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## STATUTORY INSTRUMENTS

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# 2005 No. 678

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

*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—

[<sup>F1</sup>(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.]

(b) any scheme which immediately before that date was regarded by virtue of regulation 2 of the Occupational Pension Schemes (Winding Up) Regulations 1996 <sup>M1</sup> 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 <sup>M2</sup> began to wind up before that date.

(4) These Regulations extend to England and Wales and Scotland.

**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

**M1** [S.I. 1996/3126](#).

**M2** 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—

<sup>M3</sup>“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;

<sup>M4</sup>“the 1996 Regulations” means the Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations 1996;

[<sup>F2</sup>“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;

[<sup>F2</sup>“amount A” means the amount calculated in accordance with paragraph 4 of Schedule 1A;]

[<sup>F2</sup>“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;

[<sup>F2</sup>“approved withdrawal arrangement” means an arrangement that meets the funding test and is approved by the Authority under regulation 7;]

[<sup>F2</sup>“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;]

[<sup>F2</sup>“assessment period” has the meaning given in section 132 of the 2004 Act (assessment periods);]

<sup>F3</sup>  
...

[<sup>F4</sup>“the Board of the PPF” means the Board of the Pension Protection Fund;]

[<sup>F2</sup>“cessation employer” means an employer in relation to the scheme in respect of whom an employment-cessation event has occurred;]

[<sup>F2</sup>“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;]

[<sup>F2</sup>“the corresponding assets” means the assets transferred in connection with the transfer from the scheme in respect of any relevant transfer liabilities;]

[<sup>F5</sup>“deferred debt arrangement” means an arrangement that takes effect in accordance with regulation 6F;]

[<sup>F6</sup>“defined benefits”, in relation to a member of an occupational pension scheme, means benefits which are not money purchase benefits (but the rate or amount of which is calculated by reference to earnings or service of the member or any other factor other than an amount available for their provision);]

[<sup>F2</sup>“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;]

[<sup>F2</sup>“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 [<sup>F7</sup>6, [<sup>F8</sup>6A, 6F,]] 9 and 13);

[<sup>F9</sup>“employment-cessation event” has the meaning given in regulation 6ZA;]

[<sup>F10</sup>“flexible apportionment arrangement” means an arrangement that takes effect in accordance with regulation 6E;]

[<sup>F2</sup>“frozen scheme” means a scheme which has ceased to have active members;]

[<sup>F11</sup>“the FSD Regulations” means the Pensions Regulator (Financial Support Directions etc.) Regulations 2005;]

[<sup>F2</sup>“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 “[<sup>F12</sup>K divided by 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 [<sup>F13</sup>multiplied by the total] difference between the value of the assets and the amount of the liabilities of the scheme;]

<sup>M5</sup>“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;

[<sup>F14</sup>“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;]

<sup>F15</sup> ...

[<sup>F2</sup>“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) [<sup>F16</sup>each of the following persons consents to—
  - (i) the trustees or managers, and either
  - (ii) (where the circumstances referred to in paragraph (b) apply) any remaining employer to whom all or part of the amount that would have been the employer's liability share is being apportioned, or
  - (iii) (where the circumstances referred to in paragraph (b) do not apply) the employer; 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;]

<sup>F15</sup> ...

“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) <sup>M6</sup>that the scheme is registered under section 153 of the Finance Act 2004;

<sup>M7</sup>“the Taxes Act” means the Income and Corporation Taxes Act 1988.

[<sup>F17</sup>“technical provisions” has the meaning given by section 222(2) of the 2004 Act;]

<sup>F18</sup> ...

“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;

[<sup>F19</sup>“updated liabilities assessment” means the actuary’s assessment of any changes in the liabilities of the scheme in respect of pensions and other benefits between—

- (a) the effective date of 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—
  - (i) under section 224 of the 2004 Act (actuarial valuations and reports); or
  - (ii) where the trustees or managers have not received an actuarial valuation under section 224, which the actuary thinks it is appropriate to use, and
- (b) the applicable time;]

[<sup>F20</sup>“withdrawal arrangement” means an arrangement that meets the conditions specified in paragraph 1 of Schedule 1A and meets the funding test;]

[<sup>F21</sup>“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;]

[<sup>F2</sup>(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.

