

## STATUTORY INSTRUMENTS

# 2005 No. 441

## The Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations 2005

### [<sup>F1</sup>PART 6

#### NON-SEGREGATED SCHEMES:

#### [<sup>F1</sup>SCHEMES WITHOUT PROVISION FOR PARTIAL WIND UP ON WITHDRAWAL OF A PARTICIPATING EMPLOYER

#### Textual Amendments

- F1** Pt. 6 substituted (1.8.2005) by [The Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 2005 \(S.I. 2005/2113\)](#), regs. 1(2), **10(4)**

#### Application and effect

**61.** This regulation applies to a multi-employer scheme which is not divided into two or more sections (a “non-segregated scheme”) the rules of which do not provide for the partial winding up of the scheme when an employer in relation to the scheme ceases to participate in the scheme.

#### Notification of insolvency events, confirmation of scheme status etc.

**62.**—(1) Section 120 of the Act (duty to notify insolvency events in respect of employers) shall be modified in its application to a scheme to which regulation 61 applies so that it shall be read as if—

- (a) for subsection (1), there were substituted the following subsection—

“(1) This section applies where, in the case of a multi-employer scheme which is not divided into two or more sections (a “non-segregated scheme”), an insolvency event occurs in relation to an employer in relation to the scheme.”; and

- (b) after subsection (2), there were inserted the following subsection—

“(2A) Where the trustees or managers of a non-segregated scheme receive a notice from an insolvency practitioner under subsection (2), they must send a copy of that notice as soon as practicable to all the employers in relation to the scheme.”.

(2) Section 122 of the Act (insolvency practitioner’s duty to issue notices confirming status of the scheme) shall be modified in its application to a scheme to which regulation 61 applies so that it shall be read as if—

- (a) for subsection (1), there were substituted the following subsection—

“(1) This section applies where an insolvency event has occurred in relation to any employer in relation to a non-segregated scheme.”;

- (b) in subsections (2), (3)(a), (4) and (6), for the words “the employer”, there were substituted the words “an employer”; and

(c) after subsection (6), there were inserted the following subsection—

“(6A) Where the trustees or managers of a non-segregated scheme receive a notice issued by an insolvency practitioner or a former insolvency practitioner under subsection (6), they must send a copy of that notice as soon as practicable to all the employers in relation to the scheme.”.

(3) Section 123 of the Act (approval of notices issued under section 122) shall be modified in its application to a scheme to which regulation 61 applies so that it shall be read as if—

<sup>F2</sup>(a) .....

(b) for subsection (2), there were substituted the following subsection—

“(2) The Board must determine whether to approve the section 122 notice received in relation to that employer.”;

(c) in paragraph (e) of subsection (4), for the words “in relation to the employer, the employer”, there were substituted the words “in relation to an employer, that employer”; and

(d) after subsection (4), there were inserted the following subsection—

“(4A) Where the trustees or managers of a non-segregated scheme receive a copy of a determination notice issued by the Board under subsection (4), they must send a copy of that notice as soon as practicable to all the employers in relation to the scheme.”.

(4) Section 124 of the Act (Board’s duty where there is a failure to comply with section 122) shall be modified in its application to a scheme to which regulation 61 applies so that it shall be read as if—

(a) in subsection (1)—

(i) for the words “This section applies where in relation to an occupational pension scheme”, there were substituted the words “This section applies where in relation to a non-segregated scheme”; and

(ii) in paragraphs (a) and (b) of subsection (1), for the words “the employer”, there were substituted the words “an employer”;

(b) in subsection (4)—

(i) in paragraph (d), for the words “the employer”, there were substituted the words “an employer”; and

(ii) in paragraph (e), for the words “in relation to the employer, the employer”, there were substituted the words “in relation to an employer, that employer”; and

(c) after subsection (4), there were inserted the following subsection—

“(4A) Where the trustees or managers of a non-segregated scheme receive a copy of a notice issued by the Board under section 122 by virtue of this section, they must send a copy of that notice as soon as practicable to all the employers in relation to the scheme.”.

(5) Section 125 of the Act (binding notices confirming status of scheme) shall be modified in its application to a scheme to which regulation 61 applies so that it shall be read as if—

(a) in subsection (3)—

(i) in paragraph (d), for the words “the employer”, there were substituted the words “an employer”; and

(ii) in paragraph (e), for the words “in relation to the employer, the employer”, there were substituted the words “in relation to an employer, that employer”; and

(b) after subsection (3), there were inserted the following subsection—

“(3A) Where the trustees or managers of a non-segregated scheme receive a notice from the Board under subsection (3) together with a copy of the binding notice, they must

send a copy of the notice and the binding notice as soon as practicable to all the employers in relation to the scheme.”.

