheme apportionment arrangement share” means the amount under a scheme apportionment arrangement that is an employer's share of the difference;

“scheme's apportionment rule” means a scheme rule which makes provision for the difference between the value of a scheme's assets and the amount of its liabilities to be apportioned among the employers in different proportions from those which would otherwise arise;

“the Scheme Funding Regulations” means the Occupational Pension Schemes (Scheme Funding) Regulations 2005;

“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 a scheme;

“statutory funding objective” has the same meaning as in Part 3 of the 2004 Act;]

“the tax condition”, in relation to a scheme, means—

- (a) that the scheme has been approved by the Commissioners of the Board of Inland Revenue for the purposes of section 590 or 591 of the Taxes Act at any time before 6th April 2006; or
- (b) ^{M8}that the scheme is registered under section 153 of the Finance Act 2004;

^{M9}“the Taxes Act” means the Income and Corporation Taxes Act 1988.

[^{F2}“updated actuarial assessment” means—

- (a) the actuary's estimate of the solvency of the scheme as defined in regulation 7(6) of the Scheme Funding Regulations included in the most recent actuarial valuation of the scheme received by the trustees or managers under section 224 of the 2004 Act; or
- (b) where the trustees or managers have not received a valuation of the scheme under section 224 of the 2004 Act, the actuary's estimate of the solvency of the scheme included in the most recent actuarial valuation of the scheme received by the trustees or managers, which in the opinion of the actuary is appropriate to use,

adjusted to the applicable time to reflect the actuary's assessment of changes between the effective date of that valuation and the applicable time in the value of the scheme's assets and of the matters set out in regulation 7(6)(a)(i) and (ii) of the Scheme Funding Regulations;

“updated asset assessment” means an update (whether or not audited) of the value of the assets of the scheme identified in the most recent relevant accounts received by the trustees or managers which—

- (a) is prepared by the trustees or managers, and
- (b) estimates where they consider appropriate any alteration in the value of the assets of the scheme between the date by reference to which those accounts are prepared and the applicable time;]

[^{F7}“withdrawal arrangement” means an arrangement that meets the conditions specified in paragraph 1 of Schedule 1A and meets the funding test;]

[^{F2}“withdrawal arrangement share” means an amount that is—

- (a) a cessation employer's share of the difference,
- (b) equal to or, where the employer agrees, greater than amount A, and
- (c) payable by a cessation employer pursuant to a withdrawal arrangement;]

[^{F2}(2) In these Regulations “scheme” must be read in appropriate cases in accordance with the modifications of section 75 of the 1995 Act made by regulation 8, 14 or 15, as the case may be; and “employer” and “member” must be read accordingly.

[^{F8}(3) References in these Regulations to BAS standards are to standards on winding up and scheme asset deficiency adopted or prepared, and from time to time revised, by the Board for Actuarial Standards.]

^{F9}(4)

[

Status: Point in time view as at 06/04/2008.

Changes to legislation: There are currently no known outstanding effects for the The Occupational Pension Schemes (Employer Debt) Regulations 2005. (See end of Document for details)

^{F10}(4A) For the purposes of regulations 6B, 6C and 7, an arrangement relating to a scheme meets the funding test where the trustees or managers are reasonably satisfied that—

- (a) when the arrangement takes effect, the remaining employers will be reasonably likely to be able to fund the scheme so that after the applicable time it will have sufficient and appropriate assets to cover its technical provisions, taking account of any change in those provisions which will in the opinion of the trustees or managers be necessary as a result of the arrangement, and
- (b) in the case of a scheme apportionment arrangement under regulation 6B, the effect of the arrangement will not be to adversely affect the security of members' benefits as a result of any—
 - (i) 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, or
 - (ii) material revision to any existing recovery plan made in accordance with section 226 of the 2004 Act.

(4B) For the purposes of paragraph (4A), 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, that paragraph shall apply as if for that paragraph there were substituted—

“(4A) For the purposes of regulations 6B, 6C and 7, an arrangement relating to a scheme meets the funding test where the trustees or managers are reasonably satisfied that, after taking account of the financial resources of the remaining employers, the arrangement is unlikely to adversely affect the security of the members' benefits under the scheme.”

(4C) The trustees or managers may consider that the test in paragraph (4A)(a) is met if in their opinion the remaining employers are able to meet the relevant payments as they fall due under the schedule of contributions for the purposes of section 227 of the 2004 Act, taking into account any revision of that schedule that they think will be necessary when the arrangement takes effect.

(4D) In paragraphs (4A) and (4C), references to “remaining employers” may in relevant circumstances be read as referring only to the employer or employers to whom all or part of the liability share is apportioned under the scheme rules.]

(5) Subject to the previous provisions of this regulation, expressions used in these Regulations have the same meaning as in Part 1 of the 1995 Act (see section 124).]

Textual Amendments

- F2** Words in reg. 2(1) inserted (6.4.2008) by [The Occupational Pension Schemes \(Employer Debt and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/731\)](#), regs. 2(1), **4(2)(e)** (with reg. 2(3)-(8))
- F3** Words in reg. 2(1) inserted (6.4.2007) by [The Occupational and Personal Pension Schemes \(Prescribed Bodies\) Regulations 2007 \(S.I. 2007/60\)](#), reg. 1, **Sch. para. 14(a)(i)**
- F4** Word in reg. 2(1) inserted (6.4.2008) by [The Occupational Pension Schemes \(Employer Debt and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/731\)](#), regs. 2(1), **4(2)(a)** (with reg. 2(3)-(8))
- F5** Words in reg. 2(1) substituted (6.4.2008) by [The Occupational Pension Schemes \(Employer Debt and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/731\)](#), regs. 2(1), **4(2)(b)** (with reg. 2(3)-(8))
- F6** Words in reg. 2(1) substituted (6.4.2008) by [The Occupational Pension Schemes \(Employer Debt and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/731\)](#), regs. 2(1), **4(2)(c)** (with reg. 2(3)-(8))
- F7** Words in reg. 2(1) substituted (6.4.2008) by [The Occupational Pension Schemes \(Employer Debt and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/731\)](#), regs. 2(1), **4(2)(d)** (with reg. 2(3)-(8))
- F8** Reg. 2(3) substituted (6.4.2008) by [The Occupational Pension Schemes \(Employer Debt and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/731\)](#), regs. 2(1), **4(3)** (with reg. 2(3)-(8))

- F9** Reg. 2(4) omitted (6.4.2008) by virtue of [The Occupational Pension Schemes \(Employer Debt and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/731\)](#), regs. 2(1), **4(4)** (with reg. 2(3)-(8))
- F10** Reg. 2(4A)-(4D) inserted (6.4.2008) by [The Occupational Pension Schemes \(Employer Debt and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/731\)](#), regs. 2(1), **4(4)** (with reg. 2(3)-(8))

Marginal Citations

- M5** 1993 c. 48.
M6 S.I. 1996/3128.
M7 S.I. 1996/1536.
M8 2004 c. 12.
M9 1988 c. 1.

Disapplication of the 1996 Regulations

3. The 1996 Regulations do not apply in any case where these Regulations apply (and accordingly they only apply to a scheme as respects which regulation 1(3)(a), (b) or (c) applies).

