
STATUTORY INSTRUMENTS

2005 No. 441

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

PART 7

**NON-SEGREGATED SCHEME WITH AN OPTION TO SEGREGATE
ON THE WITHDRAWAL OF A PARTICIPATING EMPLOYER**

Application and effect

71.—(1) This regulation applies to a non-segregated multi-employer scheme in circumstances—

(a) where—

- (i) an insolvency event occurs in relation to an employer in relation to the scheme; or
- (ii) the trustees or managers of the scheme become aware that an employer in relation to the scheme is unlikely to continue as a going concern and meets the requirements prescribed under subsection (1)(b) of section 129 of the Act (applications and notifications for the purposes of section 128); and

(b) where, under the rules of the scheme, the trustees or managers have an option, in circumstances where an employer in relation to the scheme ceases to participate in the scheme, to segregate such part of the assets of the scheme as is attributable to the scheme's liabilities to provide pensions or other benefits to or in respect of the pensionable service of some or all of the members by reference to that employer.

(2) In the case of a scheme to which this regulation applies—

- (a) the trustees or managers of the scheme shall be deemed to have exercised the option to segregate under the scheme rules so as to create a segregated part of the scheme unless and until they decide not to exercise that option and have given the Board a notice to this effect as required by section 120(3A) or 129(1B) of the Act as modified by this Part; and
- (b) except as otherwise provided for in paragraph (3) below, Part 2 of the Act shall be read in relation to the scheme as if it contained the modifications provided for in Part 5 of these Regulations.

(3) The exceptions referred to in paragraph (2) above are that—

(a) section 120 of the Act (duty to notify insolvency events in respect of employers) shall be modified so that it shall be read as if—

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

“(1) This section applies where an insolvency event occurs in relation to an employer in relation to a multi-employer scheme which is not divided into two or more sections (“a non-segregated scheme”) under the rules of which the trustees or managers of the scheme have an option, in circumstances where an employer in relation to the scheme ceases to participate in the scheme, to segregate such part of the assets of the scheme as is attributable to the scheme's liabilities to provide

pensions or other benefits to or in respect of the pensionable service of some or all of the members of the scheme by reference to that employer (“the segregated part”).”; and

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

“(3A) If, where this section applies to a non-segregated scheme, the trustees or managers the scheme decide not to exercise the option to segregate under the scheme rules so as to create a segregated part of the scheme they must, as soon as practicable—

- (a) give a notice to the Board to that effect (a “non-segregation notice”); and
- (b) send a copy of that notice to—
 - (i) an insolvency practitioner acting in relation to the employer, and
 - (ii) the Regulator.”;

(b) section 122 of the Act (insolvency practitioner’s duty to issue notices confirming status of scheme) shall be modified so that it shall be read as if, after subsection (2), there were inserted the following subsection—

“(2A) Where an insolvency practitioner acting in relation to an employer in relation to a non-segregated scheme receives a non-segregation notice under subsection (3A) of section 120 from the trustees or managers of the scheme, he must as soon as practicable issue a notice under subsection (2)(b) (a “withdrawal notice”) in relation the scheme.”; and

(c) section 129 of the Act (applications and notifications for the purposes of section 128) shall be modified so that it shall be read as if—

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

“(1) The trustees or managers of a non-segregated scheme which is, for the purposes of this Part, an eligible scheme must make an application to the Board for it to assume responsibility for a segregated part of the scheme under section 128 where they become aware that —

- (a) an employer in relation to the scheme is unlikely to continue as a going concern, and
- (b) the prescribed requirements are met in relation to that employer, and where the rules of the scheme contain an option, in circumstances where an employer in relation to the scheme ceases to participate in the scheme, for the trustees or managers to segregate such part of the assets of the scheme as is attributable to the scheme’s liabilities to provide pensions or other benefits to or in respect of the pensionable service of some or all of the members by reference to that employer.”; and

(ii) after subsection (1A), there were inserted the following subsections—

“(1B) If, where subsection (1) applies to a non-segregated scheme, the trustees or managers of the scheme decide not to exercise the option to segregate under the scheme rules so as to create a segregated part of the scheme they must, as soon as practicable—

- (a) give a notice to the Board to that effect (a “non-segregation notice”); and
- (b) send a copy of that notice to the Regulator.”; and

“(1C) Where the Board receives a non-segregation notice from the trustees or managers of a non-segregated scheme under paragraph (a) of subsection (1B), it must as soon as practicable issue a notice under subsection (3) of section 130 (a “withdrawal notice”) in relation to the scheme.”.