#### Textual Amendments

- F2** Reg. 62(3)(a) omitted (6.4.2008) by virtue of [The Occupational Pension Schemes \(Employer Debt and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/731\)](#), regs. 2(1), **17** (with reg. 2(3)-(8))

#### Eligible schemes

**63.**—(1) Section 126(1) of the Act (eligible schemes) shall be modified in its application to a scheme to which regulation 61 applies so that it shall be read as if, for the words “an occupational pension scheme”, there were substituted the words “a non-segregated scheme”.

(2) Paragraph (1) shall not have effect in relation to sections 174 to 181 of the Act (the levies).

#### Duty to assume responsibility for schemes

**64.**—(1) Section 127 of the Act (duty to assume responsibility for schemes following insolvency event) shall have effect in relation to a scheme to which regulation 61 applies and, for this purpose, shall be modified so that it shall be read as if—

(a) for subsection (1), there were substituted the following subsection—

“(1) This section applies where a qualifying insolvency event has occurred in relation to an employer in relation to a non-segregated scheme.”; and

(b) for subsection (3), there were substituted the following subsection—

“(3) For the purposes of this section, an insolvency event (“the current event”) in relation to an employer in relation to an eligible scheme is a qualifying insolvency event if—

(a) it occurs—

(i) simultaneously in relation to more than one of the employers in relation to the scheme at a time when those employers are the only employers in relation to the scheme, or

(ii) in relation to an employer in relation to the scheme at a time when all other employers in relation to the scheme have either had—

(aa) an insolvency event occur in relation to them and an insolvency practitioner is still required by law to be appointed to act in relation to them, or

(bb) a notice given in respect of them by the trustees or managers of the section under section 129(1A) or a notice given by the Board in respect of them under section 129(5) by virtue of a notice given by the Regulator under section 129(4)(a),

(b) it occurs on or after the day appointed under section 126(2), and

(c) it—

(i) is the first insolvency event to occur in relation to that employer on or after that day, or

(ii) does not occur within an assessment period (see section 132) in relation to the scheme which began before the occurrence of the current event.”.

(2) Section 128 of the Act (duty to assume responsibility for schemes following application or notification) shall be modified in its application to a scheme to which regulation 61 applies so that it shall be read as if, for subsection (1), there were substituted the following subsection—

“(1) This section applies where, in relation to a non-segregated scheme which is, for the purposes of this Part, an eligible scheme—

- (a) the trustees or managers of the scheme make an application under subsection (1) (a) or (b) of section 129 (a “section 129 application”), or
- (b) the Board receives a notice given by the Regulator under subsection (4)(b) of that section.”.

### **Applications and notifications and Board’s duty where application or notification received under section 129**

**65.**—(1) Section 129 of the Act (applications and notifications for the purposes of section 128) shall be modified in its application to a scheme to which regulation 61 applies so that it shall be read as if—

(a) for subsection (1), there were substituted the following subsection—

“(1) Where the trustees or managers of a non-segregated scheme which is, for the purposes of this Part, an eligible scheme—

(a) have—

(i) notified the Board in accordance with subsection (1A) that an employer in relation to the scheme is unlikely to continue as a going concern at a time when all other employers in relation to the scheme have either had—

(aa) an insolvency event occur in relation to them and an insolvency practitioner is still required by law to be appointed to act in relation to them, or

(bb) a notice given in respect of them by the trustees or managers of the scheme under subsection (1A) or a notice given by the Board in respect of them under subsection (5) by virtue of a notice given by the Regulator under subsection (4)(a), or

(ii) received a notice given by the Board under subsection (5) by virtue of a notice given by the Regulator under subsection (4)(a) in respect of an employer in relation to the scheme at a time when all other employers in relation to the scheme have either had—

(aa) an insolvency event occur in relation to them and an insolvency practitioner is still required by law to be appointed to act in relation to them, or

(bb) a notice given in respect of them by the trustees or managers of the scheme under subsection (1A) or a notice given by the Board in respect of them under subsection (5) by virtue of a notice given by the Regulator under subsection (4)(a), or

(b) are aware that a person is no longer an employer, or that persons are no longer employers, in relation to the scheme at a time when—

(i) all other employers in relation to the scheme have either had—

(aa) an insolvency event occur in relation to them and an insolvency practitioner is still required by law to be appointed to act in relation to them, or

