

2005 No. 441

PENSIONS

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

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The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 307(1)(b) and (2)(b) and (e), 315(1), (2), (4) and (5) and 318(1) and (4)(a) of the Pensions Act 2004^(a), and of all other powers enabling him in that behalf, by this instrument, which contains regulations made before the end of the period of six months beginning with the coming into force of the provisions of that Act by virtue of which they is made^(b), hereby makes the following Regulations:

PART 1

PRELIMINARY

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations 2005 and shall come into force—

- (a) for the purposes of this regulation and regulations 2(2)(b), 3(2)(d), 5(2)(d), 9(1)(a) and (2)(a), 14(3)(b), 15(2)(e), 18(c), 24(1)(a) and (2)(a), 28(4)(b), 29(2)(d), 32(d), 38(1)(d)(i), 39(1)(a) and (2)(a), 45(4)(b), 46(2)(d), 49(d), 54(1)(d)(i), 55(1)(a) and (2)(a), 63(1) and 73(3) for the purpose only of the making of regulations on 9th March 2005; and
- (b) for the purposes of regulation 76, on whichever is the later of—
 - (i) the day which is 21 days after the date on which this instrument is laid, or
 - (ii) the day on which section 286 of the Pensions Act 2004 comes into force;
- (c) for the purposes of regulations 4, 16, 30, 47, 63(2), 73(2)(b) and 74(2) on 1st April 2005; and
- (d) for all other purposes on 6th April 2005.

(2) In these Regulations—

“the Act” means the Pensions Act 2004;

▶¹“the assessment date” means the date on which the assessment period in relation to the scheme or section, or (where there has been more than one such assessment period) the last one, began;◀

▶²“employer”, in relation to a single-employer section of a segregated scheme which has no active members, includes the person who was the employer of persons in the description of employment to which the scheme or section relates immediately before the time at which the scheme or section ceased to have any active members in relation to it;◀

“multi-employer section” means a section of a segregated scheme which has at least two employers in relation to that section;

▶³“pensionable service” has the meaning given by paragraph 36(4) of Schedule 7 to the Act (accrual rate, pensionable service and pensionable earnings);◀

“segregated scheme” means a multi-employer scheme which is divided into two or more sections where—

¹Defn. of “the assessment date” inserted by reg. 4(2)(c) of S.I. 2005/2113 as from 19.8.05.

²Defn. of “employer” inserted by reg. 10(2)(a) of S.I. 2005/2113 as from 19.8.05.

³Defn. of “pensionable service” substituted by reg. 3 of S.I. 2018/988 as from 2.10.18.

(a) 2004 c. 35. Section 318(1) is cited because of the meaning there given to “modifications”, “prescribed” and “regulations”.

(b) See section 317 of the Pensions Act 2004 which provides that the Secretary of State must consult such persons as he considers appropriate before making regulations by virtue of the provisions of the Act (other than Part 8). This duty does not apply where regulations are made before the end of six months beginning with the coming into force of the provisions of the Act by virtue of which the regulations are made.

- (a) any contributions payable to the scheme by an employer in relation to the scheme or by a member are allocated to that employer's or that member's section; and
- (b) a specified proportion of the assets of the scheme is attributable to each section of the scheme and cannot be used for the purposes of any other section.

►¹(3) In the application of Part 2 of the Act, the definition of "multi-employer scheme" in section 307(4) of the Act and of these Regulations, "employer", in relation to a multi-employer scheme that is not a segregated scheme or a multi-employer section of a segregated scheme—

¹Para (3) of reg. 1 substituted by reg. 10 (2)(b) of S.I. 2005/2113 as from 19.8.05.

- (a) in an assessment period, includes any person who before the assessment date has ceased to be the employer of persons in the description of employment to which the scheme or section relates unless condition A, B, ►²C, ►³D, E or F◄ is satisfied where—

²Words in paras. (3)(a) & (b) substituted and sub-para. (a)(v) inserted by reg. 2(a)-(b) of S.I. 2010/725 as from 6.4.10.

- (i) condition A is that a debt under section 75 of the Pensions Act 1995 (deficiencies in the assets) became due from that employer and the full amount of the debt has been paid before the assessment date;

- (ii) condition B is that—

³Words substituted in reg. 1(3)(a) & (b) & sub-para. (a)(vi) inserted by reg. 2(a) & (b) of S.I. 2011/2973 as from 27.1.12.

