

2005 No. 364

PENSIONS

**The Pension Protection Fund (Entry Rules) (Amendment)
Regulations (Northern Ireland) 2005**

Made - - - - - *3rd August 2005*

Coming into operation - - - - - *24th August 2005*

The Department for Social Development, in exercise of the powers conferred on it by Articles 105(5), 109(4)(a), 110(5), 113(1)(b), (1A)(b), (3)(b) and (8) and 287(2) and (3) of the Pensions (Northern Ireland) Order 2005(a) and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Pension Protection Fund (Entry Rules) (Amendment) Regulations (Northern Ireland) 2005 and shall come into operation on 24th August 2005.

Amendment of the Pension Protection Fund (Entry Rules) Regulations

2.—(1) The Pension Protection Fund (Entry Rules) Regulations (Northern Ireland) 2005(b) shall be amended in accordance with paragraphs (2) to (9).

(2) In regulation 1(2) (citation, commencement and interpretation) after the definition of “the Insolvency Rules” there shall be inserted the following definition—

““the Multi-employer Regulations” means the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations (Northern Ireland) 2005(c);”.

(3) In regulation 2 (schemes which are not eligible schemes)—

(a) in paragraph (2) the words “with an employer in relation to the scheme” and “from that employer” shall be omitted;

(b) in paragraph (3)—

(i) in sub-paragraphs (a)(i) and (b) the words “with an employer in relation to the scheme” shall be omitted and for “from that employer under Article 75(2)” there shall be substituted “under Article 75”;

(ii) in sub-paragraph (c) the words “is acting as creditor of an employer in relation to the scheme under Article 121 (Board to act as creditor of the employer) and” and “with that employer” shall be omitted and for “from that employer under Article 75(4)” there shall be substituted “under Article 75”;

(a) S.I. 2005/255 (N.I. 1); Part III is modified in its application to partially guaranteed schemes, hybrid schemes and multi-employer schemes by, respectively, S.R. 2005 Nos. 55, 84 and 91; Article 113(1A) was inserted by the modifications in Parts III and VI of S.R. 2005 No. 91 as substituted by regulation 3(3) and (4) of S.R. 2005 No. 357

(b) S.R. 2005 No. 126; relevant amending regulations are S.R. 2005 No. 194

(c) S.R. 2005 No. 91; relevant amending regulations are S.R. 2005 No. 357

(c) paragraph (5)(c), but not the word “and” immediately after it, shall be omitted;

(d) after paragraph (7) there shall be added the following paragraph—

“(8) In their application to a segregated scheme, paragraphs (2) to (7) shall have effect as if each section of the scheme were a separate scheme.”.

(4) In regulation 5(1) (prescribed insolvency events) for sub-paragraph (a) there shall be substituted the following sub-paragraphs—

“(a) in relation to a company, where—

- (i) an administration order is made by the High Court in respect of the company by virtue of any statutory provision which applies Part III of the Insolvency Order (administration orders) (with or without modification);
- (ii) the company moves from administration to winding up pursuant to an order of the court under Rule 2.65 of the Insolvency Rules^(a) (conversion of administration into winding up – power of court), or
- (iii) an administrator or liquidator of the company, being the nominee in relation to a proposal for a voluntary arrangement under Part II of the Insolvency Order (company voluntary arrangements), summons meetings of the company and of its creditors, to consider the proposal, in accordance with Article 16(2) of that Order (summoning of meetings);

(aa) in relation to a partnership, where—

- (i) the partnership moves from administration to winding up pursuant to an order of the court under Rule 2.65 of the Insolvency Rules (as applied by an order under Article 364 of the Insolvency Order^(b) (insolvent partnerships)), or
- (ii) an administrator, liquidator or trustee of the partnership, being the nominee in relation to a proposal for a voluntary arrangement under Part II of the Insolvency Order (as applied by an order under Article 364 of that Order), summons meetings of the members of the partnership and of the partnership’s creditors, to consider the proposal, in accordance with Article 16(2) of that Order (as applied by an order under Article 364 of that Order);”.

