
STATUTORY RULES OF NORTHERN IRELAND

2014 No. 204

**The Pensions (2012 Act)
(Transitional, Consequential and Supplementary Provisions)
Regulations (Northern Ireland) 2014**

PART 6

Deficiencies in the assets

Interpretation

17.—(1) In this Part—

“approved withdrawal arrangement”, “flexible apportionment arrangement”, “multi-employer scheme”, “regulated apportionment arrangement”, “scheme apportionment arrangement” and “withdrawal arrangement” have the same meanings as in regulation 2(1) ^{M1} of the Employer Debt Regulations;

“the effective date” is the date by reference to which the assets of a scheme are valued and the amount of the scheme liabilities is calculated;

“employer” has the same meaning as in Article 75 ^{M2} of the 1995 Order (deficiencies in the assets) and regulations 6 ^{M3} (multi-employer schemes: general) and 9 ^{M4} (frozen schemes and former employers) of the Employer Debt Regulations;

“the Employer Debt Regulations” means the Occupational Pension Schemes (Employer Debt) Regulations (Northern Ireland) 2005 ^{M5};

“share of the difference”, in relation to an employer participating in a multi-employer scheme, has the meaning given by regulation 2(1) ^{M6} of the Employer Debt Regulations and includes in particular an employer's share under—

- (a) a scheme apportionment arrangement;
- (b) a withdrawal arrangement;
- (c) a flexible apportionment arrangement;
- (d) an approved withdrawal arrangement, and
- (e) a regulated apportionment arrangement.

Marginal Citations

M1 The definitions of “approved withdrawal arrangement”, “regulated apportionment arrangement” and “scheme apportionment arrangement” were inserted, and the definitions of “multi-employer scheme” and “withdrawal arrangement” were substituted, by regulation 4(2) of S.R. [2008 No. 132](#); the definition of “flexible apportionment arrangement” was inserted by regulation 4(a)(i) of S.R. [2012 No. 1](#)

Changes to legislation: There are currently no known outstanding effects for the *The Pensions (2012 Act) (Transitional, Consequential and Supplementary Provisions) Regulations (Northern Ireland) 2014, PART 6. (See end of Document for details)*

- M2** Article 75 was amended by Article 248 of the Pensions (Northern Ireland) Order 2005
- M3** Regulation 6 was amended by regulation 6 of S.R. 2008 No. 132, regulation 6 of S.R. 2010 No. 111; regulation 6 of S.R. 2012 No. 1 and paragraph 10(c) of the Schedule to S.R. 2012 No. 294
- M4** Regulation 9 was substituted by regulation 10 of S.R. 2008 No. 132 and amended by regulation 11 of S.R. 2010 No. 111 and regulation 11 of S.R. 2012 No. 1
- M5** S.R. 2005 No. 168
- M6** The definition of “share of the difference” was inserted by regulation 4 of S.R. 2008 No. 132

Application to multi-employer schemes

18. Where, by virtue of regulation 8^{M7} (single employer sections, multi-employer sections, etc.), 14^{M8} (schemes covering United Kingdom and foreign employment) or 15^{M9} (schemes with partial government guarantee) of the Employer Debt Regulations, Article 75 of the 1995 Order (deficiencies in the assets) applied before the appointed day to a scheme in relation to which there is more than one employer as if a section or part of the scheme were a separate scheme (or would have so applied but for these Regulations)—

- (a) this Part also so applies, and
- (b) “employer” and “member” must be read accordingly.

Marginal Citations

- M7** Regulation 8 was substituted by regulation 9 of S.R. 2008 No. 132
- M8** Regulation 14 was amended by regulation 13 of S.R. 2010 No. 111
- M9** Regulation 15 was amended by regulation 14 of S.R. 2010 No. 111

Application of Article 75 of the 1995 Order to schemes treated as money purchase schemes: periods before the appointed day

19.—(1) Where, on the appointed day, the conditions specified in paragraph (2) are met in relation to an occupational pension scheme, Article 75 of the 1995 Order (deficiencies in the assets) does not apply to the scheme in relation to any time before the appointed day.