- (aa) such a debt became due;
 - (bb) a legally enforceable agreement has been entered into the effect of which is to reduce the amount which may be recovered in respect of the debt; and
 - (cc) the reduced amount has been paid in full before the assessment date;

- (iii) condition C is that such a debt became due but before the assessment date it is excluded from the value of the assets of the scheme or section because it is unlikely to be recovered without disproportionate costs or within a reasonable time;

- (iv) condition D is that at the time at which any such person ceased to be the employer of persons in the description of employment to which the scheme or section relates the value of the assets of the scheme or section was such that no such debt was treated as becoming due;

- ²(v) condition E is that—

- (aa) there is a restructuring within regulation 6ZB or 6ZC of the Occupational Pension Schemes (Employer Debt) Regulations 2005 (employment-cessation events: exemptions)(a);
 - (bb) in that restructuring, the employer was the exiting employer for the purposes of those Regulations (see the definition of "exiting employer" in regulation 2(3A) of those Regulations (interpretation))(b); and
 - (cc) regulation 6ZA(3) or (4) of those Regulations (employment-cessation events: general) does not apply in relation to that restructuring;◄

- ³(vi) condition F is that a flexible apportionment arrangement has taken effect in accordance with regulation 6E of the Occupational Pension Schemes (Employer Debt) Regulations 2005 (flexible apportionment arrangements) (c) where the employer was the leaving employer within the meaning given in paragraph (7) of that regulation;◄

- (b) in any other case, includes any person who before the assessment date has ceased to be the employer of persons in the description of employment to which the scheme or section relates unless condition A, B, ►²C, ►³D, E or F◄ is satisfied where—

- (i) condition A is that a debt under section 75 of the Pensions Act 1995 became due from that employer and the full amount of the debt has been paid before the assessment date;

- (ii) condition B is that—

- (aa) such a debt became due;
 - (bb) a legally enforceable agreement has been entered into the effect of which is to reduce the amount which may be recovered in respect of the debt; and

(a) Regulations 6ZA to 6ZD are inserted by regulation 7 of these Regulations.

(b) Regulation 2(3A) is inserted by regulation 4(3) of these Regulations.

(c) Regulation 6E is inserted by regulation 10 of these Regulations

- (cc) the reduced amount has been paid in full before the assessment date;
- (iii) condition C is that such a debt became due but before the assessment date it is excluded from the value of the assets of the scheme or section because it is unlikely to be recovered without disproportionate costs or within a reasonable time;
- (iv) condition D is that at the time at which any such person ceased to be the employer of persons in the description of employment to which the scheme or section relates the value of the assets of the scheme or section was such that no such debt was treated as becoming due.◀

¹Sub-para. (b)(v)
inserted by reg. 2(c) of
S.I. 2010/725 as from
6.4.10.

- ▶¹(v) condition E is that—
 - (aa) there is a restructuring within regulation 6ZB or 6ZC of the Occupational Pension Schemes (Employer Debt) Regulations 2005 (employment-cessation events: exemptions);
 - (bb) in that restructuring, the employer was the exiting employer for the purposes of those Regulations (see the definition of “exiting employer” in regulation 2(3A) of those Regulations (interpretation)); and
 - (cc) regulation 6ZA(3) or (4) of those Regulations (employment-cessation events: general) does not apply in relation to that restructuring.◀

²Sub-para. (b)(vi)
inserted by reg. 2(c) of
S.I. 2011/2973 as from
27.1.12.

- ▶²(vi) condition F is that a flexible apportionment arrangement has taken effect in accordance with regulation 6E of the Occupational Pension Schemes (Employer Debt) Regulations 2005 where the employer was the leaving employer within the meaning given in paragraph (7) of that regulation;◀

PART 2

SEGREGATED SCHEMES: SINGLE EMPLOYER SECTIONS

Application and effect

2.—(1) This regulation applies to a section of a segregated scheme with one employer in relation to that section in circumstances where—

- (a) an insolvency event occurs in relation to an employer in relation to that section; or
- (b) the trustees or managers of the scheme become aware that the employer in relation to that section 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).

(2) Except as otherwise provided in this Part, in a case to which this regulation applies—

- (a) Part 2 of the Act, except Chapter 4, shall be read as if it contained the modifications provided for by this Part; and
- (b) references in Part 2 of the Act, except in Chapter 4, to—
 - (i) “scheme rules” shall be read as if they were references to “scheme rules relating to the section”;
 - (ii) “the scheme” shall be read as if they were references to “the section”;
 - (iii) “the employer” shall be read as if they were references to “the employer in relation to the section”; and
 - (iv) “trustees or managers of the scheme” shall, in relation to a section of a segregated scheme, be read as if they were references to “trustees or managers with ultimate responsibility for the administration of the section”.