- (bb) a notice given in respect of them by the trustees or managers of the scheme under subsection (1A) or a notice given by the Board in respect of them under subsection (5) by virtue of a notice given by the Regulator under subsection (4)(a), and
- (ii) at least one such insolvency event occurred, or at least one such notice was given under subsection (1A) or (5) by virtue of a notice given by the Regulator under subsection (4)(a), on or after 6th April 2005 in relation to an employer in relation to that scheme,
- they must, except where an assessment period has already begun in relation to that scheme, make an application to the Board for it to assume responsibility for the scheme under section 128.”; and
- (b) after subsection (1), there were inserted the following subsections—
- “(1A) Where the trustees or managers of a non-segregated scheme which is, for the purposes of this Part, an eligible scheme become aware that an employer in relation to the scheme—
- (a) is unlikely to continue as a going concern, and
- (b) the prescribed requirements are met in relation to that employer,
- they must give the Board a notice to that effect.
- (1B) The notice which must be given to the Board in accordance with subsection (1A) must be in writing and must contain the following information—
- (a) a description of the type or purpose of the notice,
- (b) the name of the employer in relation to the scheme in respect of which the notice is given,
- (c) a statement by the trustees or managers of the scheme that the employer in respect of which the notice is given is unlikely to continue as a going concern and that the requirements prescribed under subsection (1A)(b) have been met in relation to that employer,
- (d) the date on which the trustees or managers of the scheme became aware that the employer in respect of which the notice is given is unlikely to continue as a going concern, and
- (e) the date on which the notice was sent to the Board by the trustees or managers of the scheme.
- (1C) Where the trustees or managers of a non-segregated scheme which is, for the purposes of this Part, an eligible scheme make an application to the Board under subsection (1)(a) or (b), they must as soon as practicable notify that fact to all the employers in relation to the scheme.”;
- (c) for subsection (4), there were substituted the following subsection—
- “(4) Where, in relation to a non-segregated scheme which is, for the purposes of this Part, an eligible scheme, the Regulator—
- (a) becomes aware that an employer in relation to the scheme—
- (i) is unlikely to continue as a going concern, and
- (ii) meets the requirements prescribed under subsection (1A)(b), or
- (b) is aware that a person is no longer an employer, or that persons are no longer employers, in relation to the scheme at a time when—
- (i) all other employers in relation to the scheme have either had—

- (aa) an insolvency event occur in relation to them and an insolvency practitioner is still required by law to be appointed to act in relation to them, or
    - (bb) a notice given in respect of them by the trustees or managers of the scheme under subsection (1A) or a notice given by the Board in respect of them under subsection (5) by virtue of a notice given by the Regulator under subsection (4)(a), and
  - (ii) at least one such insolvency event occurred, or at least one such notice was given under subsection (1A) or (5) by virtue of a notice given by the Regulator under subsection (4)(a), on or after 6th April 2005 in relation to an employer in relation to that scheme,
- it must, except where an assessment period has already begun in relation to the scheme, give the Board a notice to that effect.”; and
- (d) after subsection (5), there were inserted the following subsection—
    - “(5A) Where the trustees or managers of a non-segregated scheme receive a copy of a notice from the Board under subsection (5), they must send a copy of that notice as soon as practicable to all the employers in relation to the scheme.”.
- (2) Section 130 of the Act (Board’s duty where application or notification received under section 129) shall be modified in its application to a scheme to which regulation 61 applies so that it shall be read as if—
- (a) for subsection (1), there were substituted the following subsection—
    - “(1) This section applies where the Board—
      - (a) receives an application under subsection (1) of section 129 and is satisfied that either paragraph (a) or (b) of that subsection is satisfied in relation to the application, or
      - (b) is notified by the Regulator under section 129(4)(b).”;
  - (b) after subsection (4), there were inserted the following subsection—
    - “(4A) Where the trustees or managers of a non-segregated scheme receive a copy of a notice from the Board under subsection (4), they must send a copy of that notice as soon as practicable to all the employers in relation to the scheme.”; and
  - (c) after subsection (7), there were inserted the following subsection—
    - “(7A) Where the trustees or managers of a non-segregated scheme receive a notice from the Board under subsection (7) together with a copy of the binding notice, they must send a copy of the notice and the binding notice as soon as practicable to all the employers in relation to the scheme.”.

