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BRIEFING PAPER

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Section 75 employer debt - multi-employer pension schemes

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Summary

The employer debt provisions in section 75 of the *Pensions Act 1995* provide protection for DB scheme members. Key elements are:

- If a 'relevant event' occurs, the employer is required to pay their share of the debt;
- The employer debt is calculated on a 'buy-out basis' (i.e.; the cost of buying out the liabilities through an annuity purchased from an insurance company).
- For non-associated multi-employer schemes, the employer debt can be triggered in a number of circumstances, including where an employer ceases to employ any active members in the scheme.

Changes in the *Pensions Act 2004* (s270-1) required the debt to be calculated on a more stringent basis and to include a share of "orphan liabilities" (that have not been attributed to an employer).

Some smaller employers say they find the employer debt regime overly onerous, and that it risks driving some employers out of business unnecessarily. In particular, some owners of unincorporated businesses (such as plumbers) who could be personally liable for the debt – felt the consequences could be catastrophic.

In 2017, the Government launched a consultation on proposals to allow employers to defer their debt to a multi-employer pension scheme provided they meet certain conditions. Regulations to introduce this came into force on 6 April 2018 (SI 2018/237).

In a March 2018 White Paper, the Government said it had concluded that "the existing arrangements now provide a sufficient range of mechanisms to enable employers, including those who could be personally liable for the debt, to provide for and meet their pension liabilities (Cm 9591, para 232).

The Plumbing Pension Scheme is one of nearly 1,000 multi-employer schemes to which this legislation applies (PQ208372, 21 January 2019). The trustees lobbied for a change in the law, or special exemption, arguing that at the time the scheme was established, it was not envisaged that employers would be responsible for anything other than the contributions due to the Scheme in respect of their own employees and highlighting ways in which they thought the application of the legislation was unfair. (Plumbing Pensions website/section 75 employer debt).

Following the White Paper announcement that the rules would not change, the Trustee consulted on the methodology it would use to calculate its employer debts. Notices were issued to employers between February and 30 June 2019 (Section 75 employer debt update, January 2019).

The issue continues to be raised in Parliament. In October 2019, Pensions Minister, Guy Opperman said the Government had concluded that any changes to the calculation of employer debt would "weaken members' benefit security whilst placing significant additional costs on employers who would remain in the scheme." It was the role of the trustees to ensure the scheme was run properly and members' benefits secure.

In an article in the *Scotsman* in December 2019 the Scottish and Northern Ireland Plumbing Employers' Federation said the impact on its members was "clear to see: financially strong businesses are encumbered with a huge, often unpayable debt/liability, and the Section 75 debt is taking a grave personal toll on the individuals involved." It said that, while, for those firms currently trading there were some options for managing or delaying section 75 liabilities, for those who had already retired, there was little help available.

1. Background

Defined benefit (DB) schemes pay pension benefits based on salary and length of service. Because it is important that they are sufficiently well-funded to pay promised benefits as they fall due, they are subject to funding requirements.[1]

In certain circumstances, the deficit in a DB scheme can become a debt on the sponsoring employer. This can happen if the scheme winds up, if the employer becomes insolvent or there is an application to the Pension Protection Fund. In the case of a multi-employer scheme, the liability is also triggered if one employer ceases to employ any active members in the scheme.[2]

1.1 2004 Act changes

Under provisions in the *Pensions Act 1995*, employers would withdraw "relatively cheaply" from multi-employer schemes. The Labour Government made changes in the *Pensions Act 2004* (s270-1) requiring the debt to be calculated on a more stringent basis and to include a share of orphan liabilities:

> […] by reference to the cost of buying-out members' benefits with an insurance company on full buyout basis and includes a share of any orphan liabilities. Orphan liabilities are those attributable to members whose employers no longer participate in the scheme. The policy rationale is that trustees have a duty to ensure that all members' rights are protected and that their scheme is. (Cm 9412, Feb 2017, part 4).

