

2018 No. 237

PENSIONS

**The Occupational Pension Schemes (Employer Debt and
Miscellaneous Amendments) Regulations 2018**

<i>Made</i> - - - -	<i>22nd February 2018</i>
<i>Laid before Parliament</i>	<i>26th February 2018</i>
<i>Coming into force</i> - -	<i>6th April 2018</i>

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 75(5) and (10), 75A(1) to (4) and (5)(a), 124(1), 125(3) and 174(1) to (3) of the Pensions Act 1995(a) and sections 69(2), 232, 307(1)(b) and (2)(ba), 315(2) 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 and commencement

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2018.

(2) These Regulations come into force on 6th April 2018.

Amendments to the Occupational Pension Schemes (Employer Debt) Regulations 2005

2. The Occupational Pension Schemes (Employer Debt) Regulations 2005(c) are amended in accordance with regulations 3 to 11.

Amendments to regulation 2

3.—(1) Regulation 2 (interpretation) is amended as follows.

(2) In paragraph (1)—

(a) after the definition of “the corresponding assets”(d) insert—

(a) 1995 c.26. Section 75 was amended by section 271 of the Pensions Act 2004 (c.35) and S.I. 2017/540. Section 75A was amended by section 272 of that Act. Section 124(1) is cited for the meaning it gives to “prescribed” and “regulations”.

(b) 2004 c.35. Section 307(2)(ba) was inserted by section 31(2) of the Pensions Act 2011 (c.19). Section 318(1) is cited for the meaning it gives to “prescribed” and “regulations”.

(c) S.I. 2005/678. Relevant amending instruments are S.I.s 2005/993, 2224, 3377 and 3378, 2006/467 and 558, 2007/60, 2008/731 and 1068, 2009/1906, 2010/725, 2011/2973, 2012/1817, 2013/627, 2014/540 and 2016/200.

(d) The definition of “the corresponding assets” was inserted by S.I. 2008/731.

““deferred debt arrangement” means an arrangement that takes effect in accordance with regulation 6F(a);”;

(b) in the definition of “employer”(b), after “6,” insert “6A, 6F;”;

(c) after the definition of “frozen scheme”(c) insert—

““the FSD Regulations” means the Pensions Regulator (Financial Support Directions etc.) Regulations 2005(d);”.

(3) In paragraph (3A)(e) in the definition of “receiving employer” for sub-paragraph (b)(ii) substitute—

“(ii) not associated but falls within paragraph (3B)(f).”.

(4) After paragraph (3A), insert—

“(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”)(g); and

(ii) in relation to Scotland, has the meaning given by section 112 of the Companies Act 1989(h);

(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(i);

(c) “limited company” has the meaning given by section 3(1) of the Companies Act 2006(j)Act;

(d) “limited liability partnership” has the meaning given by section 1(2) of the Limited Liability Partnerships Act 2000(k); and

(e) “limited partnership” has the meaning given by section 4 of the Limited Partnerships Act 1907(l).

(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.”.

(5) After paragraph (4D)(m) insert—

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

(a) Regulation 6F is inserted by regulation 7 of these Regulations.

(b) The definition of “employer” was amended by S.I. 2008/731.

(c) The definition of “frozen scheme” was inserted by S.I. 2008/731.

(d) S.I. 2005/2188. Relevant amending instruments are S.I. 2005/2224, 2008/731, 2009/617, 2010/725 and 2011/2973.

(e) Paragraph (3A) was inserted by S.I. 2010/725.

(f) Paragraph (3B) was inserted by these Regulations.

(g) 2011 c.25.

(h) 1989 c.40. Section 112 was amended by S.I. 2006/242 and S.I. 2009/1941.

(i) 2005 asp 10.

(j) 2006 c. 26.

(k) 2000 c.12.

(l) 1907 c.24. Section 4 was amended by the Statute Law Revision Act 1927 (c.24), S.I.s 2003/2904, 2003/3203 and 2017/514. Section 4 was modified by S.I.s 2013/1388 and 2015/1882.

