

**2005 No. 2224**

**PENSIONS**

**The Occupational Pension Schemes (Employer Debt etc.)  
(Amendment) Regulations 2005**

*Made* - - - - - *9th August 2005*

*Laid before Parliament* *12th August 2005*

*Coming into force* *2nd September 2005*

**ARRANGEMENT OF REGULATIONS**

1. Citation, commencement and interpretation
2. Multi-employer schemes: employment-cessation events and withdrawal arrangements etc.
3. The Pensions Regulator's functions under the 2005 Regulations
4. Minor amendments of the 2005 Regulations
5. Consequential amendments of the Pensions Regulator (Financial Support Directions etc.) Regulations 2005
6. Amendment of the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996
7. Amendment of the Pension Protection Fund (Entry Rules) Regulations 2005

**SCHEDULE — Schedules inserted in the 2005 Regulations**

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 10(3), 56(3), 75(1)(b), (5) and (10), 75A(1) to (7), 89(2), 118(1)(a) and (b), 119, 124(1), 125(3) and 174(2) and (3) of the Pensions Act 1995(a) and sections 93(2)(q), 135(4), 315(2) and 318(1) and (4)(a) of, and paragraph 21(e) of Schedule 1 to, the Pensions Act 2004(b) and of all other powers enabling him in that behalf, by this instrument, which is consequential on sections 271 and 272 of the Pensions Act 2004(c), and is made before the end of the period of six months beginning with the coming into force of those sections, hereby makes the following Regulations:

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- (a) 1995 c.26. Section 75 was amended by section 271 of the Pensions Act 2004 (c.35) and modified by regulations 6, 8 to 10 and 13 to 15 of S.I. 2005/678. Section 89(2) was amended by paragraph 66 of Schedule 12 to the Pensions Act 2004. Section 75A was inserted by section 272 of the Pensions Act 2004. Section 124(1) is cited for the meaning it gives to "prescribed" and "regulations".
  - (b) 2004 c.35. Section 93(2)(q) and paragraph 21(e) of Schedule 1 refer to functions of the Regulator, which by virtue of section 7(1)(b) and (2)(b) include functions expressed to be conferred on "the Authority" by or by virtue of the Pensions Act 1995. Section 318(1) is cited for the meaning it gives to "prescribed" and "regulations".
  - (c) See section 120 of the Pensions Act 1995 and section 317 of the Pensions Act 2004 which provide that the Secretary of State must consult such persons as he may consider appropriate before making regulations for the purposes of the provisions for the purposes of which these Regulations are made. This duty does not apply where regulations are made before the end of the period of six months beginning with the coming into force of any enactment on which the regulations are consequential (in the case of section 120) or by virtue of which the regulations are made (in the case of section 317).

## **Citation, commencement and interpretation**

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

(2) These Regulations come into force on 2nd September 2005.

(3) Regulation 2(1), (2)(c), (3) and (5) does not apply if the employment-cessation event occurs before that date.

(4) Regulation 4(2) does not apply if the applicable time is before that date.

(5) In these Regulations—

“the 2004 Act” means the Pensions Act 2004;

“the 2005 Regulations” means the Occupational Pension Schemes (Employer Debt) Regulations 2005(a);

“the applicable time” has the meaning given in regulation 2(1) of the 2005 Regulations (interpretation);

“employment-cessation event” has the meaning given in regulation 6(4) of the 2005 Regulations (multi-employer schemes: general).

## **Multi-employer schemes: employment-cessation events and withdrawal arrangements etc.**

2.—(1) At the end of regulation 2(1) of the 2005 Regulations (interpretation) add—

““withdrawal arrangement” and “approved withdrawal arrangement” are to be read in accordance with paragraph 1(1) of Schedule 1A to these Regulations.”.

(2) In regulation 5 of the 2005 Regulations (calculation of the value of scheme liabilities and assets: defined benefit schemes)—

(a) in paragraph (1)(c) after “paragraphs (2), (3),” insert “(3A),”;

(b) after paragraph (3) insert—

“(3A) If the modification specified in regulation 7(3) has applied in the case of an employment-cessation event that occurred in relation to an employer before the applicable time—

(a) the liabilities of the scheme that are attributable to employment with that employer, and

(b) the debts treated as due under section 75(4) of the 1995 Act in accordance with that modification,

are not to be taken into account under paragraph (1).”;

(c) in paragraph (8) for “valuations for employment cessation events” substitute “employment-cessation events and withdrawal arrangements”.