However, the then Work and Pensions Minister, Baroness Hollis, explained that there would be flexibility when a participating employer withdraw from a multi-employer scheme:

> The current legislation on withdrawal from multi-employer schemes provides for circumstances where, provided that there are other companies left in such a scheme, a company can withdraw from the scheme and cease to be a sponsoring employer so that it will not be liable for any shortfall if the scheme winds up in the future. Employers can currently do that relatively cheaply, as the withdrawal debt is based on the minimum funding requirement (MFR). Of course the problem with that is that any shortfall then has to be met by the last employer remaining in the scheme, something that is not always possible. That is the dilemma. That would mean that the pension promise was not met, with consequent issues for the PPF. Clause 260 therefore allows for Section 75 of the *Pensions Act 1995* to be modified to provide flexibility in calculating the Section 75 debt when a participating employer withdraws from a multi-employer scheme with associated employers.[3]

Regulations would provide that:

[1] *Pensions Act 2004*, part 3

[2] *Pensions Act 1995, s75; Occupational Pension Schemes (Employer Debt) Regulations 2005 (SI 2005 No. 678)*

[3] HL Deb 13 October 2004 s83-4

> […] a full buy-out debt will be triggered on withdrawal unless the withdrawing employer puts in place an appropriate financial support arrangement approved by the Pensions Regulator. Once appropriate arrangements are in place, the debt will be recalculated and a scheme-specific debt will be payable.[4]

How the employer debt is calculated

There are different ways of measuring the assets and liabilities of pension schemes:

- the Statutory Funding Objective used by trustees as part of the scheme specific funding regime to value pension liabilities (often known as Technical Provisions).[5]
- the Solvency measure – known as full buy-out – an actuarial estimate based on the cost of securing full scheme benefits with an insurer;
- FRS 17/102 (and IAS19) – used to calculate and present the pension liabilities in company accounts; and
- the Pension Protection Fund's Section 179 basis (a subset of the solvency measure) is the estimated cost of securing PPF compensation levels rather than the full scheme benefits with an insurer.[6]

Buy-out is the most stringent of these methods. For more detail, see section 1.2 of Library Briefing Paper SN-04877 – Pension scheme funding requirements (October 2017).

Section 75 (6) of the *Pensions Act 1995* provides for the employer debt to be calculated in "in a prescribed manner". The detail is in the *Occupational Pension Schemes (Employer Debt) Regulations 2005 (SI 2005/678)*, regulations 5 and 6.

Orphan liabilities

In multi-employer pension schemes, an employer is also liable for "a proportionate share of orphan liabilities". The Pensions Regulator (TPR) explains:

> There may be members of the scheme (whether deferred or pensioners) whose benefits have not accrued as a result of service with one of the employers. If scheme liabilities in respect of these members are not attributed to any particular employer then they are known as orphan liabilities. Therefore they still make up a part of the overall scheme liabilities, in some cases a very significant part, and trustees should ensure that they understand how these liabilities will normally be shared amongst the employers for the purpose of calculating each employer's liability share. The method for calculating the liability share for each employer is detailed in regulation 2(1) of the Employer Debt Regulations.[7]

This is provided for in *SI 2005/678* (regulation 6).

[4] Ibid

[5] DWP, Protecting Defined Benefit Pension Schemes, Cm 9591, March 2018, p72

[6] DWP, *Security and Sustainability in Defined Benefit Pension Schemes*, Cm 9412, February 2017

[7] DWP, Multi-employer schemes and employer departures, July 2012

Related Library briefing papers include: SN-04368 The Pensions Regulator: Powers to protect pension benefits (March 2018) and SN-04515 Deregulatory Review of Private Pensions (September 2009).

1.2 Review in 2007

A review set up by the last Labour Government to look at the regulations applying to DB schemes said employers had expressed concern that it was unfair to require large payments from those departing multi-employer schemes based on a debt that would only arise if the scheme wound up.[8] It recommended that the debt should not be triggered where the covenant to the scheme from the remaining employers remained strong:

> **148. Recommendation 2** - Where there is a group reconstruction of employers in a multi-employer scheme, the principle should be established that the debt should not be triggered where the original covenant was strong, and if the remaining employers' covenant remains as strong, following the reconstruction, as the original covenant. The judgement as to whether the covenant remains intact should be the responsibility of the trustees, after taking appropriate professional advice. However, one of us (Chris Lewin) recommends that, where the original covenant is potentially weak, provided it remains unchanged after the reconstruction, the debt should still not be triggered. (Report, July 2007).

