

For Defined Benefit arrangements, Section 75 of the Pensions Act 1995 requires that, where a scheme begins to wind up when the scheme's assets are less than its liabilities, a debt becomes due to the scheme from the sponsoring employer. Not surprisingly, this is often referred to as a 'Section 75 debt'.

Where a multi-employer scheme exists, a Section 75 debt can also arise where one of the employers ceases to employ any active members of the scheme at a time when at least one other employer continues to employ an active defined benefit member of the scheme.

The imposition of such a debt on a withdrawing employer can be particularly onerous and various amendments have been made to the requirements to enable the employer in question to be subject to a reduced debt.

Whilst the previous options may be helpful where the scheme in question operates for associated employers (in which case, one of the other employers may be prepared to take on some of the debt due from the withdrawing employer), they may not be so helpful where the employers are not associated with each other. Such non-associated multi-employer schemes are quite common in the charitable and voluntary sector, for example the Social Housing Pension Scheme and the Scottish Housing Associations' Pension Scheme. In addition, there are a number of 'industry wide' pension schemes such as the Plumbing & Mechanical Services (UK) Industry Pension Scheme and the Universities Superannuation Scheme.

To help address this issue, from 6 April 2018, by virtue of amendments made to the *Occupational Pension Schemes (Employer Debt) Regulations* [SI 2005 / 678] by the *Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2018* [SI 2018 / 237], a new option is available, known as a 'deferred debt arrangement'.

How does a deferred debt arrangement work?

Under a deferred debt arrangement, the withdrawing employer does not immediately become liable for any Section 75 debt due to the scheme – the debt is deferred. The withdrawing employer (known as a 'deferred employer') will, however, retain all of its liabilities to the scheme, including its scheme funding responsibilities.

The possible advantage to the withdrawing employer is that, by entering into a deferred debt arrangement, they can reduce their debt to the scheme over time by continuing to make deficit reduction payments to the scheme under a recovery plan, rather than being immediately liable

for their full debt at the point that they cease employing any active members. In effect, the deferred employer can re-spread their debt into the future.

Entering into a deferred debt arrangement

For the withdrawing employer to enter into a deferred debt arrangement, the following conditions must be met:

- The trustees must consent to the arrangement in writing,
- The trustees must be satisfied that the scheme is not likely to enter into a Pension Protection Fund

(PPF) Assessment Period within the 12 months following the date on which the trustees expect the deferred debt arrangement to begin,

- The trustees must be satisfied that the withdrawing employer's covenant to the scheme is not likely to materially weaken within the 12 months following the date on which the trustees expect the deferred debt arrangement to begin.

It is not, however, possible to enter into a deferred debt arrangement where the scheme is in a PPF Assessment Period or where the scheme as a whole is winding up.

Where the trustees of the scheme consent to a deferred debt arrangement, this is a notifiable event and the trustees must report this to the Pensions Regulator as soon as reasonably practical.

Termination of a deferred debt arrangement

A deferred debt arrangement will be terminated in various situations including, but not limited to, the following:

- When the deferred employer first starts to employ an active member of the scheme. In this situation, no Section 75 debt will arise on the employer.
- When the deferred employer and the trustees mutually agree to terminate the arrangement. In this situation, the employer will become subject to any Section 75 debt that arises on the date of termination, based on the scheme's funding position at that time.
- When a 'relevant event' occurs (for example, an insolvency event occurs in respect of the deferred employer, the scheme makes an application to the PPF for the PPF to assume responsibility for the scheme, or the scheme receives a notice from the PPF that the deferred employer is unlikely to continue as a going concern). In this situation, the employer will become subject to any Section 75 debt that arises on the date of termination, based on the scheme's funding position at that time.
- When a 'freezing event' occurs in respect of the scheme. Such an event occurs at the point that the scheme ceases to have any active

members. In this situation, no Section 75 debt will immediately arise on the employer.

- When the trustees of the scheme serve a notice on the deferred employer terminating the arrangement. The trustees can do this where they are reasonably satisfied that the deferred employer has materially failed to comply with its duties under the 'scheme funding Regulations' [SI 2005 / 3377] or Regulation 6 of the 'scheme administration Regulations' [SI 1996 / 1715] (i.e. the duty to disclose certain information), or that the deferred employer's covenant to the scheme is likely to materially weaken in the next 12 months. In this situation, the employer will become subject to any Section 75 debt that arises on the date of termination, based on the scheme's funding position at that time.
- When the scheme commences winding up.

The termination of a deferred debt arrangement as a result of a decision by the trustees is a notifiable event and the trustees must report this to the Pensions Regulator as soon as reasonably practical.

Grace periods

Where an employer ceases to employ an active member of a multi-employer scheme, but intends to do so again in the future, the employer can notify the trustees of this, in writing, within three months of the employer ceasing to employ any active members.

In this situation, the employer enters into a grace period, which is by default 12 months but can be extended to up to 36 months with the agreement of the trustees.

During a grace period, no Section 75 debt is due from the withdrawing employer and the employer is treated as an employer for the purposes of the employer debt Regulations.

Where an employer does intend to employ an active member of the scheme again within 12 months (or, subject to the consent of the trustees, 36 months), the employer may wish to enter into a grace period instead of entering into a deferred debt arrangement or any other arrangement.

Provided that the employer does employ an active member of the scheme within the grace period, no Section 75 debt will be triggered. If:

- by end of the grace period, the employer has not employed an active member of the scheme; or
- during the grace period, the employer no longer intends to employ an active member of the scheme before the end of the grace period; or
- an insolvency event occurs in respect of the employer,

the grace period ends and any Section 75 debt arises at that point, based on the scheme's funding position as at the date on which the employer ceased employing any active members of the scheme.

Grace period or deferred debt arrangement?

Where an employer ceases to employ any active members of the scheme, they will need to consider

whether they wish to enter into a grace period or a deferred debt arrangement. When considering this, it is important to bear in mind that:

- There is no maximum duration for a deferred debt arrangement. The maximum length of a grace period is 12 months or, subject to trustee consent, 36 months.
- Trustee consent is required for a deferred debt arrangement. No such consent is required for a grace period of up to 12 months.
- The withdrawing employer can unilaterally terminate a grace period, whilst trustee consent may be required to terminate a deferred debt arrangement.
- It is only possible to enter into a grace period where the employer actually intends to employ an active member of the scheme within that period.
- Where a grace period ends without the employer having employed an active member of the scheme, any Section 75 debt is based on the scheme's funding position as at the date on which the employer ceased employing any active members of the scheme. Where a deferred debt arrangement ends, either no Section 75 debt immediately arises or, where such a debt does arise, it will be based on the funding position when the arrangement is terminated.

Note that it is possible for a scheme to enter into a grace period and for this to be immediately followed by a deferred debt arrangement.

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