

2010 No. 725

PENSIONS

**The Occupational Pension Schemes (Employer Debt and
Miscellaneous Amendments) Regulations 2010**

<i>Made</i> - - - -	<i>10th March 2010</i>
<i>Laid before Parliament</i>	<i>15th March 2010</i>
<i>Coming into force</i> - -	<i>6th April 2010</i>

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 68(2)(e), 75(5), (6D)(b)(i) and (10), 75A(1) to (4) and (5)(a), 119, 124(1), 125(3) and 174(2) and (3) of the Pensions Act 1995(a) and sections 69(2)(a), 126(5), 307(1)(b) and (2)(b), 315(2), (4) and (5) and 318(1) and (4)(a) of the Pensions Act 2004(b).

In accordance with section 120(1) of the Pensions Act 1995 and section 317(1) of the Pensions Act 2004, the Secretary of State has consulted such persons as the Secretary of State considers appropriate before making these Regulations.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2010.

(2) These Regulations come into force on 6th April 2010.

(3) In these Regulations, “the 2005 Regulations” means the Occupational Pension Schemes (Employer Debt) Regulations 2005(c).

Amendment of the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations 2005

2. In regulation 1(3) of the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations 2005 (interpretation)(d)—

(a) in sub-paragraphs (a) and (b), for “C or D” substitute “C, D or E”,

(b) after sub-paragraph (a)(iv), insert—

“(v) condition E is that—

(a) 1995 c.26. Section 75 was amended by section 271 of the Pensions Act 2004 (c.35) (section 75(6D)(b)(i) was inserted by section 271(5) of that Act) and section 75A was inserted by section 272 of that Act. Section 119 was amended by paragraph 68 of Schedule 12 and Part 1 of Schedule 13 to the Pensions Act 2004 and paragraph 8 of Schedule 5 to the Pensions Act 2007 (c.22). Section 124(1) is cited for the meaning it gives to “prescribed” and “regulations”.

(b) 2004 c.35. Section 318(1) is cited for the meaning it gives to “prescribed” and “regulations”.

(c) S.I. 2005/678. Amending instruments are S.I.s 2005/993, 2224, 3377 and 3378, 2006/467 and 558, 2007/60, 2008/731 and 1068 and 2009/1906.

(d) S.I. 2005/441. Regulation 1(3) was substituted by S.I. 2005/2113.

- (aa) there is a restructuring within regulation 6ZB or 6ZC of the Occupational Pension Schemes (Employer Debt) Regulations 2005 (employment-cessation events: exemptions)(a);
 - (bb) in that restructuring, the employer was the exiting employer for the purposes of those Regulations (see the definition of “exiting employer” in regulation 2(3A) of those Regulations (interpretation)(b)); and
 - (cc) regulation 6ZA(3) or (4) of those Regulations (employment-cessation events: general) does not apply in relation to that restructuring;”, and
- (c) after sub-paragraph (b)(iv), insert—
- “(v) condition E is that—
- (aa) there is a restructuring within regulation 6ZB or 6ZC of the Occupational Pension Schemes (Employer Debt) Regulations 2005 (employment-cessation events: exemptions);
 - (bb) in that restructuring, the employer was the exiting employer for the purposes of those Regulations (see the definition of “exiting employer” in regulation 2(3A) of those Regulations (interpretation)); and
 - (cc) regulation 6ZA(3) or (4) of those Regulations (employment-cessation events: general) does not apply in relation to that restructuring.”.

Amendment of the Pension Protection Fund (Entry Rules) Regulations 2005

3.—(1) The Pension Protection Fund (Entry Rules) Regulations 2005(c) are amended as follows.

(2) In regulation 1(5) (interpretation)(d)—

(a) in sub-paragraphs (a) and (b), for “C or D” substitute “C, D or E”,

(b) after sub-paragraph (a)(iv), insert—

“(v) condition E is that—

- (aa) there is a restructuring within regulation 6ZB or 6ZC of the Occupational Pension Schemes (Employer Debt) Regulations 2005 (employment-cessation events: exemptions);
- (bb) in that restructuring, the employer was the exiting employer for the purposes of those Regulations (see the definition of “exiting employer” in regulation 2(3A) of those Regulations (interpretation)); and
- (cc) regulation 6ZA(3) or (4) of those Regulations (employment-cessation events: general) does not apply in relation to that restructuring;”, and

(c) after sub-paragraph (b)(iv), insert—

“(v) condition E is that—

- (aa) there is a restructuring within regulation 6ZB or 6ZC of the Occupational Pension Schemes (Employer Debt) Regulations 2005 (employment-cessation events: exemptions);
- (bb) in that restructuring, the employer was the exiting employer for the purposes of those Regulations (see the definition of “exiting employer” in regulation 2(3A) of those Regulations (interpretation)); and
- (cc) regulation 6ZA(3) or (4) of those Regulations (employment-cessation events: general) does not apply in relation to that restructuring.”.