The Government responded that the intention was to "ensure that an employer cannot 'walk away' from their pension obligations without ensuring that they are properly funded."[9] However, it acknowledged the concerns and after consultation introduced a number of changes in regulations.[10]

As a result, alternatives to the payment of the full s75 debt are available in some circumstances. Guidance from the Pensions Regulator explains:

> - When an **employer** departs from a scheme they will normally become liable to pay their share of the scheme's liabilities; this is their **section 75 debt**. As a starting point, trustees should always consider whether it is appropriate for the **departing employer** to pay their full **section 75 debt**. However, there are some alternatives which may be available in certain circumstances.
> - Where an **employer** ceases to employ active members for a temporary period, in some cases they can delay their **departure** from the scheme by providing the trustees with a 'period of grace' notice.
> - There are also two mechanisms which allow an **employer** to depart without becoming liable to pay a **section 75 debt**, introduced in amendments to the **Employer Debt Regulations** from April 2010:
>   – de minimis restructuring test – applicable to one-to-one restructures where trustees are satisfied that specified conditions are met indicating that the

[8] Deregulatory review of private pensions - consultation Paper, March 2007, p29
[9] Government response, December 2007, p14
[10] SI 2008/731; SI 2010/725; SI 2011/2973

amount of the **departing employer's** liabilities is minimal; and

- restructuring test – applicable to one-to-one restructures where trustees are satisfied that there is no weakening of the **covenant**.

And there are four mechanisms which allow the **employer** to depart from the scheme having paid a modified **section 75 debt**:

- scheme apportionment arrangement
- withdrawal arrangement
- approved withdrawal arrangement
- regulated apportionment arrangement

Finally a mechanism was introduced in amendments to the **Employer Debt Regulations** from 27 January 2012 which can either prevent a **section 75 debt** becoming due or modify that debt after which it has become due. This is a flexible apportionment arrangement.

Each mechanism has specific criteria and tests which must be met. In addition trustees must consider their fiduciary duties to the scheme's beneficiaries.[11]

[11] TPR, Multi-employer schemes – and employer departures, July 2012

2. 2015 call for evidence

In March 2015, DWP issued a call for evidence on Section 75 Employer Debt in Non-Associated Multi-Employer Defined Benefit Pension Schemes. It said employers in certain non-associated multi-employer schemes had raised concerns that:

> the requirement to pay the difference between the scheme's relevant assets and their proportion of the liabilities at full buy-out price if an employer stops employing active members is overly onerous for employers seeking to rationalise their pension costs.

It said there were differing views on whether the easements already introduced went far enough:

- Some stakeholders were concerned that some smaller and less financially robust employers are finding the employer debt regime overly onerous: rather than protecting the interests of members, they risked driving some employers out of business unnecessarily;
- Others were concerned that changing the rules could be destabilising for schemes and increase the risks for members.[12]

It asked for views on other options including:

- Amending the provisions so that ceasing to employ active members does not trigger employer debt. The debt would still be triggered in the event of employer solvency or scheme wind-up; and
- Changing the way liability is calculated following an employment-cessation event.[13]

2.1 Responses

In response to the consultation, the Pension and Lifetime Savings Association (then the NAPF) said particular difficulty was caused by the triggering of the employer debt with the departure of the last active scheme member working for a particular employer. On balance, it thought the solution should be to change the way the debt was calculated (i.e; to calculate it on a 'technical provisions' basis, as applies to ongoing schemes, rather than on the more stringent 'buy-out' basis). The Charity Finance Group called for the removal of the rule triggering the debt on the departure of the last active member and for flexible repayments to be allowed.

An Early Day Moon with 57 signatures called on the Government to respond to this consultation:

> That this House expresses concern that changes to pensions legislation intended to ensure that employers meet their pension scheme liabilities are causing unintended financial difficulties for small business owners in non-associated multi-employer pension schemes, including the Plumbing and Mechanical Services (UK) Industry Pension Scheme; notes that the section 75 employer debt is calculated at full buy-out level and includes a share of orphan

[12] Ibid section 2
[13] Ibid section 6

liabilities, causing debts for employers which can be substantially more than what would be required to meet pension obligations and in many cases threatening their homes and life savings; and calls for publication of a response from the Government to the consultation on section 75 employer debt legislation which closed in May 2015 and for urgent revision of the way this debt is calculated for non-associated multi-employer schemes.

