STATUTORY RULES OF NORTHERN IRELAND

2012 No. 1

PENSIONS

The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations (Northern Ireland) 2012

Made - - - -	*4th January 2012*
Coming into operation	*27th January 2012*

The Department for Social Development 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(**1**), and now vested in it(**2**), and Articles 2(5)(a), 64(2)(a), 110(5), 211, 280(1)(b) and (2)(b) and 287(3) of the Pensions (Northern Ireland) Order 2005(**3**).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations (Northern Ireland) 2012 and shall come into operation on 27th January 2012.

(2) In these Regulations "the 2005 Regulations" means the Occupational Pension Schemes (Employer Debt) Regulations (Northern Ireland) 2005(**4**).

Amendment of the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations

2. In regulation 1(3) of the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations (Northern Ireland) 2005(**5**) (interpretation)—

(a) in sub-paragraphs (a) and (b) for "C, D or E" substitute "C, D, E or F";

(b) in sub-paragraph (a) after head (v) add—

(**1**) 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)) and is modified by S.R. 2005 No. 168; Article 75A was inserted by Article 249 of the Pensions (Northern Ireland) Order 2005

(**2**) *See* Article 8(b) of S.R. 1999 No. 481

(**3**) S.I. 2005/255 (N.I. 1)

(**4**) S.R. 2005 No. 168; relevant amending Regulations are S.R. 2008 No. 132 and S.R. 2010 No. 111

(**5**) S.R. 2005 No. 91; regulation 1(3) was substituted by regulation 3(2)(b) of S.R. 2005 No. 357 and amended by regulation 2 of S.R. 2010 No. 111

"(vi) condition F is that a flexible apportionment arrangement has taken effect in accordance with regulation 6E(**6**) of the Occupational Pension Schemes (Employer Debt) Regulations (Northern Ireland) 2005 where the employer was the leaving employer within the meaning given in paragraph (7) of that regulation;";

(c) in sub-paragraph (b) after head (v) add—

"(vi) condition F is that a flexible apportionment arrangement has taken effect in accordance with regulation 6E of the Occupational Pension Schemes (Employer Debt) Regulations (Northern Ireland) 2005 where the employer was the leaving employer within the meaning given in paragraph (7) of that regulation.".

Amendment of the Pension Protection Fund (Entry Rules) Regulations

3.—(1) The Pension Protection Fund (Entry Rules) Regulations (Northern Ireland) 2005(**7**) are amended in accordance with paragraphs (2) and (3).

(2) In regulation 1(4)(**8**) (interpretation)—

(a) in sub-paragraphs (a) and (b) for "C, D or E" substitute "C, D, E or F";

(b) in sub-paragraph (a) after head (v) add—

"(vi) condition F is that a flexible apportionment arrangement has taken effect in accordance with regulation 6E of the Occupational Pension Schemes (Employer Debt) Regulations (Northern Ireland) 2005 where the employer was the leaving employer within the meaning given in paragraph (7) of that regulation;";

(c) in sub-paragraph (b) after head (v) add—

"(vi) condition F is that a flexible apportionment arrangement has taken effect in accordance with regulation 6E of the Occupational Pension Schemes (Employer Debt) Regulations (Northern Ireland) 2005 where the employer was the leaving employer within the meaning given in paragraph (7) of that regulation.".

(3) In regulation 2(4)(**9**) (schemes which are not eligible schemes) after sub-paragraph (e) add—

"(f) a flexible apportionment arrangement within regulation 6E of those Regulations.".

Amendment of regulation 2 of the 2005 Regulations

4. In regulation 2 of the 2005 Regulations (interpretation)—

(a) in paragraph (1)—

(i) after the definition of "employment-cessation event"(**10**) insert—

""flexible apportionment arrangement" means an arrangement that takes effect in accordance with regulation 6E;";

(ii) in the definition of "liability proportion"(**11**) for ""K/L"" substitute "K divided by L";

(**6**) Regulation 6E is inserted by regulation 10 of these Regulations
(**7**) S.R. 2005 No. 126; relevant amending Regulations are S.R. 2005 No. 357, S.R. 2008 No. 132 and S.R. 2010 No. 111
(**8**) Regulation 1(4) was substituted by regulation 4(b) of S.R. 2005 No. 357 and amended by regulation 3(2) of S.R. 2010 No. 111
(**9**) Regulation 2(4) was substituted by regulation 18 of S.R. 2008 No. 132 and amended by regulation 3(3) of S.R. 2010 No. 111
(**10**) The definition of "employment-cessation event" was substituted by regulation 4(a)(ii) of S.R. 2010 No. 111
(**11**) The definitions of "liability proportion" and "liability share" were inserted by regulation 4(2)(h) of S.R. 2008 No. 132

(iii) in the definition of "liability share" for "of the total" substitute "multiplied by the total";

(b) in paragraph (4A)(**12**)—

(i) after "regulations 6B, 6C" insert ", 6E";

(ii) in sub-paragraph (a) after "the applicable time" insert "(or, in the case of a flexible apportionment arrangement, after the time that arrangement takes effect)";

(iii) in sub-paragraph (b) after "under regulation 6B" insert "or a flexible apportionment arrangement under regulation 6E";

(c) in paragraph (4B)—

(i) after "the applicable time" insert "(or, in the case of a flexible apportionment arrangement, at the time that arrangement takes effect)";

(ii) in substituted paragraph (4A) after "regulations 6B, 6C" insert ", 6E".