(m) Paragraph (4D) was inserted by S.I. 2008/731.

- (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.”.

Amendments to regulation 6ZA

4. In regulation 6ZA(1)(c)(employment-cessation events: general)(a) for “regulation 6A” substitute “regulations 6A and 6F”.

Amendments to regulation 6A

5.—(1) Regulation 6A (employment-cessation events: periods of grace)(b) is amended as follows.

(2) In paragraph (1)—

- (a) for “2 months” substitute “3 months”;
- (b) in sub-paragraph (a), after “scheme” insert “or enters into a deferred debt arrangement”;
- (c) for sub-paragraph (b) substitute—

“(b) if at any time during the period of grace A—

- (i) no longer intends to employ any person who will be an active member of the scheme; or
- (ii) does not intend to enter into a deferred debt arrangement by the last day of the period of grace,

A must notify the trustees or managers of the scheme and A must be treated as if the period of grace had not applied;”.

(3) In paragraph (2), after “these Regulations” insert “and regulation 16 of the FSD Regulations (multi-employer schemes)”.

Amendments to regulation 6E

6.—(1) Regulation 6E (flexible apportionment arrangements)(c) is amended as follows.

(2) In paragraph (1) for “A flexible” substitute “Except in the case of a frozen scheme, a flexible”.

(3) In paragraph (1)(b)—

- (a) at the end of sub-paragraph (i) insert “or”; and
- (b) at the end of sub-paragraph (ii) for “applied; or” substitute “applied.”.

(4) Omit paragraph (1)(b)(iii) and after paragraph (1) insert—

“(1A) Where the scheme is a frozen scheme, the flexible apportionment arrangement takes effect on the date on which the conditions in paragraph (2) are met.”.

Insertion of new regulation 6F

7. After regulation 6E insert—

(a) Regulation 6ZA was inserted by S.I. 2010/725 and amended by S.I. 2011/2973.
 (b) Regulation 6A was inserted by S.I. 2008/731 and amended by S.I. 2011/2973.
 (c) Regulation 6E was inserted by S.I. 2011/2973.

“Deferred debt arrangement

6F.—(1) A deferred debt arrangement takes effect on the date on which the trustees or managers of the scheme, being satisfied that the conditions in paragraphs (2) and (3) are met, consent in writing to the arrangement.

(2) The condition in this paragraph is that an employment-cessation event—

- (a) has occurred in relation to the deferred employer before the date on which the conditions in paragraph (3) are met; or
- (b) would have occurred in relation to the deferred employer if the deferred employer had not entered into and remained in a period of grace in accordance with regulation 6A until immediately before the date on which the deferred debt arrangement is to take effect.

(3) The conditions in this paragraph are—

- (a) the scheme is not in an assessment period within the meaning of Part 2 of the 2004 Act (the Board of the Pension Protection Fund) or being wound up; and
- (b) the trustees or managers of the scheme are satisfied that—
 - (i) an assessment period is unlikely to begin in relation to the scheme within the period of 12 months beginning with the date on which the trustees or managers expect the deferred debt arrangement to take effect; and
 - (ii) the deferred employer’s covenant with the scheme is not likely to weaken materially within the period of 12 months beginning with the date on which the trustees or managers expect the deferred debt arrangement to take effect.

(4) A deferred employer must be treated during the period that the deferred debt arrangement is in place—

- (a) as if employing at least one person who is an active member of the scheme; and
- (b) for the purposes of these Regulations and regulation 16 of the FSD Regulations (multi-employer schemes), as an employer in relation to the scheme.

(5) Where a deferred debt arrangement is in place the deferred employer must be treated as if the employment-cessation event in paragraph (2) had not, or would not have, occurred.