3. 2017 Consultation

3.1 Defined Benefit Green Paper

In its Green Paper Security and Sustainability in Defined Benefit Pension Schemes, published on 20 February 2017, the Government said it would consult on "a new option employers can consider to manage the employer debt in these circumstances":

> 405. In 2015 we published a "Call for Evidence" seeking views about section 75 employer debt regime for non-associated multi-employer DB schemes. This explored the impact of possible changes to the employer debt regime following an employment cessation event that had been suggested by stakeholders. We intend to consult on a new option employers can consider to manage the employer debt in these circumstances.
>
> 406. More generally some respondents questioned the inclusion of orphan liabilities attributable to former employers who left the scheme prior to full buyout requirements in the calculation of an employer debt. They say that for some employers this orphan debt can be significant compared to the debt arising from their own current or former employers, and in some circumstances – for example the owners of unincorporated businesses (such as Plumbers) who may be personally liable for the debt – it may be catastrophic.
>
> 407. In the context of DB affordability we would like to understand scale of this issue and explore other ways of relieving the pressure on some employers, while ensuring that orphan members receive the full benefits that they have accrued and expect to receive.[14]

3.2 Regulation changes

DWP launched a consultation on draft regulations on 21 April 2017. It said the majority of respondents to the 2015 consultation had advocated some form of change to the employer debt regime. They were fairly evenly divided between those who felt any changes should be limited to schemes for multiple non-associated employers (who were not able to take advantage of existing flexibilities, such as apportioning liabilities to another participating employer) and those who thought they should also apply to associated employers. Attention was also drawn to the contrast with single employer schemes – where the employer can freeze the scheme and continue to make on-going contributions as necessary in respect of accrued liabilities.

The Government proposed introducing a new option for employers in multi-employer schemes to defer the requirement to pay an employer debt on ceasing to employ an active member. This would be subject to the condition that the employer retained all their previous

[14] DWP, Security and Sustainability in Defined Benefit Pension Schemes, Cm 9410, February 2017, part 4

responsibilities and continued to be treated as if they were the employer in relation to that scheme.[15]

The PLSA welcomed the consultation and said it would be important to ensure that the right balance of member protection and employer flexibility was achieved.[16]

EDM 414 in the name of Jonathan Edwards (with 30 signatures), called on the Government to find a solution:

> That this House holds grave concerns for the hundreds of plumbers in pension schemes who face employer debt under section 75 of the *Pensions Act 1995* as subsequently amended; notes that because many of the plumbing businesses are unincorporated, their personal wealth and lifetime savings are at risk; reminds the Government that it has committed to working with the industry in exploring alternative methods to help employers in such pension schemes to manage their employer debt; cautiously welcomes the Green Paper on Defined Benefit Pension Schemes published in February 2017, but has concerns over the progress made to date; and calls on the Government to reach a solution as a matter of urgency.

Response

The Government responded to its consultation on the draft regulations on 26 February 2018.[17] The *Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2018 (SI 2018/237)* are planned to come into effect on 6 April 2018. They will introduce a "deferred debt arrangement" which will allow an employer to defer their debt to a multi-employer pension scheme provided they meet certain conditions. The Explanatory Memorandum states that:

> 7.7 The deferred debt arrangement will enable an employer in a multi-employer pension scheme to defer the requirement to pay an employer debt on ceasing to employ an active scheme member. The arrangement will need the consent of the trustees who must be satisfied that the employer can continue to meet its obligations to the scheme and that the arrangement will not be of detriment to the scheme as a whole.
>
> 7.8 Once in place the deferred debt arrangement can continue for an indefinite period and during this time the deferred employer will retain all their previous responsibilities to the scheme and be treated as if they were the employer in relation to that scheme.
>
> 7.9 The instrument set out the various circumstances in which the deferred debt arrangement will come to an end. For example if the scheme itself winds up or the employer becomes insolvent. If the employer's ability to support the scheme is getting weaker the trustees can end the arrangement. The instrument lists such events and sets out what will happen about the employer debt in each circumstance.
>
> 7.10 This instrument makes changes to enable an employer in a "period of grace" to enter a deferred debt arrangement. The