(a) Regulations 6ZA to 6ZD are inserted by regulation 7 of these Regulations.
 (b) Regulation 2(3A) is inserted by regulation 4(3) of these Regulations.
 (c) S.I. 2005/590.
 (d) Regulation 1(5) was substituted by S.I. 2005/2113.

(3) In regulation 2(4) (schemes which are not eligible schemes)(a), after sub-paragraph (d) insert—

“(e) a restructuring within regulation 6ZB or 6ZC of those Regulations.”.

Amendment of regulation 2 of the 2005 Regulations

4.—(1) Regulation 2 of the 2005 Regulations (interpretation)(b) is amended as follows.

(2) In paragraph (1)—

(a) omit the definitions of “PPF” and “statutory funding objective”,

(b) after the definition of “the Board for Actuarial Standards”, insert—

““the Board of the PPF” means the Board of the Pension Protection Fund(c);”;

(c) after the definition of “the corresponding assets”, insert—

““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);”;

(d) for the definition of “employment-cessation event”, substitute—

““employment-cessation event” has the meaning given in regulation 6ZA;”;

(e) after the definition of “the Taxes Act”, insert—

““technical provisions” has the meaning given by section 222(2) of the 2004 Act;”;

(f) omit the definition of “updated actuarial assessment”, and

(g) after the definition of “updated asset assessment”, insert—

““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;”.

(3) After paragraph (3), insert—

“(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—

(a) Regulation 2(4) was substituted by S.I. 2008/731.

(b) Regulation 2 was amended by S.I.s 2005/2224, 2007/60 and 2008/731 and 1068.

(c) The Board of the Pension Protection Fund is established under section 107 of the Pensions Act 2004.

- (i) associated (within the meaning in section 435 of the Insolvency Act 1986^(a) or section 74 of the Bankruptcy (Scotland) Act 1985^(b)) with the exiting employer, or
- (ii) the new legal status of the exiting employer,
- (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.”.

Amendment of regulation 5 of the 2005 Regulations

5.—(1) Regulation 5 of the 2005 Regulations (calculation of the amount of scheme liabilities and value of scheme assets)^(c) is amended as follows.

(2) For paragraph (4)(b), substitute—

“(b) any amounts which are—

- (i) treated as a debt due to the trustees or managers under—
 - (aa) section 75(2) or (4) of the 1995 Act (deficiencies in assets);
 - (bb) section 228(3) of the 2004 Act (amounts due in accordance with a schedule of contributions);
 - (cc) sections 59(2) (determination of contributions: supplementary) or 60(5) (serious underprovision) of the 1995 Act as they were in force before 30th December 2005;
 - (dd) section 75(1) of the 1995 Act as it was in force before 6th April 2005; or
 - (ee) section 144(1) of the 1993 Act (deficiencies in the assets of a scheme on winding up) as it was in force before 6th April 1997, and
- (ii) unlikely to be recovered without disproportionate cost or within a reasonable time;”.

(3) For paragraph (7), substitute—

“(7) For the purposes of paragraph (6)—

- (a) “external liabilities” means such liabilities of the scheme as are shown in—
 - (i) the net assets statement in the relevant accounts; or
 - (ii) an estimate used for the purposes of an updated asset statement, except that the liabilities in paragraph (8) are to be disregarded; and
- (b) the amount of the external liabilities is—
 - (i) where sub-paragraph (a)(i) applies, the amount shown in the statement referred to in that sub-paragraph in respect of the external liabilities; or
 - (ii) where sub-paragraph (a)(ii) applies, the amount shown in the estimate referred to in that sub-paragraph in respect of the external liabilities.”.

(4) In paragraph (10)(a), omit “(“the receiving scheme”)”.

(5) At the beginning of paragraph (12), insert “For the purposes of paragraph (11),”.

(6) In paragraphs (14) and (17)(b), for “updated actuarial assessment” substitute “updated liabilities assessment”.

(a) 1986 c.45.

(b) 1985 c.66.

(c) Regulation 5 was substituted by S.I. 2008/731.