Schemes to which section 75 of the 1995 Act does not apply

- 4.—(1) Section 75 of the 1995 Act does not apply to any scheme which is—
- (a) a public service pension scheme under the provisions of which there is no requirement for assets related to the intended rate or amount of benefit under the scheme to be set aside in advance (disregarding requirements relating to additional voluntary contributions);
 - (b) a scheme which is made under section 7 of the Superannuation Act 1972 ^{M10} (superannuation of persons employed in local government etc.) and provides pensions to local government employees;
 - (c) a scheme which is made under section 2 of the Parliamentary and Other Pensions Act 1987 ^{M11} (power to provide for pensions for Members of the House of Commons etc.);
 - (d) a scheme in respect of which a relevant public authority, as defined in section 307(4) of the 2004 Act, has given a guarantee or made any other arrangements for the purposes of securing that the assets of the scheme are sufficient to meet its liabilities;
 - (e) a scheme which does not meet the tax condition;
 - (f) a scheme which—
 - (i) has been categorised by the Commissioners of the Board of Inland Revenue for the purposes of its approval as a centralised scheme for non-associated employers;
 - (ii) which is not contracted-out; and
 - (iii) under the provisions of which the only benefits that may be provided on or after retirement (other than money purchase benefits derived from the payment of voluntary contributions by any person) are lump sum benefits which are not calculated by reference to a member's salary;
 - (g) a scheme with such a superannuation fund as is mentioned in section 615(6) of the Taxes Act (fund established to provide superannuation benefits in respect of persons' employment in a trade or undertaking wholly outside the United Kingdom);
 - (h) a scheme with fewer than two members;
 - (i) a scheme with fewer than twelve members where all the members are trustees of the scheme and either—
 - (i) the rules of the scheme provide that all decisions are made only by the trustees who are members of the scheme by unanimous agreement; or

Status: Point in time view as at 06/04/2008.

Changes to legislation: There are currently no known outstanding effects for the The Occupational Pension Schemes (Employer Debt) Regulations 2005. (See end of Document for details)

- (ii) the scheme has a trustee who is independent in relation to the scheme for the purposes of section 23 of the 1995 Act ^{M12} (power to appoint independent trustees) (see subsection (3) of that section) and is registered in the register maintained by the Authority in accordance with regulations made under subsection (4) of that section;
- (j) a scheme with fewer than twelve members where all the members are directors of a company which is the sole trustee of the scheme and either—
 - (i) the rules of the scheme provide that all decisions are made only by the members of the scheme by unanimous agreement, or
 - (ii) one of the directors of the company is independent in relation to the scheme for the purposes of section 23 of the 1995 Act and is registered in the register maintained by the Authority in accordance with regulations made under subsection (4) of that section;
- (k) the Chatsworth Settlement Estate Pension Scheme; or

^{F11}(1)

(2) Before 6th April 2006 paragraph (1)(e) applies with the addition at the end of the words “and is not a relevant statutory scheme providing relevant benefits”; and for the purposes of that paragraph “relevant statutory scheme” and “relevant benefits” have the same meaning as in Chapter 1 of Part 14 of the Taxes Act (see sections 611A and 612(1) of that Act).

Textual Amendments

F11 Reg. 4(1)(l) omitted (2.9.2005) by virtue of [The Occupational Pension Schemes \(Employer Debt etc.\) \(Amendment\) Regulations 2005 \(S.I. 2005/2224\)](#), regs. 1(2), **4(1)**

Marginal Citations

M10 1972 c. 11.

M11 1987 c. 45.

M12 Section 23 is substituted by section 36(3) of the Pensions Act 2004.

Valuations

[^{F12}Calculation of the amount of scheme liabilities and value of scheme assets

5.—(1) The value of the assets which are to be taken into account for the purposes of section 75(2) and (4) of the 1995 Act shall be determined, calculated and verified by the trustees or managers.

(2) The liabilities which are to be taken into account for the purposes of section 75(2) and (4) of the 1995 Act shall be determined by the trustees or managers and the amount of those liabilities shall be calculated and verified by the actuary.

(3) The assets of the scheme shall be valued and the amount of the liabilities shall be determined and calculated by reference to the same date.

(4) Subject to paragraph (15), the assets of a scheme to be taken into account by the trustees or managers are the assets attributable to the scheme in the relevant accounts, excluding—

- (a) any resources invested (or treated as invested by or under section 40 of the 1995 Act) in contravention of section 40(1) of the 1995 Act (employer-related investments);
- (b) any amounts treated as a debt due to the trustees or managers under section 75(2) or (4) of the 1995 Act (deficiencies in assets) or section 228(3) of the 2004 Act (amounts due in accordance with a schedule of contributions) which are unlikely to be recovered without disproportionate cost or within a reasonable time;

- (c) where it appears to the actuary that the circumstances are such that it is appropriate to exclude them, any rights under an insurance policy; and
- (d) assets representing the value of any rights to money purchase benefits under the scheme; and where arrangements are being made by the scheme for the transfer to or from it of any accrued rights and any pension credit rights, until such time as the trustees or managers of the scheme to which the transfer is being made (“the receiving scheme”) have received the assets of the full amount agreed by them as consideration for the transfer, it shall be assumed that any assets transferred in respect of the transfer of those rights are assets of the scheme making the transfer and not assets of the receiving scheme.
- (5) An updated asset assessment may be used for the purposes of paragraph (4) if—
- (a) the trustees or managers, after consulting the cessation employer and other scheme employers, so decide; and
 - (b) section 75(4) of the 1995 Act applies by virtue of an employment-cessation event.
- (6) The value to be given to the assets of a scheme by the trustees or managers is—
- (a) the value given to those assets in the relevant accounts or in the updated asset assessment less, in either case, the amount of the external liabilities;
 - (b) in the case of any rights under an insurance policy taken into account notwithstanding paragraph (4)(c), the value the actuary considers appropriate in the circumstances of the case.
- (7) For the purposes of paragraph (6), “external liabilities” means—
- (a) such liabilities of the scheme as are shown in the net assets statement in the relevant accounts and their amount shall be taken to be the amount shown in that statement in respect of them (and the liabilities in paragraph (8) are not to be included as external liabilities); or
 - (b) an estimate used for the purposes of an updated asset statement.
- (8) Subject to paragraphs (9), (13) and (15), the liabilities of a scheme to be taken into account by the trustees or managers are any liabilities—
- (a) in relation to a member of the scheme by virtue of—
 - (i) any right that has accrued to or in respect of him to future benefits under the scheme rules,
 - (ii) any entitlement to the present payment of a pension or other benefit which he has under the scheme rules, and
 - (b) in relation to the survivor of a member of the scheme, by virtue of any entitlement to benefits, or right to future benefits which he has under the scheme rules in respect of the member.
- (9) The liabilities of a scheme to be excluded from paragraph (8) are—
- (a) liabilities secured by an insurance policy the rights under which are excluded under paragraph (4)(c); and
 - (b) liabilities representing the value of any rights to money purchase benefits under the scheme.
- (10) For the purposes of paragraph (8)—
- (a) where arrangements are being made by the scheme for the transfer to or from it of accrued rights and any pension credit rights, until such time as the trustees or managers of the scheme to which the transfer is being made (“the receiving scheme”) have received the assets of the full amount agreed by them as consideration for the transfer, it shall be assumed that the rights have not been transferred;

Status: Point in time view as at 06/04/2008.

Changes to legislation: There are currently no known outstanding effects for the The Occupational Pension Schemes (Employer Debt) Regulations 2005. (See end of Document for details)

- (b) it shall be assumed that all pensionable service under the scheme ceased before the applicable time; and
- (c) the following definitions shall apply—
- “right” includes a pension credit right; and
- “the survivor” of a member is a person who has survived the member and has any entitlement to benefit, or right to future benefits, under the scheme on account of the member.
- (11) The amount of the liabilities in respect of pensions and other benefits is to be calculated and verified by the actuary on the assumption that they will be discharged by the purchase of annuities of the kind described in section 74(3)(c) of the 1995 Act (discharge of liabilities; annuity purchase) and for this purpose the actuary must estimate the cost of purchasing annuities.
- (12) The actuary must estimate the cost of purchasing the annuities—
- (a) on terms the actuary considers consistent with those in the available market and which he considers would be sufficient to satisfy the scheme's liabilities in respect of pensions and other benefits, or
- (b) where the actuary considers that it is not practicable to make an estimate in accordance with sub-paragraph (a), in such manner as the actuary considers appropriate in the circumstances of the case.
- (13) The liabilities shall include all expenses (except the cost of the annuities) which, in the opinion of the trustees or managers of the scheme, are likely to be incurred in connection with the winding-up of the scheme.
- (14) An updated actuarial assessment may be prepared by the actuary for the purposes of paragraph (8) if—
- (a) the trustees or managers, after consulting the actuary and the cessation employer, so decide; and
- (b) section 75(4) of the 1995 Act applies by virtue of an employment-cessation event.
- (15) If at the applicable time the scheme has not commenced winding-up and a withdrawal arrangement or an approved withdrawal arrangement is in force before the applicable time, the amount B treated as a debt due under the arrangement shall be included as an asset of the scheme, provided that the trustees or managers are reasonably satisfied that, as at the applicable time, the guarantors have sufficient financial resources to be likely to pay amount B.
- (16) For the purposes of paragraph (15), amount B shall be determined by the trustees or managers and calculated by the actuary as if it had become due at the applicable time.
- (17) Where in these Regulations there is a reference to—
- (a) the amount of any liability being calculated or verified in accordance with the opinion of the actuary or as he thinks appropriate, or
- (b) the actuary preparing an updated actuarial assessment,
- he must apply any relevant BAS standards in making that calculation or verification, or preparing that update.
- (18) The amount of the liabilities of a scheme which are to be taken into account for the purposes of section 75(2) and (4) of the 1995 Act must be certified by the actuary in the form set out in Schedule 1 to these Regulations.
- (19) This regulation is subject to regulation 6 (multi-employer schemes: general), regulation 6C (withdrawal arrangements) and regulation 7 (approved withdrawal arrangements).]