(3) For regulation 7 of the 2005 Regulations (multi-employer schemes: valuations for employment cessation events) substitute—

### **“Multi-employer schemes: employment-cessation events and withdrawal arrangements**

7.—(1) This regulation applies where—

(a) section 75 of the 1995 Act applies to a trust scheme with the modifications referred to in regulation 6 (multi-employer schemes: general); and

(b) as a result of the occurrence of an employment-cessation event in relation to an employer, a debt (“the cessation debt”) calculated on the basis of assets and

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(a) S.I. 2005/678.

liabilities valued in accordance with regulation 5 is treated as due from the employer (“the cessation employer”) under section 75(4) of that Act.

(2) If the cessation employer notifies the Authority in writing that he proposes to enter into a withdrawal arrangement—

- (a) the Authority may issue a direction that the cessation debt is to be unenforceable for such period as the Authority may specify in the direction, and where such a direction has been issued the debt is unenforceable for that period; and
- (b) the Authority may issue a direction that if an approved withdrawal arrangement has come into force within that period, section 75 of the 1995 Act is to apply in the case of the employment-cessation event with the modification specified in paragraph (3) instead of the modification referred to in regulation 6(1)(e)(ii), and where such a direction has been issued and such an arrangement has so come into force, that modification so applies.

(3) The modification is that section 75 of the 1995 Act has effect as if the reference in section 75(4) to an amount equal to the difference being treated as a debt due from the employer were a reference to—

- (a) amount A being treated as a debt due from the employer; and
- (b) unless and until the Authority issue a direction that it is not to be so treated, amount B being treated as a debt due from the guarantors at the guarantee time for which (if there is more than one guarantor) they are jointly or, if the approved withdrawal arrangement so provides, jointly and severally liable,

where amount A is calculated in accordance with regulation 7A and amount B is calculated in accordance with regulation 7B.

(4) In this regulation—

“the guarantee time” means the earliest time when an event specified in paragraph 1(3) of Schedule 1A to these Regulations occurs; and

“the guarantors” means such one or more of the parties to the approved withdrawal arrangement as are specified in the arrangement as the persons who are the guarantors for the purposes of this regulation.

(5) The Authority may issue a direction extending the period mentioned in paragraph (2)(a) by such further period as they may specify (so that the debt is unenforceable for the extended period).

(6) The Authority may only issue a direction under paragraph (3)(b)—

- (a) before the guarantee time, and
- (b) if the Authority consider that the approved withdrawal arrangement is no longer required.

(7) Schedule 1A to these Regulations applies for the purpose of making further provision in cases where this regulation applies; and in that Schedule and regulations 7A and 7B “the cessation employer” has the same meaning as in this regulation.

### **Calculation of amounts due from cessation employer by virtue of regulation 7**

**7A.**—(1) For the purposes of regulation 7(3), amount A depends on whether or not a debt (a “scheme funding basis debt”) would have been treated as due from the cessation employer under section 75(4) of the 1995 Act if—

- (a) regulation 5 had applied with the modifications specified in paragraph (4); and
- (b) section 75(4) had applied in accordance with regulation 6(1)(d) and (e) but subject to the modifications of regulation 6 specified in paragraph (5) (instead of in accordance with the modification specified in regulation 7(3)).

(2) If a debt would have been so treated, amount A is the sum of the scheme funding basis debt and the cessation expenses attributable to the employer.

(3) If a debt would not have been so treated, amount A is equal to the amount of the cessation expenses attributable to the employer.