- (2) The conditions specified in this paragraph are that, if this regulation did not apply—
- (a) a debt would be due to the trustees or managers of the scheme from an employer in relation to the scheme in accordance with Article 75 of the 1995 Order in relation to a time before the appointed day;
 - (b) at that time—
 - (i) benefits under the scheme included cash balance benefits or pensions derived from money purchase or cash balance benefits;
 - (ii) the scheme did not include any benefits other than those specified in paragraph (i), death benefits or money purchase benefits;
 - (iii) the trustees or managers of the scheme treated the scheme as a money purchase scheme, and
 - (iv) for that reason, the trustees or managers treated the scheme as if Article 75 of the 1995 Order did not apply to it.

Application of Article 75 of the 1995 Order to non-money purchase schemes including benefits treated as money purchase benefits: periods before the appointed day

20.—(1) This regulation applies where before the appointed day—

- (a) an occupational pension scheme included benefits other than money purchase benefits;
 - (b) in accordance with Article 75 of the 1995 Order (deficiencies in the assets), a debt became due to the trustees or managers of the scheme from an employer in relation to the scheme, and
 - (c) at the time that the debt became due the scheme included any of the benefits specified in paragraph (2) and met the condition specified in paragraph (3).
- (2) The benefits specified in this paragraph are—
- (a) cash balance benefits;
 - (b) a defined benefit minimum (in relation to money purchase underpin benefits or cash balance underpin benefits);
 - (c) top-up benefits;
 - (d) pensions derived from money purchase benefits, and
 - (e) pensions derived from any of the benefits specified in sub-paragraphs (a) to (c).

(3) The condition specified in this paragraph is that assets and liabilities in respect of benefits specified in paragraph (2) were treated as if they related to money purchase benefits for the purposes of calculating the debt referred to in paragraph (1)(b).

(4) Where this regulation applies, Article 75 of the 1995 Order applies in relation to the time that the debt referred to in paragraph (1)(b) of this regulation became due (or would have become due if this regulation did not apply) as if the assets and liabilities relating to the benefits specified in paragraph (2) of this regulation which were treated as money purchase benefits for the purposes of calculating the debt referred to in paragraph (1)(b) of this regulation related to money purchase benefits.

Non-money purchase schemes which are multi-employer schemes: arrangements before the appointed day

21.—(1) This regulation applies where at any time before the appointed day an occupational pension scheme which was a multi-employer scheme—

- (a) included any of the benefits specified in regulation 20(2), and
- (b) met the condition specified in paragraph (2).

(2) The condition specified in this paragraph is that an employer's share of the difference (if any) between the value of the assets and the amount of the liabilities of the scheme for the purposes of Article 75 of the 1995 Order (deficiencies in the assets) was determined as if benefits specified in regulation 20(2) were money purchase benefits.

(3) Where this regulation applies, Article 75 of the 1995 Order applies at the time that that debt became due (or would have become due if this regulation did not apply), as if the assets and liabilities relating to the benefits specified in regulation 20(2) which were treated as money purchase benefits for the purposes of calculating an employer's share of the difference, related to money purchase benefits.

Schemes or benefits treated as money purchase falling outside regulations 19 to 21

22.—(1) Subject to paragraph (11), this regulation applies where—

- (a) at any time before the appointed day, an occupational pension scheme included benefits which were not money purchase benefits;
- (b) if this regulation did not apply, a debt would be due to the trustees or managers of the scheme from an employer in relation to the scheme in accordance with Article 75 of the 1995 Order (deficiencies in the assets), in relation to a time before the appointed day;