[15] DWP, The draft Occupational Pension Schemes (Employer Debt) (Amendment) Regulations 2017: consultation, 21 April 2017, para 1.14

[16] PLSA welcomes DWP consultation on occupational pension scheme regulations, 24 April 2017

[17] Government response: The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2018 26 February 2018

> "period of grace" arrangement is used by employers who temporarily cease to employ an active member of a pension scheme. The employer debt does not trigger for a period of up to 36 months, providing the employer employs another active member within that time. These changes will allow an employer in a period of grace to defer the requirement to pay an employer debt indefinitely providing they meet the conditions of the deferred debt arrangement. They also increase the notification period that employers have to write to trustees to seek permission to use the period of grace from two to three months.[18]

Plumbing Pensions explained on its website that:

> In essence the easement allows an employer to exit the Scheme and defer the section 75 employer debt that would have otherwise been triggered. Employers who use this easement will remain responsible for the ongoing funding of the Scheme.[19]

3.3 The White Paper

In its March 2018 Defined Benefit Pension Scheme White Paper, the Government said it had decided not to make further changes:

> 230. The Government considered proposals to exclude orphan liabilities from the calculation of an employer debt very carefully. We looked closely at the impact any such changes to legislation would have on the security of members' benefits and the additional burden that would be placed on remaining employers. Our assessment showed that any changes of this nature could significantly weaken the security of members' benefits and increase the risk of schemes with high levels of orphan liabilities transferring to the PPF with an increased deficit. It also showed that simply excluding the pre-2005 orphan liabilities from an employer debt calculation would not necessarily solve employers' affordability issues.
>
> 231. Having reviewed all the responses to the Green Paper and after considering all the available evidence, we have found that there is insufficient justification to warrant amending the measure of calculation of these debts. The Government believes that the existing arrangements provide sufficient flexibility for employers to manage their section 75 debts and that maintaining the current calculation method is the most viable way of ensuring that members receive their pension benefits over the longer term.
>
> 232. The existing arrangements now provide a sufficient range of mechanisms to enable employers, including those who could be personally liable for the debt, to provide for and meet their pension liabilities.[20]

[18] Explanatory Memorandum; Impact Assessment, 2018, p4

[19] Plumbing Pensions/new deferred debt arrangements

[20] DWP, Protecting Defined Benefit Pension Schemes, Cm 9591, March 2018

4. Plumbing Pension Scheme

The Plumbing and Mechanical Services (UK) Industry Pension Scheme - an industry-wide scheme covering 400 contributing employers and 36,000 members. It says there are particular challenges applying the employer debt legislation in its particular circumstances:

> The legislation is not easy to apply because:
>
> - The way the Scheme held data was member-centric which makes it extremely difficult to extract membership data for individual employers.
> - The practical difficulties mean the cost of doing the debt calculations and pursuing payment each time an employer has a trigger event is likely to exceed the recovery level in most cases. [21]

4.1 Debates in Parliament

In debate on the Pensions Schemes Bill 2016-17, the then SNP Pensions Spokesperson, Ian Blackford, proposed amendments to "protect incorporated businesses who are at risk of losing their personal assets, including their homes":

> These new clauses would help to deal with the current issue facing plumbers in Scotland. Plumbing Pensions (UK) Ltd was established in 1975 to provide pensions for the plumbing and heating industry UK-wide. The scheme is managed by a group of trustee directors appointed from nominees of the Association of Plumbing and Heating Contractors in England and Wales, the Scottish and Northern Ireland Plumbing Employers Federation, and Unite the union. The scheme has over 36,000 members and assets in excess of £1.5 billion. Under section 75 of the *Pensions Act 1995*, employers can in certain circumstances become liable for what is known as a section 75 employer debt. The debt is calculated on a "buy-out" basis, which tests whether there would be sufficient assets in the scheme to secure all the members' benefits by buying annuity contracts from an insurance company. Legislation specifies that a section 75 employer debt becomes payable when the employer either becomes insolvent, winds up, changes its legal status, or ceases to have any active members in the scheme. While we must be mindful that the purpose of these rules is to protect pension benefits, the way in which they are currently framed creates problems for some stakeholders. We are sympathetic to the concerns raised by SNIPEF.[22]