(4) The modifications of regulation 5 are that—

- (a) paragraphs (1)(a) and (2) and the references to those provisions in paragraph (1)(b), (c) and (d) (by virtue of which liabilities for pensions and other benefits are to be valued on the assumption that they will be discharged by the purchase of annuities) are omitted;
- (b) paragraph (3) and the references to that paragraph in paragraph (1)(c) and (d) (by virtue of which winding up expenses are to be taken into account) are omitted; and
- (c) in paragraph (5) for the words “for the purposes of section 75(2) and (4) of the 1995 Act” there are substituted the words “for the purposes of section 75(2) of the 1995 Act and for the purposes of section 75(4) of the 1995 Act where no approved withdrawal arrangement has been entered into by the employer”.

(5) The modifications of regulation 6 are that—

(a) for paragraph (ii) of paragraph (1)(e) there is substituted—

“(ii) in a case where the difference is ascertained immediately before an employment-cessation event occurs in relation to the employer, a reference to an amount equal to the employer’s share of the difference, less the relevant transferred liabilities deduction, being treated as a debt due from the employer;”;

(b) after paragraph (5) there is added—

“(6) In this regulation “the relevant transferred liabilities deduction” means the amount of any relevant transferred liabilities, less the value of the corresponding assets.

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

- (a) “corresponding assets”, in relation to relevant transferred liabilities, means the assets transferred from the scheme in connection with the transfer from the scheme of those liabilities; and
- (b) the value of the corresponding assets is to be determined—
  - (i) in the case of corresponding assets that are assets of the scheme at the applicable time, as at that time; and
  - (ii) in the case of corresponding assets that are not assets of the scheme at that time, as at the date of the transfer of the assets.

(8) For the purposes of paragraph (6)—

- (a) “relevant transferred liabilities” means liabilities in respect of members—
  - (i) which are transferred from the scheme in circumstances where the conditions set out in paragraphs (2)(a) or (b) and 93 of regulation 12 of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991<sup>(a)</sup> (transfer without consent) are met;
  - (ii) which are so transferred during the period beginning with the applicable time and ending with the date on which the approved withdrawal arrangement is approved (“the relevant period”);
  - (iii) the transfer of which reduces the amount of the scheme’s liabilities attributable to employment with the employer in relation to whom the employment-cessation event has occurred; and

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(a) S.I. 1991/167. Relevant amendments of regulation 12 were made by regulation 35 of S.I. 1992/1531, regulation 2(a) of S.I. 1993/1822, paragraph 30(15) of Schedule 2 to S.I. 1994/1062, regulation 2(4) of S.I. 1995/3067, regulation 2(7) of S.I. 1996/2131, paragraph 3(3) of Schedule 1 to S.I. 1997/786, regulation 2 of S.I. 1999/2543 and regulation 27 of S.I. 2000/1403.

- (iv) in connection with the transfer of which there is a transfer of corresponding assets during the relevant period; and
  - (b) the amount of the relevant transferred liabilities is to be calculated in accordance with regulation 5 as modified by regulation 7A(4).”.
- (6) The value of the assets and the amount of the liabilities of a scheme which are to be taken into account for the purposes of determining whether a scheme funding basis debt would have been treated as due as mentioned in paragraph (1) must be certified by the actuary in the form set out in Schedule 1B to these Regulations, but—
- (a) if the actuary is of the opinion that the value of the assets of the scheme was not less than the amount of the liabilities of the scheme—
    - (i) substituting in the first sentence of the comparison of value of scheme assets with amount of scheme liabilities for the words “was less” the words “was not less”; and
    - (ii) omitting the last sentence of that comparison; and
  - (b) if the scheme is being wound up on the date as at which the valuation is made, omitting from the Note the words from “if the scheme” onwards.
- (7) In this regulation “the cessation expenses attributable to the employer” has the meaning given by regulation 6(5).

#### **Calculation of amounts due from guarantors by virtue of regulation 7**

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

(2) If the approved withdrawal arrangement so provides, amount B is equal to the amount (if any) that would be the amount of the debt due from the cessation employer under section 75(4) of the 1995 Act if—

- (a) the employment-cessation event had occurred at the guarantee time;
- (b) the cessation employer had not entered into an approved withdrawal arrangement; and
- (c) there were no cessation expenses attributable to the employer.