(5) In regulation 7 (applications and notifications to the Board)—

(a) for “The prescribed requirements” there shall be substituted “Except in a case to which regulation 7A applies, the prescribed requirements”;

(b) in paragraph (a)(i) after “defined in” there shall be inserted “, or in regulations made under,”;

(c) at the end of paragraph (a)(ii)(bb) the word “or” shall be omitted;

(d) after paragraph (b) there shall be added—

“or

- (c) a trade union within the meaning of Article 3(1) of the Industrial Relations (Northern Ireland) Order 1992^(c) in relation to which it is not possible for an insolvency event as defined in, or in regulations made under, Article 105 to occur.”

(a) Rule 2.65 was inserted by rule 6(8) of S.R. 2002 No. 261

(b) Article 364 was amended by regulation 4(3) of S.R 2002 No. 223

(c) S.I. 1992/807 (N.I. 5)

(6) After regulation 7 there shall be inserted the following regulation—

“Applications and notifications to the Board – multi-employer schemes

7A.—(1) This regulation applies to—

- (a) a multi-employer section to which Part III of the Multi-employer Regulations (segregated schemes: multi-employer sections without requirement for partial wind up on withdrawal of a participating employer) applies which is, for the purposes of Part III of the Order, an eligible scheme, and
- (b) a non-segregated scheme to which Part VI of the Multi-employer Regulations (non-segregated schemes: schemes without provision for partial wind up on withdrawal of a participating employer) applies which is, for the purposes of Part III of the Order, an eligible scheme.

(2) In the case of a scheme, or a section of a scheme, to which this regulation applies, the prescribed requirements referred to in Article 113(1A)(b) and (4)(a)(ii)(c) (applications and notifications for the purposes of Article 112) that are to be met in relation to an employer in relation to the scheme, or the section, are that he is either—

- (a) a public body—
 - (i) in relation to which it is not possible for an insolvency event as defined in, or in regulations made under, Article 105 (insolvency event, insolvency date and insolvency practitioner) to occur, and
 - (ii) which is not an employer in relation to a scheme, or a section of a scheme, in respect of which a relevant public authority has either—
 - (aa) given a guarantee in relation to any part of the scheme, or section, any benefits payable under the scheme, or section, or any member of the scheme, or section, or
 - (bb) made any other arrangements for the purposes of securing that the assets of the scheme, or section, are sufficient to meet any part of its liabilities;
- (b) a charity which is not a company or other body corporate, or
- (c) a trade union within the meaning of Article 3(1) of the Industrial Relations (Northern Ireland) Order 1992 in relation to which it is not possible for an insolvency event as defined in, or in regulations made under, Article 105 to occur.”

(7) In regulation 8(1) (applications and notifications to the Board – further provision) for “The prescribed period” there shall be substituted “Except in a case to which regulation 8A applies, the prescribed period”.

(8) After regulation 8 there shall be inserted the following regulation—

“Applications and notifications to the Board – further provision for multi-employer schemes

8A.—(1) This regulation applies to—

- (a) a multi-employer section to which Part III of the Multi-employer Regulations (segregated schemes: multi-employer sections without requirement for partial wind up on withdrawal of a participating employer) applies which is, for the purposes of Part III of the Order, an eligible scheme, and

(a) Part III was substituted by regulation 3(3) of S.R. 2005 No. 357
(b) Part VI was substituted by regulation 3(4) of S.R. 2005 No. 357
(c) Subsection (4) was substituted by the modifications in Parts III and VI of S.R. 2005 No. 91 as substituted by regulation 3(3) and (4) of S.R. 2005 No. 357