The then Pensions Minister Richard Harrington said it was a complex issue, but one on which the Government would make progress.[23]

In a Westminster Hall debate in January 2018 Kirstene Hair said the arrangements were "not suited to the plumbers' pension scheme" and had "inadvertently left many plumbers facing vast liabilities when they come up to retirement."[24] Pensions Minister Guy Opperman responded

[21] Ibid
[22] HC Deb 22 March 2017 c893
[23] Ibid c899
[24] HC Deb 11 January 2018 c579

that the intention of the legislation was to protect members' pensions. It would be difficult to protect just this one scheme:

> The Government estimate that there are about 25 other multi-employer schemes with a design similar to that of the plumbers' pension scheme. It would be difficult to consider introducing specific legislation about one particular scheme's problems, especially as, since 2005, many similar such schemes have paid their section 75 debts and complied with the current legislation. That includes employers who were personally liable for any debt they may have owed. [25]

Changing the law to enable underfunded schemes to accept less, would simply transfer more risk to scheme members. There was already some flexibility in the system:

> The plumbing pension trustee has a streamlined flexible apportionment arrangement process in place to help small employers wishing to incorporate. Individuals who want more details on this arrangement should contact the plumbing pension scheme to discuss their situation and whether an FAA can help. I urge individuals worried about their personal liability to contact the scheme to discuss their situation in more detail.
>
> Once the debts have been calculated, the scheme trustees can also use their discretion not to pursue a debt when they expect that doing so would represent a disproportionate cost to the scheme.[26]

The deferred debt arrangement, on which the Government had recently consulted, would be a further tool for those affected by the problem (see above).[27]

Presenting a Ten-Minute Rule Bill to Parliament in January 2018, Alan Brown MP set out his concerns about the impact on employers who had contributed to the scheme:

> […] in 2005 the assessment of such schemes was altered to a buy-out basis: if the scheme were to close down, what would be the estimated cost for an insurance company to pick up the liabilities in the form of annuities? That is where the problems began.
>
> That process can be up to three times more expensive in its valuations, and it has been applied retrospectively, so companies that previously left the scheme in good faith and did not have to pay any shortfall—because there was not one—are now deemed to have created a debt for the scheme. That debt cannot be recovered, so it is passed on to the remaining employers. The same applies to companies that become insolvent. Those accrued debts are known as orphan liabilities. Any company that now leaves the scheme triggers a section 75 debt, which attributes orphan liabilities into the mix.
>
> Besides leaving the scheme, there are other ways of triggering a section 75 debt, such as no longer having an employee enrolled in the scheme, a change in ownership and changing from unincorporated status. In fact, some employers have inadvertently

[25] Ibid c584
[26] Ibid c585
[27] Ibid c586

> triggered the section 75 debt process through such actions, not realising what the outcome would be.
>
> Although an accurate way of assessing a debt share under section 75 rules has yet to be formally agreed, estimates to date provide ridiculous sums of several hundred thousand pounds—and, in some cases, more than £1 million. That is completely unsustainable and, if put into practice, will bankrupt several individuals. That in turn will create a domino effect, increasing debts on remaining scheme members until the whole thing collapses. Jobs and apprenticeships will be lost, and individuals' and families' lives will be completely ruined.[28]

He proposed a number of solutions, including allowing a change to the method of valuing the employer debt in this case, or finding a solution for orphaned liabilities:

> Why should current employers pay for historic debts applied retrospectively? Additionally, the Pension Protection Fund should be the guarantor of last resort for orphaned liabilities. It is hoped that such a guarantee would not be instigated, but it is the correct measure. We are currently in the crazy position of Carillion having created a pensions black hole while paying top staff handsomely, with the PPF picking up the slack. However, the Government are unwilling to do the same for the plumbing pensions. Carillion will make more firms insolvent, putting further liabilities on to the pension scheme, yet the Government are stepping in to help the Carillion pensioners but not the plumbers.
>
> I also suggest that if the PPF has to step in for orphaned debts, in reality the whole scheme will have failed anyway. The Minister stated that using the PPF in such a way would be unfair to payers of the PPF levy. However, the plumbing pension fund is in fact a levy payer, so that argument falls down there.
>
> We must also put legislation in place to allow unincorporated businesses to change, to protect them from unlimited liability. They must be able to incorporate without triggering a section 75 debt. The Minister claimed that that is possible under existing legislation, but it is not as straightforward as he made out. A number of exemptions act as barriers, with the main one being the funding test from the flexible apportionment arrangement. They must be removed, and my Bill aims to do that. The Minister needs to understand that that option is available only to employers currently participating in the scheme and not those who have left or are no longer trading. That is why the other measures I have outlined are also critical.[29]

In response to a PQ in January 2019, Pensions Minister Guy Opperman said that, since 2005 when the legislation was strengthened, this scheme had not "calculated a section 75 employer debt for employers affected by this issue." The key pressure was on the trustees was to "ensure that they carry out a proper calculation so that all parties can then understand the situation."[30]

[28] *Multi-employer Pension Schemes Bill 2017-19.* The Ten Minute Rule Bill procedure allows a backbench MP to make his or her case for a new Bill in a speech lasting up to ten minutes.

[29] HC Deb 24 January 2018 c281-3

[30] PQ 208372, 21 January 2019.

In October 2019, he referred back to the work done at the time of the 2018 White Paper:

> The issue of Section 75 debt notices and estimates are a private matter between the scheme trustee and employers. It is the role of the scheme trustee to ensure that the pension scheme is run properly and that members' benefits are secure.
>
> DWP's 2017 Green Paper "security-and-sustainability-in-defined-benefit-pension-schemes" assessed changing the way employer debts are calculated and the impact this would have on members' benefit security and remaining employers. This assessment showed any changes would weaken members' benefit security, whilst placing significant additional costs on employers who would remain in the scheme. It also showed that excluding orphan liabilities from employer debt calculations would not necessarily resolve the issues some employers face with complying with their employer debt obligations.[31]

MPs have continued to raise the issue in Parliament. For example:

> John Mann: My constituent Margaret Briggs, having paid £21,000 over 11 years with four employees into a pension scheme, has in the past four weeks received a demand for £331,000. How is she expected to pay this, and how can that possibly be rational and fair?
>
> Guy Opperman: I cannot speak on the specifics of the individual scheme, but the majority of the employers in these schemes are incorporated and are not personally liable for any debt. The flexible apportionment arrangement can be used to help unincorporated employers who wish to incorporate, and the plumbing pension trustee has a streamlined flexible apportionment arrangement process that employers can use. Alternatively, where the employer debt arises in multi-employer schemes as a result of an employer cessation event, there are a number of mechanisms in the occupational pension schemes employer debt regulations that can be of assistance
>
> Alan Brown (Kilmarnock and Loudoun) (SNP): Rubbish.[32]

In an article in the Scotsman in December 2019, the chief executive of the Scottish and Northern Ireland Plumbing Employers' Federation said the impact on some of its members had been devastating:

> In the most extreme cases, we are seeing firms fold as a result of these pension liabilities. With no incentive for businesses to grow, some are downsizing and cutting back on investment in new equipment and technology.
>
> There's also a reluctance to take on new apprentices and expand their workforce, which has obvious long-term repercussions for the industry and the wider community. Having been issued with notices to pay sums ranging from a few hundred thousand to a million pounds or more, employers now in retirement are faced with personal bankruptcy.
>
> Owners of unincorporated family-run firms that are currently trading can't sell up or pass on the business to the next generation, for fear of passing on an unknown liability.