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

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

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

- (a) substituting for the reference to regulation 5 a reference to paragraph (2) of this regulation;
- (b) if the actuary is of the opinion that the value of the assets of the scheme was not less than the amount of the liabilities of the scheme—

- (i) substituting in the first sentence of the comparison of value of scheme assets with amount of scheme liabilities for the words “was less” the words “was not less”; and
- (ii) omitting the last sentence of that comparison; and
- (c) if the scheme is being wound up on the date as at which the valuation is made, omitting from the Note the words from “if the scheme” onwards.

(5) In this regulation—

“the cessation expenses attributable to the employer” has the meaning given by regulation 6(5); and

“the relevant transferred liabilities deduction” has the meaning given by regulation 6(6), as inserted by the modification of regulation 6 made by regulation 7A(5)(b), except that for the purposes of this regulation the amount of the relevant transferred liabilities is to be calculated in accordance with regulation 5 without the modifications made by regulation 7A(4).”.

(4) In regulation 9 of the 2005 Regulations (former employers)—

(a) in paragraph (2)(b)(ii) for “condition A, B” substitute “condition A, B, BB”;

(b) after paragraph (4) insert—

“(4A) Condition BB is that such a debt was treated as becoming due from him, the modification in regulation 7(3) applied, and the amount treated as becoming due from him under regulation 7(3)(a) has been paid before the applicable time.”.

(5) The Schedules set out in the Schedule to these Regulations are inserted after Schedule 1 to the 2005 Regulations.

### **The Pensions Regulator’s functions under the 2005 Regulations**

**3.**—(1) The following functions under the 2005 Regulations are regulatory functions for the purposes of Part 1 of the 2004 Act—

- (a) the power to issue directions under regulation 7;
- (b) the power to issue a notice under paragraph 1(3)(c) of Schedule 1A; and
- (c) the power to issue a notice under paragraph 2 of Schedule 1A.

(2) The Pensions Regulator may, if it thinks fit, delegate the functions specified in paragraph (1) to the Determinations Panel established under section 9 of the 2004 Act (the Determinations Panel).

### **Minor amendments of the 2005 Regulations**

**4.**—(1) In regulation 4(1) of the 2005 Regulations (schemes to which section 75 of the 1995 Act does not apply) omit sub-paragraph (l) (the scheme established by the Salvation Army Act 1963(a)).

(2) In regulation 10 of the 2005 Regulations (money purchase schemes: fraud and levy deficiencies etc.), as it applies by virtue of regulation 12 of those Regulations (multi-employer money purchase schemes), in paragraph (1A)(a) (under which, unless the scheme makes contrary provision, an employer’s share of the levy deficit or the criminal deficit is such proportion of the total deficit as, in the opinion of the actuary, the amount of the scheme’s liabilities attributable to employment with that employer bears to the total amount of the scheme’s liabilities attributable to employment with the employers) for “the actuary” substitute “the trustees or managers”.

(3) In paragraph 2 of Schedule 2 to the 2005 Regulations (consequential amendment of the Occupational Pension Schemes (Winding Up) Regulations 1996(b)) for “the Occupational

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(a) 1963 c.xxxii.  
(b) S.I. 1996/3126.

Pension Schemes Winding Up Regulations 1996” substitute “the Occupational Pension Schemes (Winding Up) Regulations 1996”.

**Consequential amendments of the Pensions Regulator (Financial Support Directions etc.) Regulations 2005**

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

- (a) for “condition A, B” substitute “condition A, AA, B”; and
- (b) after sub-paragraph (a) insert—
  - “(aa) condition AA is that—
  - (i) such a debt became due;
  - (ii) the modification in regulation 7(3) of the Occupational Pension Schemes (Employer Debt) Regulations 2005 (multi-employer schemes: employment-cessation events and withdrawal arrangements) applied, and
  - (iii) the amount treated as becoming due from him under regulation 7(3)(a) of those Regulations has been paid;”.

**Amendment of the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996**

6. In regulation 6(1)(b) of the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996(b) (excluded assets) for “60(5) or 75(1)” substitute “or 60(5) or under section 75(1), as it has effect before 6th April 2005, or under section 75(2) or (4), as it has effect on or after that date”.

