STATUTORY INSTRUMENTS

2018 No. 237

PENSIONS

The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2018

Made - - - -	*22nd February 2018*
Laid before Parliament	*26th February 2018*
Coming into force - -	*6th April 2018*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 75(5) and (10), 75A(1) to (4) and (5)(a), 124(1), 125(3) and 174(1) to (3) of the Pensions Act 1995(**1**) and sections 69(2), 232, 307(1)(b) and (2)(ba), 315(2) and (5) and 318(1) and (4)(a) of the Pensions Act 2004(**2**).

In accordance with section 120(1) of the Pensions Act 1995 and section 317(1) of the Pensions Act 2004, the Secretary of State has consulted such persons as the Secretary of State considers appropriate before making these Regulations.

Citation and commencement

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2018.

(2) These Regulations come into force on 6th April 2018.

Amendments to the Occupational Pension Schemes (Employer Debt) Regulations 2005

2. The Occupational Pension Schemes (Employer Debt) Regulations 2005(**3**) are amended in accordance with regulations 3 to 11.

Amendments to regulation 2

3.—(1) Regulation 2 (interpretation) is amended as follows.

(2) In paragraph (1)—

(**1**) 1995 c.26. Section 75 was amended by section 271 of the Pensions Act 2004 (c.35) and S.I. 2017/540. Section 75A was amended by section 272 of that Act. Section 124(1) is cited for the meaning it gives to "prescribed" and "regulations".

(**2**) 2004 c.35. Section 307(2)(ba) was inserted by section 31(2) of the Pensions Act 2011 (c.19). Section 318(1) is cited for the meaning it gives to "prescribed" and "regulations".

(**3**) S.I. 2005/678. Relevant amending instruments are S.I.s 2005/993, 2224, 3377 and 3378, 2006/467 and 558, 2007/60, 2008/731 and 1068, 2009/1906, 2010/725, 2011/2973, 2012/1817, 2013/627, 2014/540 and 2016/200.

(a) after the definition of "the corresponding assets"(**4**) insert—

""deferred debt arrangement" means an arrangement that takes effect in accordance with regulation 6F(**5**);";

(b) in the definition of "employer"(**6**), after "6," insert "6A, 6F,";

(c) after the definition of "frozen scheme"(**7**) insert—

""the FSD Regulations" means the Pensions Regulator (Financial Support Directions etc.) Regulations 2005(**8**);".

(3) In paragraph (3A)(**9**) in the definition of "receiving employer" for sub-paragraph (b)(ii) substitute—

"(ii) not associated but falls within paragraph (3B)(**10**),".

(4) After paragraph (3A), insert—

"(3B) An employer falls within this paragraph where it is—

(a) a limited company, limited partnership or limited liability partnership;

(b) a charitable company; or

(c) a CIO.

(3C) For the purposes of paragraph (3B)—

(a) "charitable company"—

(i) in relation to England and Wales, has the meaning given by section 193 of the Charities Act 2011("the 2011 Act")(**11**); and

(ii) in relation to Scotland, has the meaning given by section 112 of the Companies Act 1989(**12**);

(b) "CIO"—

(i) in relation to England and Wales, means a charitable incorporated organisation within the meaning of Part 11 of the 2011 Act; and

(ii) in relation to Scotland, means a Scottish charitable incorporated organisation within the meaning of section 49 of the Charities and Trustee Investment (Scotland) Act 2005(**13**);

(c) "limited company" has the meaning given by section 3(1) of the Companies Act 2006(**14**)Act;

(d) "limited liability partnership" has the meaning given by section 1(2) of the Limited Liability Partnerships Act 2000(**15**); and

(e) "limited partnership" has the meaning given by section 4 of the Limited Partnerships Act 1907(**16**).