### **Assessment periods**

**66.** Section 132 of the Act (assessment periods) shall be modified in its application to a scheme to which regulation 61 applies so that it shall be read as if—

- (a) in subsection (2)—
  - (i) for the words “in relation to an eligible scheme”, there were substituted the words “in relation to a non-segregated scheme which is, for the purposes of this Part, an eligible scheme”;
  - (ii) for the words “the employer,”, there were substituted the words “an employer in relation to the scheme”; and

- (iii) after the words “an assessment period”, there were inserted the words “in relation to the scheme”;
- (b) in subsection (4), for the words “in relation to an eligible scheme, an application is made under section 129(1) or a notification is received under section 129(5)(a), an assessment period”, there were substituted the words “in relation to a non-segregated scheme which is, for the purposes of this Part, an eligible scheme, an application is made under section 129(1)(a) or (b) or a notification is received under section 129(4)(b), an assessment period in relation to the scheme”; and
- (c) in subsection (5), for the words “section 129(5)(a)”, there were substituted the words “section 129(4)(b)”.

### **Power to validate contraventions of section 135 and Board to act as creditor of the employer**

**67.**—(1) Section 136(2)(of the Act (power to validate contraventions of section 135) shall be modified in its application to a scheme to which regulation 61 applies so that it shall be read as if, for the words “in relation to the employer, or if there is no such insolvency practitioner, the employer”, there were substituted the words “in relation to an employer or, if there is no such insolvency practitioner, that employer”.

(2) Section 137(2) of the Act (Board to act as creditor of the employer) shall be modified in its application to a scheme to which regulation 61 applies so that it shall be read as if, for the words “the employer”, there were substituted the words “an employer”.

### **Valuation of assets**

**68.** Sections [F3 143A(4)(c) (Determinations under section 143),] 144(2)(b)(iii) (approval of valuation) and 145(3)(c) (binding valuations) of the Act shall be modified in their application to a scheme to which regulation 61 applies so that they shall be read as if, for the words “in relation to the employer or, if there is no such insolvency practitioner, the employer”, there were substituted the words “in relation to an employer or, if there is no such insolvency practitioner, that employer”.

#### **Textual Amendments**

**F3** Words in [reg. 68](#) inserted (24.1.2013) by [The Pension Protection Fund \(Miscellaneous Amendments\) \(No. 2\) Regulations 2012 \(S.I. 2012/3083\)](#), [regs. 1\(2\)\(b\), 2\(20\)](#) (with [regs. 9\(2\), 10](#))

### **Refusal to assume responsibility**

**69.**—(1) The provisions of the Act specified in paragraph (2) shall be modified in their application to a scheme to which regulation 61 applies so that they shall be read as if, for the words “in relation to the employer or, if there is no such insolvency practitioner, the employer”, there were substituted the words “in relation to an employer or, if there is no such insolvency practitioner, that employer”.

(2) The provisions specified in this paragraph are—

- (a) section 146(2)(b)(iii) and (4)(c) (schemes which become eligible schemes); and
- (b) section 147(2)(b)(iii) and (4)(c) (new schemes created to replace existing schemes).

(3) Section 148(5)(c) and (7)(c) of the Act (withdrawal following issue of section 122(4) notice) shall be modified in its application to a scheme to which regulation 61 applies so that it shall be read as if, for the words “the employer”, there were substituted the words “any employer”.

### **Transfer notice and the pension compensation provisions**

**70.**—(1) Section 160 of the Act (transfer notice) shall be modified in its application to a scheme to which regulation 61 applies so that it shall be read as if—

(a) in subsection (1), for the words “where the Board is required to assume responsibility for a scheme”, there were substituted the words “where the Board is required to assume responsibility for a non-segregated scheme”;

(b) after subsection (2), there were inserted the following subsection—

“(2A) Where the trustees or managers of a non-segregated scheme receive a transfer notice from the Board under subsection (2), they must send a copy of that notice as soon as practicable to all the employers in relation to the scheme.”; and

(c) for subsection (6), there were substituted the following subsection—

“(6) The Board must give a copy of the transfer notice given under subsection (2) to—

(a) the Regulator, and

(b) an insolvency practitioner acting in relation to every employer in relation to the scheme in respect of which the transfer notice is given.”.

(2) Schedule 6 to the Act (transfer of property, rights and liabilities to the Board) shall be modified in its application to a scheme to which regulation 61 applies so that it shall be read as if, in paragraph 1, for the words “an occupational pension scheme”, there were substituted the words “a non-segregated multi-employer scheme”.

(3) Schedule 7 to the Act (pension compensation provisions) shall be modified in its application to a scheme to which regulation 61 applies so that it shall be read as if, in paragraph 1, for the words “an eligible scheme”, there were substituted the words “a non-segregated multi-employer scheme which is, for the purposes of Part 2, an eligible scheme”.]



**Changes to legislation:**

There are currently no known outstanding effects for the The Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations 2005, SCHEMES WITHOUT PROVISION FOR PARTIAL WIND UP ON WITHDRAWAL OF A PARTICIPATING EMPLOYER.