
STATUTORY INSTRUMENTS

2011 No. [draft consultation]

PENSIONS

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

Made - - - -

Laid before Parliament

Coming into force - -

1st October 2011

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(2) and (3) of the Pensions Act 1995(a) and sections 126(5), 232, 307(1)(b) and (2)(b), 315(2) and (5) and 318(1) and (4)(a) of the Pensions Act 2004(b).

[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, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2011.

(2) They come into force on 1st October 2011.

(3) In these Regulations, “the 2005 Regulations” means the Occupational Pension Schemes (Employer Debt) Regulations 2005(c).

Amendment of the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations 2005

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

(a) in sub-paragraphs (a) and (b), for “D or E” substitute “D, E or F”,

(b) after sub-paragraph (a)(v), insert—

“(vi) condition F is that a flexible apportionment arrangement has taken effect in accordance with regulation 6E of the Occupational Pension Schemes

(a) 1995 c.26. Section 75 was amended by section 271 of the Pensions Act 2004 (c.35) and section 75A was inserted by section 272 of that Act. Section 124(1) is cited for the meaning it gives to “prescribed” and “regulations”.

(b) 2004 c.35. Section 318(1) is cited for the meaning it gives to “prescribed” and “regulations”.

(c) S.I. 2005/678. Amending instruments are S.I.s 2005/993, 2224, 3377 and 3378, 2006/467 and 558, 2007/60, 2008/731 and 1068, 2009/1906 and 2010/725.

(d) S.I. 2005/441. Regulation 1(3) was substituted by S.I. 2005/2113 and amended by S.I. 2010/725.

(Employer Debt) Regulations 2005 (flexible apportionment arrangements)(a) where the employer was the leaving employer within the meaning in paragraph (7) of that regulation;”, and

(c) after sub-paragraph (b)(v), insert—

“(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 2005 where the employer was the leaving employer within the meaning in paragraph (7) of that regulation.”.

Amendment of the Pension Protection Fund (Entry Rules) Regulations 2005

3.—(1) The Pension Protection Fund (Entry Rules) Regulations 2005(b) are amended as follows.

(2) In regulation 1(5) (interpretation)(c)—

(a) in sub-paragraphs (a) and (b), for “D or E” substitute “D, E or F”,

(b) after sub-paragraph (a)(v), insert—

“(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 2005 (flexible apportionment arrangements) where the employer was the leaving employer within the meaning in paragraph (7) of that regulation;”, and

(c) after sub-paragraph (b)(v), insert—

“(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 2005 where the employer was the leaving employer within the meaning in paragraph (7) of that regulation.”.

(3) In regulation 2(4) (schemes which are not eligible schemes)(d), after sub-paragraph (e) insert—

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

Amendment of regulation 2 of the 2005 Regulations

4.—(1) Regulation 2 of the 2005 Regulations (interpretation) is amended as follows.

(2) In paragraph (1)—

(a) after the definition of “employment-cessation event”(e), insert—

““flexible apportionment arrangement” means an arrangement which takes effect in accordance with regulation 6E;”,

(b) in the definition of “liability proportion”(f), for ““K/L”” substitute “K divided by L”, and

(c) in the definition of “liability share”(g), for “of the total” substitute “multiplied by the total”.

(3) In paragraph (3A)(h) in the definition of “receiving employer”, for paragraph (b)(ii) substitute—

(a) Regulation 6E is inserted by regulation 10 of these Regulations.

(b) S.I. 2005/590.

(c) Regulation 1(5) was substituted by S.I. 2005/2113 and amended by S.I. 2010/725.

(d) Regulation 2(4) was substituted by S.I. 2008/731 and amended by S.I. 2010/725.

(e) The definition of “employment-cessation event” was substituted by S.I. 2010/725.

(f) The definition of “liability proportion” was inserted by S.I. 2008/731.

(g) The definition of “liability share” was inserted by S.I. 2008/731.

(h) Paragraph (3A) was inserted by S.I. 2010/725.

“(ii) an employer who was the exiting employer but has changed its legal status so that it is now legally a different employer.”.

(4) In paragraph (4A)(a)—

- (a) after “regulations 6B, 6C” insert “, 6E”,
- (b) in sub-paragraph (a), after “to fund the scheme so that after” insert “the date the trustees or managers expect a flexible apportionment arrangement to take effect or, in all other cases, after”, and
- (c) in sub-paragraph (b), after “under regulation 6B” insert “or a flexible apportionment arrangement under regulation 6E”.

Amendment of regulation 5 of the 2005 Regulations

5.—(1) Regulation 5 of the 2005 Regulations (calculation of the amount of scheme liabilities and value of scheme assets)(b) is amended as follows.