Amendment of regulation 6 of the 2005 Regulations

6.—(1) Regulation 6 of the 2005 Regulations (multi-employer schemes: general) is amended as follows.

(2) In paragraph (1)(e)(i), after “an amount equal to” insert “the sum of any unpaid expenses which were incurred by the scheme in connection with a previous employment-cessation event occurring to the employer and”.

(3) After paragraph (4)(a)(a), insert—

“(aa) where there is a restructuring within regulation 6ZB or 6ZC and regulation 6ZA(3) or (4) does not apply in relation to that restructuring, all of the liabilities in relation to the scheme which were attributable to the exiting employer shall be attributed to the receiving employer;”.

Insertion of regulations 6ZA to 6ZD of the 2005 Regulations

7. After regulation 6 of the 2005 Regulations, insert—

“Employment-cessation events: general

6ZA.—(1) In these regulations, “employment-cessation event” means, subject to paragraphs (2) to (6), an event which—

- (a) occurs in relation to a multi-employer scheme,
- (b) is not a relevant event, and
- (c) subject to regulation 6A, occurs on the date on which—
 - (i) an employer has ceased to employ at least one person who is an active member of the scheme, and
 - (ii) at least one other employer who is not a defined contribution employer continues to employ at least one active member of the scheme.

(2) Subject to paragraphs (3) and (4), an employment-cessation event does not occur where there is a restructuring within regulation 6ZB or 6ZC.

(3) An employment-cessation event occurs where there is a restructuring within regulation 6ZB and within six years of that, it becomes apparent that—

- (a) the exiting employer or receiving employer provided the trustees or managers with—
 - (i) incorrect information, or
 - (ii) incomplete information,and the trustees or managers are satisfied that they would have made a different decision in step 4 in regulation 6ZB(9) if they had had the correct or complete information,
- (b) step 6 has not been completed in accordance with regulation 6ZB(13) and (14), or
- (c) step 7 has not been completed in accordance with regulation 6ZB(15) and (16).

(4) An employment-cessation event occurs where there is a restructuring within regulation 6ZC and within six years of that, it becomes apparent that—

- (a) step 4 has not been completed in accordance with regulation 6ZC(9) and (10), or
- (b) step 5 has not been completed in accordance with regulation 6ZC(11) and (12).

(5) An employment-cessation event does not occur where—

- (a) there is a restructuring within regulation 6ZB or 6ZC,

(a) Paragraph (4) was substituted by S.I. 2008/731.

- (b) at any time after that, it becomes apparent that any step has not been completed in accordance with regulation 6ZB or 6ZC, and
 - (c) paragraphs (3) and (4) of this regulation do not apply.
- (6) Where an employment-cessation event occurs in accordance with paragraph (3) or (4)—
- (a) section 75(4) of the 1995 Act applies as if the amount of the debt due from the exiting employer is treated as a debt due from the exiting employer and the receiving employer jointly and severally,
 - (b) the date on which the employment-cessation event occurs is the date referred to in paragraph (1)(c), and
 - (c) for the purposes of calculating the exiting employer's liability proportion for the purposes of the exiting employer's liability share, the liabilities attributable to employment with the exiting employer shall be determined as if nothing had been done in relation to carrying out any of the steps in regulations 6ZB or 6ZC.

Employment-cessation events: exemptions

6ZB.—(1) There is a restructuring within this regulation if each of steps 1 to 6 in the following paragraphs are completed and the date on which there is a restructuring within this regulation is the date on which step 6 has been completed.

- (2) Each of steps 2 to 7 can only be carried out if the previous step has been completed.
- (3) Step 1 is for the exiting employer to write to the trustees or managers asking them to make a decision for the purposes of this regulation.
- (4) The exiting employer decides whether and when to carry out step 1.
- (5) Step 2 is for the exiting employer and receiving employer (unless the receiving employer has not yet been created) to provide any information which the trustees or managers—
 - (a) may request, and
 - (b) are satisfied is necessary to complete step 4.
- (6) The trustees or managers must request any information, and the exiting employer and receiving employer must provide any information, for the purposes of completing step 2 without undue delay.
- (7) Step 3 is for the trustees or managers to consult—
 - (a) the exiting employer about the decision to be made in step 4, and
 - (b) the receiving employer about the decision to be made in step 4, unless the receiving employer has not yet been created.
- (8) The trustees or managers must complete step 3 without undue delay.
- (9) Step 4 is for the trustees or managers to decide whether they are satisfied that the receiving employer will be at least as likely—
 - (a) as the exiting employer to meet all the exiting employer's liabilities in relation to the scheme, and
 - (b) to meet any liabilities in relation to the scheme which the receiving employer has immediately before step 6 is carried out.
- (10) The trustees or managers must—
 - (a) complete step 4 without undue delay, and
 - (b) consider, when carrying out step 4, factors including, but not limited to, any 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.