(6) The deferred debt arrangement terminates on the first date on which one of the following events occurs—

- (a) the deferred employer commences employing a person who is an active member of the scheme;
- (b) the deferred employer and the trustees or managers of the scheme agree that an employment-cessation event shall be treated as having occurred for the purposes of bringing the deferred debt arrangement to an end in relation to the deferred employer;
- (c) a relevant event occurs in relation to the deferred employer;
- (d) all the employers in the scheme have experienced a relevant event or have become deferred employers;
- (e) the scheme commences winding up;
- (f) the deferred employer restructures, unless—
 - (i) the restructuring falls within either regulation 6ZB (employment-cessation events: exemptions) or regulation 6ZC; and
 - (ii) where the receiving employer is a deferred employer, the trustees or managers of the scheme are satisfied that the conditions in paragraph (3) are met;
- (g) a freezing event as defined in regulation 9(2)(b)(frozen schemes and former employers) occurs in relation to the scheme;

- (h) the trustees or managers of the scheme serve a notice on the deferred employer stating that the deferred debt arrangement has come to an end on the grounds that the trustees or managers of the scheme are reasonably satisfied that—
 - (i) the deferred employer has failed to comply materially with its duties under the Scheme Funding Regulations;
 - (ii) the deferred employer’s covenant with the scheme is likely to weaken materially in the next 12 months; or
 - (iii) the deferred employer has failed to comply materially with its duties under regulation 6 (duty to disclose information) of the Occupational Pension Schemes (Scheme Administration) Regulations 1996(a).
- (7) For the purposes of these Regulations where—
- (a) an event referred to in paragraph (6)(a) or (e) of this regulation occurs, the deferred employer must be treated as if the employment-cessation event in paragraph (2) had not, or would not have, occurred;
 - (b) an event referred to in paragraph (6)(b), (c), (d) or (h) of this regulation occurs, the date of that event must be treated as the date of the employment-cessation event in relation to the deferred employer;
 - (c) the deferred employer restructures in circumstances where—
 - (i) paragraph (6)(f) of this regulation does not apply, the date of the restructuring must be treated as the date of the employment-cessation event in relation to the deferred employer;
 - (ii) paragraph (6)(f) of this regulation applies—
 - (aa) if the receiving employer is not a deferred employer, paragraph (6)(a) of this regulation applies to the receiving employer; and
 - (bb) if the receiving employer is a deferred employer, the deferred debt arrangement must continue;
 - (d) a freezing event referred to in paragraph (6)(g) of this regulation occurs, the deferred employer—
 - (i) becomes a former employer in relation to the scheme for the purposes of regulation 9 (frozen schemes and former employers); and
 - (ii) must be treated as if the employment-cessation event referred to in paragraph (2)(a) had not, or would not have, occurred and the deferred debt arrangement had never taken effect.”.

Amendments to regulation 8

8. For paragraph (2)(a)(i) of regulation 8 (single employer sections, multi-employer sections etc.)(b), substitute—

“(i) any contributions payable to the scheme by an employer in relation to the scheme, or by a member in employment under that employer, are allocated to that employer’s section, or if more than one section applies to that employer, to the section which is appropriate in respect of the employment in question; and”.

Amendments to regulation 9

9.—(1) Regulation 9 (frozen schemes and former employers)(c), is amended as follows.

(2) In paragraph (2)(a) after “scheme relates” insert—

(a) Regulation 6 was amended by S.I. 2005/2426.
 (b) Regulation 8 was substituted by S.I. 2008/731 and amended by S.I. 2010/725.
 (c) Regulation 9 was substituted by S.I. 2008/731 and amended by S.I. 2010/725.

“and, in the case of a frozen scheme includes any person who employed persons in the description of employment to which the scheme relates immediately before the relevant time.”.

(3) After paragraph (3) insert—

“(3A) Where a scheme which has one or more deferred employers experiences a freezing event as defined in paragraph (2)(b), the deferred employers must all be treated as if they have ceased to employ persons in the description of employment to which the scheme relates immediately before the relevant time.”.