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

7. In regulation 16(1)(a)(ii) of the Pension Protection Fund (Entry Rules) Regulations 2005(c) (restrictions on winding up, discharge of liabilities etc.) for “section 94(1)(a)” substitute “section 94(1)(aa)”(d).

9th August 2005

*David Blunkett*  
Secretary of State for Work and Pensions

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(a) S.I. 2005/2188.  
(b) S.I. 1996/1536. Regulation 6(1)(b) was amended by regulation 12(1) of S.I. 1996/3127.  
(c) S.I. 2005/590.  
(d) Section 94(1)(aa) of the Pension Schemes Act 1993 (c.48) was inserted by section 154(2) of the Pensions Act 1995 (c.26).

## Schedules inserted in the 2005 Regulations

## “SCHEDULE 1A

## Multi-employer schemes: employer-cessation events and approved withdrawal arrangements

*Withdrawal arrangements*

- 1.—(1) For the purposes of these Regulations—
- (a) a withdrawal arrangement is an arrangement that meets the conditions specified in sub-paragraph (2), and
  - (b) a withdrawal arrangement is approved if the details—
    - (i) of the arrangement, and
    - (ii) if the arrangement is amended, of any amendments of the arrangement, are approved by the Authority.
- (2) The conditions are that—
- (a) the arrangement consists of an agreement to which the trustees of the scheme and the cessation employer are parties;
  - (b) the agreement is enforceable under the law of England and Wales, and the parties to the agreement have agreed that—
    - (i) that law applies to the agreement; and
    - (ii) they are subject to the jurisdiction of the court in England and Wales as respects the agreement;
  - (c) the agreement provides that at or before a time specified in the agreement the cessation employer will pay an amount equal to or greater than the amount that is amount A for the purposes of regulation 7(3)(a);
  - (d) the agreement—
    - (i) provides that if an event specified in sub-paragraph (3) occurs whilst the agreement is in force the parties to the agreement who are specified in the agreement as the guarantors for the purposes of regulation 7 (the “guarantors”) (who may be or include the cessation employer) will pay an amount equal to the amount that is amount B for the purposes of regulation 7(3)(b) (but without prejudice to their powers to make a payment on account of that amount at any earlier time);
    - (ii) if there are two or more guarantors, provides whether or not the guarantors are to be jointly and severally liable for that amount for those purposes; and
    - (iii) provides whether or not that amount is to be the amount provided for under regulation 7B(2);
  - (e) the agreement provides that an amount payable under paragraph (c) or (d) is payable—
    - (i) to the trustees of the scheme; or
    - (ii) if the Board of the Pension Protection Fund has assumed responsibility for the scheme in accordance with Chapter 3 of Part 2 of the 2004 Act



(pension protection), to the Board on behalf of the trustees of the scheme;

- (f) the agreement provides that one or more of the parties to the agreement other than the trustees of the scheme are to bear any expenses incurred by the parties in connection with—
  - (i) the making of the agreement; or
  - (ii) the making of any calculations by the actuary for the purposes of the agreement;
- (g) the agreement will continue in force until—
  - (i) the winding up of the scheme is completed;
  - (ii) the Authority issue a notice to the parties to the agreement stating that the Authority consider that the agreement is no longer required; or
  - (iii) the agreement is replaced by another agreement that is approved by the Authority as an approved withdrawal arrangement,whichever occurs first.

(3) The events are that—

- (a) the scheme begins to be wound up;
- (b) an event occurs as a result of which there is no person who is an employer in relation to the scheme for the purposes of these Regulations in relation to whom a relevant event has not occurred for the purposes of section 75 of the 1995 Act (see section 75(6A) of that Act<sup>(a)</sup>);
- (c) the Authority issue a notice to the parties to the agreement stating that they consider that the amount referred to in sub-paragraph (2)(d)(i) should be paid.

(4) The Authority may not issue such a notice at any time unless the Authority consider that it is reasonable for the guarantors to be required to pay that amount at that time.

(5) In forming an opinion for the purposes of sub-paragraph (4), the Authority must have regard to such matters as the Authority consider relevant including—

- (a) whether the guarantors have taken reasonable steps to comply with the approved withdrawal arrangement;
- (b) whether the guarantors have complied with their obligations under paragraph 5; and
- (c) the guarantors' financial circumstances.