- (11) Step 5 is for the trustees or managers to send—
- (a) the exiting employer, and
 - (b) the receiving employer, unless the receiving employer has not yet been created,
- their decision in step 4, and the reasons for that decision, in writing.
- (12) The trustees or managers must complete step 5 without undue delay.
- (13) Step 6 is for—
- (a) the receiving employer to take over responsibility, under a legally enforceable agreement, for all of the exiting employer's—
 - (i) assets,
 - (ii) employees, and
 - (iii) scheme members, and
 - (b) all of the exiting employer's liabilities in relation to the scheme to be—
 - (i) taken over by the receiving employer under a legally enforceable agreement so that the receiving employer is responsible for them, or
 - (ii) where it is impossible for the receiving employer to take over the exiting employer's liabilities in relation to the scheme under a legally enforceable agreement, treated for all purposes as being the responsibility of the receiving employer.
- (14) The receiving employer decides whether to carry out step 6, but the receiving employer can only carry out step 6—
- (a) where the trustees or managers decided in step 4 that they are satisfied,
 - (b) where the trustees or managers are satisfied that there has been no change which would alter that decision in step 4, and
 - (c) within the 18 weeks, or such longer period up to a total of 36 weeks as the trustees or managers may choose, after the date of the written decision in step 5.
- (15) Step 7 is for the receiving employer and exiting employer to send the trustees or managers written confirmation—
- (a) that step 6 has been completed, and
 - (b) of the date on which step 6 was completed.
- (16) The receiving employer and exiting employer must complete step 7 without undue delay.
- (17) In this regulation, liabilities in relation to the scheme means all such liabilities including, but not limited to, any—
- (a) liabilities which—
 - (i) have accrued to or in respect of scheme members, and
 - (ii) are attributable to the employer under regulation 6(4),
 - (b) amounts treated as a debt due to the trustees or managers of the scheme, including such debts due in accordance with section 75 of the 1995 Act,
 - (c) liabilities or amounts which have been apportioned to the employer in—
 - (i) a scheme apportionment arrangement,
 - (ii) an exercise of a scheme apportionment rule before 6th April 2008, or
 - (iii) a regulated apportionment arrangement,
 - (d) liabilities which were attributed to the employer as part of a previous restructuring within this regulation or regulation 6ZC,
 - (e) amount for which the employer is a guarantor under a withdrawal arrangement or an approved withdrawal arrangement,
 - (f) payments which are due to be made by the employer under—

- (i) the schedule of contributions, or
- (ii) any recovery plan, and
- (g) liability share of the employer.

6ZC.—(1) There is a restructuring within this regulation if each of steps 1 to 4 in the following paragraphs are completed and the date on which there is a restructuring within this regulation is the date on which step 4 has been completed.

(2) Each of steps 2 to 5 can only be carried out if the previous step has been completed.

(3) Step 1 is for the exiting employer to write to the trustees or managers asking them to make a decision for the purposes of this regulation.

(4) The exiting employer decides whether and when to carry out step 1.

(5) Step 2 is for the trustees or managers to decide whether they are satisfied that the following four conditions are met—

- (a) the assets of the scheme are at least equal to the protected liabilities of the scheme,
- (b) either—

- (i) there are only one or two relevant members, or
- (ii) no more than 3% of the total number of scheme members in respect of whom defined benefits have accrued are relevant members,

- (c) the annual amount of accrued pension in respect of the relevant members does not exceed the maximum amount where—

- (i) the annual amount of accrued pension includes pensions in payment and pensions not in payment,
- (ii) the annual amount of accrued pensions in payment means the most recent payment of pension to each relevant member multiplied to produce an estimated annual amount,
- (iii) the annual amount of accrued pensions not in payment means the annual amount of pension to which each relevant member has accrued rights, and

- (iv) the maximum amount means—

- (aa) in the year commencing on 6th April 2010, £20,000, and
- (bb) in any subsequent year, £20,000 plus £500 for each year after the year commencing on 6th April 2010, and

- (d) if any restructurings within this regulation in relation to the scheme have occurred in the three years before step 4 is completed, those restructurings and the restructuring which occurs when step 4 is completed involve a combined total of—

- (i) no more than—
 - (aa) five scheme members in respect of whom defined benefits have accrued, or
 - (bb) 7.5% of the total number of scheme members in respect of whom defined benefits have accrued,
 whichever is the higher, and

- (ii) no more than £50,000 of the annual amount of accrued pension as calculated for the purposes of sub-paragraph (c).

