

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).

[Regulation 2 amends regulation 1(3) of S.I. 2005/441.]

[Regulation 3 amends regulations 1(5) and 2(4) of S.I. 2005/590.]

[Regulation 4 amends regulation 2 of S.I. 2005/678.]

[Regulation 5 amends regulation 5 of S.I. 2005/678.]

[Regulation 6 amends regulation 6(4) of S.I. 2005/678.]

[Regulation 7 amends regulation 6ZA of S.I. 2005/678.]

[Regulation 8 amends regulation 6ZB of S.I. 2005/678.]

[Regulation 9 amends regulation 6A of S.I. 2005/678.]

[Regulation 10 inserts regulation 6E into S.I. 2005/678.]

[Regulation 11 amends regulation 9 of S.I. 2005/678.]

(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.

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OCCUPATIONAL PENSION SCHEMES (**EMPLOYER DEBT** AND
MISCELLANEOUS AMENDMENTS) REGULATIONS 2011

[Regulation 12 amends schedule 1 of S.I. 2005/678.]

[Regulation 13 amends schedule 1B of S.I. 2005/678.]

[Regulation 14 amends regulation 15(2) of S.I. 2005/2188.]

[Regulation 15 inserts paragraph 3A into schedule 2 of S.I. 2005/3377.]

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

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, 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>.