
STATUTORY INSTRUMENTS

2008 No. 731

The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2008

Application and interpretation of the Employer Debt Regulations

- 4.—(1) For regulation 1(3)(a) (citation, commencement, application and extent) substitute—
- “(a) any employer in relation to any debt which has arisen under section 75(1) of the 1995 Act to the trustees or managers of the scheme before that date.”.
- (2) In regulation 2(1) (interpretation)—
- (a) in the definition of “employer” after “and regulations” insert “6,”;
- (b) for the definition of “employment-cessation event” substitute—
- ““employment-cessation event” means in relation to a multi-employer scheme an event which is not a relevant event and which, subject to regulation 6A, occurs on the date on which—
- (a) an employer has ceased to employ at least one person who is an active member of the scheme, and
- (b) at least one other employer who is not a defined contribution employer continues to employ at least one active member of the scheme;”;
- (c) for the definition of “multi-employer scheme” substitute—
- ““multi-employer scheme” means a scheme (or a section of a scheme treated pursuant to regulation 8 as a separate scheme) in relation to which there is more than one employer;”;
- (d) for the definition of “withdrawal arrangement” substitute—
- ““withdrawal arrangement” means an arrangement that meets the conditions specified in paragraph 1 of Schedule 1A and meets the funding test;”;
- (e) insert in the appropriate alphabetical places—
- ““actuarial valuation” has the same meaning as in Part 3 of the 2004 Act;
- “amount A” means the amount calculated in accordance with paragraph 4 of Schedule 1A;
- “amount B” means the amount calculated in accordance with either subparagraph (2) or (3) of paragraph 5 of Schedule 1A;
- “approved withdrawal arrangement” means an arrangement that meets the funding test and is approved by the Authority under regulation 7;
- “approved withdrawal arrangement share” means an amount that is—
- (a) a cessation employer’s share of the difference,
- (b) less than amount A, and
- (c) payable by a cessation employer pursuant to an approved withdrawal arrangement;

“assessment period” has the meaning given in section 132 of the 2004 Act (assessment periods);

“cessation employer” means an employer in relation to the scheme in respect of whom an employment-cessation event has occurred;

“cessation expenses” are all expenses which, in the opinion of the trustees or managers of a scheme, are likely to be incurred by the scheme in connection with an employment-cessation event occurring to an employer in relation to the scheme;

“the corresponding assets” means the assets transferred in connection with the transfer from the scheme in respect of any relevant transfer liabilities;

“defined contribution employer” means an employer all the liabilities attributable to whom in relation to a scheme are liabilities in respect of money purchase benefits as defined in section 181(1) of the 1993 Act or in respect of supplementary benefits provided on an ancillary basis in the form of payments on death;

“departing employer” means—

- (a) a cessation employer; or
- (b) an employer in respect of whom an insolvency event has occurred;

“frozen scheme” means a scheme which has ceased to have active members;

“guarantors” means such one or more of the parties to a withdrawal arrangement or an approved withdrawal arrangement as are specified in the arrangement as the persons who have given guarantees in relation to amount B for the purposes of the arrangement;

“the guarantee time” means the earliest time when an event specified in paragraph 3 of Schedule 1A occurs;

“liability proportion” means “K/L” where—

- (a) “K” equals the amount of a scheme’s liabilities attributable to an employer in accordance with paragraph (4) of regulation 6; and
- (b) “L” equals the total amount of the scheme’s liabilities attributable to employment with the employers;

“liability share” means an amount equal to the liability proportion of the total difference between the value of the assets and the amount of the liabilities of the scheme;

“PPF” means the Pension Protection Fund established under Part 2 of the 2004 Act;

“the PPF Valuation Regulations” means the Pension Protection Fund (Valuation) Regulations 2005(1);

“protected liabilities” has the same meaning as for the purposes of a valuation under section 179 of the 2004 Act (valuations to determine scheme under funding);

“recovery plan” means a recovery plan that complies with the requirements in section 226 of the 2004 Act and the Scheme Funding Regulations;

“regulated apportionment arrangement” is an arrangement under the scheme rules that—

- (a) provides for the amount that would have been the employer’s liability share to be changed;

- (b) where the employer's liability share is reduced, apportions all or part of the amount that would have been the employer's liability share to one or more of the remaining employers;
- (c) may provide for when the amount apportioned is to be paid;
- (d) is entered into before, on or after the applicable time;
- (e) sets out the amount of an employer's regulated apportionment arrangement share; and
- (f) meets the conditions in regulation 7A;

"regulated apportionment arrangement share" means the amount under a regulated apportionment arrangement that is an employer's share of the difference;

"relevant accounts" means the audited accounts for the scheme that comply with the requirements imposed under section 41 of the 1995 Act (provision of documents to members)(2);

"the relevant transfer deduction" means the amount of the relevant transfer liabilities less the value of the corresponding assets;

"the relevant transfer liabilities" means the liabilities attributable to a departing employer that are transferred after the applicable time to an occupational or personal pension scheme or are otherwise secured;