*Approval of withdrawal arrangements*

2.—(1) Approval by the Authority of an agreement as a withdrawal arrangement is to be given in a notice issued by the Authority.

(2) Such an approval may be given subject to such conditions as the Authority consider appropriate.

(3) The Authority may not approve an agreement as a withdrawal arrangement unless they are satisfied that—

- (a) the agreement meets the conditions in paragraph 1(2); and
- (b) the guarantors have or will have such resources that the debt becoming due under section 75 of the 1995 Act is more likely to be met if the agreement is approved.

3.—(1) Nothing in this Schedule prevents the Authority from approving as a withdrawal arrangement an agreement that will take effect only if an employment-cessation event occurs in relation to an employer.

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(a) Subsection (6A) was inserted in section 75 by section 271(5) of the Pensions Act 2004.

(2) And in the case of such an approval, references in paragraphs 1 and 2 to that event and debt must be read accordingly.

(3) But, subject to that, references in these Regulations to an approved withdrawal arrangement only include references to an arrangement approved under this paragraph if the agreement has taken effect.

4.—(1) Paragraphs 1, 2 and 5 of this Schedule apply to any arrangement replacing an approved withdrawal arrangement as they applied to the replaced arrangement.

(2) No directions may be issued under regulation 7(2) as a result of a notification about an arrangement that is to replace another arrangement if—

- (a) directions have been issued under that regulation as a result of a notification about the replaced arrangement; and
- (b) the replaced arrangement is an approved withdrawal arrangement that has come into force.

(3) But if an approved withdrawal arrangement replaces another such arrangement—

- (a) any directions issued under regulation 7(2) as a result of a notification about the replaced arrangement continue to apply, and
- (b) after the replacing arrangement comes into force the references to the approved withdrawal arrangement in regulations 7(3)(b), (4) and (6) and 7B(1) to (3) and in regulation 6(6)(b), as inserted by regulation 7A(5)(b), are to be taken as references to the replacing arrangement.

(4) Once sub-paragraph (2) has applied to an arrangement (“the second arrangement”) that is to replace another arrangement—

- (a) no further directions may be issued under regulation 7(2) as a result of a notification about any arrangement that is to replace the second arrangement or any subsequent replacing arrangement;
- (b) sub-paragraph (3)(a) continues to apply to any directions about the arrangement replaced by the second arrangement notwithstanding the replacement of the second arrangement, or any subsequent replacement, by an approved withdrawal arrangement; and
- (c) if such a replacement of the second arrangement or subsequent replacement occurs, references in sub-paragraph (3)(b) to the replacing arrangement are references to the latest replacing arrangement.

#### *Notifiable events*

5.—(1) Where an approved withdrawal arrangement is in force in relation to a scheme, each relevant person must give notice to the Authority if such an event as is mentioned in sub-paragraph (3) occurs in relation to that person.

(2) For the purposes of this paragraph each of the guarantors is a relevant person.

(3) The following are the events referred to in sub-paragraph (1)—

- (a) any decision by the relevant person to take action which will, or is intended to, result in a debt which is or may become due—
  - (i) to the trustees of the scheme, or
  - (ii) if the Board of the Pension Protection Fund has assumed responsibility for the scheme in accordance with Chapter 3 of Part 2 of the 2004 Act, to the Board, not being paid in full;
- (b) a decision by the relevant person to cease to carry on business (including any trade or profession) in the United Kingdom or, if the relevant person ceases to carry on such business without taking such a decision, his doing so;

