
STATUTORY INSTRUMENTS

2011 No. 2973

The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2011

Insertion of regulation 6E of the Employer Debt Regulations

10. After regulation 6D of the Employer Debt Regulations (notifiable events)(**1**), insert—

“Flexible apportionment arrangements

6E.—(1) A flexible apportionment arrangement takes effect on the date on which both—

- (a) the conditions in paragraph (2) are met; and
- (b) an employment-cessation event—
 - (i) has occurred in relation to the leaving employer before the date on which the conditions in paragraph (2) are met;
 - (ii) would have occurred in relation to the leaving employer if regulation 6ZA(7) had not applied; or
 - (iii) would have occurred in relation to the leaving employer if the scheme had not become a frozen scheme.

(2) The conditions are that—

- (a) subject to paragraph (4), the funding test is met;
- (b) one or more replacement employers—
 - (i) take over responsibility under a legally enforceable agreement for all the liabilities in relation to the scheme (within the meaning given in regulation 6ZB(17)) of the leaving employer as those liabilities stand immediately before the flexible apportionment arrangement takes effect, taking into account any reduction mentioned in paragraph (5)(c); or
 - (ii) where it is impossible for the replacement employer(s) to take over responsibility for those liabilities under a legally enforceable agreement, are treated for all purposes as being responsible for those liabilities;
- (c) the following persons consent in writing—
 - (i) the trustees or managers of the scheme;
 - (ii) the leaving employer; and
 - (iii) all the replacement employers referred to in sub-paragraph (b);
- (d) the leaving employer is not in a period of grace in accordance with regulation 6A;
- (e) the requirements set out in paragraph (5) are met for any payment of any part of a debt—
 - (i) due as a result of the employment-cessation event referred to in paragraph (1)(b)(i); or

(1) Regulation 6D was inserted by [S.I. 2008/731](#).

- (ii) that would have been due as a result of the employment-cessation event referred to in paragraph (1)(b)(ii) that would have occurred if regulation 6ZA(7) had not applied;
 - (f) the scheme is not—
 - (i) in an assessment period; or
 - (ii) being wound up; and
 - (g) the trustees or managers of the scheme are satisfied that an assessment period is unlikely to begin in relation to the scheme within the period of 12 months beginning with the date on which a flexible apportionment arrangement takes effect.
- (3) Where a flexible apportionment arrangement takes effect in accordance with paragraph (1)(b)(i), section 75(4) of the 1995 Act is modified so that no amount is to be treated as a debt due to the trustees or managers of the scheme as a result of the employment-cessation event.
- (4) The funding test does not have to be met where—
- (a) the funding test is met for a different flexible apportionment arrangement;
 - (b) the time when the flexible apportionment arrangement takes effect is or will be, in the opinion of the trustees or managers of the scheme, the same as or similar to the time when the different flexible apportionment arrangement takes effect; and
 - (c) the trustees or managers of the scheme are satisfied that the funding test would be met if it was carried out again.
- (5) The requirements referred to in paragraph (2)(e) are—
- (a) the payment (which in this paragraph means the payment referred to in paragraph (2)(e)) is made to the trustees or managers of the scheme by or on behalf of the leaving employer;
 - (b) the payment is in addition to any amount that is required to be paid under the schedule of contributions;
 - (c) the trustees or managers of the scheme decide to make a reduction of the liabilities in relation to the scheme (within the meaning given in regulation 6ZB(17)) of the leaving employer as a result of the payment; and
 - (d) the reduction of those liabilities relates to the amount of the payment.
- (6) The trustees or managers of the scheme may require the leaving employer or the replacement employers (or both) to pay all or part of the costs which the trustees or managers of the scheme have incurred by virtue of this regulation.
- (7) In this regulation—
- “the leaving employer” means an employer—
- (a) in relation to a multi-employer scheme;
 - (b) in respect of whom a relevant event has not occurred; and
 - (c) who—
 - (i) employs at least one active member of the scheme in respect of whom defined benefits are accruing; or
 - (ii) used to employ at least one such active member;
- “replacement employer” means an employer who, on the date on which the flexible apportionment arrangement takes effect—

- (a) is an employer in relation to the same multi-employer scheme as the leaving employer;
- (b) either—
 - (i) is employing at least one active member of the scheme in respect of whom defined benefits are accruing; or
 - (ii) used to employ at least one such active member and no amount was treated as a debt due to the trustees or managers of the scheme when the last such active member ceased to be employed; and
- (c) is an employer in respect of whom a relevant event has not occurred.”.