[<sup>F21</sup>(3) References in these Regulations to FRC standards are to actuarial standards on winding up and scheme asset deficiency adopted or prepared, and from time to time revised, by the Financial Reporting Council Limited.]

[<sup>F22</sup>(3A) For the purposes of a restructuring within regulations 6ZB or 6ZC—

“exiting employer” means an employer—

- (a) in relation to a multi-employer scheme,
- (b) who employs at least one active member of the scheme in respect of whom defined benefits are accruing, and
- (c) in respect of whom a relevant event has not occurred; and

“receiving employer” means an employer who, on the date on which there is a restructuring within regulation 6ZB or 6ZC, is—

- (a) an employer in relation to the same multi-employer scheme as the exiting employer,
- (b) either—
  - (i) associated (within the meaning in section 435 of the Insolvency Act 1986 or section 74 of the Bankruptcy (Scotland) Act 1985) with the exiting employer, or
  - (ii) [<sup>F23</sup>not associated but falls within paragraph (3B),]
- (c) employing at least one active member of the scheme in respect of whom defined benefits are accruing, and
- (d) an employer in respect of whom a relevant event has not occurred.]

[

<sup>F24</sup>(3B) An employer falls within this paragraph where it is—

- (a) a limited company, limited partnership or limited liability partnership;
- (b) a charitable company; or
- (c) a CIO.

(3C) For the purposes of paragraph (3B)—

- (a) “charitable company”—
  - (i) in relation to England and Wales, has the meaning given by section 193 of the Charities Act 2011 (“the 2011 Act”); and
  - (ii) in relation to Scotland, has the meaning given by section 112 of the Companies Act 1989;
- (b) “CIO”—
  - (i) in relation to England and Wales, means a charitable incorporated organisation within the meaning of Part 11 of the 2011 Act; and
  - (ii) in relation to Scotland, means a Scottish charitable incorporated organisation within the meaning of section 49 of the Charities and Trustee Investment (Scotland) Act 2005;
- (c) “limited company” has the meaning given by section 3(1) of the Companies Act 2006 Act;
- (d) “limited liability partnership” has the meaning given by section 1(2) of the Limited Liability Partnerships Act 2000; and
- (e) “limited partnership” has the meaning given by section 4 of the Limited Partnerships Act 1907.

(3D) Where regulation 6F(6)(f) applies, the definitions of “exiting employer” and “receiving employer” in paragraph (3A) shall be deemed to include deferred employers.]

<sup>F25</sup>(4) .....

[  
<sup>F26</sup>(4A) For the purposes of regulations 6B, 6C<sup>[F27]</sup>, 6E] 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 [<sup>F28</sup>(or, in the case of a flexible apportionment arrangement, after the time that arrangement takes effect)] 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 [<sup>F29</sup>or a flexible apportionment arrangement under regulation 6E], 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 [<sup>F30</sup>(or, in the case of a flexible apportionment arrangement, at the time that arrangement takes effect)] 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<sup>F31</sup>, 6E] 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.]

[  
F32(4E) For the purposes of these Regulations “deferred employer” in relation to a multi-employer scheme means a person—

- (a) who formerly employed at least one active member of the scheme in respect of whom defined benefits were accruing;
- (b) in respect of whom a relevant event has not occurred; and
- (c) who—
  - (i) has proposed to the trustees or managers of the scheme to enter into a deferred debt arrangement; and
  - (ii) having made that proposal, is participating in a deferred debt arrangement.]

(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).]