(6) The trustees or managers must complete step 2—

- (a) without undue delay, and
- (b) using the figures contained in the most recent—
 - (i) actuarial valuation under section 179 of the 2004 Act (valuations to determine scheme underfunding) for the assets and protected liabilities of the scheme, and

- (ii) scheme return within the meaning in section 65(2) of the 2004 Act (scheme returns: supplementary) for the number of members of the scheme.
 - (7) Step 3 is for the trustees or managers to send—
 - (a) the exiting employer, and
 - (b) the receiving employer, unless the receiving employer has not yet been created,
 their decision in step 2 in writing.
 - (8) The trustees or managers must complete step 3 without undue delay.
 - (9) Step 4 is for—
 - (a) the receiving employer to take over responsibility, under a legally enforceable agreement, for all of the exiting employer’s—
 - (i) assets,
 - (ii) employees, and
 - (iii) scheme members, and
 - (b) all of the exiting employer’s liabilities in relation to the scheme (as defined in regulation 6ZB(17)) to be—
 - (i) taken over by the receiving employer under a legally enforceable agreement so that the receiving employer is responsible for them, or
 - (ii) where it is impossible for the receiving employer to take over the exiting employer’s liabilities in relation to the scheme under a legally enforceable agreement, treated for all purposes as being the responsibility of the receiving employer.
 - (10) The receiving employer decides whether to carry out step 4, but the receiving employer can only carry out step 4—
 - (a) where the trustees or managers decided in step 2 that they are satisfied, and
 - (b) within the 18 weeks, or such longer period up to a total of 36 weeks as the trustees or managers may choose, of the date of the written decision in step 3.
 - (11) Step 5 is for the receiving employer and exiting employer to send the trustees or managers written confirmation—
 - (a) that step 4 has been completed, and
 - (b) of the date on which step 4 was completed.
 - (12) The receiving employer and exiting employer must complete step 5 without undue delay.
 - (13) In this regulation, “relevant members” means scheme members in respect of whom defined benefits accrued as a result of pensionable service with the exiting employer.
- 6ZD.**—(1) The trustees or managers may decide that any costs incurred by them as a result of the steps in regulation 6ZB or 6ZC are to be met by the exiting employer, the receiving employer or both.
- (2) The trustees or managers may make a decision under paragraph (1)—
 - (a) at any time during the steps in regulation 6ZB or 6ZC, or
 - (b) within one month after the final step in either of those regulations is completed.
 - (3) Where the trustees or managers make such a decision—
 - (a) they must write to the exiting employer, the receiving employer or both (as the case may be) with details of their costs, and
 - (b) the exiting employer, the receiving employer or both (as the case may be) must pay those costs.”.

Amendment of regulation 6B of the 2005 Regulations

8.—(1) Regulation 6B of the 2005 Regulations (scheme apportionment arrangements)(a) is amended as follows.

(2) For paragraph (2), substitute—

“(2) Paragraph (1) does not apply where paragraph (3) or (4) applies.”.

(3) After paragraph (2), insert—

“(3) This paragraph applies where—

- (a) the employer’s scheme apportionment arrangement share will be higher than the liability share, and
- (b) the trustees or managers are satisfied that the employer is able to pay the scheme apportionment arrangement share.

(4) This paragraph applies where—

- (a) the scheme has commenced winding-up by the date the scheme apportionment arrangement is entered into,
- (b) the employer’s scheme apportionment arrangement share will be lower than that employer’s liability share,
- (c) the trustees or managers are satisfied that it is likely that the employer—
 - (i) will be able to pay the scheme apportionment arrangement share, and
 - (ii) would have been unable to pay the liability share if it applied,
- (d) the trustees or managers are satisfied that it is likely that any of the employers who—
 - (i) are remaining in the scheme, and
 - (ii) are not defined contribution employers,will be able to pay any amount by which the employer’s scheme apportionment arrangement share will be less than the employer’s liability share,
- (e) the scheme is not in an assessment period, and
- (f) the trustees or managers are satisfied that an assessment period is unlikely to begin in relation to the scheme within the following 12 months.”.