Textual Amendments

- F12** Reg. 5 substituted (6.4.2008) by [The Occupational Pension Schemes \(Employer Debt and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/731\)](#), regs. 2(1), 5 (with reg. 2(3)-(8))

Multi-employer schemes

Multi-employer schemes: general

6.—(1) In its application to a multi-employer scheme, section 75 of the 1995 Act has effect in relation to each employer as if—

- (a) the reference in section 75(2)(a) to a time which falls before any relevant event in relation to the employer which occurs while the scheme is being wound up were a reference to a time which falls before relevant events have occurred in relation to all the employers;
- (b) the reference in section 75(2) to an amount equal to the difference being treated as a debt due from the employer were a reference to an amount equal to that employer's share of the difference being treated as a debt due from that employer;
- (c) the references in section 75(3)(a)(i) and (b) to no relevant event of the kind there mentioned occurring in relation to the employer were references to no event of that kind occurring in relation to all the employers;
- (d) the reference in section 75(4)(a) to a relevant event (“the current event”) occurring in relation to the employer were a reference to a relevant event or an employment-cessation event occurring only in relation to that employer;
- (e) the reference in section 75(4) to an amount equal to the difference being treated as a debt due from the employer were—
 - (i) in a case where the difference is ascertained immediately before a relevant event occurs in relation to the employer, a reference to an amount equal to the employer's share of the difference being treated as a debt due from the employer; and
 - (ii) in a case where the difference is ascertained immediately before an employment cessation event occurs in relation to the employer, a reference to an amount equal to the sum of the cessation expenses attributable to the employer and the employer's share of the difference being treated as a debt due from the employer; and
- (f) section 75(4)(d) and (e) were omitted.

[^{F13}(2) For the purposes of paragraph (1), an employer's share of the difference is the liability share unless the conditions are met for it being one of the following—

- (a) the scheme apportionment arrangement share;
- (b) the regulated apportionment arrangement share;
- (c) the withdrawal arrangement share; or
- (d) the approved withdrawal arrangement share.]

[^{F13}(3) Where—

- (a) the withdrawal arrangement share applies, the modification in regulation 6C(2) of section 75(4) of the 1995 Act shall apply when the withdrawal arrangement comes into force;
- (b) the approved withdrawal arrangement share applies, the modification in regulation 7(6) of section 75(4) of the 1995 Act shall apply when the approved withdrawal arrangement comes into force.]

Status: Point in time view as at 06/04/2008.

Changes to legislation: There are currently no known outstanding effects for the The Occupational Pension Schemes (Employer Debt) Regulations 2005. (See end of Document for details)

[^{F13}(4) For the purposes of calculating the liability proportion for the purposes of the liability share, the liabilities attributable to employment with any employer (“Employer A”) shall be determined by the trustees or managers, after consulting the actuary and Employer A, as follows—

- (a) where a scheme apportionment arrangement (or before 6th April 2008, an exercise of a scheme apportionment rule) or a regulated apportionment arrangement has required certain liabilities to be apportioned to one or more employer in a particular way, those liabilities shall be so attributed;
- (b) subject to sub-paragraph (c), where liabilities to or in respect of any member arose as a result of pensionable service with more than one employer, the liabilities attributable to Employer A in respect of any such member shall comprise only liabilities which arose during or as a result of pensionable service with Employer A (including any liabilities attributable to a transfer received by the scheme during that period or periods of pensionable service); and
- (c) where any of the circumstances in paragraph (5) applies in respect of certain liabilities in respect of any member, those liabilities shall be attributable in accordance with the following sub-paragraphs applied in sequence—
 - (i) either—
 - (aa) if Employer A is the last employer of any member and the liabilities in respect of that member cannot be attributed to any employer, all of the liabilities to or in respect of any such member shall be attributable to Employer A, or
 - (bb) the liabilities in respect of any member which cannot be attributed to any employer shall be attributable in a reasonable manner to one or more employer (which may or may not include Employer A), or
 - (ii) if the trustees or managers are unable to determine whether or not Employer A is the last employer of any member and the liabilities in respect of that member cannot be attributed to any employer, the liabilities attributable to any such member shall not be attributable to any employer.

(5) The circumstances referred to in paragraph 4(c) are—

- (a) where the trustees or managers are unable to determine to whom liabilities in respect of any member should be attributed in accordance with paragraph (4) (b), paragraph (4)(c) shall apply in relation to those liabilities which cannot be attributed to any employer under paragraph (4)(b); or
- (b) where the trustees or managers are able to determine to whom liabilities in respect of any member should be attributed in accordance with paragraph (4)(b), but to do so they expect disproportionate costs will be incurred by the scheme, paragraph (4)(c) shall apply in relation to those liabilities which cannot be attributed to any employer under paragraph (4)(b) except at disproportionate costs.]

[^{F13}(6) Where an employer notifies the trustees or managers that a relevant transfer deduction shall apply to a departing employer's liabilities—

- (a) the departing employer's liability share shall be reduced by the amount of the relevant transfer deduction, provided the relevant transfer liabilities and corresponding assets are transferred out during the period commencing with the applicable time and ending on the day that is 12 months later (“transfer out period”); and
- (b) the liability share shall be calculated after the end of the transfer out period or if all transfers are completed on a date before the end of that period, after that date.

(7) For the purposes of paragraph (6), the relevant transfer deduction shall be determined by calculating the relevant transfer liabilities and the corresponding assets in accordance with regulation 5.

(8) The amount of the liabilities attributable to an employer under paragraph (4), the liability proportion, and the amount of the liability share shall be calculated and verified by the actuary in accordance with any relevant BAS standards and shall be certified by him in the form set out in Schedule 1 to these Regulations.]

Textual Amendments

F13 Reg. 6(2)-(8) substituted for reg. 6(2)-(5) (6.4.2008) by [The Occupational Pension Schemes \(Employer Debt and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/731\)](#), regs. 2(1), 6 (with reg. 2(3)-(8))

[^{F14}Employment-cessation events: periods of grace

6A.—(1) Where but for this regulation an employment-cessation event would have occurred in relation to an employer (“A”) and before, on, or as soon as possible and in any event within one month after, the cessation date A gives the trustees or managers of a relevant scheme (“the scheme”) a period of grace notice, A will be treated for a period of grace as if he employed a person who is an active member of the scheme, but—

- (a) if by the last day of the period of grace A does not employ a person who is an active member of the scheme, A will be treated as if the period of grace had not applied;
- (b) if at any time during the period of grace A no longer intends to employ any person who will be an active member of the scheme, A must notify the trustees or managers of the scheme and A will be treated as if the period of grace had not applied;
- (c) if at any time during the period of grace A employs an active member (whether before or after giving the period of grace notice), A will be treated as if an employment-cessation event had not occurred in relation to him on the cessation date which applied to the period of grace notice; or
- (d) if during the period of grace an insolvency event occurs in relation to A, A will be treated as if the period of grace had not applied.