(**4**) The definition of "the corresponding assets" was inserted by S.I. 2008/731.
(**5**) Regulation 6F is inserted by regulation 7 of these Regulations.
(**6**) The definition of "employer" was amended by S.I. 2008/731.
(**7**) The definition of "frozen scheme" was inserted by S.I. 2008/731.
(**8**) S.I. 2005/2188. Relevant amending instruments are S.I. 2005/2224, 2008/731, 2009/617, 2010/725 and 2011/2973.
(**9**) Paragraph (3A) was inserted by S.I. 2010/725.
(**10**) Paragraph (3B) was inserted by these Regulations.
(**11**) 2011 c.25.
(**12**) 1989 c.40. Section 112 was amended by S.I. 2006/242 and S.I. 2009/1941.
(**13**) 2005 asp 10.
(**14**) 2006 c. 26.
(**15**) 2000 c.12.
(**16**) 1907 c.24. Section 4 was amended by the Statute Law Revision Act 1927 (c.24), S.I.s 2003/2904, 2003/3203 and 2017/514. Section 4 was modified by S.I.s 2013/1388 and 2015/1882.

(3D) Where regulation 6F(6)(f) applies, the definitions of "exiting employer" and "receiving employer" in paragraph (3A) shall be deemed to include deferred employers.".

(5) After paragraph (4D)(**17**) insert—

"(4E) For the purposes of these Regulations "deferred employer" in relation to a multi-employer scheme means a person—

(a) who formerly employed at least one active member of the scheme in respect of whom defined benefits were accruing;

(b) in respect of whom a relevant event has not occurred; and

(c) who—

(i) has proposed to the trustees or managers of the scheme to enter into a deferred debt arrangement; and

(ii) having made that proposal, is participating in a deferred debt arrangement.".

Amendments to regulation 6ZA

4. In regulation 6ZA(1)(c)(employment-cessation events: general)(**18**) for "regulation 6A" substitute "regulations 6A and 6F".

Amendments to regulation 6A

5.—(1) Regulation 6A (employment-cessation events: periods of grace)(**19**) is amended as follows.

(2) In paragraph (1)—

(a) for "2 months" substitute "3 months";

(b) in sub-paragraph (a), after "scheme" insert "or enters into a deferred debt arrangement";

(c) for sub-paragraph (b) substitute—

"(b) if at any time during the period of grace A—

(i) no longer intends to employ any person who will be an active member of the scheme; or

(ii) does not intend to enter into a deferred debt arrangement by the last day of the period of grace,

A must notify the trustees or managers of the scheme and A must be treated as if the period of grace had not applied;".

(3) In paragraph (2), after "these Regulations" insert "and regulation 16 of the FSD Regulations (multi-employer schemes)".

Amendments to regulation 6E

6.—(1) Regulation 6E (flexible apportionment arrangements)(**20**) is amended as follows.

(2) In paragraph (1) for "A flexible" substitute "Except in the case of a frozen scheme, a flexible".

(3) In paragraph (1)(b)—

(a) at the end of sub-paragraph (i) insert "or"; and

(**17**) Paragraph (4D) was inserted by S.I. 2008/731.
(**18**) Regulation 6ZA was inserted by S.I. 2010/725 and amended by S.I. 2011/2973.
(**19**) Regulation 6A was inserted by S.I. 2008/731 and amended by S.I. 2011/2973.
(**20**) Regulation 6E was inserted by S.I. 2011/2973.

(b) at the end of sub-paragraph (ii) for "applied; or" substitute "applied.".

(4) Omit paragraph (1)(b)(iii) and after paragraph (1) insert—

"(1A) Where the scheme is a frozen scheme, the flexible apportionment arrangement takes effect on the date on which the conditions in paragraph (2) are met.".

Insertion of new regulation 6F

7. After regulation 6E insert—

"**Deferred debt arrangement**

6F.—(1) A deferred debt arrangement takes effect on the date on which the trustees or managers of the scheme, being satisfied that the conditions in paragraphs (2) and (3) are met, consent in writing to the arrangement.