Amendment of regulation 6C of the 2005 Regulations

9. In regulation 6C(2) of the 2005 Regulations (withdrawal arrangements)(b)—

- (a) for “When the” substitute “Where a”, and
- (b) for sub-paragraph (b) substitute—

“(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 liable or, if the withdrawal arrangement so provides, jointly and severally liable.”.

Amendment of regulation 9 of the 2005 Regulations

10.—(1) Regulation 9 of the 2005 Regulations (frozen schemes and former employers)(c) is amended as follows.

(2) In paragraph (3) in both sub-paragraphs (c)(iii) and (d), for “A to I” substitute “A to J”.

(a) Regulation 6B was inserted by S.I. 2008/731.

(b) Regulation 6C was inserted by S.I. 2008/731.

(c) Regulation 9 was substituted by S.I. 2008/731.

(3) In paragraph (13), after “becoming due from him” insert “under section 75(2) or (4) of the 1995 Act”.

(4) After paragraph (14), insert—

“(14A) Condition J is that—

- (a) as a result of a restructuring occurring within regulation 6ZB or 6ZC, no debt was treated as becoming due from the person under section 75(2) or (4) of the 1995 Act, and
- (b) regulation 6ZA(3) or (4) does not apply in relation to that restructuring.”.

Amendment of regulation 12 of the 2005 Regulations

11. In regulation 12(1) of the 2005 Regulations (multi-employer money purchase schemes)(a) in the substituted paragraph (1B), omit the words from “in accordance with the guidance given in GN 19” to the end.

Amendment of regulation 14 of the 2005 Regulations

12.—(1) Regulation 14 of the 2005 Regulations (schemes covering United Kingdom and foreign employment) is amended as follows.

(2) In paragraphs (2)(b), (4)(b) and (6)(b), for “form set out in Schedule 1” substitute “forms set out in Schedules 1, 1C and 1D”.

(3) In paragraph (4)(a), for “approved and unapproved” substitute “registered and unregistered”.

Amendment of regulation 15 of the 2005 Regulations

13. In regulation 15(2)(b) of the 2005 Regulations (schemes with partial government guarantee), for “form set out in Schedule 1” substitute “forms set out in Schedules 1, 1C and 1D”.

Amendment of regulation 16 of the 2005 Regulations

14. For regulation 16 of the 2005 Regulations (modification of schemes: apportionment of section 75 debts)(b), substitute—

“Modification of schemes: apportionment of section 75 debts

16.—(1) This regulation prescribes a purpose for which the trustees of a trust scheme (whether or not a money purchase scheme) may by resolution modify the scheme under section 68 of the 1995 Act (power of trustees to modify schemes by resolution).

(2) The purpose is to enable—

- (a) a scheme apportionment arrangement, or
- (b) a regulated apportionment arrangement,

to be entered into.

(3) No modification may be made for the purpose in paragraph (2) unless the trustees have consulted such employers in relation to the scheme as they think appropriate.”.

Amendment of regulation 17 of the 2005 Regulations

15. In regulation 17(1) of the 2005 Regulations (disregard of staying of voluntary winding up of employer for purposes of section 75 of the 1995 Act), for “section 75(6D)(i)” substitute “section 75(6D)(b)(i)”.

(a) Regulation 12 was amended by S.I.s 2005/2224 and 2008/731.

(b) Regulation 16 was substituted by S.I. 2008/731 and amended by S.I. 2008/1068.

Amendment of Schedule 1 to the 2005 Regulations

16.—(1) Schedule 1 to the 2005 Regulations (actuary’s certificate of total difference between scheme assets and liabilities)(**a**) is amended as follows.

(2) In the first paragraph in the certificate(**b**), for “assets in scheme” substitute “assets of the scheme”.

(3) Omit the third paragraph in the Notes(**c**).

(4) In the fifth paragraph in the Notes, for “updated actuarial assessment” substitute “updated liabilities assessment”.

(5) After the sixth paragraph in the Notes, insert—

“The total amount of the employer’s debt will be the amount stated in paragraph 2 of the certificate plus any cessation expenses (as defined in regulation 2(1) of the Employer Debt Regulations). See regulation 6(1)(e)(ii) of the Employer Debt Regulations.”.

Amendment of Schedule 1B to the 2005 Regulations

17.—(1) Schedule 1B to the 2005 Regulations (notifiable events)(**d**) is amended as follows.

(2) In paragraph 1(2), omit paragraphs (e) and (g).