(2) Where in accordance with paragraph (1) an employer is treated for the period of grace as if he employed at least one person who is an active member of the scheme, he will for the purposes of these Regulations be treated during that period as if he were an employer in relation to the scheme.

(3) For the purposes of this regulation, the following definitions shall apply—

“cessation date” means the date on which the employer ceases to employ at least one person who is an active member of the scheme and at least one other person who is not a defined contribution employer continues to employ at least one person who is an active member of the scheme;

“relevant scheme” means a scheme in relation to which A is not aware of any intention for it to become a frozen scheme during the period of grace;

“period of grace” means a period commencing on the cessation date and ending on the earlier of—

- (a) the day which is twelve months later, or
- (b) the day on which the employer employs a person who is an active member of the scheme;

“period of grace notice” means a notice in writing that an employer intends during the period of grace to employ at least one person who will be an active member of the scheme.

Status: Point in time view as at 06/04/2008.

Changes to legislation: There are currently no known outstanding effects for the The Occupational Pension Schemes (Employer Debt) Regulations 2005. (See end of Document for details)

Textual Amendments

F14 Regs. 6A-6D inserted (6.4.2008) by [The Occupational Pension Schemes \(Employer Debt and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/731\)](#), regs. 2(1), 7 (with reg. 2(3)-(8))

Scheme apportionment arrangements

6B.—(1) Before the trustees or managers of the scheme enter into a scheme apportionment arrangement, the funding test must be met in relation to it.

(2) Paragraph (1) shall not apply where—

- (a) the employer's scheme apportionment arrangement share will be higher than the liability share and the trustees or managers are satisfied that the employer is able to pay the scheme apportionment arrangement share; or
- (b) at the date of the agreement the scheme had commenced winding-up, and the employer's scheme apportionment arrangement share will be lower than his liability share and the trustees or managers are satisfied that—
 - (i) it is likely that the employer would be unable to pay the liability share if it applied; and
 - (ii) it is likely that the employer will be able to pay the scheme apportionment arrangement share.

Textual Amendments

F14 Regs. 6A-6D inserted (6.4.2008) by [The Occupational Pension Schemes \(Employer Debt and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/731\)](#), regs. 2(1), 7 (with reg. 2(3)-(8))

Withdrawal Arrangements

6C.—(1) The trustees or managers may enter into a withdrawal arrangement, before, on or after the applicable time (which applies to an employment-cessation event), provided that—

- (a) the funding test is met, and
 - (b) they are satisfied that at the date of the agreement, the guarantors have sufficient financial resources to be likely to be able to pay amount B that would arise on that date (or pay the likely amount B).
- (2) When the withdrawal arrangement comes into force—
- (a) the cessation employer's share of the difference shall for the purposes of regulation 6(2) be the withdrawal arrangement share, and
 - (b) section 75(4) of the 1995 Act shall apply as if amount B is treated as a debt due on the guarantee time and the guarantors who are party to the withdrawal arrangement shall be jointly liable unless the withdrawal arrangement provides that they shall be jointly and severally liable.
- (3) A relevant transfer deduction will apply to a withdrawal arrangement share provided any transfer or transfers of the cessation employer's relevant transfer liabilities and corresponding assets are completed on or before the date which is twelve months after the employment-cessation event.
- (4) Schedule 1A makes further provision in relation to withdrawal arrangements.

Textual Amendments

F14 Regs. 6A-6D inserted (6.4.2008) by [The Occupational Pension Schemes \(Employer Debt and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/731\)](#), regs. 2(1), 7 (with reg. 2(3)-(8))

Notifiable events

6D. Schedule 1B applies for the purposes of section 69(2)(a) and (3)(a) of the 2004 Act so as to require notice of the events prescribed in that Schedule to be given to the Authority by the persons prescribed in relation to those events, unless the Authority direct otherwise.]

Textual Amendments

F14 Regs. 6A-6D inserted (6.4.2008) by [The Occupational Pension Schemes \(Employer Debt and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/731\)](#), regs. 2(1), 7 (with reg. 2(3)-(8))

[^{F15}Approved withdrawal arrangements

7.—(1) If a cessation employer notifies the Authority in writing that he proposes to enter into an arrangement under this regulation and proposes to seek the Authority's approval of the arrangement, the Authority may issue directions that—

- (a) a debt which may be treated as due under section 75(4) of the 1995 Act is to be unenforceable for such period (“suspension period”) as the Authority may specify in the direction;
 - (b) the suspension period is to be extended by such further periods as it specifies; and
 - (c) if an approved withdrawal arrangement comes into force before the end of the suspension period, section 75(4) of the 1995 Act is to apply with the modifications in paragraph (6).
- (2) The Authority may not approve an arrangement under this regulation unless—
- (a) the amount the cessation employer proposes to pay as its approved withdrawal arrangement share is less than amount A,
 - (b) the trustees have notified the Authority that the funding test is met, and
 - (c) the Authority are satisfied that it is reasonable to do so having regard to such matters as the Authority consider relevant, which may include the following—
 - (i) the potential effect of the employment-cessation event on the method or assumptions used to calculate the scheme's technical provisions;
 - (ii) the financial circumstances of the proposed guarantors;
 - (iii) the amount of the cessation employer's share of the difference under the liability share;
 - (iv) the amount the cessation employer proposes to pay as its approved withdrawal arrangement share (and, where there is likely to be a relevant transfer deduction, an estimate of the amount that the cessation employer will pay if the transfer is completed); and
 - (v) the effect of the proposed arrangement on the security of members' benefits under the scheme.

(3) Approval by the Authority of an arrangement—

- (a) may be given subject to such conditions as the Authority consider appropriate; and

Status: Point in time view as at 06/04/2008.

Changes to legislation: There are currently no known outstanding effects for the The Occupational Pension Schemes (Employer Debt) Regulations 2005. (See end of Document for details)

(b) is to be given in a notice issued by the Authority.

(4) An arrangement may be approved by the Authority in advance of an employment-cessation event occurring (see paragraph 6 of Schedule 1A) or following the occurrence of such an event.

(5) An arrangement may be approved by the Authority where a departing employer notifies the trustees that a relevant transfer deduction shall apply to the proposed approved withdrawal arrangement share, but such approval will cease to be effective if the transfer or transfers of the cessation employer's liabilities are not completed on or before the date which is twelve months after the employment-cessation event or within such a longer period as the Authority approve.

(6) If the Authority issue the directions referred to in paragraph (1) and an approved withdrawal arrangement comes into force before the end of the suspension period (referred to in that paragraph)

(a) the cessation employer's share of the difference shall for the purposes of regulation 6(2) be the approved withdrawal arrangement share, and

(b) section 75(4) of the 1995 Act shall apply as if amount B is treated as a debt due from the guarantors at the guarantee time for which (if there is more than one guarantor) they are jointly, or if the approved withdrawal arrangement provides, jointly and severally liable.

(7) The Authority may issue a direction that amount B under an approved withdrawal arrangement is not to be treated as a debt due from the guarantors under section 75(4) of the 1995 Act and any such direction must be issued—

(a) before the guarantee time, and

(b) if the Authority consider that the approved withdrawal arrangement is no longer required.

(8) The Authority may issue a notice that they consider amount B (or the balance remaining) under an approved withdrawal arrangement should be paid but they may not issue such a notice unless they consider that it is reasonable for the guarantors to be required to pay that amount at that time.

(9) In forming an opinion for the purposes of paragraph (8), the Authority must have regard to such matters as the Authority consider relevant including—

(a) whether the guarantors have taken reasonable steps to comply with the approved withdrawal arrangement;

(b) whether the guarantors have complied with their obligations under Schedule 1B (notifiable events); and

(c) the guarantors' financial circumstances.

(10) Where the Authority consider that an arrangement no longer requires to be continued in force, they may issue a notice to the parties to that effect.

(11) Schedule 1A makes further provision in relation to approved withdrawal arrangements.]