- (c) where applicable, receipt by the relevant person of advice that the person is trading wrongfully within the meaning of section 214 of the Insolvency Act 1986(a) (wrongful trading), or circumstances occurring in which a director or former director of the company knows that there is no reasonable prospect that the company will avoid going into insolvent liquidation within the meaning of that section, and for this purpose section 214(4) of that Act applies;
- (d) any breach by the relevant person of a covenant in an agreement between the relevant person and a bank or other institution providing banking services, other than where the bank or other institution agrees with the relevant person not to enforce the covenant;
- (e) any change in the relevant person’s credit rating, or the relevant person ceasing to have a credit rating;
- (f) where the relevant person is a company, a decision by a controlling company to relinquish control of the relevant person or, if the controlling company relinquishes such control without taking such a decision, its doing so;
- (g) two or more changes in the holders of any key relevant person posts within a period of 12 months;
- (h) where the relevant person is a company or partnership, the conviction of an individual, in any jurisdiction, for an offence involving dishonesty, if the offence was committed while the individual was a director or partner of the relevant person;
- (i) an insolvency event occurring in relation to the relevant person for the purposes of Part 2 of the 2004 Act (see section 121 of that Act: insolvency event, insolvency date and insolvency practitioner).

(4) A notice under sub-paragraph (1) must be given in writing as soon as reasonably practicable after the relevant person becomes aware of the event.

(5) No duty to which a relevant person is subject is to be regarded as contravened merely because of any information or opinion contained in a notice under this paragraph.

(6) But sub-paragraph (5) does not require any person to disclose protected items within the meaning of section 311 of the 2004 Act (protected items).

(7) Section 10 of the 1995 Act (civil penalties) applies to any relevant person who without reasonable excuse fails to comply with an obligation imposed on him under this paragraph.

(8) In this paragraph—

“control” has the meaning given in section 435(10) of the Insolvency Act 1986 (meaning of “associate”- meaning of “control”) and “controlling company” is to be read accordingly;

“director” has the meaning given in section 741(1) of the Companies Act 1985(b) (meaning of “director” and “shadow director”);

“key relevant person posts” means the Chief Executive and any director or partner responsible in whole or in part for the financial affairs of the relevant person.

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(a) 1986 c.45. Section 214 was modified by section 90 of, and Schedule 15 to, the Building Societies Act 1986 (c.53) and by section 23 of, and Schedule 10 to, the Friendly Societies Act 1992 (c.40). Regulation 5 of the Limited Liability Partnerships Regulations 2001 (S.I. 2001/1090) applies section 214 to limited liability partnerships with modifications including that references to a company include references to such partnerships and references to a director include references to a member (see regulation 5(2)(a) and (b)).

(b) 1985 c.6. Under regulation 4 of, and Part 1 of Schedule 2 to, S.I. 2001/1090 section 741 (except subsection (3)) applies to limited liability partnerships with the modifications set out in regulation 4(1).

## SCHEDULE 1B

### Form of Actuary's certificate: scheme funding basis debts in approved withdrawal arrangement cases

#### Actuarial Certificate Given for the Purposes of Regulation 7A(6) of the Occupational Pension Schemes (Employer Debt) Regulations 2005

Name of scheme

1 Comparison of value of scheme assets with amount of scheme liabilities

In my opinion, at the above date the value of the assets of the scheme was less than the amount of the liabilities of the scheme.

The value of the assets of the scheme was

The amount of the liabilities was

The amount of the difference was

2 The scheme's assets and liabilities are valued in accordance with regulation 5 of the Occupational Pension Schemes (Employer Debt) Regulations 2005, subject to the modifications specified in regulation 7A(4) of those Regulations, and the guidelines on winding up and scheme asset deficiency (GN19) and on minimum funding requirement (GN27) prepared and published by the Institute of Actuaries and the Faculty of Actuaries (so far as those guidelines are applicable).

Signature

Date

Name

Qualification

Address

Name of employer (if applicable)

Note:

The valuation of the amount of the liabilities of the scheme may not reflect the actual cost of securing those liabilities by the purchase of annuities if the scheme were to have been wound up on the date as at which the valuation is made. ”

### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made as a consequence of provisions in the Pensions Act 2004 (c.35) (“the 2004 Act”) and amend the Occupational Pension Schemes (Employer Debt) Regulations 2005 (S.I. 2005/678) (“the 2005 Regulations”) where debts arise under section 75 of the Pensions Act 1995 (c.26) (“the 1995 Act”) in respect of occupational pension schemes. They also make minor amendments of the Pensions Regulator (Financial Support Directions etc.) Regulations 2005 (S.I. 2005/2188), the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996 (S.I. 1996/1536) and the Pension Protection Fund (Entry Rules) Regulations 2005 (S.I. 2005/590).