- (c) regulations 19 to 21 do not apply in relation to the scheme, and
 - (d) one or more of the conditions specified in paragraphs (2) to (4) are met in relation to the scheme.
- (2) The condition specified in this paragraph is that the trustees or managers of the scheme—
- (a) treated the scheme as if it were a money purchase scheme, and
 - (b) did not, in accordance with Article 75 of the 1995 Order, treat a difference between the value of the assets and the amount of the liabilities of the scheme as a debt due from an employer in relation to the scheme.
- (3) The condition specified in this paragraph is that the trustees or managers of the scheme—
- (a) treated benefits which were not money purchase benefits, death benefits or benefits specified in regulation 20(2) as money purchase benefits, and
 - (b) excluded assets and liabilities representing the value or amount of rights to any of those benefits from a calculation of the amount of the scheme liabilities and the value of the scheme assets for the purposes of Article 75 of the 1995 Order.
- (4) The condition specified in this paragraph is that an employer's share of the difference (if any) between the value of the scheme assets and the amount of the scheme liabilities, for the purposes of Article 75 of the 1995 Order, was determined as if benefits which were not money purchase benefits, death benefits or benefits specified in regulation 20(2) were money purchase benefits.
- (5) Subject to paragraph (6), the trustees or managers of a scheme to which this regulation applies must, as soon as reasonably possible after the appointed day—
- (a) secure a valuation of the scheme assets and scheme liabilities calculated in accordance with regulation 5^{M10} of the Employer Debt Regulations (calculation of the amount of scheme liabilities and value of scheme assets);
 - (b) where the value of the scheme assets at the effective date of that valuation is less than the amount of the scheme liabilities, treat the difference as a debt due from an employer in relation to the scheme, and
 - (c) designate a time for the purposes of a debt to be imposed in accordance with Article 75 of the 1995 Order.
- (6) Paragraph (5) does not apply to a scheme which is not in winding up if either of the conditions specified in paragraph (7) or (8) is met.
- (7) The condition specified in this paragraph is that an actuarial valuation has been prepared in accordance with Article 203 of the 2005 Order (actuarial valuations and reports) in the period of 3 years ending immediately before the appointed day and either—
- (a) it appears to the trustees or managers of the scheme that the statutory funding objective was met on the effective date of that actuarial valuation, or
 - (b) the statutory funding objective was not met on the effective date of the valuation but on the appointed day a recovery plan is in force in relation to the scheme.
- (8) The condition specified in this paragraph is that the trustees or managers of the scheme obtain an actuarial valuation in accordance with Article 203 of the 2005 Order and either—
- (a) it appears to the trustees or managers that the statutory funding objective is met on the effective date of that valuation, or
 - (b) the statutory funding objective is not met at that time but the trustees or managers ensure, within 6 months beginning with the effective date of the valuation, that a recovery plan in relation to the scheme is in force.

(9) The actuarial valuation mentioned in paragraph (8) must have an effective date within the period of 12 months beginning with the appointed day, and the trustees and managers of the scheme must ensure that they receive that valuation within 15 months beginning with the effective date.

(10) Where—

- (a) the trustees or managers of the scheme comply with the requirements of paragraph (5), or
- (b) either of the conditions specified in paragraph (7) or (8) is met,

no provision of section 27 of the Act or of these Regulations requires the trustees or managers of the scheme to calculate a debt which was due or would have become due from an employer in relation to the scheme in relation to a time before the appointed day.

(11) This regulation does not apply where regulation 23 applies to the scheme.

(12) Where the trustees or managers of a scheme do not comply with the requirements of paragraph (5), Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

(13) In this regulation—

- “recovery plan” is a recovery plan prepared in accordance with Article 205 of the 2005 Order;
- “statutory funding objective” is the requirement mentioned in Article 201 of the 2005 Order.

Marginal Citations

M10 Regulation 5 was substituted by regulation 5 of S.R. 2008 No. 132 and amended by regulation 5 of S.R. 2010 No. 111, regulation 5 of S.R. 2012 No. 1 and paragraph 10(b) of the Schedule to S.R. 2012 No. 294

Schemes or benefits treated as money purchase falling outside regulations 19 to 21: insolvent employer

23.—(1) This regulation applies where—

- (a) the circumstances specified in regulation 22(1) apply in relation to an occupational pension scheme, and
- (b) an event which is or would be (if this regulation did not apply)—
 - (i) a relevant event within Article 75(6A)(a) or (b) of the 1995 Order (deficiencies in the assets) (in relation to periods on or after 6th April 2005), or
 - (ii) a relevant insolvency event within Article 75(4) of that Order (as originally enacted) (in relation to periods before that date),

has occurred in relation to the employer in relation to the scheme, or in a case where the scheme is a multi-employer scheme, all the employers in relation to the scheme.

(2) Where this regulation applies, Article 75 of the 1995 Order applies as if the assets and liabilities of the scheme relating to the non-money purchase benefits treated as money purchase benefits related to money purchase benefits, or (as the case may be), as if the scheme were a money purchase scheme.

Changes to legislation:

There are currently no known outstanding effects for the The Pensions (2012 Act) (Transitional, Consequential and Supplementary Provisions) Regulations (Northern Ireland) 2014, PART 6.