Textual Amendments

F15 Regs. 7 7A substituted for reg. 7 (6.4.2008) by [The Occupational Pension Schemes \(Employer Debt and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/731\)](#), regs. 2(1), **8** (with reg. 2(3)-(8))

[^{F15}Regulated apportionment arrangements

7A.—(1) The conditions which apply to a regulated apportionment arrangement are as follows—

(a) the arrangement applies to a trust scheme where—

- (i) the trustees are of the opinion that there is a reasonable likelihood of an assessment period commencing in relation to the scheme within the following twelve months; or
 - (ii) an assessment period has already commenced in relation to the scheme and has not come to an end;
 - (b) where an assessment period has not already commenced, the trustees of the scheme agree to the arrangement;
 - (c) the arrangement and any amendments to the arrangement are approved by the Authority by a notice of approval; and
 - (d) the Board of the PPF do not object to the arrangement.
- (2) A notice of approval is a confirmation, issued by the Authority, that in their opinion in the circumstances described in the application it would be reasonable to issue a notice of approval.

Textual Amendments

F15 Regs. 7 7A substituted for reg. 7 (6.4.2008) by [The Occupational Pension Schemes \(Employer Debt and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/731\)](#), regs. 2(1), 8 (with reg. 2(3)-(8))

Calculation of amounts due from guarantors by virtue of regulation 7

7B.—(1) For the purposes of regulation 7(3), amount B depends on whether the approved withdrawal arrangement provides for amount B to be the amount provided for under paragraph (2).

(2) If the approved withdrawal arrangement so provides, amount B is equal to the amount (if any) that would be the amount of the debt 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;
- (b) the cessation employer had not entered into an approved withdrawal arrangement; and
- (c) there were no cessation expenses attributable to the employer.

(3) If the approved withdrawal arrangement does not provide for amount B to be the amount provided for under paragraph (2), amount B is equal to the amount that would be the amount treated as due from the cessation employer under section 75(4) of the 1995 Act if the cessation employer had not entered into an approved withdrawal arrangement, less the sum of—

- (a) the amount that is amount A for the purposes of regulation 7(3);
- (b) if the amount that the approved withdrawal arrangement provides for the cessation employer to pay exceeds that amount, an amount equal to the excess; and
- (c) the relevant transferred liabilities deduction.

(4) The value of the assets and the amount of the liabilities of a scheme which are to be taken into account for the purposes of determining the amount (if any) that would be the amount of the debt due from the cessation employer under section 75(4) of the 1995 Act in the case mentioned in paragraph (2) must be certified by the actuary in the form set out in Schedule 1 to these Regulations, but—

- (a) substituting for the reference to regulation 5 a reference to paragraph (2) of this regulation;
- (b) if the actuary is of the opinion that the value of the assets of the scheme was not less than the amount of the liabilities of the scheme—
 - (i) substituting in the first sentence of the comparison of value of scheme assets with amount of scheme liabilities for the words “was less” the words “was not less”; and
 - (ii) omitting the last sentence of that comparison; and

Status: Point in time view as at 06/04/2008.

Changes to legislation: There are currently no known outstanding effects for the The Occupational Pension Schemes (Employer Debt) Regulations 2005. (See end of Document for details)

- (c) if the scheme is being wound up on the date as at which the valuation is made, omitting from the Note the words from “if the scheme” onwards.
- (5) In this regulation—
- “the cessation expenses attributable to the employer” has the meaning given by regulation 6(5); and
- “the relevant transferred liabilities deduction” has the meaning given by regulation 6(6), as inserted by the modification of regulation 6 made by regulation 7A(5)(b), except that for the purposes of this regulation the amount of the relevant transferred liabilities is to be calculated in accordance with regulation 5 without the modifications made by regulation 7A(4).]

Textual Amendments

F15 Regs. 7 7A substituted for reg. 7 (6.4.2008) by [The Occupational Pension Schemes \(Employer Debt and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/731\)](#), regs. 2(1), **8** (with reg. 2(3)-(8))

[^{F16}Single employer sections, multi-employer sections, etc

8.—(1) Where section 75 of the 1995 Act and these Regulations (apart from this regulation) apply to a scheme in relation to which there is more than one employer they shall apply to each of the following sections or parts of that scheme as if the section or part were a separate scheme—

- (a) a section of a segregated scheme with one employer in relation to the section;
 - (b) a section of a segregated scheme with more than one employer in relation to the section;
 - (c) a death benefits section of a segregated scheme;
 - (d) a frozen section of a segregated scheme.
- (2) For the purposes of paragraph (1)—
- (a) subject to sub-paragraph (b), a “segregated scheme” means a scheme in relation to which there is more than one employer and which is divided into two or more sections where—
 - (i) any contributions payable to the scheme by an employer in relation to the scheme or by a member are allocated to that employer's section, if more than one section applies to an employer to the section to which the employment relates, and any contributions to that employer's or member's section; and
 - (ii) a specified proportion of the assets of the scheme is attributable to each section of the scheme and cannot be used for the purposes of any other section;
 - (b) when determining whether a scheme is a segregated scheme there shall (for that purpose) be disregarded any provisions of the scheme which—
 - (i) permit contributions or transfers of assets to be used to provide death benefits;
 - (ii) permit any assets of a section of a scheme to be used for the purpose of another section in the event of the winding-up of the scheme or a section;
 - (c) a “death benefits section of a segregated scheme” shall mean a section—
 - (i) which provides death benefits only; and
 - (ii) to which contributions or transfers of assets may only be made for the purpose of providing death benefits;
 - (d) a “frozen section of a segregated scheme” shall mean a section—
 - (i) which applies only to members who are no longer in pensionable service in relation to the section (and a period of grace notice has not been given under regulation 6A and a period of grace under that regulation is not in progress); and

- (ii) where the scheme rules have not been amended to prevent the scheme from otherwise being a segregated scheme.]

Textual Amendments

- F16** Reg. 8 substituted (6.4.2008) by [The Occupational Pension Schemes \(Employer Debt and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/731\)](#), regs. 2(1), **9** (with reg. 2(3)-(8))

Former employers

[^{F17}Frozen schemes and former employers

9.—(1) In the application of section 75 of the 1995 Act to a scheme, subject to paragraph (3), references to employers include former employers.

- (2) For the purposes of this regulation—
- (a) a “former employer” means any person who employed persons in the description of employment to which the scheme relates but at the relevant time has ceased to do so;
 - (b) in relation to a frozen scheme, “freezing event” means the event in consequence of which the scheme became a frozen scheme (this is subject to regulation 6A);
 - (c) “relevant time” means in relation to a scheme which is not a frozen scheme, the applicable time, and in relation to a frozen scheme, the time of occurrence of the freezing event.
- (3) A person shall not be included as a former employer if—
- (a) he is a defined contribution employer;
 - (b) before 19th December 1996, he ceased to be a person employing persons in the description or category of employment to which the scheme related and was not regarded as a “former participator” for the purposes of the 1996 Regulations by virtue of regulation 6 of those Regulations (ceasing to participate: transitional provision);
 - (c) at a time before the relevant time, when the scheme had not commenced winding-up and the scheme continued to have active members, he—
 - (i) on or after 19th December 1996 and before 6th April 1997, ceased to be a person employing persons in the description or category of employment to which the scheme related and was not regarded as a “former participator” for the purposes of the 1996 Regulations by virtue of regulation 6 of those Regulations (ceasing to participate: transitional provision);
 - (ii) on or after 6th April 1997 and before 6th April 2008, ceased to be a person employing persons in the description or category of employment to which the scheme related and one of conditions A to I is met; or
 - (iii) on or after 6th April 2008 and before the applicable time, ceased to be a person employing persons in the description or category of employment to which the scheme related or an employment-cessation event or insolvency event occurs in respect of him and one of conditions A to I is met; or
 - (d) in relation to a frozen scheme, at a time on or after 6th April 2008, after the freezing event, when the scheme had not commenced winding-up and before the applicable time, he ceased to be a person employing persons in the description or category of employment to which the scheme related or an employment-cessation event or insolvency event occurred in respect of him and one of conditions A to I is met.

Status: Point in time view as at 06/04/2008.

