

**2011 No. 2973**

**PENSIONS**

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

<i>Made</i> - - - -	<i>10th December 2011</i>
<i>Laid before Parliament</i>	<i>15th December 2011</i>
<i>Coming into force</i> - -	<i>27th January 2012</i>

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 69(2)(a), 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 27th January 2012.

(3) In these Regulations, “the Employer Debt 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

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(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 given 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 given 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 given 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 given 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 Employer Debt Regulations**

4.—(1) Regulation 2 of the Employer Debt 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 that 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 (4A)(h)—

(a) after “regulations 6B, 6C” insert “, 6E”,

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(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) Paragraphs (4A) and (4B) were inserted by S.I. 2008/731.

- (b) 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)”, and
  - (c) in sub-paragraph (b), after “under regulation 6B” insert “or a flexible apportionment arrangement under regulation 6E”.
- (4) In paragraph (4B)—
- (a) after “the applicable time”, insert “(or, in the case of a flexible apportionment arrangement, at the time that arrangement takes effect)”, and
  - (b) in the substituted paragraph (4A), after “regulations 6B, 6C” insert “, 6E”.

#### **Amendment of regulation 5 of the Employer Debt Regulations**

**5.**—(1) Regulation 5 of the Employer Debt Regulations (calculation of the amount of scheme liabilities and value of scheme assets)(a) 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 Employer Debt Regulations**

- 6.** In regulation 6(4) of the Employer Debt Regulations (multi-employer schemes: general)(b)—
- (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;”, and
- (b) 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”.

#### **Amendment of regulation 6ZA of the Employer Debt Regulations**

**7.**—(1) Regulation 6ZA of the Employer Debt Regulations (employment-cessation events: general)(c) is amended as follows.

- (2) In paragraph (1), for “paragraphs (2) to (6)” substitute “paragraphs (2) to (7)”.

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(a) Regulation 5 was substituted by S.I. 2008/731 and amended by S.I. 2010/725.  
 (b) Regulation 6(4) was substituted by S.I. 2008/731 and sub-paragraph (aa) was inserted by S.I. 2010/725.  
 (c) Regulation 6ZA was inserted by S.I. 2010/725.

(3) After paragraph (6), insert—

“(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 sub-paragraphs (a) to (c) of paragraph (1) of this regulation.”.

#### **Amendment of regulation 6ZB of the Employer Debt Regulations**

**8.** In regulation 6ZB(17) of the Employer Debt Regulations (employment-cessation events: exemptions)(a)—

- (a) after sub-paragraph (f), omit “and”, and
- (b) after sub-paragraph (g) insert—
  - “(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 Employer Debt Regulations**

**9.**—(1) Regulation 6A of the Employer Debt Regulations (employment-cessation events: periods of grace)(b) is amended as follows.

(2) In paragraph (1), for “as soon as possible and in any event within one month” substitute “within 2 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) 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).”.

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(a) Regulation 6ZB was inserted by S.I. 2010/725.

(b) Regulation 6A was inserted by S.I. 2008/731.

## Insertion of regulation 6E of the Employer Debt Regulations

10. After regulation 6D of the Employer Debt Regulations (notifiable events)(a), 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
    - (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.

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(a) Regulation 6D was inserted by S.I. 2008/731.

(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.”.

### **Amendment of regulation 9 of the Employer Debt Regulations**

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

(2) In paragraph (3)—

(a) in sub-paragraph (c)(iii), for “A to J is met; or” substitute “A to K is met;”, and

(b) after sub-paragraph (d), insert—

“; or

(e) in relation to a frozen scheme, the person is the leaving employer within the meaning given in regulation 6E(7) in a flexible apportionment arrangement which has taken effect in accordance with regulation 6E.”.

(3) After paragraph (14A), insert—

“(14B) Condition K is that a flexible apportionment arrangement took effect in accordance with regulation 6E—

(a) with the result that no debt was treated as due from the person under section 75(4) of the 1995 Act, or

(b) with the result that no debt arose in respect of the person because regulation 6ZA(7) applied.”.