- (b) a non-segregated scheme to which Part VI of the Multi-employer Regulations (non-segregated schemes: schemes without provision for partial wind up on withdrawal of a participating employer) applies which is, for the purposes of Part III of the Order, an eligible scheme.
- (2) The prescribed period for making an application to the Board under Article 113(1)(a) or (b)(a) (applications and notifications for the purposes of Article 112) shall be—
- (a) where the application is under Article 113(1)(a), the period of 28 days beginning with the date on which the trustees or managers of a scheme, or a section of a scheme, become aware that the conditions for making an application to the Board under that Article are met in relation to that scheme or section, or
 - (b) where the application is under Article 113(1)(b), the period of 28 days beginning with—
 - (i) 24th August 2005 if the trustees or managers of a scheme, or a section of a scheme, are aware on that date that the conditions for making an application to the Board under that Article were met in relation to that scheme, or section, between 6th April 2005 and that date, or
 - (ii) the date on which the trustees or managers of a scheme, or a section of a scheme, become aware after 24th August 2005 that the conditions for making an application to the Board under that Article are met in relation to that scheme or section.
- (3) Applications to the Board for the purposes of Article 112(b) (duty to assume responsibility for schemes following application or notification) shall, where the application is made under Article 113(1)(a), be in writing and shall contain the following information—
- (a) a description of the type or purpose of the application;
 - (b) the name, address and pension scheme registration number of the scheme, or section of the scheme, in respect of which the application is made;
 - (c) the name of the employer in relation to the scheme, or section of the scheme, in respect of which the application is made;
 - (d) a statement by the trustees or managers of the scheme, or section of the scheme, that the conditions for making an application to the Board under Article 113(1)(a) have been met;
 - (e) the date on which the trustees or managers of the scheme, or section of the scheme, became aware that the conditions for making an application to the Board under Article 113(1)(a) were met, and
 - (f) the date on which the application was sent to the Board by the trustees or managers of the scheme or section of the scheme.
- (4) Applications to the Board for the purposes of Article 112 shall, where the application is made under Article 113(1)(b), be in writing and shall contain the following information—
- (a) a description of the type or purpose of the application;
 - (b) the name, address and pension scheme registration number of the scheme, or section of the scheme, in respect of which the application is made;
 - (c) the name of each employer in relation to the scheme, or section of the scheme, in respect of which the application is made;
 - (d) the name of the person who is no longer an employer or the persons who are no longer employers in relation to the scheme, or section of the scheme, at the time referred to in Article 113(4)(b);

(a) Article 113(1) was substituted by the modifications in Parts III and VI of S.R. 2005 No. 91 as substituted by regulation 3(3) and (4) of S.R. 2005 No. 357

(b) Article 112(1) was substituted by the modifications in Parts III and VI of S.R. 2005 No. 91 as substituted by regulation 3(3) and (4) of S.R. 2005 No. 357

- (e) a statement by the trustees or managers of the scheme, or section of the scheme, that the conditions for making an application to the Board under Article 113(1)(b) have been met;
- (f) the date on which the trustees or managers of the scheme, or section of the scheme, became aware that the conditions for making an application to the Board under Article 113(1)(b) were met, and
- (g) the date on which the application was sent to the Board by the trustees or managers of the scheme or section of the scheme.

(5) Where the Regulator becomes aware that the conditions for making a notification to the Board under Article 113(4)(a) are met in relation to a scheme, or a section of a scheme, which is, for the purposes of Part III of the Order, an eligible scheme, the notice which the Regulator must give to the Board under that Article shall be in writing and shall contain the following information—

- (a) the name or type of the notice given;
- (b) the date on which the notice is given;
- (c) the name, address and pension scheme registration number of the scheme, or section of the scheme, in respect of which the notice is given;
- (d) the name of the employer in relation to the scheme, or section of the scheme, in respect of which the notice is given;
- (e) a statement by the Regulator that the employer referred to in sub-paragraph (d) is unlikely to continue as a going concern and meets the requirements specified in regulation 7A(2), and
- (f) the date on which the Regulator became aware of the matter in respect of which the statement is provided by it under sub-paragraph (e).

(6) Where the Regulator is aware that the conditions for making an application to the Board under Article 113(4)(b) are met in relation to a scheme, or a section of a scheme, which is, for the purposes of Part III of the Order, an eligible scheme, the notice which the Regulator must give to the Board under that Article shall be in writing and shall contain the following information—

- (a) the name or type of the notice given;
- (b) the date on which the notice is given;
- (c) the name, address and pension scheme registration number of the scheme, or section of the scheme, in respect of which the notice is given;
- (d) the name of each employer in relation to the scheme, or section of the scheme, in respect of which the notice is given;
- (e) the name of the person who is no longer an employer or the persons who are no longer employers in relation to the scheme, or section of the scheme, at the time referred to in Article 113(4)(b);
- (f) a statement by the Regulator that the person or persons referred to in sub-paragraph (e) is no longer an employer or are no longer employers in relation to the scheme, or section of the scheme, at the time referred to in Article 113(4)(b), and
- (g) the date on which the Regulator became aware of the matter in respect of which the statement is provided by it under sub-paragraph (f).