(3) Paragraph (2) shall not have effect in relation to section 174 of the Act (initial levy).

Notification of insolvency events, confirmation of scheme status etc.

3.—(1) Section 120 of the Act (duty to notify insolvency events in respect of employers) shall be modified in its application to a section of a segregated scheme to which regulation 2 applies so that it shall be read as if—

- (a) for the words “in the case of an occupational pension scheme, an insolvency event occurs in relation to the employer” in subsection (1), there were substituted the words “in the case of a multi-employer scheme which is divided into two or more sections (“a segregated scheme”), an insolvency event occurs in relation to an employer in relation to a section of the scheme in circumstances where that employer is the only employer in relation to that section”; and
- (b) after subsection (2), there were inserted the following subsection—

“(2A) Where the trustees or managers of a section of a 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 the trustees or managers of each section of the scheme (if different) and 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 section of a segregated scheme to which regulation 2 applies so that it shall be read as if—

- (a) for the words “employer in relation to an occupational pension scheme” in subsection (1), there were substituted the words “employer in relation to a section of a segregated scheme in circumstances where that employer is the only employer in relation to that section”;
- (b) in subsection (2)—
 - (i) after the words “a scheme rescue is not possible” in paragraph (a), there were inserted the words “in relation to the relevant section of the scheme”; and
 - (ii) after the words “a scheme rescue has occurred” in paragraph (b), there were inserted the words “in relation to the relevant section of the scheme”;
- (c) for the words “in relation to the scheme” in subsection (4), there were substituted the words “in relation to the relevant section of the scheme”;
- ▶¹(d) in subsection (5)—
 - (i) in paragraph (a), for the words “in relation to an occupational pension scheme” there were substituted the words “in relation to a section of a segregated scheme”; and
 - (ii) in paragraph (b), for the words “in relation to such a scheme” there were substituted the words “in relation to such a section”; and◀
- (e) after subsection (6), there were inserted the following subsection—

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

¹Sub-para. (d) of reg. 3(2) substituted by reg. 5(3) of S.I. 2005/993 as from 1.4.05.

(3) Section 123 of the Act (approval of notices issued under section 122) shall be modified in its application to a section of a segregated scheme to which regulation 2 applies so that it shall be read as if, after subsection (4), there were inserted the following subsection—

- “(4A) Where the trustees or managers of a section of a 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 the trustees or managers of each section of the scheme (if different) and to all the employers in relation to the scheme.”.

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(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 section of a segregated scheme to which regulation 2 applies so that it shall be read as if—

- (a) for the words “in relation to an occupational pension scheme” in subsection (1), there were substituted the words “in relation to a section of a segregated scheme in circumstances where the employer is the only employer in relation to that section”; and
- (b) after subsection (4), there were inserted the following subsection—
 - “(4A) Where the trustees or managers of a section of a 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 the trustees or managers of each section of the scheme (if different) and 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 section of a segregated scheme to which regulation 2 applies so that it shall be read as if—

- (a) after subsection (3), there were inserted the following subsection—
 - “(3A) Where the trustees or managers of a section of a 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 the trustees or managers of each section of the scheme (if different) and to all the employers in relation to the scheme.”;
 - and
- (b) for the words “ceases to be involved with the scheme” in paragraph (b) of subsection (4), there were substituted the words “ceases to be involved with the relevant section of the scheme”.

Eligible schemes

4.—(1) Except as otherwise provided in this Part, for the purposes of Part 2 of the Act, except Chapter 4, as it applies in the case of a section of a segregated scheme to which regulation 2 applies, references to “an eligible scheme” shall be read as if they were references to a section of a segregated scheme in circumstances where that section, if it were a scheme, would not be—

- (a) a money purchase scheme; or
- (b) a scheme which is a prescribed scheme or a scheme of a prescribed description under section 126(1)(b) of the Act (eligible schemes).

(2) Paragraph (1) above shall not apply for the purposes of sections 174 to 181 of the Act (the levies).

