
STATUTORY INSTRUMENTS

2005 No. 1986

The Financial Assistance Scheme Regulations 2005

PART 3

QUALIFYING PENSION SCHEMES

Qualifying pension schemes

9.—(1) An occupational pension scheme shall be a qualifying pension scheme for the purposes of these Regulations where—

- (a) immediately before the time when the scheme began to wind up, it was neither a money purchase scheme nor a scheme of a description prescribed in regulation 10;
 - (b) the scheme began to wind up during the period beginning on 1st January 1997 and ending on 5th April 2005;
 - (c) the employer in relation to that scheme satisfies the condition in regulation 11 or in relation to a multi-employer scheme, the condition in regulation 12 is satisfied; and
 - (d) the details prescribed in regulation 14 have been notified to the scheme manager by a person, in the form and manner and before the date prescribed in that regulation.
- (2) The following shall be treated as separate schemes for the purposes of these Regulations—
- (a) in relation to an occupational pension scheme which is not a tax approved scheme but contains one or more sections which, by virtue of section 611(3) of the ICTA(1) (definition of “retirement benefits scheme”), are treated by the Commissioners of HMRC as a tax approved scheme, those sections which are so treated;
 - (b) sections of sectionalised multi-employer schemes as defined for the purposes of regulation 12,

and references in these Regulations to schemes shall be construed accordingly.

Other schemes which are not qualifying pension schemes

10. The following are descriptions of schemes for the purposes of regulation 9(1)(a)—

- (a) a public service pension scheme under the provisions of which there is no requirement for assets related to the intended rate or amount of benefit under the scheme to be set aside in advance (disregarding requirements relating to additional voluntary contributions);
- (b) a scheme which is made under section 7 of the Superannuation Act 1972(2) or under Article 9 of the Superannuation (Northern Ireland) Order 1972(3) (superannuation of persons employed in local government service etc.) and provides pensions to persons employed in local government service;

(1) Section 611(3) is amended by the Finance Act 1999, section 79 and Schedule 10 and by the Finance Act 2000 (c. 17), section 61 and Schedule 13.

(2) 1972 c. 11.

(3) S.I.1972/1073 (N.I.10).

- (c) a scheme which is made under section 2 of the Parliamentary and Other Pensions Act 1987(4) (power to provide for pensions for Members of the House of Commons etc.);
- (d) a scheme which is established under section 48 of the Northern Ireland Act 1998(5) (pensions of members), or which was established under Part 2 of the Ministerial Salaries and Members' Pensions Act (Northern Ireland) 1965(6) or Article 3 of the Assembly Pensions (Northern Ireland) Order 1976(7);
- (e) a scheme in respect of which a relevant public authority has given a guarantee or made any other arrangements for the purposes of securing that the assets of the scheme are sufficient to meet its liabilities;
- (f) a scheme which provides relevant benefits within the meaning of section 612(1) of the ICTA but which is neither a tax approved scheme nor a relevant statutory scheme within the meaning of section 611A of that Act(8) (definition of “relevant statutory scheme”);
- (g) a scheme—
 - (i) which has been categorised before 18th April 2005, by the Commissioners of Inland Revenue, and on or after that date, by the Commissioners of HMRC, for the purposes of its approval as a centralised scheme for non-associated employers;
 - (ii) which is not contracted-out in accordance with section 9 of the 1993 Act(9); and
 - (iii) under the provisions of which the only benefits that may be provided on or after retirement (other than money purchase benefits derived from the payment of voluntary contributions by any person) are lump sum benefits which are not calculated by reference to a member’s salary;
- (h) a scheme—
 - (i) the only benefits provided by which (other than money purchase benefits) are death benefits; and
 - (ii) under the provisions of which no member has accrued rights (other than rights to money purchase benefits);
- (i) a scheme with such a superannuation fund as is mentioned in section 615(6) of the ICTA(10) (exemption from tax in respect of certain pensions);
- (j) a scheme which does not have its main place of administration registered in the United Kingdom;
- (k) a scheme with fewer than two members;
- (l) a scheme which is a small self-administered scheme for the purposes of the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Small Self-administered Schemes) Regulations 1991(11) as in force on the day on which this regulation comes into force.

(4) 1987 c. 45.

(5) 1998 c. 47.

(6) 1965 c. 18 (N.I.).

(7) S.I.1976/1779.

(8) Section 611A is inserted by the Finance Act 1989 (c. 26), section 75 and Schedule 6, paragraph 15 and amended by the Finance Act 1999, section 52(1) and Schedule 5, paragraph 5.