(2) The condition in this paragraph is that an employment-cessation event—

(a) has occurred in relation to the deferred employer before the date on which the conditions in paragraph (3) are met; or

(b) would have occurred in relation to the deferred employer if the deferred employer had not entered into and remained in a period of grace in accordance with regulation 6A until immediately before the date on which the deferred debt arrangement is to take effect.

(3) The conditions in this paragraph are—

(a) the scheme is not in an assessment period within the meaning of Part 2 of the 2004 Act (the Board of the Pension Protection Fund) or being wound up; and

(b) the trustees or managers of the scheme are satisfied that—

(i) an assessment period is unlikely to begin in relation to the scheme within the period of 12 months beginning with the date on which the trustees or managers expect the deferred debt arrangement to take effect; and

(ii) the deferred employer's covenant with the scheme is not likely to weaken materially within the period of 12 months beginning with the date on which the trustees or managers expect the deferred debt arrangement to take effect.

(4) A deferred employer must be treated during the period that the deferred debt arrangement is in place—

(a) as if employing at least one person who is an active member of the scheme; and

(b) for the purposes of these Regulations and regulation 16 of the FSD Regulations (multi-employer schemes), as an employer in relation to the scheme.

(5) Where a deferred debt arrangement is in place the deferred employer must be treated as if the employment-cessation event in paragraph (2) had not, or would not have, occurred.

(6) The deferred debt arrangement terminates on the first date on which one of the following events occurs—

(a) the deferred employer commences employing a person who is an active member of the scheme;

(b) the deferred employer and the trustees or managers of the scheme agree that an employment-cessation event shall be treated as having occurred for the purposes of bringing the deferred debt arrangement to an end in relation to the deferred employer;

(c) a relevant event occurs in relation to the deferred employer;

(d) all the employers in the scheme have experienced a relevant event or have become deferred employers;

(e) the scheme commences winding up;

(f) the deferred employer restructures, unless—

(i) the restructuring falls within either regulation 6ZB (employment-cessation events: exemptions) or regulation 6ZC; and

(ii) where the receiving employer is a deferred employer, the trustees or managers of the scheme are satisfied that the conditions in paragraph (3) are met;

(g) a freezing event as defined in regulation 9(2)(b)(frozen schemes and former employers) occurs in relation to the scheme;

(h) the trustees or managers of the scheme serve a notice on the deferred employer stating that the deferred debt arrangement has come to an end on the grounds that the trustees or managers of the scheme are reasonably satisfied that—

(i) the deferred employer has failed to comply materially with its duties under the Scheme Funding Regulations;

(ii) the deferred employer's covenant with the scheme is likely to weaken materially in the next 12 months; or

(iii) the deferred employer has failed to comply materially with its duties under regulation 6 (duty to disclose information) of the Occupational Pension Schemes (Scheme Administration) Regulations 1996(**21**).

(7) For the purposes of these Regulations where—

(a) an event referred to in paragraph (6)(a) or (e) of this regulation occurs, the deferred employer must be treated as if the employment-cessation event in paragraph (2) had not, or would not have, occurred;

(b) an event referred to in paragraph (6)(b), (c), (d) or (h) of this regulation occurs, the date of that event must be treated as the date of the employment-cessation event in relation to the deferred employer;

(c) the deferred employer restructures in circumstances where—

(i) paragraph (6)(f) of this regulation does not apply, the date of the restructuring must be treated as the date of the employment-cessation event in relation to the deferred employer;

(ii) paragraph (6)(f) of this regulation applies—

(aa) if the receiving employer is not a deferred employer, paragraph (6)(a) of this regulation applies to the receiving employer; and

(bb) if the receiving employer is a deferred employer, the deferred debt arrangement must continue;

(d) a freezing event referred to in paragraph (6)(g) of this regulation occurs, the deferred employer—

(i) becomes a former employer in relation to the scheme for the purposes of regulation 9 (frozen schemes and former employers); and

(ii) must be treated as if the employment-cessation event referred to in paragraph (2)(a) had not, or would not have, occurred and the deferred debt arrangement had never taken effect.".

(**21**) Regulation 6 was amended by S.I. 2005/2426.