- |            |                                                                                                                                                                                                                            |
|------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>F2</b>  | Words in reg. 2(1) inserted (6.4.2008) by <a href="#">The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2008 (S.I. 2008/731)</a> , regs. 2(1), <b>4(2)(e)</b> (with reg. 2(3)-(8)) |
| <b>F3</b>  | Words in reg. 2(1) omitted (9.8.2012) by virtue of <a href="#">The Occupational and Personal Pension Schemes (Prescribed Bodies) Regulations 2012 (S.I. 2012/1817)</a> , reg. 1, <b>Sch. para. 7(a)(i)</b>                 |
| <b>F4</b>  | Words in reg. 2(1) inserted (6.4.2010) by <a href="#">The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2010 (S.I. 2010/725)</a> , regs. 1(2), <b>4(2)(b)</b>                      |
| <b>F5</b>  | Words in reg. 2(1) inserted (6.4.2018) by <a href="#">The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2018 (S.I. 2018/237)</a> , regs. 1(2), <b>3(2)(a)</b>                      |
| <b>F6</b>  | Words in reg. 2(1) inserted (6.4.2010) by <a href="#">The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2010 (S.I. 2010/725)</a> , regs. 1(2), <b>4(2)(c)</b>                      |
| <b>F7</b>  | Word in reg. 2(1) inserted (6.4.2008) by <a href="#">The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2008 (S.I. 2008/731)</a> , regs. 2(1), <b>4(2)(a)</b> (with reg. 2(3)-(8))  |
| <b>F8</b>  | Words in reg. 2(1) inserted (6.4.2018) by <a href="#">The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2018 (S.I. 2018/237)</a> , regs. 1(2), <b>3(2)(b)</b>                      |
| <b>F9</b>  | Words in reg. 2(1) substituted (6.4.2010) by <a href="#">The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2010 (S.I. 2010/725)</a> , regs. 1(2), <b>4(2)(d)</b>                   |
| <b>F10</b> | Words in reg. 2(1) inserted (27.1.2012) by <a href="#">The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2011 (S.I. 2011/2973)</a> , regs. 1(2), <b>4(2)(a)</b>                    |
| <b>F11</b> | Words in reg. 2(1) inserted (6.4.2018) by <a href="#">The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2018 (S.I. 2018/237)</a> , regs. 1(2), <b>3(2)(c)</b>                      |
| <b>F12</b> | Words in reg. 2(1) substituted (27.1.2012) by <a href="#">The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2011 (S.I. 2011/2973)</a> , regs. 1(2), <b>4(2)(b)</b>                 |

- F13** Words in reg. 2(1) substituted (27.1.2012) by The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2011 (S.I. 2011/2973), regs. 1(2), **4(2)(c)**
- F14** 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))
- F15** Words in reg. 2(1) omitted (6.4.2010) by virtue of The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2010 (S.I. 2010/725), regs. 1(2), **4(2)(a)**
- F16** Words in reg. 2(1) substituted (15.4.2008) by The Occupational Pension Schemes (Employer Debt “Apportionment Arrangements) (Amendment) Regulations 2008 (S.I. 2008/1068), regs. 1, **2(2)**
- F17** Words in reg. 2(1) inserted (6.4.2010) by The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2010 (S.I. 2010/725), regs. 1(2), **4(2)(e)**
- F18** Words in reg. 2(1) omitted (6.4.2010) by virtue of The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2010 (S.I. 2010/725), regs. 1(2), **4(2)(f)**
- F19** Words in reg. 2(1) inserted (6.4.2010) by The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2010 (S.I. 2010/725), regs. 1(2), **4(2)(g)**
- F20** 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))
- F21** Reg. 2(3) substituted (9.8.2012) by The Occupational and Personal Pension Schemes (Prescribed Bodies) Regulations 2012 (S.I. 2012/1817), reg. 1, **Sch. para. 7(a)(ii)**
- F22** Reg. 2(3A) inserted (6.4.2010) by The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2010 (S.I. 2010/725), regs. 1(2), **4(3)**
- F23** Words in reg. 2(3A) substituted (6.4.2018) by The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2018 (S.I. 2018/237), regs. 1(2), **3(3)**
- F24** Reg. 2(3B)-(3D) inserted (6.4.2018) by The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2018 (S.I. 2018/237), regs. 1(2), **3(4)**
- F25** 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))
- F26** 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))
- F27** Word in reg. 2(4A) inserted (27.1.2012) by The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2011 (S.I. 2011/2973), regs. 1(2), **4(3)(a)**
- F28** Words in reg. 2(4A)(a) inserted (27.1.2012) by The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2011 (S.I. 2011/2973), regs. 1(2), **4(3)(b)**
- F29** Words in reg. 2(4A)(b) inserted (27.1.2012) by The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2011 (S.I. 2011/2973), regs. 1(2), **4(3)(c)**
- F30** Words in reg. 2(4B) inserted (27.1.2012) by The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2011 (S.I. 2011/2973), regs. 1(2), **4(4)(a)**
- F31** Word in reg. 2(4B) inserted (27.1.2012) by The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2011 (S.I. 2011/2973), regs. 1(2), **4(4)(b)**
- F32** Reg. 2(4E) inserted (6.4.2018) by The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2018 (S.I. 2018/237), regs. 1(2), **3(5)**