(3) In paragraph 3(1), omit “under paragraph 1 or 2” the first time it appears.

Amendment of Schedule 1C to the 2005 Regulations

18.—(1) Schedule 1C to the 2005 Regulations (actuary’s certificate for withdrawal arrangement share or approved withdrawal arrangement share in multi-employer scheme)(**e**) is amended as follows.

(2) For the third paragraph in the certificate, substitute—

“3 Valuation principles

The scheme’s assets and liabilities are valued in accordance with—

(a) section 75(5) of the Pensions Act 1995, and

(b) regulations 5, 6[, 6C(3) and 7(5)] [delete as appropriate] of the Employer Debt Regulations.”.

(3) In the first paragraph in the Notes, for the definition of “relevant transfer deduction” substitute—

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

(4) Omit the second paragraph of the Notes.

(5) In the fourth paragraph in the Notes, for “updated actuarial assessment” substitute “updated liabilities assessment”.

(6) After the last paragraph in the Notes, insert—

“The total amount of the employer’s debt will be the amount of the (approved) withdrawal arrangement share stated in paragraph 2 of the certificate plus any cessation expenses (as defined in regulation 2(1) of the Employer Debt Regulations). See regulation 6(1)(e)(ii) of the Employer Debt Regulations.”.

(a) Schedule 1 was substituted by S.I. 2008/731.

(b) The first paragraph in the certificate is headed “Comparison of value of scheme assets with amount of scheme liabilities”.

(c) The third paragraph in the Notes reads “The value of the assets was provided by the trustees or managers of the scheme.”.

(d) Schedule 1B was inserted by S.I. 2005/2224 and substituted by S.I. 2008/731.

(e) Schedule 1C was inserted by S.I. 2008/731.

Amendment of Schedule 1D to the 2005 Regulations

19.—(1) Schedule 1D to the 2005 Regulations (actuary’s certificate for amount B under a withdrawal arrangement or an approved withdrawal arrangement in a multi-employer scheme)(a) is amended as follows.

(2) In the second paragraph of the certificate, for “Occupational Pension Schemes (Employer Debt) Regulations 2005” substitute “Employer Debt Regulations”.

(3) Omit the third paragraph in the Notes(b).

(4) In the penultimate paragraph in the Notes, for “updated actuarial assessment” substitute “updated liabilities assessment”.

Amendment of the Pensions Regulator (Financial Support Directions etc.) Regulations 2005

20. In regulation 15(2) of the Pensions Regulator (Financial Support Directions etc.) Regulations 2005 (former employers)(c)—

(a) for “A, AA, AB, B, C or D”, substitute “condition A, AA, AB, B, C, D or E”, and

(b) after sub-paragraph (d), insert—

“(e) condition E is that—

(i) as a result of a restructuring occurring within regulation 6ZB or 6ZC of the Occupational Pension Schemes (Employer Debt) Regulations 2005 (employment-cessation events: exemptions), no section 75 debt became due; and

(ii) regulation 6ZA(3) or (4) of those Regulations (employment-cessation events: general) does not apply in relation to that restructuring.”.

Amendment of the Occupational Pension Schemes (Scheme Funding) Regulations 2005

21. In paragraph 3(2) of Schedule 2 to the Occupational Pension Schemes (Scheme Funding) Regulations 2005 (multi-employer schemes: frozen or paid-up schemes)(d), for “paragraph (1)” substitute “sub-paragraph (1)”.

Amendment of the Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2008

22.—(1) Regulation 2 of the Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2008(e) (commencement and transitional provisions) is amended as follows.

(2) In paragraph (3), at the end of sub-paragraph (b) insert—

“, and

(c) the scheme had not ceased to have active members.”.

(3) In paragraph (4), for “, as it appeared in regulation 6(4) of the old Regulations,” substitute “referred to in paragraph (4A)”.

(4) After paragraph (4), insert—

“(4A) The definition referred to in this paragraph is the definition of “employment-cessation event” as it appeared in regulation 6(4) of the old Regulations but with “who is not a defined contribution employer” inserted after “when at least one other person”.”.

(a) Schedule 1D was inserted by S.I. 2008/731.

(b) The third paragraph in the Notes reads “The value of the assets was provided by the trustees or managers of the scheme.”

(c) S.I. 2005/2188. Regulation 15(2) was amended by S.I.s 2005/2224 and 2008/731.

(d) S.I. 2005/3377. Paragraph 3 was substituted by S.I. 2008/731.

(e) S.I. 2008/731.

