STATUTORY RULES OF NORTHERN IRELAND

2018 No. 49

PENSIONS

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

Made - - - -	*13th March 2018*
Coming into operation	*6th April 2018*

The Department for Communities(**1**) makes the following Regulations in exercise of the powers conferred by Articles 75(5) and (10), 75A(1) to (4) and (5)(a), 122(3) and 166(1) to (3) of the Pensions (Northern Ireland) Order 1995(**2**), and now vested in it(**3**), and Articles 2(5)(a), 64(2), 211, 280(1)(b) and (2)(ba) and 287(2) and (3) of the Pensions (Northern Ireland) Order 2005(**4**).

Citation and commencement

1. These Regulations may be cited as the Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations (Northern Ireland) 2018 and shall come into operation on 6th April 2018.

Amendment of the Occupational Pension Schemes (Employer Debt) Regulations

2. The Occupational Pension Schemes (Employer Debt) Regulations (Northern Ireland) 2005(**5**) are amended in accordance with regulations 3 to 10.

Amendment of regulation 2

3. In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) after the definition of "the corresponding assets"(**6**) insert—

(**1**) *See* section 1(7) of the Departments Act (Northern Ireland) 2016 (c. 5 (N.I.))
(**2**) S.I. 1995/3213 (N.I. 22); Article 75 was amended by Article 248 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)); Article 75A was inserted by Article 249 of that Order; Article 122(3) was amended by Article 217(1) of that Order
(**3**) *See* Article 8(b) of S.R. 1999 No. 481
(**4**) S.I. 2005/255 (N.I. 1); Article 280(2)(ba) was inserted by section 29(2) of the Pensions Act (Northern Ireland) 2012 (c. 3 (N.I.))
(**5**) S.R. 2005 No. 168; relevant amending Regulations are S.R 2008 No. 132, S.R. 2010 No. 111 and S.R. 2012 No. 1
(**6**) The definition of "the corresponding assets" was inserted by regulation 4(2)(d) of S.R. 2008 No. 132

""deferred debt arrangement" means an arrangement that takes effect in accordance with regulation 6F(**7**);";

(ii) in the definition of "employer"(**8**) after "6," insert "6A, 6F,";

(iii) after the definition of "frozen scheme"(**9**) insert—

""the FSD Regulations" means the Pensions Regulator (Financial Support Directions, etc.) Regulations (Northern Ireland) 2005(**10**);";

(b) in paragraph (3A)(**11**) in the definition of "receiving employer" in paragraph (b) for sub-paragraph (ii) substitute—

"(ii) not associated but falls within paragraph (3B);";

(c) 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)—

"charitable company" has the meaning given in section 95(6) of the Charities Act (Northern Ireland) 2008(**12**);

"CIO" has the meaning given in Part 11 of the Charities Act (Northern Ireland) 2008;

"limited company" has the meaning given in section 3(1) of the Companies Act 2006(**13**);

"limited liability partnership" has the meaning given by section 1(2) of the Limited Liability Partnerships Act 2000(**14**);

"limited partnership" has the meaning given by section 4 of the Limited Partnerships Act 1907(**15**).

(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.".

(d) after paragraph (4D)(**16**) 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—

(**7**) Regulation 6F is inserted by regulation 7 of these Regulations
(**8**) The definition of "employer" was amended by regulation 4(2)(f) of S.R. 2008 No. 132
(**9**) The definition of "frozen scheme" was inserted by regulation 4(2)(h) of S.R. 2008 No. 132
(**10**) S.R. 2005 No. 378
(**11**) Paragraph (3A) was inserted by regulation 4(b) of S.R. 2010 No. 111
(**12**) 2008 c. 12 (N.I.)
(**13**) 2006 c. 46
(**14**) 2000 c. 12
(**15**) 1907 c. 24
(**16**) Paragraph (4D) was inserted by regulation 4(4) of S.R. 2008 No. 132

(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.".

Amendment of regulation 6ZA

4. In regulation 6ZA(1)(c)(**17**) (employment-cessation events: general) for "regulation 6A" substitute "regulations 6A and 6F".

Amendment of regulation 6A

5. In regulation 6A(**18**) (employment-cessation events: periods of grace)—

(a) in paragraph (1)—

(i) for "within 2 months" substitute "within 3 months";

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

(iii) 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 shall 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 shall notify the trustees or managers of the scheme and A shall be treated as if the period of grace had not applied;";

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

Amendment of regulation 6E

6. In regulation 6E(**19**) (flexible apportionment arrangements)—

(a) in paragraph (1)—

(i) for "A flexible" substitute "Except in the case of a frozen scheme, a flexible";

(ii) in sub-paragraph (b)—

(aa) in head (i) for "met;" substitute "met, or";

(bb) in head (ii) for "applied, or" substitute "applied.";

(cc) omit head (iii);

(b) 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 regulation 6F

7. After regulation 6E insert—

(**17**) Regulation 6ZA was inserted by regulation 7 of S.R. 2010 No. 111 and amended by regulation 7 of S.R. 2012 No. 1
(**18**) Regulation 6A was inserted by regulation 7 of S.R. 2008 No. 132 and amended by regulation 9 of S.R. 2012 No. 1
(**19**) Regulation 6E was inserted by regulation 10 of S.R. 2012 No. 1

"**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(**20**)—

(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 that—

(a) the scheme is not in an assessment period(**21**) 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 shall 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 shall 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 or 6ZC, and

(**20**) The definition of "employment-cessation event" was substituted by regulation 4(a)(ii) of S.R. 2010 No. 111
(**21**) The definition of "assessment period" was inserted by regulation 4(2)(c) of S.R. 2008 No. 132