### **Amendment of Schedule 1 to the Employer Debt Regulations**

**12.** In the certificate in Schedule 1 to the Employer Debt 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 Schedule 1B to the Employer Debt Regulations**

**13.** In paragraph 2(1) of Schedule 1B to the Employer Debt Regulations (notifiable events)(c)—

(a) the words “any entering into a scheme apportionment arrangement on or after the applicable time” become paragraph (a) of paragraph 2(1), and

(b) after paragraph (a), insert—

“; or

(b) a flexible apportionment arrangement taking effect.”.

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

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

(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 the Occupational Pension Schemes (Employer Debt) Regulations 2005 (flexible apportionment arrangements) where the

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(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) Schedule 1B was inserted by S.I. 2005/2224 and substituted by S.I. 2008/731.

(d) S.I. 2005/2188. Regulation 15(2) was amended by S.I.s 2005/2224, 2008/731 and 2010/725.

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

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

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

**“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 (scheme funding) 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.

10th December 2011

*Steve Webb*  
Minister of State,  
Department for Work and Pensions

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(a) S.I. 2005/3377. Paragraph 3 of Schedule 2 was substituted by S.I. 2008/731 and amended by S.I. 2010/725.



## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations contain provisions about debts arising for an employer under section 75 of the Pensions Act 1995 (c.26) in respect of occupational pension schemes and also contain consequential amendments.

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).

Regulation 10 amends the Employer Debt Regulations to insert a new regulation 6E. This allows an employer in a multi-employer occupational pension scheme to apportion its liabilities in relation to the scheme to another employer in the scheme. The amendments provide that the employer who apportions its liabilities does not have to pay a debt to the scheme. The employer to whom the liabilities are apportioned becomes responsible for those liabilities. This process is called a flexible apportionment arrangement.

New regulation 6E(2) sets out the conditions which must be met in order for a flexible apportionment arrangement to take effect. This includes a condition that the trustees or managers of the scheme are satisfied that the employers remaining in the scheme are likely to be able to fund the scheme (the funding test). New regulation 6E(1)(b) contains another condition that the employer reapportioning its liabilities must have ceased to employ an active member of the scheme.

Regulation 4(3) and (4) amends the Employer Debt Regulations to set the time by reference to which the trustees or managers of the scheme must carry out the funding test.

Regulation 7 amends the Employer Debt Regulations to set out circumstances in which an employer who ceases to employ an active member of the scheme in connection with a flexible apportionment arrangement does not become liable to pay a debt to the scheme.

Regulations 4(2)(a), 6(a), 8, 11 and 13 make consequential amendments to the Employer Debt Regulations as a result of the new flexible apportionment arrangements.

Regulations 2, 3 and 14 make consequential amendments to the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations 2005, the Pension Protection Fund (Entry Rules) Regulations 2005 and the Pensions Regulator (Financial Support Directions etc.) Regulations 2005 as a result of the new flexible apportionment arrangements. The amendments made by regulations 2 and 3 change the conditions in which an employer who apportions its liabilities can enter the Pension Protection Fund. The amendments made by regulation 14 provide that an employer who apportions its liabilities is not treated as an employer for the purposes of the scheme.

The remainder of the amendments made by these Regulations do not relate to flexible apportionment arrangements.

Regulation 9 amends the Employer Debt Regulations to extend the period in which an employer can employ no active members of the scheme without becoming liable to pay a debt to the scheme (the period of grace). The amendments allow the trustees or managers of the scheme to choose to extend the existing 12 month period to a maximum of 36 months. Regulation 15 makes consequential amendments to the Occupational Pension Schemes (Scheme Funding) Regulations

2005 so that the employer in a period of grace is still liable for making payments to fund the scheme.

Regulations 4(2)(b) and (c), 5, 6(b) and 12 make minor amendments to the Employer Debt Regulations.

These Regulations reduce costs on the private sector and civil society organisations. An assessment of the impact of these Regulations has been made. Copies of that Impact Assessment are available from:

- the libraries of both Houses of Parliament;
- [www.legislation.gov.uk](http://www.legislation.gov.uk), where it is annexed to the Explanatory Memorandum which is available alongside these Regulations;
- 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>.

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STATUTORY INSTRUMENTS

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