Amendments to Schedule 1B

10.—(1) Paragraph 2 of Schedule 1B (notifiable events)(a) is amended as follows.

(2) In sub-paragraph (1)—

(a) in sub-paragraph (b) for “effect.” substitute “effect; or”;

(b) after sub-paragraph (b), insert—

“(c) a deferred debt arrangement taking effect; or

(d) any event which terminates a deferred debt arrangement in accordance with regulation 6F(6).”.

(3) In sub-paragraph (2) for “the making of the decision” substitute “the trustees or managers of the scheme make the decision or become aware of the event.”.

Insertion of new regulation 19

11. After regulation 18 (consequential amendments) insert—

“Review

19.—(1) The Secretary of State must from time to time—

(a) carry out a review of the regulatory provision contained in regulation 6F of these Regulations; and

(b) publish a report setting out the conclusions of the review.

(2) The first report must be published before 6th April 2023.

(3) Subsequent reports must be published at intervals not exceeding five years.

(4) Section 30(4) of the Small Business, Enterprise and Employment Act 2015(b) requires that a report published under this regulation must, in particular—

(a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a);

(b) assess the extent to which those objectives are achieved;

(c) assess whether those objectives remain appropriate; and

(d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(5) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).”.

(a) Schedule 1B was inserted by S.I. 2005/2224 and was substituted by S.I. 2008/731. It was amended by S.I. 2010/725 and S.I. 2011/2973.

(b) 2015 c.26.

Amendments to the Occupational Pension Schemes (Scheme Funding) Regulations 2005

12.—(1) Schedule 2 of the Occupational Pension Schemes (Scheme Funding) Regulations 2005 (modifications of the Act and Regulations)(a) is amended as follows.

(2) After paragraph 3A (employers in periods of grace) insert—

“Period of grace followed by a deferred debt arrangement

3B. In a case where a period of grace is immediately followed by a deferred debt arrangement as the result of the trustees or managers of the scheme being satisfied that the conditions in regulation 6F(2)(b) and (3) of the Occupational Pension Schemes (Employer Debt) Regulations 2005 are met, the period of grace and the deferred debt arrangement are to be treated as one continuous period of time for the purposes of Part 3 of the 2004 Act and these Regulations.

Employers in deferred debt arrangements

3C.—(1) This paragraph applies where a deferred employer is treated under regulation 6F(4) of the Occupational Pension Schemes (Employer Debt) Regulations 2005 (deferred debt arrangement) as if it employed at least one person who is an active member of a scheme.

(2) Where this paragraph applies, Part 3 of the 2004 Act and these Regulations are modified so that references to “employer” include a reference to a deferred employer.

(3) This paragraph ceases to apply where the deferred debt arrangement referred to in regulation 6F of the Occupational Pension Schemes (Employer Debt) Regulations 2005 in respect of the deferred employer comes to an end in accordance with that regulation.

3D. For the purposes of paragraphs 3B and 3C—

“deferred debt arrangement” and “deferred employer” have the meanings given in regulation 2(1) (interpretation) of the Occupational Pension Schemes (Employer Debt) Regulations 2005.”.

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

Guy Opperman
Parliamentary Under Secretary of State
Department for Work and Pensions

22nd February 2018

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations contain provisions about debts arising for employers under section 75 of the Pensions Act 1995 (c.26) in respect of occupational pension schemes and also contain consequential amendments. In particular, the Regulations introduce a new option for employers managing section 75 debt, namely the ‘deferred debt arrangement’ which permits employers in specified circumstances to defer payment of the section 75 debt provided certain conditions are met.

These Regulations amend the Occupational Pension Schemes (Employer Debt) Regulations 2005 (“the Employer Debt Regulations”) (S.I. 2005/678), and the Occupational Pension Schemes (Scheme Funding) Regulations 2005 (“the Scheme Funding Regulations”) (S.I. 2005/3377).

Regulations 3 to 11 of these Regulations amend the Employer Debt Regulations.