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#### Marginal Citations

- M3** 1993 c. 48.  
**M4** S.I. 1996/3128.  
**M5** S.I. 1996/1536.  
**M6** 2004 c. 12.  
**M7** 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 <sup>M8</sup> (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 <sup>M9</sup> (power to provide for pensions for Members of the House of Commons etc.);
  - <sup>F33</sup>(ca) a scheme, provision for which is made by virtue of section 81(3) of the Scotland Act 1998 (remuneration of members of the Parliament and Executive);]
  - (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 <sup>F34</sup>was not contracted-out at any time before the second abolition date]; 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;
  - <sup>F35</sup>(g) a scheme—
    - (i) which has such a superannuation fund as is mentioned in section 615(6) of the Taxes Act (exemption from tax in respect of certain pensions); ]
    - <sup>F36</sup>(ii) . . . . .
  - (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
    - (ii) the scheme has a trustee who is independent in relation to the scheme for the purposes of section 23 of the 1995 Act <sup>M10</sup> (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

<sup>F37</sup>(l) .....

(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).

[<sup>F38</sup>(3) In this regulation—

“contracted-out” is to be construed in accordance with section 7B(2) (meaning of “contracted-out scheme” etc.) of the Pension Schemes Act 1993; and

“the second abolition date” has the meaning given in section 181(1) (general interpretation) of the Pension Schemes Act 1993.]

- F33** Reg. 4(1)(ca) inserted (1.9.2009) by The Occupational Pension Schemes (Scottish Parliamentary Pensions Act 2009) Regulations 2009 (S.I. 2009/1906), reg. 1, **Sch. para. 3**
- F34** Words in reg. 4(1)(f)(ii) substituted (6.4.2016) by The Pensions Act 2014 (Abolition of Contracting-out for Salary Related Pension Schemes) (Consequential Amendments and Savings) Order 2016 (S.I. 2016/200), arts. 1(2), **22(a)**
- F35** Reg. 4(1)(g) substituted (30.3.2006) by The Occupational Pension Schemes (Republic of Ireland Schemes Exemption (Revocation) and Tax Exempt Schemes (Miscellaneous Amendments)) Regulations 2006 (S.I. 2006/467), regs. 1(2), **6(2)**
- F36** Reg. 4(1)(g)(ii) and word omitted (31.12.2020) by virtue of The Occupational and Personal Pension Schemes (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/192), regs. 1, **19(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F37** 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)**
- F38** Reg. 4(3) inserted (6.4.2016) by The Pensions Act 2014 (Abolition of Contracting-out for Salary Related Pension Schemes) (Consequential Amendments and Savings) Order 2016 (S.I. 2016/200), arts. 1(2), **22(b)**

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#### Marginal Citations

**M8** 1972 c. 11.

**M9** 1987 c. 45.

**M10** Section 23 is substituted by section 36(3) of the Pensions Act 2004.

**Changes to legislation:**

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