

SCHEDULE 3

Regulation 15

Amendment of the Employer Debt Regulations

For Schedule 1B to the Employer Debt Regulations substitute the following—

“SCHEDULE 1B

Regulation 6D

Notifiable Events

1.—(1) Where a withdrawal arrangement or an approved withdrawal arrangement is in force in relation to a scheme, each of the guarantors must give notice to the Authority if such an event as is mentioned in sub-paragraph (2) occurs in relation to that person.

(2) The events referred to in sub-paragraph (1) are—

- (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 PPF 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 (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).

(3) 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.

(4) In this paragraph—

Status: This is the original version (as it was originally made).

“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 (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.

2.—(1) The trustees or managers of a scheme must give notice to the Authority of any decision by them to take action which will, or is intended to, result in any entering into a scheme apportionment arrangement on or after the applicable time.

(2) A notice under sub-paragraph (1) must be given in writing as soon as reasonably practicable after the making of the decision.

3.—(1) No duty to which a person is subject under paragraph 1 or 2 is to be regarded as contravened merely because of any information or opinion contained in a notice under paragraph 1 or 2.

(2) But sub-paragraph (1) does not require any person to disclose protected items within the meaning of section 311 of the 2004 Act (protected items).

(3) Section 10 of the 1995 Act (civil penalties) applies to any person who without reasonable excuse fails to comply with an obligation imposed on him under paragraph 1 or 2.

SCHEDULE 1C

paragraph 2(a) of Schedule 1A

Actuary’s Certificate for Withdrawal Arrangement Share or Approved Withdrawal Arrangement Share in Multi-Employer Scheme

Given for the purposes of paragraph 2(a) of Schedule 1A to the Occupational Pension Schemes (Employer Debt) Regulations 2005 (“the Employer Debt Regulations”)

This certificate is subject to the Notes below

Name of scheme

Date used as the applicable time for purposes of calculations

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

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

The amount of the total liabilities was [approximately]

The amount of the total difference between the value of the assets in the multi-employer scheme and the amount of the liabilities was [approximately]

2 Employer's withdrawal arrangement share or approved withdrawal arrangement share

[name of Employer]'s [approved] withdrawal arrangement share [after the relevant transfer deduction] [delete as appropriate] was

In the case of an approved withdrawal arrangement share, the amount A which applied for the purposes of determining [name of Employer]'s approved withdrawal arrangement share was

3 Valuation principles

The value of the scheme's assets and the amount of the liabilities are valued in accordance with section 75(5) of the Pensions Act 1995, regulation 5, [regulation 6C(3), regulation 7(5)] [delete as appropriate] of, and paragraph 3 of Schedule 1 to, the Employer Debt Regulations 2005, and with relevant BAS standards.

[4 Approximations

With the agreement of the trustees or managers of the scheme, approximate calculations were used in arriving at the amount of the liabilities at [] [specify] above.][delete as appropriate]

Signature

Date

Name

Qualification

Address

Name of employer

(if applicable)

Status: This is the original version (as it was originally made).

Notes:

The references to—

“amount A” means the amount calculated in accordance with paragraph 4 of Schedule 1A to the Employer Debt Regulations;

“applicable time” means the time as at which the value of the assets of a scheme and the amount of the liabilities are to be determined, calculated and verified for the purposes of section 75 of the Pensions Act 1995;

“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;

“multi-employer scheme” means a scheme (or a section of a scheme treated pursuant to regulation 8 of the Employer Debt Regulations as a separate scheme) in relation to which there is more than one employer;

“relevant transfer deduction” means, in relation to an approved withdrawal arrangement, the amount of the relevant transfer liabilities less the value of the corresponding assets by which the approved withdrawal arrangement share is to be reduced in accordance with regulation 7(5);

“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 the scheme;

“withdrawal arrangement share” means an amount that is—

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

The value of the assets was provided by the trustees or managers of the scheme.

The value of the assets was provided by the trustees or managers of the scheme by relying on an updated asset assessment, that they decided to use in accordance with the conditions in regulation 5(5) of the Employer Debt Regulations [delete as appropriate].

The liabilities were calculated and verified by relying on an updated actuarial assessment which the trustees or managers of the scheme decided to use in accordance with the conditions in regulation 5(14) of the Employer Debt Regulations [delete as appropriate].

Where approximate calculations are used in arriving at the amount of liabilities, the amount calculated on a more accurate basis may be significantly different.

The withdrawal arrangement share amount was reduced to reflect a relevant transfer deduction under regulation 6C(3) of the Employer Debt Regulations [delete as appropriate].

The approved withdrawal arrangement share was calculated by reference to an amount A which was reduced to reflect where the Authority permitted, under regulation 7(5) of the Employer Debt Regulations, a relevant transfer deduction to apply [delete as appropriate].

SCHEDULE 1D

paragraph 2(b) and (c) of Schedule 1A

Actuary's Certificate for Amount B under a Withdrawal Arrangement
or an Approved Withdrawal Arrangement in a Multi-Employer Scheme

Given for the purposes of sub-paragraph (b) or (c) of paragraph 2 of Schedule 1A to the Occupational
Pension Schemes (Employer Debt) Regulations 2005 ("the Employer Debt Regulations")

This certificate is subject to the Notes below

Name of multi-employer scheme

Date used for purposes of calculations

1 Amount B

For the purposes of [sub-paragraph (2)] [sub-paragraph (3)] [delete as appropriate] of paragraph 5
of Schedule 1A to the Employer Debt Regulations, the guarantors' amount B for the purposes of a
withdrawal arrangement or an approved withdrawal arrangement was

2 Valuation principles

The value of the scheme's assets and the amount of the liabilities are valued in accordance with
section 75(5) of the Pensions Act 1995, regulation 5 of, and paragraph 5(2) or (3) of Schedule 1A
to, the Occupational Pension Schemes (Employer Debt) Regulations 2005 and with relevant BAS
standards.

Signature

Date

Name

Qualification

Address

Name of employer

(if applicable)

Notes:

The references to—

"amount B" means the amount calculated in accordance with sub-paragraph (2) or (3)
of paragraph 5 of Schedule 1A to the Employer Debt Regulations;

"approved withdrawal arrangement" means an arrangement that meets the conditions in
paragraph 1 of Schedule 1A to the Employer Debt Regulations and is approved by the
Authority under regulation 7 of those Regulations;

Status: This is the original version (as it was originally made).

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

“withdrawal arrangement” means an arrangement that meets the conditions specified in paragraph 1 of Schedule 1A to the Employer Debt Regulations and meets the test in paragraph (1) of regulation 6C of those Regulations;

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] [delete if scheme had commenced winding-up on the applicable date].

The value of the assets was provided by the trustees or managers of the scheme.

The value of the assets was provided by the trustees or managers of the scheme by relying on an updated asset assessment, that they decided to use in accordance with the conditions in regulation 5(5) of the Employer Debt Regulations [delete as appropriate].

The liabilities were calculated and verified by relying on an updated actuarial assessment which the trustees or managers of the scheme decided to use in accordance with the conditions in regulation 5(14) of the Employer Debt Regulations [delete as appropriate].

A relevant transfer deduction (as defined in regulation 2(1) of the Employer Debt Regulations) applied [delete as appropriate].