(2) For paragraph (3), substitute—

“(3) The assets of the scheme are to be valued, the liabilities of the scheme are to be determined and the amounts of those liabilities are to be calculated by reference to the same date.”.

(3) In paragraph (8), for “(15)” substitute “(14)”.

(4) 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) of the 2005 Regulations (multi-employer schemes: general)(c)—

(a) in sub-paragraph (a), after “where” insert “, before 1st October 2011,”,

(b) 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—

- (i) for which Employer A has taken over responsibility under that arrangement;
or
- (ii) which Employer A is treated for all purposes as being responsible for under that arrangement;”, and

(c) for sub-paragraph (b), substitute—

“(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”.

(a) Paragraph (4A) was inserted by S.I. 2008/731.

(b) Regulation 5 was substituted by S.I. 2008/731 and amended by S.I. 2010/725.

(c) Regulation 6(4) was substituted by S.I. 2008/731 and sub-paragraph (aa) was inserted by S.I. 2010/725.

Amendment of regulation 6ZA of the 2005 Regulations

7. In regulation 6ZA(1) of the 2005 Regulations (employment-cessation events: general)(a), after “paragraphs (2) to (6)” insert “and regulation 6E(2)”.

Amendment of regulation 6ZB of the 2005 Regulations

8. In regulation 6ZB(17) of the 2005 Regulations (employment-cessation events: exemptions)(b), after sub-paragraph (g) insert—

“, and

- (h) liabilities which the employer—
 - (i) has taken over responsibility for under a flexible apportionment arrangement, or
 - (ii) is treated for all purposes as being responsible for under such an arrangement.

Amendment of regulation 6A of the 2005 Regulations

9.—(1) Regulation 6A of the 2005 Regulations (employment-cessation events: periods of grace)(c) is amended as follows.

(2) In paragraph (1), for “one month” substitute “two months”.

(3) In paragraph (3) in the definition of “period of grace”, for paragraph (a) substitute—

“(a) the day referred to in paragraph (4), or”.

(4) After paragraph (3), insert—

“(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;
 - (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) must 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 of the 2005 Regulations

10. After regulation 6D of the 2005 Regulations (notifiable events)(d), insert—

“Flexible apportionment arrangements

6E.—(1) A flexible apportionment arrangement takes effect where—

(a) Regulation 6ZA was inserted by S.I. 2010/725.
(b) Regulation 6ZB was inserted by S.I. 2010/725.
(c) Regulation 6A was inserted by S.I. 2008/731.
(d) Regulation 6D was inserted by S.I. 2008/731.

- (a) subject to paragraph (4), the funding test is met;
- (b) one or more staying employers (see also paragraph (5))—
 - (i) take over responsibility under a legally enforceable agreement for all the liabilities in relation to the scheme (within the meaning in regulation 6ZB(17)) of the leaving employer as those liabilities stand at the relevant time; or
 - (ii) where taking over such responsibility under a legally enforceable agreement is impossible, are treated for all purposes as being responsible for those liabilities as those liabilities stand at the relevant time;
- (c) the following persons consent in writing—
 - (i) the trustees or managers of the scheme;
 - (ii) the leaving employer; and
 - (iii) all the staying employers referred to in sub-paragraph (b);
- (d) the leaving employer is not in a period of grace within regulation 6A;
- (e) if an employment-cessation event has occurred in relation to the leaving employer—
 - (i) that occurrence was on or after 1st October 2011; and
 - (ii) none of the debt due as a result of that occurrence has been paid;
- (f) the scheme is not in an assessment period; 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 12 months following a flexible apportionment arrangement taking effect.

(2) Where a flexible apportionment arrangement takes effect at a time when an employment-cessation event has not occurred in relation to the leaving employer, an employment-cessation event does not occur when that leaving employer ceases to employ at least one person who is an active member of the scheme.

(3) Where a flexible apportionment arrangement takes effect at a time when an employment-cessation event has occurred in relation to the leaving employer, section 75(4) of the 1995 Act is modified so that no amount is treated as a debt due to the trustees or managers of the scheme as a result of that 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; and
- (b) the trustees or managers of the scheme are satisfied that the funding test should not be carried out again.

(5) Where the leaving employer is changing or has changed its legal status so that it is now legally a different employer, that employer in its new legal status may be a staying employer.

(6) The trustees or managers of the scheme may require the leaving or staying employers to pay all or part of the costs they have incurred under this regulation.