Under regulation 1 these Regulations come into force on 2nd September 2005, but the amendments made by regulations 2(1), (2)(c), (3) and (5) and 4(2) do not apply where the debt arose before that date.

Regulation 2 amends the 2005 Regulations.

Regulation 2(2) amends regulation 5 of the 2005 Regulations so that where a debt has arisen under section 75 of the 1995 Act on the leaving of an employer and an approved withdrawal arrangement (see below) has applied, valuations for events happening later are to ignore the debts that arose when the employer left.

Regulation 2(3) substitutes new regulations 7 to 7B into the 2005 Regulations.

Under the new regulation 7 where a debt arises under section 75 of the 1995 Act because of an employer ceasing to employ people in employments covered by an occupational pension scheme where there was more than one such employer, and an arrangement (an “approved withdrawal arrangement”) is approved by the Pensions Regulator under which parties to the arrangement (“the guarantors”) are bound to make payments to the scheme if certain events occur, the debt becomes partly payable by the leaving employer, and partly by the guarantors at a later time (“the guarantee time”). (The amended provisions of the 2005 Regulations refer to “the Authority” but in accordance with section 124(1) of the 1995 Act that means the Pensions Regulator.)

New regulation 7A provides for the part payable by the leaving employer to be calculated on the same basis as is used for minimum funding valuations under section 56 of the 1995 Act, except that a deduction is made where liabilities attributable to employment with the employer have been transferred out before the withdrawal arrangement was approved.

New regulation 7B provides that the basis on which the part payable by the guarantors is calculated depends on the terms of the approved withdrawal arrangement. It may be the amount that would be payable if the leaving employer had ceased at the guarantee time to employ people in employments covered by the scheme. Alternatively, it may be the amount that would be payable if there were no approved withdrawal arrangement, but with a deduction both for the amount payable by the leaving employer and for any transfers out of the scheme of liabilities attributable to employment with the leaving employer.

Regulation 2(4) amends regulation 9 of the 2005 Regulations so that a leaving employer who has paid the debt due from him under new regulation 7A no longer counts as an employer for the purposes of section 75 of the 1995 Act and the 2005 Regulations, regardless of whether the amount payable by the guarantors has been paid.

Regulation 2(5) inserts two new Schedules into the 2005 Regulations which are set out in the Schedule to these Regulations. The first, Schedule 1A, sets out the requirements for the approval of withdrawal arrangements and imposes a requirement for the guarantors to notify the Pensions Regulator if certain events occur that are relevant to their solvency. The second, Schedule 1B, sets out the form that the scheme actuary’s certificate must take for the valuation of scheme assets and liabilities based on section 56 of the 1995 Act that is needed to determine the amount of the debt payable by the leaving employer under new regulation 7A.

Regulation 3 makes provision about the exercise of functions of the Pensions Regulator under the 2005 Regulations, as amended by regulation 2 of these Regulations.

Regulation 4 makes minor amendments of the 2005 Regulations. In particular, the Salvation Army pension scheme is omitted from the list of schemes to which section 75 of the 1995 Act does not apply, and the function of determining the proportion of any levy deficit or criminal deficit in the pension fund of a multi-employer money purchase scheme that is to be due from any of the employers is transferred from the scheme’s actuary to the scheme’s trustees or managers.

Regulation 5 amends the Pensions Regulator (Financial Support Directions etc.) Regulations 2005 (S.I. 2005/2188) so that, for the purposes of those Regulations and provisions of the 2004 Act relating to contribution notices, financial support directions and transactions at an undervalue, a former employer does not count as an employer if an approved withdrawal arrangement has applied and the part of the debt payable by the former employer under new regulation 7A of the 2005 Regulations has been paid.

Regulation 6 makes an amendment of the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996 (S.I. 1996/1536) that is consequential on the amendments of section 75 of the 1995 Act made by section 271 of the 2004 Act.

Regulation 7 corrects a minor error in the Pension Protection Fund (Entry Rules) Regulations 2005 (S.I. 2005/590).

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

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.



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