Board's duty where application or notification received under section 129

5.—(1) Section 129 of the Act (applications and notifications for the purposes of section 128) shall be modified in its application to a section of a segregated scheme to which regulation 2 applies so that it shall be read as if—

- (a) after subsection (1), there were inserted the following subsection—
 - “(1A) Where the trustees or managers of a section of a segregated scheme make an application to the Board under subsection (1), they must issue a notice to that effect as soon as practicable to the trustees or managers of each section of the scheme (if different) and to all the employers in relation to the scheme.”; and
- (b) after subsection (5), there were inserted the following subsection—
 - “(5A) Where the trustees or managers of a section of a segregated scheme receive a notice from the Board under subsection (5), they must send a copy of that notice as soon as practicable to the trustees or managers of each section of the scheme (if different) and 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 section of a segregated scheme to which regulation 2 applies so that it shall be read as if—

- (a) after the words “a scheme rescue is not possible” in subsection (2), there were inserted the words “in relation to the relevant section of a segregated scheme”;
- (b) after the words “a scheme rescue has occurred” in subsection (3), there were inserted the words “in relation to that section”;
- (c) after subsection (4), there were inserted the following subsection—

“(4A) Where the trustees or managers of a section of a 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 the trustees or managers of each section of the scheme (if different) and to all the employers in relation to the scheme.”;

▶¹(d) in subsection (5)—

- (i) in paragraph (a), for the words “in relation to an occupational pension scheme” there were substituted the words “in relation to a section of a segregated scheme”; and
- (ii) in paragraph (b), for the words “in relation to such a scheme” there were substituted the words “in relation to such a section”; and◀

(e) after subsection (7), there were inserted the following subsection—

“(7A) Where the trustees or managers of a section of a 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 the trustees or managers of each section of the scheme (if different) and to all the employers in relation to the scheme.”.

¹Sub-para. (d) of reg. 5(2) substituted by reg. 5(3)(b) of S.I. 2005/993 as from 1.4.05.

Protected liabilities and assessment periods

6.—(1) Section 131 of the Act (protected liabilities) shall be modified in its application to a section of a segregated scheme to which regulation 2 applies so that it shall be read as if, for subsection (1), there were substituted the following subsection—

(1) “For the purposes of this Chapter the protected liabilities, in relation to a section of a segregated scheme which is, for the purposes of this Part, an eligible scheme, at a particular time (“the relevant time”), are—

- (a) the cost of securing benefits for and in respect of members of the section which correspond to the compensation which would be payable, in relation to the section, in accordance with the pension compensation provisions (see section 162) if the Board assumed responsibility for the section in accordance with this Chapter,
- (b) a proportion of the liabilities of the scheme as a whole ▶²as determined by the Board or as calculated in the Board's valuation of the relevant section of the scheme under section 143◀ which are not liabilities to, or in respect of, members,
- (c) the estimated cost of winding up the section.”.

²Words in reg. 6(1) substituted by reg. 2(2) of S.I. 2012/3083 as from 24.1.13.

(2) Section 132 of the Act (assessment periods) shall be modified in its application to a section of a segregated scheme to which regulation 2 applies so that it shall be read as if, after the words “an assessment period” in subsections (2) and (4), there were inserted the words “in relation to a section of a segregated scheme”.

Directions and power to validate contraventions of section 135

7.—(1) Section 134 of the Act (directions) shall be modified in its application to a section of a segregated scheme to which regulation 2 applies so that it shall be read as if—

- (a) in subsection (2)–
 - (i) for the words “the scheme’s protected liabilities do not exceed its assets”, there were substituted the words “the protected liabilities of the section do not exceed its assets”; and
 - (ii) for the words “in relation to the scheme”, there were substituted the words “in relation to the segregated scheme in question”; and
- (b) for the words “the trustees or managers” in paragraph (a)(i) of subsection (3), there were substituted the words “any trustees or managers”.

(2) Section 136 of the Act (power to validate contraventions of section 135) shall be modified in its application to a section of a segregated scheme to which regulation 2 applies so that it shall be read as if, after subsection (2), there were inserted the following subsection–

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

Valuation of assets

¹Reg. 8(1) substituted & para. (1A) inserted by reg. 2(3)(a) & (b) of S.I. 2012/3083 as from 24.1.13.