Changes to legislation: There are currently no known outstanding effects for the The Occupational Pension Schemes (Employer Debt) Regulations 2005. (See end of Document for details)

(4) In the application of regulation 6 to a frozen scheme which was a multi-employer scheme before the event as a result of which the scheme became a frozen scheme, in relation to a person who before the applicable time was a former employer under this regulation, an employment-cessation event shall be treated as having occurred where notice is given to the trustees or managers by such a person for the purposes of this paragraph.

(5) A notice given for the purposes of paragraph (4) must specify the date on which the employment-cessation event is to be treated as having occurred, being a date not earlier than 3 months before the date on which the notice is given, and not more than 3 months after that date.

(6) Condition A is that as a result of the employment-cessation event, insolvency event or assumption of his liabilities by another person, no debt arose under section 75(2) or (4) of the 1995 Act (or, before 6th April 2005, under section 75(1) of that Act).

(7) Condition B is that no debt was treated as becoming due from him under section 75(2) or (4) of the 1995 Act (or, before 6th April 2005, under section 75(1) of that Act).

(8) Condition C is that a debt was treated as becoming due from him under section 75(2) or (4) of the 1995 Act (or, before 6th April 2005, under section 75(1) of that Act) and has been paid by him before the applicable time.

(9) Condition D is that in accordance with a withdrawal arrangement a debt was treated as becoming due from him under section 75(4) of the 1995 Act and has been paid by him before the applicable time.

(10) Condition E is that in accordance with an approved withdrawal arrangement a debt was treated as becoming due from him under section 75(4) of the 1995 Act and has been paid by him before the applicable time.

(11) Condition F is that in accordance with a scheme apportionment arrangement a debt was treated as becoming due from him under section 75(2) or (4) of the 1995 Act and has been paid by him before the applicable time.

(12) Condition G is that in accordance with a regulated apportionment arrangement a debt was treated as becoming due from him under section 75(2) or (4) of the 1995 Act and has been paid by him before the applicable time.

(13) Condition H is that a debt was treated as becoming due from him and has not been paid solely because he was not notified of the debt, and of the amount of it, sufficiently in advance of the applicable time for it to be paid before that time.

(14) Condition I is that a debt was treated as becoming due from him under section 75(2) or (4) of the 1995 Act but at the applicable time it is excluded from the value of the assets of the scheme because it is unlikely to be recovered without disproportionate cost or within a reasonable time.

(15) For the purposes of paragraph (6), an “employment-cessation event” shall include circumstances where before 6th April 2005—

- (a) section 75(1) of the 1995 Act applied when a scheme was not being wound-up, and
- (b) an employer ceased to be a person employing persons in the description or category of employment to which the scheme related at a time when at least one other person continued to employ such persons.]

Textual Amendments

F17 Reg. 9 substituted (6.4.2008) by [The Occupational Pension Schemes \(Employer Debt and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/731\)](#), regs. 2(1), **10** (with reg. 2(3)-(8))

Money purchase schemes

Money purchase schemes: fraud and levy deficiencies etc.

10.—(1) Notwithstanding subsection (1)(a) of section 75 of the 1995 Act, that section applies to money purchase schemes as if—

- (a) subsection (2)—
 - (i) provided that if the levy deficit condition is met the levy deficit is to be treated as a debt due from the employer to the trustees or managers of the scheme; and
 - (ii) was not subject to subsection (3) of that section;
- (b) subsection (4) provided that where the criminal reduction conditions are met the criminal deficit is to be treated as a debt due from the employer to the trustees or managers of the scheme; and
- (c) subsections (4A) to (4C) and (6) were omitted.

(2) The levy deficit condition is that an amount payable by way of general levy [^{F18}or fraud compensation levy] in respect of any money purchase scheme exceeds the value of the unallocated assets of the scheme either—

- (a) at the time when the amount first becomes payable to the Secretary of State; or
- (b) at a later time designated by the trustees or managers of the scheme for the purposes of this paragraph.

(3) The criminal reduction conditions are that—

- (a) a reduction in the aggregate value of the allocated assets of the scheme occurs;
- (b) the reduction is attributable to an act or omission which—
 - (i) constitutes an offence prescribed for the purposes of section 81(1)(c) of the 1995 Act; or
 - (ii) 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; and
- (c) immediately after the act or omission or, if that time cannot be determined, at the earliest time when the auditor of the scheme knows that the reduction has occurred, the amount of that reduction exceeds the value of the unallocated assets of the scheme.

(4) [^{F19}In this regulation]—

“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” is to be read accordingly);

“the criminal deficit” means the amount of the excess mentioned in paragraph (3)(c);

[^{F20}“the fraud compensation levy” means the levy imposed in accordance with section 189 of the 2004 Act;]

“the general levy” means the levy imposed under section 175 of the 1993 Act by regulation 3(1) or (2) of the Occupational and Personal Pension Schemes (General Levy) Regulations 2005^{M13}.

“the levy deficit” means the amount of the excess mentioned in paragraph (2);

Status: Point in time view as at 06/04/2008.

Changes to legislation: There are currently no known outstanding effects for the The Occupational Pension Schemes (Employer Debt) Regulations 2005. (See end of Document for details)

Textual Amendments

- F18** Words in reg. 10(2) inserted (1.4.2006) by [The Occupational Pension Schemes \(Fraud Compensation Levy\) Regulations 2006 \(S.I. 2006/558\)](#), regs. 1, **12(a)**
- F19** Words in reg. 10(4) substituted (1.4.2006) by [The Occupational Pension Schemes \(Fraud Compensation Levy\) Regulations 2006 \(S.I. 2006/558\)](#), regs. 1, **12(b)(i)**
- F20** Words in reg. 10(4) inserted (1.4.2006) by [The Occupational Pension Schemes \(Fraud Compensation Levy\) Regulations 2006 \(S.I. 2006/558\)](#), regs. 1, **12(b)(ii)**

Marginal Citations

- M13** [S.I. 2005/626](#).

Money purchase schemes: valuations etc.

11.—(1) For the purposes of section 75 of the 1995 Act as applied by regulation 10, this regulation applies instead of regulation 5^{F21}....

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

- (a) the value at any time of the unallocated assets of the scheme is to 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 at any time is to be calculated by subtracting the actual aggregate value of those assets at that time from the notional aggregate value of those assets.

(3) The notional aggregate value mentioned in paragraph (2)(b) is to 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 time in question.

(4) The actual aggregate value mentioned in paragraph (2)(b) is to be calculated in the same manner as it was calculated for the purposes of the accounts mentioned in paragraph (3)(a) or, as the case may be, the statement mentioned in paragraph (3)(b).

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

- (a) the value at any time of the unallocated assets of the scheme; and
- (b) 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.

(6) 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.

Textual Amendments

- F21** Words in [reg. 11\(1\)](#) omitted (6.4.2008) by virtue of [The Occupational Pension Schemes \(Employer Debt and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/731\)](#), [regs. 2\(1\)](#), [11\(1\)](#) (with [reg. 2\(3\)-\(8\)](#))

Multi-employer money purchase schemes

12.—(1) In its application to a money purchase scheme that is a multi-employer scheme regulation 10 applies with the substitution for paragraph (1) of the following paragraphs —

“(1) Notwithstanding subsection (1)(a) of section 75 of the 1995 Act, that section applies to money purchase schemes as if—

- (a) subsection (2)—
 - (i) provided that if the levy deficit condition is met each employer's share of the levy deficit is to be treated as a debt due from that employer to the trustees or managers of the scheme; and
 - (ii) was not subject to subsection (3) of that section;
- (b) subsection (4) provided that where the criminal reduction conditions are met each employer's share of the criminal deficit is to be treated as a debt due from the employer to the trustees or managers of the scheme; and
- (c) subsections (4A) to (4C) and (6) were omitted.

(1A) For the purposes of paragraph (1), an employer's share of the levy deficit or the criminal deficit is—

- (a) such proportion of that total deficit as, in the opinion of [^{F22}the trustees or managers], the amount of the scheme's liabilities attributable to employment with that employer bears to the total amount of the scheme's liabilities attributable to employment with the employers; or
- (b) [^{F23}if the scheme provides for the total amount of that debt to be otherwise apportioned amongst the employers, the amount due from that employer under that provision.]