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

10th March 2010

Angela Eagle
Minister of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend—

- the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations 2005 (S.I. 2005/441) (“the Multi-employer Regulations”),
- the Pension Protection Fund (Entry Rules) Regulations 2005 (S.I. 2005/590) (“the Entry Rules Regulations”),
- the Occupational Pension Schemes (Employer Debt) Regulations 2005 (S.I. 2005/678) (“the 2005 Regulations”),
- the Pensions Regulator (Financial Support Directions etc.) Regulations 2005 (S.I. 2005/2188) (“the FSD Regulations”),
- the Occupational Pension Schemes (Scheme Funding) Regulations 2005 (S.I. 2005/3377) (“the Scheme Funding Regulations”), and
- the Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2008 (S.I. 2008/731) (“the 2008 Regulations”).

These Regulations contain provisions about debts arising under section 75 of the Pensions Act 1995 (c.26) in respect of occupational pension schemes.

Regulation 7 amends the 2005 Regulations to insert new regulations 6ZA to 6ZD. These new regulations introduce two new circumstances in which an employer in a multi-employer occupational pension scheme can stop participating in the scheme without being required to pay a debt to the scheme (“the 2 changes”). Both apply where two employers who are associated with each other are restructuring the way they are organised.

New regulation 6ZA sets out the circumstances in which an employer who stops participating in a multi-employer occupational pension scheme has to pay a debt to the scheme.

New regulation 6ZB sets out the first of the 2 changes. It prescribes the process to be followed in order for an employer to stop participating in their pension scheme without paying a debt. New regulation 6ZB(13) requires that the employer transfers to an employer who is remaining in the scheme all their responsibilities and obligations in respect of the scheme and all their assets. New regulation 6ZB(9) requires the trustees or managers of the scheme to be satisfied that the employer which is taking over those responsibilities and obligations will be at least as likely to meet them as the employer leaving the scheme.

New regulation 6ZC sets out the second of the 2 changes. It also prescribes a process to be followed. New regulation 6ZC(9) requires the same transfer to take place as new regulation 6ZB(13). New regulation 6ZC(5) provides that only a small transfer can be made.

New regulation 6ZD allows the trustees or managers of the scheme to recover from the employers any costs they incur under new regulations 6ZB or 6ZC.

Regulations 2 and 3 make consequential amendments to the Multi-employer Regulations and Entry Rules Regulations. These amendments change the conditions in which an employer who stops participating in the scheme in accordance with the 2 changes can enter the Pension Protection Fund.

Regulations 4, 6(3) and 10 make amendments to the 2005 Regulations which are consequential on the 2 changes.

Regulation 20 also makes a consequential amendment to the FSD Regulations. It provides that an employer who stops participating in the pension scheme under one of the 2 changes is not treated as an employer for the purposes of the scheme.

Regulations 5, 6(2), 8, 9 and 11 to 19 make changes to the 2005 Regulations which are not connected to the 2 changes and regulations 21 and 22 make changes to other Regulations which are not connected to the 2 changes.

Regulation 5 makes amendments to the way scheme liabilities and assets are calculated for the purposes of employer debt.

Regulation 8 makes amendments which prevent an employer entering a scheme apportionment arrangement where the scheme is attempting to enter the Pension Protection Fund or is likely to make such an attempt in the next year.

Regulation 9 makes amendments which provide that guarantors can be jointly liable for a debt under a withdrawal arrangement.

Regulation 11 removes a reference to guidance which is no longer published.

Regulation 14 makes amendments which allow schemes to modify their rules so that an apportionment arrangement can be entered into.

Regulations 16, 18 and 19 amend the certificates which an actuary may have to complete for employer debt purposes.

Regulations 6(2), 12, 13, 15 and 17 make minor amendments to the 2005 Regulations.

Regulation 21 makes a minor amendment to the Scheme Funding Regulations.

Regulation 22 amends the transitional provisions of the 2008 Regulations in respect of schemes that have ceased to employ active members.

An assessment of the impact these Regulations have on business, charities and the voluntary sector has been made. Copies of that Impact Assessment are available from the libraries of both Houses of Parliament, the Better Regulation Unit of the Department for Work and Pensions, Caxton House, Tothill Street, London SW1H 9NA and the Department's website at: <http://www.dwp.gov.uk/publications/impact-assessments>.

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STATUTORY INSTRUMENTS

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PENSIONS

The Occupational Pension Schemes (Employer Debt and
Miscellaneous Amendments) Regulations 2010

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