Amendment of regulation 5 of the 2005 Regulations

5. In regulation 5(**13**) of the 2005 Regulations (calculation of the amount of scheme liabilities and value of scheme assets)—

(a) for paragraph (3) substitute—

"(3) The assets of the scheme shall be valued, the liabilities of the scheme shall be determined and the amounts of those liabilities shall be calculated by reference to the same date.";

(b) in paragraph (8) for "(15)" substitute "(14)";

(c) for paragraph (15) substitute—

"(15) An amount B is an asset of the scheme to be taken into account by the trustees or managers only if—

(a) the scheme has not commenced winding-up at the applicable time;

(b) the amount B is part of a withdrawal arrangement or an approved withdrawal arrangement which is in force before the applicable time, and

(c) the trustees or managers are reasonably satisfied that the guarantors have sufficient financial resources at the applicable time to be likely to pay the amount B.".

Amendment of regulation 6 of the 2005 Regulations

6. In regulation 6(4)(**14**) of the 2005 Regulations (multi-employer schemes: general)—

(a) after sub-paragraph (aa) insert—

"(ab) where a flexible apportionment arrangement has taken effect, the liabilities to be attributed to Employer A must include the liabilities for which Employer A—

(i) has taken over responsibility under that arrangement, or

(ii) is treated for all purposes as being responsible under that arrangement;";

(b) for sub-paragraph (b) substitute—

(**12**) Paragraphs (4A) to (4D) were inserted by regulation 4(4) of S.R. 2008 No. 132

(**13**) Regulation 5 was substituted by regulation 5 of S.R. 2008 No. 132 and amended by regulation 5 of S.R. 2010 No. 111

(**14**) Paragraphs (2) to (5) of regulation 6 were substituted by regulation 6 of S.R. 2008 No. 132 and paragraph (4) was amended by regulation 6(b) of S.R. 2010 No. 111

"(b) subject to sub-paragraph (c), the liabilities to or in respect of any member which arose during or as a result of pensionable service with Employer A (including any liabilities attributable to a transfer in respect of that member received by the scheme during that period or periods of pensionable service) are attributable to Employer A, and".

Amendment of regulation 6ZA of the 2005 Regulations

7. In regulation 6ZA(**15**) of the 2005 Regulations (employment-cessation events: general)—

(a) in paragraph (1) for "paragraphs (2) to (6)" substitute "paragraphs (2) to (7)";

(b) after paragraph (6) add—

"(7) An employment-cessation event does not occur in respect of the leaving employer within the meaning given in regulation 6E(7) where—

(a) the conditions in regulation 6E(2) are met, and

(b) before the end of the period of 28 days beginning with the day on which those conditions were met, an event occurs in relation to that employer which meets the requirements of paragraph (1)(a) to (c) of this regulation.".

Amendment of regulation 6ZB of the 2005 Regulations

8. In regulation 6ZB(17) of the 2005 Regulations (employment-cessation events: exemptions)—

(a) in sub-paragraph (f)(ii) for "plan, and" substitute "plan;";

(b) after sub-paragraph (g) add—

"(h) liabilities for which the employer—

(i) has taken over responsibility under a flexible apportionment arrangement, or

(ii) is treated for all purposes as being responsible under such an arrangement, and

(i) actual and contingent liabilities.".

Amendment of regulation 6A of the 2005 Regulations

9. In regulation 6A(**16**) of the 2005 Regulations (employment-cessation events: periods of grace)—

(a) in paragraph (1) for "as soon as possible and in any event within one month" substitute "within 2 months";

(b) in paragraph (3) in the definition of "period of grace" for paragraph (a) substitute—

"(a) the day referred to in paragraph (4), or";

(c) after paragraph (3) add—

"(4) The day mentioned in paragraph (a) of the definition of "period of grace" in paragraph (3) is—

(a) the day which is 12 months after the cessation date, or

(b) a day which—

(i) is more than 12 months after the cessation date;

(**15**) Regulations 6ZA to 6ZD were inserted by regulation 7 of S.R. 2010 No. 111
(**16**) Regulations 6A to 6D were inserted by regulation 7 of S.R. 2008 No. 132

(ii) is less than 36 months after the cessation date, and

(iii) the trustees or managers of the scheme choose to nominate in accordance with paragraph (5).

(5) A nomination mentioned in paragraph (4)(b)(iii) may only be made—

(a) in writing, and

(b) before—

(i) the end of 12 months after the cessation date, where no day has previously been nominated under paragraph (4)(b)(iii), or

(ii) the day previously nominated under paragraph (4)(b)(iii).".

Insertion of regulation 6E into the 2005 Regulations

10. After regulation 6D of the 2005 Regulations (notifiable events) 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 employer—

(i) takes 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 to take over responsibility for those liabilities under a legally enforceable agreement, is 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