(7) In this regulation—

“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 and a debt became due from them when they ceased to employ at least one such active member;

“relevant time” means—

- (a) where a flexible apportionment arrangement takes effect on a date when an employment-cessation event has not occurred in relation to the leaving employer, the time when the leaving employer ceases to employ at least one person who is an active member of the scheme as referred to in paragraph (2); or
 - (b) where a flexible apportionment arrangement takes effect on a date when an employment-cessation event has occurred in relation to the leaving employer, the time immediately before the flexible apportionment arrangement takes effect;
- “staying employer” means an employer who, on the date when the flexible apportionment arrangement takes effect, is—
- (a) an employer in relation to the same multi-employer scheme as the leaving employer;
 - (b) employing at least one active member of the scheme in respect of whom defined benefits are accruing; and
 - (c) an employer in respect of whom a relevant event has not occurred.”.

Amendment of regulation 9 of the 2005 Regulations

11.—(1) Regulation 9 of the 2005 Regulations (frozen schemes and former employers)(a) is amended as follows.

- (2) In paragraph (3) in sub-paragraphs (c)(iii) and (d), for “A to J” substitute “A to K”.
- (3) After paragraph (14A), insert—
 - “(14B) Condition K is that as a result of a flexible apportionment arrangement taking effect, no debt was treated as due, or becoming due, from the person under section 75(4) of the 1995 Act.”.

Amendment of Schedule 1 to the 2005 Regulations

- 12.** In the certificate in Schedule 1 to the 2005 Regulations (actuary’s certificate)(b)—
- (a) in the definition of “liability proportion” in the Notes, for ““K/L”” substitute “K divided by L”, and
 - (b) in the definition of “liability share” in the Notes, for “of the total” substitute “multiplied by the total”.

Amendment of the Pensions Regulator (Financial Support Directions etc.) Regulations 2005

13. In regulation 15(2) of the Pensions Regulator (Financial Support Directions etc.) Regulations 2005 (former employers)(c)—

- (a) for “D or E”, substitute “D, E or F”, and
- (b) after sub-paragraph (e), insert—
 - “(f) condition F is that a flexible apportionment arrangement has taken effect in accordance with regulation 6E of those Regulations (flexible apportionment arrangements) where the employer was the leaving employer within the meaning in paragraph (7) of that regulation.”.

Amendment of the Occupational Pension Schemes (Scheme Funding) Regulations 2005

14. After paragraph 3 of Schedule 2 to the Occupational Pension Schemes (Scheme Funding) Regulations 2005 (frozen or paid-up schemes)(d), insert—

(a) Regulation 9 was substituted by S.I. 2008/731 and amended by S.I. 2010/725.
 (b) Schedule 1 was substituted by S.I. 2008/731 and amended by S.I. 2010/725.
 (c) S.I. 2005/2188. Regulation 15(2) was amended by S.I.s 2005/2224, 2008/731 and 2010/725.
 (d) S.I. 2005/3377. Paragraph 3 of Schedule 2 was substituted by S.I. 2008/731 and amended by S.I. 2010/725.

“Employers in periods of grace

3A.—(1) This paragraph applies where an employer is treated under regulation 6A(1) of the Occupational Pension Schemes (Employer Debt) Regulations 2005 (employment-cessation events: periods of grace) as if it employed at least one person who is an active member of a scheme.

(2) Where this paragraph applies, Part 3 of the 2004 Act and these Regulations are modified so that references to “employer” include a reference to the employer referred to in sub-paragraph (1).

(3) This paragraph ceases to apply where the period of grace referred to in regulation 6A of the Occupational Pension Schemes (Employer Debt) Regulations 2005 in respect of the employer comes to an end in accordance with that regulation.”.

Signed by authority of the Secretary of State for Work and Pensions.

Date

Name
Minister of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend:

- the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations 2005 (S.I. 2005/441);
- the Pension Protection Fund (Entry Rules) Regulations 2005 (S.I. 2005/590);
- the Occupational Pension Schemes (Employer Debt) Regulations 2005 (S.I. 2005/678) (“the Employer Debt Regulations”);
- the Pensions Regulator (Financial Support Directions etc.) Regulations 2005 (S.I. 2005/2188); and
- the Occupational Pension Schemes (Scheme Funding) Regulations 2005 (S.I. 2005/3377).

[Explanatory Note to be completed]

An assessment of the impact these Regulations have on the private sector and civil society organisations has been made. Copies of that Impact Assessment are available from the libraries of both Houses of Parliament, the Better Regulation Unit of the Department for Work and Pensions, Caxton House, Tothill Street, London SW1H 9NA and the Department’s website at: <http://www.dwp.gov.uk/publications/impact-assessments>.