(9) Section 9 is amended by the 1995 Act, section 136(3) and (4), Schedule 5, paragraphs 21 and 24 and by the Social Security Contributions (Transfer of Functions) Act 1999 (c. 2), Schedule 1, paragraph 35.

(10) Section 615(6) has effect in relation to trust based occupational pension schemes established in respect of persons wholly employed in a trade or undertaking outside of the United Kingdom. It was amended by the Finance Act 1999, section 79 and Schedule 10.

(11) S.I.1991/1614.

Condition to be satisfied by employer

11.—(1) The condition to be satisfied by the employer for the purposes of regulation 9(1)(c), where the scheme is not a multi-employer scheme, is that an insolvency event has occurred in relation to the employer on or before the last day of the notification period.

- (2) The reference to the employer in paragraph (1)—
- (a) includes every person who employed persons in the description or category of employment to which the scheme relates or related immediately before the time when the scheme began to wind up; or
 - (b) where the scheme had no active members immediately before the time it began to wind up, includes every person who employed persons in the description or category of employment to which the scheme relates or related immediately before the time at which the scheme ceased to have any active members.

Condition to be satisfied: multi-employer schemes

12.—(1) In relation to a section of a sectionalised multi-employer scheme, the condition to be satisfied for the purposes of regulation 9(1)(c) is that an insolvency event has occurred on or before the last day of the notification period—

- (a) in relation to the employer in that section;
- (b) where there is more than one employer in that section, in relation to the principal employer in that section; or
- (c) where there is more than one employer in that section and there is no principal employer in that section, in relation to all the employers participating in that section.

(2) In relation to a multi-employer scheme which is not a sectionalised multi-employer scheme, the condition to be satisfied for the purposes of regulation 9(1)(c) is that an insolvency event has occurred on or before the last day of the notification period—

- (a) in relation to the principal employer; or
- (b) where there is no principal employer, in relation to all the employers participating in the scheme.

(3) The references to the employer in paragraph (1) are—

- (a) to the person who employed persons in the description or category of employment to which the section of the scheme relates or related immediately before the time when the scheme began to wind up; or
- (b) where the scheme had no active members immediately before the time it began to wind up, to the person who was the employer of persons in the description or category of employment to which the section of the scheme relates or related immediately before the time when the scheme ceased to have any active members in relation to that section.

(4) The references to the employer in paragraph (2) are—

- (a) to the person who employed persons in the description or category of employment to which the scheme relates or related immediately before the time when the scheme began to wind up; or
- (b) where the scheme had no active members immediately before the time it began to wind up, to the person who was the employer of persons in the description or category of employment to which the scheme relates or related immediately before the time when the scheme ceased to have any active members in relation to it.

(5) The references to the principal employer in paragraphs (1)(b) and (c) and (2) are to the employer who was the principal employer immediately before the time when the scheme began to wind up.

(6) In this regulation—

“principal employer” means the employer who—

- (a) is the principal employer for the purposes of the scheme, or of a section of a sectionalised multi-employer scheme, in accordance with the rules of the occupational pension scheme; or
- (b) has power to act on behalf of all the employers in the scheme, or in a section of a sectionalised multi-employer scheme, in relation to the rules of that scheme;

“sectionalised multi-employer scheme” means a multi-employer scheme which is divided into two or more sections and the provisions of the scheme are such that—

- (a) different sections of the scheme apply or applied to different employers or groups of employers (whether or not more than one section applies or applied to any particular employer or groups including any particular employer);
- (b) any contributions payable or paid to the scheme by an employer, or by a member in employment under that employer, are allocated to that employer’s section (or if more than one section applies or applied to the employer, to the section which is, or was, appropriate in respect of the employment in question); and
- (c) a specified part or proportion of the assets of the scheme is, or was, attributable to each section of the scheme and cannot or could not be used for the purpose of any other section of the scheme.

Insolvency events

13.—(1) “Insolvency event” shall, for the purposes of regulations 11 and 12, be interpreted in accordance with—

- (a) section 121(2) to (4) (other than subsection (3)(f) of that section); or
- (b) Article 105(2) to (4) and (12) (other than paragraph (3)(f) of that Article),

and the following provisions of this regulation.

(2) Where the employer in relation to an occupational pension scheme is a person specified in paragraph (3), an insolvency event shall be treated as having occurred in relation to that employer for the purposes of regulations 11 and 12 where the scheme manager is satisfied that—

- (a) that employer was unlikely to continue as a going concern; and
- (b) that situation applied to that employer on or before the last day of the notification period.