[31] PQ 294206 8 October 2019
[32] HC Deb 1 July 2019

> The effect of all of this on the mental health of our members cannot be overstated.[33]

For those who had already retired, there was little help available:

> For those firms that are currently trading, there are some options available for managing or delaying Section 75 liabilities, which are known as "easements". Businesses that are unincorporated have the option of transferring to limited status, which gives a degree of protection by shielding owners' personal assets from potential pension liabilities.
>
> But for those who have already retired, there is little help available. And if a current or former owner of an unincorporated business dies, his or her estate could be frozen indefinitely until the extent of their pension liabilities are determined. The real irony here is that the scheme may never need to call in these liabilities while it continues to be well funded.
>
> That is why SNIPEF is continuing to campaign for a change to the law. We do not believe it was ever the government's intention to pass legislation with such destructive and unfair consequences.[34]

4.2 Scheme consultation on calculation methodology

In 2018, the Trustee of the Plumbing Pension Scheme said it had decided to take steps to calculate and recover s75 employer debts:

> Since the legislation changed in 2005, the Trustee has been in communication with the Pensions Regulator, the Department for Work and Pensions and its own professional advisors about the challenges the Scheme has in applying the legislation. The Trustee has lobbied for a change in the law or failing that, a special exemption from the legislation for the Scheme which is fair to the participating employers and which protects members. By early 2014, and following discussions with the Pensions Regulator, it became apparent that a change in the law was unlikely to be made in the near future so the Trustee decided to take steps to begin calculating and recovering section 75 employer debts.[35]

It is currently consulting on the calculation methodology. Once this has been agreed, it will begin issuing employer debt notices:

> Once a calculation methodology has been agreed, the Trustee will:
>
> - Write to employers to inform them of the consultation outcome.
> - Instruct the Scheme Actuary to begin calculating and certifying section 75 employer debts for businesses that have had a trigger event where it is not considered disproportionate to do so; and

[33] Plumbing pensions shows section 75 punishes good employers, Scotsman, 16 December 2019

[34] Plumbing pensions shows section 75 punishes good employers, Scotsman, 16 December 2019

[35] https://www.plumbingpensions.co.uk/employers/section-75-employer-debt/employer-consultation-2018/

- Instruct the staff at Plumbing Pensions (UK) Administration Ltd to begin issuing section 75 employer debt notices to businesses that have had a trigger event.

> In the interim, the Trustee will continue to work closely with Government officials at the Department for Work and Pensions and the Pensions Regulator to see if a solution can be found that:

- Helps unincorporated businesses, for example by allowing them to incorporate without triggering a section 75 employer debt.
- Makes the debt calculations fairer by reviewing how orphan liabilities are treated.
- Allows employers to stop accruing benefits without triggering a section 75 employer debt.[36]

The consultation ran until 21 May 2018. The Trustee has said that the feedback has enabled it to "agree a calculation methodology and instruct the Scheme Actuary to begin work on the employer debts." A booklet said estimates of section 75 employer debt estimates as at 5 April 2017 would be issued by 30 June 2019:

> **By 31 December 2018**
>
> Calculations for section 75 employer debt estimates as at 5 April 2017 will be available to all participating employers on request. Participating employers that have not triggered an employer debt are strongly recommended to seek advice on whether their company auditor would require a debt estimate to be shown in their accounts.
>
> **By 1 January 2019**
>
> The Scheme Actuary will begin to calculate debts for historic trigger events.
>
> **By 31 January 2019**
>
> First historic debt calculation will be completed and issued (12-week process as set out below would apply at this point).
>
> **By 30 June 2019**
>
> Historic section 75 employer debts all calculated and issued.
>
> The Trustee has also agreed a debt collection process, but reserves the right to modify this if required:
>
> 1. The Scheme Actuary will provide a debt estimate along with a summary of the membership data used in the calculation.
>
> 2. Employers will have at least 6 weeks to correct or query the data held by the administration team. Once an employer's formal debt notice is issued at the end of the 6 weeks, employers will have a further 6 weeks to arrange payment or propose a payment plan. An employer help sheet is being prepared on agreeing a suitable payment plan.
>
> 3. This means employers will have a period of at least 12 weeks from receiving an initial debt estimate before any monies become due.[37]

[36] Plumbing Pensions/Employer Consultation 2018/next steps
[37] Plumbing Pensions – consultation response, July 2018

Following consultation with employers, the scheme was closed to future accrual from the end of June 2019.[38] A "lock-in rule" was put in place until the end of 2020, preventing employers from ceasing to be a participating employer in the scheme without trustee consent.[39]

[38] Plumbing pensions – update about scheme closure, 27 June 2019
[39] Plumbing pensions – lock in consultation; Lock-in rule extended, December 2019

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