(1B) For the purposes of paragraph (1A)—

- (a) the total amount of the scheme's liabilities which are attributable to employment with the employers; and
- (b) [^{F24}the amount of the liabilities attributable to employment with any one employer.]

are such amounts as are determined, calculated and verified by the actuary in accordance with the guidance given in GN 19; and a determination under this paragraph must be certified by the actuary as being in accordance with that guidance.”.

(2) Regulation 6 does not apply to a money purchase scheme that is a multi-employer scheme.

Textual Amendments

- F22** Words in para. (1A)(a) substituted (2.9.2005) by [The Occupational Pension Schemes \(Employer Debt etc.\) \(Amendment\) Regulations 2005, \(S.I. 2005/2224\)](#), [reg. 4\(2\)](#).

Status: Point in time view as at 06/04/2008.

Changes to legislation: There are currently no known outstanding effects for the The Occupational Pension Schemes (Employer Debt) Regulations 2005. (See end of Document for details)

- F23** Reg. 12(1A)(b) omitted (6.4.2008) by virtue of The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2008 (S.I. 2008/731), regs. 2(1), **11(2)(a)** (with reg. 2(3)-(8))
- F24** Reg. 12(1B)(b) omitted (6.4.2008) by virtue of The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2008 (S.I. 2008/731), regs. 2(1), **11(2)(b)** (with reg. 2(3)-(8))

Former employers of money purchase schemes

13. Regulation 9 does not apply to a money purchase scheme, but in the application of section 75 of the 1995 Act and these Regulations to such a scheme which has no active members references to employers include every person who employed persons in the description of employment to which the scheme relates immediately before the occurrence of the event after which the scheme ceased to have any active members.

Other schemes treated as more than one scheme

Schemes covering United Kingdom and foreign employment

14.—(1) Paragraph (2) applies where a scheme which applies to members in employment in the United Kingdom and members in employment outside the United Kingdom is divided into two or more sections and the provisions of the scheme are such that—

- (a) different sections of the scheme apply to members in employment in the United Kingdom and to members in employment outside the United Kingdom (“the United Kingdom section” and “the foreign section”);
 - (b) contributions payable to the scheme in respect of a member are allocated to the section applying to that member's employment;
 - (c) a specified part or proportion of the assets of the scheme is attributable to each section and cannot be used for the purposes of any other section; and
 - (d) the United Kingdom section meets the tax condition and the foreign section does not do so.
- (2) If this paragraph applies—
- (a) section 75 of the 1995 Act and these Regulations (apart from this regulation) apply as if each section of the scheme were a separate scheme; and
 - (b) the reference to the scheme in the form set out in Schedule 1 may be modified appropriately.
- (3) Paragraph (4) applies where—
- (a) a scheme applies to members in employment in the United Kingdom and members in employment outside the United Kingdom;
 - (b) paragraph (2) does not apply to the scheme; and
 - (c) part of the scheme meets paragraph (b) of the tax condition by virtue of that part having been treated as a separate scheme under section 611(3) of the Taxes Act that is treated as becoming a registered pension scheme under paragraph 1(1) of Schedule 36 to the Finance Act 2004 by virtue of paragraph 1(2) of that Schedule.
- (4) If this paragraph applies—
- (a) section 75 of the 1995 Act and these Regulations (apart from this regulation) apply as if the approved and unapproved parts of the scheme were separate schemes; and
 - (b) the reference to the scheme in the form set out in Schedule 1 may be modified appropriately.

- (5) Paragraph (6) applies where—
- (a) a scheme has been such a scheme as is mentioned in paragraph (1) or (3),
 - (b) the scheme is divided into two or more sections, some or all of which apply only to members who are not in pensionable service under the section;
 - (c) the provisions of the scheme have not been amended so as to prevent the conditions in paragraph (1) or, as the case may be, paragraph (3) being met in relation to two or more sections; and
 - (d) in relation to one or more sections of the scheme those conditions have ceased to be met at any time by reason only of there being no members in pensionable service under the section and, in the case of paragraph (1), no contributions which are to be allocated to it.
- (6) If this paragraph applies—
- (a) section 75 of the 1995 Act and these Regulations (apart from this regulation) apply as if any section in relation to which those conditions have ceased to be met were a separate scheme; and
 - (b) the reference to the scheme in the form set out in Schedule 1 may be modified appropriately.
- (7) Before 6th April 2006 paragraph (3) applies with the substitution for sub-paragraph (c) of the following paragraph—
- “(c) part of the scheme meets paragraph (a) of the tax condition by virtue of section 611(3) of the Taxes Act.”

Schemes with partial government guarantee

- 15.—**(1) This regulation applies if a relevant public authority has—
- (a) given a guarantee in relation to any part of a scheme, any benefits payable under the scheme or any member of the scheme; or
 - (b) made any other arrangements for the purposes of securing that the assets of the scheme are sufficient to meet any part of its liabilities.
- (2) Where this regulation applies—
- (a) section 75 of the 1995 Act and these Regulations (apart from this regulation) apply as if the guaranteed part of the scheme and the other part of the scheme were separate schemes; and
 - (b) the reference to the scheme in the form set out in Schedule 1 may be modified appropriately.
- (3) In this regulation—
- “the guaranteed part of the scheme” means the part of the scheme—
- (a) in relation to which the guarantee has been given;
 - (b) which relates to benefits payable under the scheme in relation to which the guarantee has been given; or
 - (c) which relates to benefits payable under the scheme in relation to the liabilities for which those other arrangements have been made; and
- “relevant public authority” has the meaning given in section 307(4) of the 2004 Act.

Status: Point in time view as at 06/04/2008.

Changes to legislation: There are currently no known outstanding effects for the The Occupational Pension Schemes (Employer Debt) Regulations 2005. (See end of Document for details)

Supplementary

[^{F25}Modification of schemes

16.—(1) This regulation applies to a trust scheme (whether or not a money purchase scheme) for the purposes of section 68(2)(e) of the 1995 Act (power of trustees to modify schemes by resolution for prescribed purposes).]

[^{F25}(2) The trustees of such a trust scheme, after consulting such employers in relation to the scheme as they think appropriate, may by resolution modify the scheme for the purposes of making provision for an employer's share of the difference for the purposes of regulation 6(2) to be attributed in a different proportion from that which would otherwise apply by virtue of the liability share.]

Textual Amendments

F25 Reg. 16 substituted (6.4.2008) by [The Occupational Pension Schemes \(Employer Debt and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/731\)](#), regs. 2(1), **12** (with reg. 2(3)-(8))

Disregard of staying of voluntary winding up of employer for purposes of section 75 of the 1995 Act

17.—(1) This regulation applies for the purposes of section 75(6D)(i) of the 1995 Act (by virtue of which where a members' voluntary winding up of an employer is stayed section 75 of the 1995 Act has effect as if the resolution for the winding up had never been passed and any debt which arose under that section by virtue of the passing of the resolution had never arisen, except where the winding up is stayed in prescribed circumstances).

(2) The circumstances that are prescribed are where the stay is granted for a limited period.

Consequential amendments

18. The Regulations specified in Schedule 2 are amended as specified in that Schedule.

Signed by authority of the Secretary of State for Work and Pensions.

Malcolm Wicks
Minister of State,
Department for Work and Pensions

[^{F26}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]

Textual Amendments

F26 Sch. 1 substituted (6.4.2008) by [The Occupational Pension Schemes \(Employer Debt and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/731\)](#), regs. 2(1), 13, **Sch. 1** (with reg. 2(3)-(8))

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 [£d].] [delete as appropriate];

3 Valuation principles

The scheme's assets and liabilities are valued in accordance with section 75(5) of the Pensions Act 1995, regulations 5 and 6 of the Employer Debt Regulations and any relevant BAS 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

Status: Point in time view as at 06/04/2008.

Changes to legislation: There are currently no known outstanding effects for the The Occupational Pension Schemes (Employer Debt) Regulations 2005. (See end of Document for details)

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 employers;

"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(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].

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].]