(3) The persons specified in this paragraph are—

- (a) a public body—
 - (i) in relation to which it is not possible for an insolvency event within the meaning of section 121 or Article 105 to occur; and
 - (ii) which is not the employer in relation to an occupational pension scheme in respect of which a relevant public authority has either—
 - (aa) given a guarantee in relation to any part of the scheme, any benefits payable under the scheme or any member of the scheme; or
 - (bb) made any other arrangements for the purposes of securing that the assets of the scheme are sufficient to meet any part of its liabilities;

- (b) a charity (as construed in accordance with the Charities Act 1993⁽¹²⁾ or the Charities Act (Northern Ireland) 1964⁽¹³⁾) which is not a company or other body corporate; or
 - (c) a trade union within the meaning given in section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992⁽¹⁴⁾ or in Article 3(1) of the Industrial Relations (Northern Ireland) Order 1992⁽¹⁵⁾ in relation to which it is not possible for an insolvency event within the meaning of section 121 or Article 105 to occur.
- (4) An insolvency event also occurs for the purposes of regulations 11 and 12 where any of the following events occur on or before the last day of the notification period—
- (a) in relation to a company—
 - (i) where an administration order is made—
 - (aa) by the court in relation to the company under, or by virtue of any enactment which applies, Part 2 of the 1986 Act (administration orders) (with or without modification); or
 - (bb) by the High Court in relation to the company under, or by virtue of any statutory provision which applies, Part 3 of the Insolvency (Northern Ireland) Order (administration orders) (with or without modification);
 - (ii) where a resolution is passed for a voluntary winding up of the company with a declaration of solvency under section 89 of the 1986 Act or under Article 75 of the Insolvency (Northern Ireland) Order; or
 - (iii) where notice is published in the Gazette that the company has been struck off the register pursuant to section 652 or 652A of the Companies Act 1985⁽¹⁶⁾ or Article 603 or 603A of the Companies (Northern Ireland) Order 1986⁽¹⁷⁾;
 - (b) in relation to a relevant body, where—
 - (i) any of the events referred to—
 - (aa) in section 121(3) occurs in relation to that body by virtue of the application (with or without modification) of any provision of the 1986 Act or by or under any other enactment; or
 - (bb) in Article 105(3)⁽¹⁸⁾ (insolvency events) occurs in relation to that body by virtue of the application (with or without modification) of any provision of the Insolvency (Northern Ireland) Order or by or under any other statutory provision; or
 - (ii) an administration order is made by the court in respect of the relevant body by virtue of any enactment which applies Part 2 of the 1986 Act or Part 3 of the Insolvency (Northern Ireland) Order (with or without modification);
 - (c) in relation to a limited liability partnership, where notice has been published in the Gazette that the partnership has been struck off the register pursuant to section 652 or 652A of the Companies Act 1985⁽¹⁹⁾ or Article 603 or 603A of the Companies (Northern Ireland) Order 1986⁽²⁰⁾;

⁽¹²⁾ 1993 c. 10.

⁽¹³⁾ 1964 c. 33 (N.I.).

⁽¹⁴⁾ 1992 c. 52.

⁽¹⁵⁾ S.I.1992/807 (N.I.5).

⁽¹⁶⁾ 1985 c. 6. Section 652A is inserted by the Deregulation and Contracting Out Act 1994 (c. 40), section 13(1) and Schedule 5, paragraph 2.

⁽¹⁷⁾ S.I.1986/1032 (N.I.6). Article 603A is inserted by the Deregulation and Contracting Out Act 1994, section 13(2) and Schedule 6, paragraph 2.

⁽¹⁸⁾ See also Article 105(12).

⁽¹⁹⁾ Sections 652 and 652A are applied to limited liability partnerships by the Limited Liability Partnerships Regulations 2001 (S.I.2001/1090).