8.—¹(1) Section 143 of the Act (Board’s obligation to obtain valuation of assets and protected liabilities) shall be modified in its application to a section of a segregated scheme to which regulation 2 applies so that it shall be read as if–

- (a) for the words “the scheme” in subsection (2)(b), there were substituted the words “the relevant section of the scheme”; and
- (b) after subsection (2A), there were inserted the following subsection–

“(2B) Where the trustees or managers of a segregated scheme receive a copy of a notice under subsection (2A), they must send a copy of that notice as soon as practicable to the trustees or managers of each section of the scheme (if different) and to all the employers in relation to the scheme.”◀

¹(1A) Section 143A of the Act (determinations under section 143) shall be modified in its application to a section of a segregated scheme to which regulation 2 applies so that it shall be read as if–

- (a) after subsection (1), there were inserted the following subsection–
 - “(1A) Where the trustees or managers of a segregated scheme receive a copy of a determination under subsection (1), they must send a copy of that determination as soon as practicable to the trustees or managers of each section of the scheme (if different) and to all the employers in relation to the scheme.”; and
- (b) for the words “a scheme” in subsection (3), there were substituted the words “the relevant section of a scheme”.◀

(2) Section 144 of the Act (approval of valuation) shall be modified in its application to a section of a segregated scheme to which regulation 2 applies so that it shall be read as if–

- (a) for the words “obtains a valuation in respect of a scheme” in subsection (1), there were substituted the words “obtains a valuation in respect of the relevant section of the scheme”; and
- (b) after subsection (2), there were inserted the following subsection–
 - “(2A) Where the trustees or managers of a segregated scheme receive a copy of a valuation of the relevant section of the scheme under subsection (2), they must send a copy of that valuation as soon as practicable to the trustees or managers of each section of the scheme (if different) and to all the employers in relation to the scheme.”.

(3) Section 145 of the Act (binding valuations) shall be modified in its application to a section of a segregated scheme to which regulation 2 applies so that it shall be read as if—

- (a) for the words “in relation to a scheme” in subsection (2), there were substituted the words “in relation to the relevant section of the scheme”; and
- (b) after subsection (3), there were inserted the following subsection—

“(3A) Where the trustees or managers of a section of a segregated scheme receive a notice from the Board under subsection (3) together with a copy of the binding valuation, they must send a copy of the notice and the binding valuation as soon as practicable to the trustees or managers of each section of the scheme (if different) and to all the employers in relation to the scheme.”.

Refusal to assume responsibility for a scheme

9.—(1) Section 146 of the Act (schemes which become eligible schemes) shall be modified in its application to a section of a segregated scheme to which regulation 2 applies so that it shall be read as if—

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

“(1) Regulations may provide that where the Board is satisfied that any section of a segregated scheme is not, for the purposes of this Part, an eligible scheme throughout such period as may be prescribed, the Board must refuse to assume responsibility for that section under this Chapter.”;
- (b) for the words “a scheme” in subsection (2), there were substituted the words “a section of the scheme”;
- (c) after subsection (2), there were inserted the following subsection—

“(2A) Where the trustees or managers of a section of a segregated scheme receive a copy of a withdrawal notice from the Board under subsection (2), they must send a copy of that notice as soon as practicable to the trustees or managers of each section of the scheme (if different) and to all the employers in relation to the scheme.”; and
- (d) after subsection (4), there were inserted the following subsection—

“(4A) Where the trustees or managers of a section of a segregated scheme receive a notice from the Board under subsection (4) 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 the trustees or managers of each section of the scheme (if different) and to all the employers in relation to the scheme.”.

(2) Section 147 of the Act (new schemes created to replace existing schemes) shall be modified in its application to a new section of a segregated scheme or a section of a new segregated scheme to which regulation 2 applies so that it shall be read as if—

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

“(1) The Board must refuse to assume responsibility for a new section of a segregated scheme or a section of a new segregated scheme (“the new section”) under this Chapter where it is satisfied that—

 - (a) the new section was established during such period as may be prescribed,
 - (b) the employer in relation to the new section was, at the date of establishment of that section, also an employer in relation to another scheme (“the old scheme”) or another section of the scheme (“the old section”) established before the new section,
 - (c) a transfer or transfers of, or a transfer payment or transfer payments in respect of, any rights of members under the old scheme or the old section has or have been made to the new section, and
 - (d) the main purpose or one of the main purposes of establishing the new section and making the transfer or transfers, or transfer payment or transfer payments, was to enable those members to receive compensation under the pension compensation provisions

in respect of their rights under the new section in circumstances where, in the absence of the transfer or transfers, regulations under section 146 would have operated to prevent such payments in respect of their rights under the old scheme or the old section.”;

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

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

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

“(4A) Where the trustees or managers of a section of a segregated scheme receive a notice from the Board under subsection (4) 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 the trustees or managers of each section of the scheme (if different) and to all the employers in relation to the scheme.”.