[^{F27}SCHEDULE 1A

Regulation 6C(4) and 7(11)

Withdrawal Arrangements and Approved Withdrawal Arrangements

Textual Amendments

F27 Sch. 1A substituted (6.4.2008) by [The Occupational Pension Schemes \(Employer Debt and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/731\)](#), regs. 2(1), 14, **Sch. 2** (with reg. 2(3)-(8))

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,

Status: Point in time view as at 06/04/2008.

Changes to legislation: There are currently no known outstanding effects for the The Occupational Pension Schemes (Employer Debt) Regulations 2005. (See end of Document for details)

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—
 - (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

Status: Point in time view as at 06/04/2008.

Changes to legislation: There are currently no known outstanding effects for the The Occupational Pension Schemes (Employer Debt) Regulations 2005. (See end of Document for details)

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.]

[^{F28}SCHEDULE 1B

Regulation 6D

Notifiable Events

Textual Amendments

F28 Sch. 1B-1D substituted for Sch. 1B (6.4.2008) by [The Occupational Pension Schemes \(Employer Debt and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/731\)](#), regs. 2(1), 15, **Sch. 3** (with reg. 2(3)-(8))

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,
 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.]

Status: Point in time view as at 06/04/2008.

Changes to legislation: There are currently no known outstanding effects for the The Occupational Pension Schemes (Employer Debt) Regulations 2005. (See end of Document for details)

[F28] 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
[delete as appropriate] [delete as appropriate] was
In the case of an approved withdrawal arrangement share, the amount A which applied for the purposes of determining [delete as appropriate]’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(1), regulation 7(5) [delete as appropriate] of, and paragraph 5 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 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.
“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 8 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 measurement, 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(4) 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(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].

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”)]

Changes to legislation: There are currently no known outstanding effects for the The Occupational Pension Schemes (Employer Debt) Regulations 2005. (See end of Document for details)

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 guarantors' 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 Pension Act 1995, regulation 5(4) 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].

SCHEDULE 2

Regulation 18

Consequential Amendments

The MFR Regulations

F29 1.

Textual Amendments

F29 Sch. 2 para. 1 revoked (30.12.2005) by The Occupational Pension Schemes (Scheme Funding) Regulations 2005 (S.I. 2005/3377), regs. 1, 21, Sch. 5 (with Sch. 4)

The Occupational Pension Schemes (Winding Up) Regulations 1996

2. In regulation 10(2) of [F30 the Occupational Pension Schemes (Winding Up) Regulations 1996] for “relevant insolvency event” and “subsection (4) of section 75 (definition of relevant insolvency events)” substitute “ relevant event ” and “ subsection (6A) of section 75 (definition of relevant events) ” respectively.

Textual Amendments

F30 Words in Sch. 2 para. 2 substituted (2.9.2005) by The Occupational Pension Schemes (Employer Debt etc.) (Amendment) Regulations 2005 (S.I. 2005/2224), regs. 1(2), 4(3)

Status: Point in time view as at 06/04/2008.

Changes to legislation: There are currently no known outstanding effects for the The Occupational Pension Schemes (Employer Debt) Regulations 2005. (See end of Document for details)

The Occupational Pension Schemes (Investment) Regulations 1996

^{F31}3.

Textual Amendments

F31 Sch. 2 para. 3 revoked (30.12.2005) by [The Occupational Pension Schemes \(Investment\) Regulations 2005 \(S.I. 2005/3378\)](#), reg. 1(1), reg. 18, **Sch.**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made as a consequence of provisions in the Pensions Act 2004 (c. 35) (“the 2004 Act”) and replace the Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations 1996 (S.I. 1996/3128) (“the 1996 Regulations”) where debts arise under section 75 of the Pensions Act 1995 (c. 26) (“the 1995 Act”) in respect of occupational pension schemes.

Under regulation 1 these Regulations come into force on 6th April 2005, but do not apply in the case of schemes that have begun to wind up before that date or, unless the scheme is a money purchase scheme, if a debt arose under section 75 of the 1995 Act before that date.

Regulation 2 deals with the interpretation of these Regulations.

Regulation 3 provides that the 1996 Regulations do not apply in any case where these Regulations apply and identifies the two Actuarial Guidance Notes that will be used in connection with the calculation of debts.

Regulation 4 makes provision about the schemes that are excluded from section 75 of the 1995 Act and hence from these Regulations. They largely correspond with the schemes that are excluded from being eligible schemes for the purposes of Part 2 of the 2004 Act.

Regulation 5 makes provision about how the assets and liabilities of schemes are to be valued for the purposes of section 75 of the 1995 Act. It provides for all liabilities in respect of pensions or other benefits to be valued on the basis that the trustees or managers will provide for them by buying annuities, but, apart from that, for similar principles to apply as apply for the purpose of minimum funding valuations and for the valuation certificate set out in Schedule 1 to be used. The costs of winding up the scheme are to be included amongst its liabilities.

Regulations 6 to 8 deal with how section 75 of the 1995 Act and these Regulations apply to multi-employer schemes.

Regulation 6 provides that a debt only arises under section 75(2) while a multi-employer scheme is being wound up if a deficit in the scheme assets occurs before a relevant event has occurred in relation to all the employers, and all the employers are then responsible for a share of the debt. But whether a debt arises under section 75(4) is judged by reference to each of the employers separately and debts under that section are also taken to arise as respects an employer if he ceases to have any employees in pensionable service to which the scheme applies. The debt on each employer under section 75(4) is his share of the deficit in the assets.

Regulation 7 modifies the rules in regulation 5 where a debt arises because of an employer in a multi-employer scheme ceasing to have any employees in pensionable service. The provisions about buying annuities and including winding up costs are disapplied.

Regulation 8 provides that section 75 and these Regulations apply as if sections of multi-employer schemes were separate schemes.

Regulation 9 ensures that in the case of a scheme which has no active members section 75 and these Regulations apply as if anyone who was an employer immediately before the scheme ceased to have any active members is treated as an employer and so may be liable for a debt.

Regulations 10 to 12 deal with how section 75 of the 1995 Act and these Regulations apply to money purchase schemes.

Regulation 10 modifies section 75 so that it only applies to money purchase schemes in two cases, which differ from those where it applies for defined benefit schemes. The first is where general levy has not been paid and the second is where there has been a reduction in the scheme's assets because of a crime. Regulation 11 provides special valuation rules for these cases.

Regulation 12 modifies how regulation 10 applies where the money purchase scheme is a multi-employer scheme, apportioning the deficit among the employers in a similar way to regulation 6. Regulation 13 makes similar provision to regulation 9 for former employers of money purchase schemes.

Regulation 14 provides that sectionalised schemes covering United Kingdom and foreign employment are to be treated as separate schemes.

Regulation 15 provides that where a scheme is partly the subject of a government guarantee, the part that is so subject and the other part are treated as separate schemes.

Regulation 16 enables trustees to modify schemes by resolution for the purpose of apportioning debts under section 75 of the 1995 Act amongst employers in different proportions from those that would otherwise apply.

Regulation 17 prescribes the circumstances in which the staying of the voluntary winding up of an employer is disregarded for the purposes of section 75 of the 1995 Act. Stays for a limited period are prescribed so that the resolution for the winding up and any debt which arose under that section by virtue of the passing of the resolution are not affected by the temporary staying of the winding up.

Regulation 18 introduces Schedule 2 which contains amendments of the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996 (S.I. 1996/1536), the Occupational Pension Schemes (Winding Up) Regulations 1996 (S.I. 1996/3126) and the Occupational Pension Schemes (Investment) Regulations 1996 (S.I. 1996/3127) that are consequential on the changes made to section 75 of the 1995 Act by the 2004 Act.

As these Regulations are made before the expiry of the period of six months beginning with the coming into force of the provisions of the 2004 Act on which they are consequential, the requirement for the Secretary of State to consult such persons as he considers appropriate does not apply.

A full regulatory impact assessment has not been produced on this instrument as it has no impact on the costs of business, charities or the voluntary sector.

Status:

Point in time view as at 06/04/2008.

Changes to legislation:

There are currently no known outstanding effects for the The Occupational Pension Schemes (Employer Debt) Regulations 2005.