(a) S.I. 2005/3377. Paragraph 3A of Schedule 2 was inserted by S.I. 2011/2973.

Regulation 3 inserts new definitions in regulation 2 of those Regulations for ‘deferred debt arrangement’ and ‘deferred employer’. In addition, the regulation provides a clarified definition of ‘receiving employer’.

Regulation 4 makes a consequential amendment to regulation 6ZA.

Regulation 5 makes amendments to regulation 6A (employment-cessation events: periods of grace) consequential to the relationship between the period of grace and the deferred debt arrangement. In addition, it extends the period for employers to provide a period of grace notice to the trustees or managers of the scheme from within 2 months of the employment-cessation event to within 3 months of the employment-cessation event.

Regulation 6 makes an amendment to regulation 6E (flexible apportionment arrangements) clarifying the date on which a flexible apportionment arrangement takes place where the scheme in question is a frozen scheme.

Regulation 7 inserts a new regulation 6F (deferred debt arrangement) into the Employer Debt Regulations to allow an employer in a multi-employer occupational pension scheme who experiences an employment-cessation event (a ‘deferred employer’) to defer payment of the section 75 debt and to continue as an employer in relation to the scheme if certain conditions are met. The deferred employer will remain responsible for the debt and following certain events will be obliged to pay it.

New regulation 6F(1) provides that a deferred debt arrangement commences on the date that the trustees or managers of the scheme being satisfied that certain conditions set out in paragraphs 6F(2) and (3) have been met consent to the arrangement in writing.

New regulation 6F(2) sets out the conditions for a deferred debt arrangement to take place. The arrangement can be entered into by an employer who has experienced an employment-cessation event, including a situation where the employer has previously entered into a period of grace.

New regulation 6F(3) states further conditions that must be met for the arrangement to take place, namely that the scheme is not in an assessment period or being wound up, and that the trustees or managers of the scheme are satisfied that neither a Pension Protection Fund assessment period in relation to the scheme or a material weakening of the employer’s covenant is likely to occur within 12 months of the date that the arrangement takes place.

New regulation 6F(4) confirms that a deferred employer is treated, for the period that the deferred debt arrangement is in place, as an employer of an active scheme member, and for the purpose of the Employer Debt Regulations and the Financial Support Regulations as an employer in relation to the scheme.

New regulation 6F(5) deals with the effects of the arrangement while it is in place specifying that the deferred employer is treated as if an employment-cessation event had not occurred.

New regulation 6F(6) deals with how a deferred debt arrangement comes to an end.

New regulation 6F(7) deals with how the various ways that the deferred debt arrangement concludes in regulation 6F(6) affect whether and when an employment-cessation event has occurred.

Regulation 8 makes clarifying amendments to regulation 8.

Regulation 9 makes clarifying and consequential amendments to regulation 9.

Regulation 10 amends Schedule 1B to make the commencement and conclusion of a deferred debt arrangement a notifiable event to the Pensions Regulator and to impose notification duties on the trustees or managers of the scheme.

Regulation 11 inserts a new Regulation 19 (Review) and gives the Secretary of State for Work and Pensions a duty to review the provisions in new Regulation 6F and publish a report setting out the conclusions of the review, in accordance with sections 28 to 32 of the Small Business, Enterprise

and Employment Act 2015 (c. 26), no later than five years after these Regulations come into force, and subsequently at intervals of not more than five years.

Regulation 12 makes amendments to the Scheme Funding Regulations consequential to the deferred debt arrangement.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from the Department for Work and Pensions at Caxton House, 6-12, Tothill Street, London, SW1H 9NA and is published with the Explanatory Memorandum alongside this instrument on www.legislation.gov.uk.

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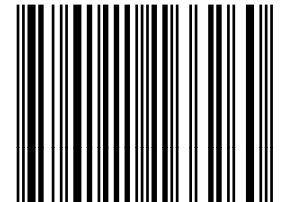
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