(7) Where the Board receives a notice from the Regulator to which paragraph (5) or (6) applies, the notice referred to in Article 113(5) which the Board must give to the trustees or managers of the scheme, or section of the scheme, concerned and copy to any employer in relation to that scheme, or section, shall be in writing and shall contain the following information—

- (a) the name or type of the notice given;
- (b) the date on which the notice is given;

- (c) the name, address and pension scheme registration number of the scheme, or section of the scheme, in respect of which the notice is given;
- (d) a statement that the Board received the notice from the Regulator under Article 113(4)(a) or (b) and the date on which the notice was received by the Board;
- (e) where the notice referred to in sub-paragraph (d) is a notice under Article 113(4)(a), the date on which the Regulator became aware that the employer in relation to the scheme, or section of the scheme, is unlikely to continue as a going concern;
- (f) where the notice referred to in sub-paragraph (d) is a notice under Article 113(4)(b), the date on which the Regulator became aware that the person or persons referred to in paragraph (6)(e) is no longer an employer or are no longer employers in relation to the scheme, or section of the scheme, at the time referred to in Article 113(4)(b);
- (g) the address for communications at which the Board may be contacted in respect of the giving of the notice, and
- (h) whether the notice given by the Board contains any restricted information and, if so, the nature of the restrictions.”.

(9) In regulation 13(a) (confirmation of scheme status – binding notices) after paragraph (1) there shall be inserted the following paragraph—

“(1A) Where a notice issued under Article 106 becomes binding, the notice which the Board must give under Article 109(3) (binding notices confirming status of scheme) shall be in writing.”.

Sealed with the Official Seal of the Department for Social Development on 3rd August 2005.



John O'Neill
A senior officer of the Department for Social Development

(a) Regulation 13(1) was amended by regulation 3(4) of S.R. 2005 No. 194

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations amend the Pension Protection Fund (Entry Rules) Regulations (Northern Ireland) 2005 (“the Entry Rules Regulations”).

Regulation 1 provides for citation and commencement.

Regulation 2 amends the Entry Rules Regulations. In particular—

paragraph (2) inserts a definition of the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations (Northern Ireland) 2005 (“the Multi-employer Regulations”);

paragraph (3)(a) and (b) makes minor amendments to regulation 2 where it refers to “employer” and corrects cross references to Article 75 of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)); paragraph (3)(c) omits regulation 2(5)(c); and paragraph (3)(d) amends regulation 2 to provide that paragraphs (2) to (7) of that regulation apply to each section of a segregated scheme as if it were a separate scheme;

paragraph (4) amends regulation 5 to add further insolvency events where a company or partnership in administration commences winding up or where a proposal for a voluntary arrangement is made;

paragraph (5)(b) to (d) amends regulation 7 to provide that where the employer is a trade union, in relation to which it is not possible for an insolvency event to occur, the trustees or managers of an eligible scheme must apply to the Board of the Pension Protection Fund (“the Board”) for it to assume responsibility for that scheme under Article 112 of the Pensions (Northern Ireland) Order 2005 (“the Order”) where the condition in Article 113(1)(a) of the Order is satisfied;

paragraphs (5)(a) and (6) to (8) make amendments to regulations 7 and 8, and insert new regulations 7A and 8A, which are consequential upon provisions of the substituted Parts III and VI of the Multi-employer Regulations;

paragraph (9) amends regulation 13 to provide that a notice given by the Board under Article 109(3) of the Order shall be in writing.

The Pensions (2005 Order) (Commencement No. 1 and Consequential and Transitional Provisions) Order (Northern Ireland) 2005 (S.R. 2005 No. 48 (C. 5)) provides for the coming into operation of some of the enabling provisions under which these Regulations are made to be brought fully into operation as follows—

Article 110(5) on 1st April 2005;

Articles 105(5), 109(4) and 113(1)(b), (3)(b) and (8) on 6th April 2005.

As these Regulations are made before the end of the period of six months beginning with the coming into operation of the provisions of the Order by virtue of which they are made, the requirement to consult under Article 289(1) of the Order does not apply by virtue of paragraph (2)(c) of that Article.

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