"schedule of contributions" means the most recent schedule of contributions that is adopted in relation to the scheme for the purposes of Part 3 of the 2004 Act;

"scheme apportionment arrangement" means an arrangement under the scheme rules that—

- (a) provides for the employer to pay a scheme apportionment arrangement share instead of the employer's liability share;
- (b) where that amount is less than the employer's liability share, apportions all or part of the amount that would have been the employer's liability share to one or more of the remaining employers;
- (c) may provide for when the amount apportioned is to be paid;
- (d) is entered into before, on or after the applicable time;
- (e) sets out the amount of an employer's scheme apportionment arrangement share;
- (f) the trustees or managers consent to; and
- (g) meets the funding test;

"scheme apportionment arrangement share" means the amount under a scheme apportionment arrangement that is an employer's share of the difference;

"scheme's apportionment rule" means a scheme rule which makes provision for the difference between the value of a scheme's assets and the amount of its liabilities to be apportioned among the employers in different proportions from those which would otherwise arise;

"the Scheme Funding Regulations" means the Occupational Pension Schemes (Scheme Funding) Regulations 2005(3);

(2) Section 41 was amended by section 1 of the Employment Rights (Dispute Resolution) Act 1998 (c.8), paragraph 12(1) of Schedule 5 to the Child Support, Pensions and Social Security Act 2000 (c.19), paragraph 52 of Schedule 12 to the Pensions Act 2004 and S.I. 2005/2053.

(3) S.I. 2005/3377, amended by S.I. 2005/3380, 2006/1733 and 2007/60 and 814.

“share of the difference” means the amount calculated as at the applicable time that is an employer’s share of the total difference between the value of the assets and the amount of the liabilities of a scheme;

“statutory funding objective” has the same meaning as in Part 3 of the 2004 Act;

“updated actuarial assessment” means—

- (a) 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 under section 224 of the 2004 Act; or
- (b) where the trustees or managers have not received a valuation of the scheme under section 224 of the 2004 Act, the actuary’s estimate of the solvency of the scheme included in the most recent actuarial valuation of the scheme received by the trustees or managers, which in the opinion of the actuary is appropriate to use,

adjusted to the applicable time to reflect the actuary’s assessment of changes between the effective date of that valuation and the applicable time in the value of the scheme’s assets and of the matters set out in regulation 7(6)(a)(i) and (ii) of the Scheme Funding Regulations;

“updated asset assessment” means an update (whether or not audited) of the value of the assets of the scheme identified in the most recent relevant accounts received by the trustees or managers which—

- (a) is prepared by the trustees or managers, and
- (b) estimates where they consider appropriate any alteration in the value of the assets of the scheme between the date by reference to which those accounts are prepared and the applicable time;

“withdrawal arrangement share” means an amount that is—

- (a) a cessation employer’s share of the difference,
- (b) equal to or, where the employer agrees, greater than amount A, and
- (c) payable by a cessation employer pursuant to a withdrawal arrangement;”.

(3) For regulation 2(3) substitute—

“(3) References in these Regulations to BAS standards are to standards on winding up and scheme asset deficiency adopted or prepared, and from time to time revised, by the Board for Actuarial Standards.”.

(4) Omit regulation 2(4), and insert—

“(4A) For the purposes of regulations 6B, 6C and 7, an arrangement relating to a scheme meets the funding test where the trustees or managers are reasonably satisfied that—

- (a) when the arrangement takes effect, the remaining employers will be reasonably likely to be able to fund the scheme so that after the applicable time it will have sufficient and appropriate assets to cover its technical provisions, taking account of any change in those provisions which will in the opinion of the trustees or managers be necessary as a result of the arrangement, and
- (b) in the case of a scheme apportionment arrangement under regulation 6B, the effect of the arrangement will not be to adversely affect the security of members’ benefits as a result of any—
 - (i) material change in legal, demographic or economic circumstances, as described in regulation 5(4)(d) of the Scheme Funding Regulations, that

would justify a change to the method or assumptions used on the last occasion on which the scheme's technical provisions were calculated, or

- (ii) material revision to any existing recovery plan made in accordance with section 226 of the 2004 Act.

(4B) For the purposes of paragraph (4A), where at the applicable time the trustees or managers of the scheme have not received its first actuarial valuation under Part 3 of the 2004 Act, that paragraph shall apply as if for that paragraph there were substituted—

“(4A) For the purposes of regulations 6B, 6C and 7, an arrangement relating to a scheme meets the funding test where the trustees or managers are reasonably satisfied that, after taking account of the financial resources of the remaining employers, the arrangement is unlikely to adversely affect the security of the members' benefits under the scheme.”.

(4C) The trustees or managers may consider that the test in paragraph (4A)(a) is met if in their opinion the remaining employers are able to meet the relevant payments as they fall due under the schedule of contributions for the purposes of section 227 of the 2004 Act , taking into account any revision of that schedule that they think will be necessary when the arrangement takes effect.

(4D) In paragraphs (4A) and (4C), references to “remaining employers” may in relevant circumstances be read as referring only to the employer or employers to whom all or part of the liability share is apportioned under the scheme rules.”.