- (d) in relation to a building society, where there is dissolution by consent of the members under section 87 of the Building Societies Act 1986 **(21)** (dissolution by consent);
- (e) in relation to a friendly society, where there is dissolution by consent of the members under section 20 of the Friendly Societies Act 1992 **(22)** (dissolution by consent); and
- (f) in relation to an industrial and provident society, where there is dissolution by consent of the members under section 58 of the Industrial and Provident Societies Act 1965 **(23)** or section 67 of the Industrial and Provident Societies Act (Northern Ireland) 1969 **(24)** (instrument of dissolution).
- (5) In this regulation, a reference to Part 2 of the 1986 Act (administration orders) shall, in so far as it relates to a company or society listed in section 249(1) of the Enterprise Act 2002 **(25)** (special administration regimes), have effect as if it referred to Part 2 of the 1986 Act as it had effect immediately before the coming into force of section 248 of the Enterprise Act 2002 (replacement of Part 2 of the 1986 Act).
- (6) In this regulation—
- “the 1986 Act” means the Insolvency Act 1986 **(26)**;
- “the Insolvency (Northern Ireland) Order” means the Insolvency (Northern Ireland) Order 1989 **(27)**;
- “administration order” means an order whereby the management of the company or relevant body, as the case may be, is placed in the hands of a person appointed by the court or, in Northern Ireland, by the High Court;
- “the Gazette” means, in respect of companies or limited liability partnerships registered—
- (a) in England and Wales, the London Gazette;
- (b) in Scotland, the Edinburgh Gazette; or
- (c) in Northern Ireland, the Belfast Gazette;
- “public body” means a government department or any non-departmental public body established by—
- (a) in relation to Great Britain, an Act of Parliament or by a statutory instrument made under an Act of Parliament to perform functions conferred on it under, or by virtue of, that Act or instrument or any other Act or instrument;
- (b) in relation to Northern Ireland, a statutory provision to perform functions conferred on it under that statutory provision or any other such statutory provision;
- “relevant body” means—
- (a) a credit union within the meaning given in section 31(1) of the Credit Unions Act 1979 **(28)** or Article 2(2) of the Credit Unions (Northern Ireland) Order 1985 **(29)** (interpretation);
- (b) a limited liability partnership within the meaning given in section 57(6) or Article 53(6) (partnerships and limited liability partnerships);

(20) Articles 603 and 603A are applied to limited liability partnerships by the Limited Liability Partnerships Regulations (Northern Ireland) 2004 (S.R.2004/307).

(21) 1986 c. 53.

(22) 1992 c. 40.

(23) 1965 c. 12.

(24) 1969 c. 24 (N.I.).

(25) 2002 c. 40.

(26) 1986 c. 45.

(27) S.I.1989/2405 (N.I.19).

(28) 1979 c. 34.

(29) S.I.1985/1205 (N.I.12).

- (c) a building society within the meaning given in section 119 of the Building Societies Act 1986 (interpretation);
- (d) a person who has permission to act under Part 4 of the FSMA (permission to carry out regulated activities);
- (e) the society of Lloyd's and Lloyd's members who have permission under Part 19 of the FSMA (Lloyd's);
- (f) a friendly society within the meaning given in the Friendly Societies Act 1992; or
- (g) a society which is registered as an industrial and provident society under the Industrial and Provident Societies Act 1965 or under the Industrial and Provident Societies Act (Northern Ireland) 1969;

“statutory provision” has the meaning given in section 1(f) of the Interpretation Act (Northern Ireland) 1954(30).

Notification of details

14.—(1) Where an occupational pension scheme is winding up, the prescribed details for the purposes of regulation 9(1)(d) are—

- (a) the name of the scheme;
- (b) the pension scheme registration number which is allocated to that scheme in the register;
- (c) the name (and if there has been a change of name, the previous name) and address of any employer of earners in employment to which the scheme relates or has related;
- (d) the name and address of at least one trustee of the scheme.

(2) The persons who may supply the details in paragraph (1) are—

- (a) any trustee of the scheme including a trustee appointed by the Regulator under section 7 or 23(1) of the 1995 Act(31);
- (b) a member of the scheme or his appointed representative;
- (c) a surviving spouse or civil partner of a member of the scheme who has died; or
- (d) any professional adviser in relation to the scheme.

(3) Where an occupational pension scheme has wound up, the prescribed details for the purposes of regulation 9(1)(d) are—

- (a) the name of the scheme; and
- (b) the name (and if there has been a change of name, the previous name) and address of any employer of earners in employment to which the scheme related.

(4) The persons who may supply the details in paragraph (3) are—

- (a) a former trustee or manager of the scheme;
- (b) a former member of the scheme or his appointed representative;
- (c) a surviving spouse or civil partner of a former member of the scheme who has died;
- (d) any former professional adviser in relation to the scheme; or
- (e) any insurance company which is paying annuities to former members of that scheme.

(5) The details in paragraphs (1) and (3) must—

- (a) be notified in writing; and

(30) 1954 c. 33 (N.I.). Section 1(f) is amended by the Northern Ireland (Modification of Enactments No.1) Order 1999 (S.I.1999/663), Article 2(1) and Schedule 1, paragraph 9(1).

(31) Section 7 is amended by the Act, Schedule 12, paragraph 36. Section 23 is substituted by section 36(3) of the Act.

- (b) have been notified to the scheme manager—
 - (i) no earlier than 1st September 2005; but
 - (ii) by no later than 28th February 2006 or by no later than such later date by which the scheme manager has indicated that he may accept notification of those details in the case of any particular scheme.