(3) Section 148 of the Act (withdrawal following issue of section 122(4) notice) shall be modified in its application to a section of a segregated scheme to which regulation 2 applies so that it shall be read as if—

- (a) after subsection (5), there were inserted the following subsection—

“(5A) Where the trustees or managers of a section of a segregated scheme receive a copy of a withdrawal notice issued by the Board under this section, they must send a copy of that notice as soon as practicable to the trustees or managers of each section of the scheme (if different) and to all the employers in relation to the scheme.”; and

- (b) after subsection (7), there were inserted the following subsection—

“(7A) Where the trustees or managers of a section of a 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 the trustees or managers of each section of the scheme (if different) and to all the employers in relation to the scheme.”.

Reconsideration and duty to assume responsibility for a scheme following reconsideration

10.—(1) Section 151 of the Act (application for reconsideration) shall be modified in its application to a section of a segregated scheme to which regulation 2 applies so that it shall be read as if, in the definition of ““protected benefits quotation” in subsection (8), for the words from “protected benefits quotation” in relation to a scheme means” to the words “from the reconsideration time” there were substituted the following words—

““protected benefits quotation”, in relation to a section of a segregated scheme, means a quotation for one or more annuities from one or more insurers, being companies willing to accept payment in respect of the members of the section from the trustees or managers of the scheme, which would provide in respect of each member of the section from the reconsideration time— ”.

(2) Section 152 of the Act (duty to assume responsibility following reconsideration) shall be modified in its application to a section of a segregated scheme to which regulation 2 applies so that it shall be read as if—

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

“(2) The Board must assume responsibility in accordance with this Chapter for a section of a segregated scheme if it is satisfied that the value of the assets of the section at the reconsideration time is less than the aggregate of—

- (a) the amount quoted in the protected benefits quotation accompanying the application;

- (b) a proportion of the amount of liabilities of the scheme as a whole at that time, ¹as determined by the Board or calculated in the valuation of the relevant section of the scheme referred to in ²subsection (2) or (3) of section 151, which are not liabilities to, or in respect of, members of the scheme;
- (c) the estimated cost of winding up the section at that time.”;
- (b) after subsection (3), there were inserted the following subsection—
- “(3A) Where the trustees or managers of a section of a segregated scheme receive a copy of a determination notice from the Board under subsection (3), they must send a copy of that notice as soon as practicable to the trustees or managers of each section of the scheme (if different) and 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 section of a 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 the trustees or managers of each section of the scheme (if different) and to all the employers in relation to the scheme.”.

¹Words in reg. 10(2)(a)(b) substituted by reg. 2(4) of S.I. 2012/3083 as from 24.1.13.

²Words in reg. 10(2)(a)(b) substituted by reg. 5(3)(c) of S.I. 2005/993 as from 1.4.05.

Closed schemes and requirement to wind up schemes with sufficient assets to meet protected liabilities

11.—(1) Section 153 of the Act (closed schemes) shall be modified in its application to a section of a segregated scheme to which regulation 2 applies so that it shall be read as if—

- (a) for the words “a closed scheme” in subsection (2), there were substituted the words “a closed section of a scheme”;
- (b) for the words “a closed scheme” in subsection (5), there were substituted the words “a closed section of a scheme”; and
- (c) after subsection (6), there were inserted the following subsection—
- “(6A) Where the trustees or managers of a section of a segregated scheme receive a copy of a determination notice from the Board under subsection (6), they must send a copy of that notice as soon as practicable to the trustees or managers of each section of the scheme (if different) and to all the employers in relation to the scheme.”.

(2) Section 154 of the Act (requirement to wind up schemes with sufficient assets to meet protected liabilities) shall be modified in its application to a section of a segregated scheme to which regulation 2 applies so that it shall be read as if—

- (a) for the words “(scheme rescue not possible but scheme has sufficient assets to meet the protected liabilities)” in paragraph (a) of subsection (2), there were substituted the words “(scheme rescue not possible in relation to a section of a segregated scheme but section has sufficient assets to meet the protected liabilities)”;
- (b) for the words “a scheme is wound up” in subsection (6), there were substituted the words “a section of a segregated scheme is wound up”;
- (c) for the words “winding up of a scheme” in subsection (11), there were substituted the words “winding up of a section of a segregated scheme”; and
- (d) for the words “in relation to a scheme” in subsection (12), there were substituted the words “in relation to a section of a segregated scheme”.

(3) Section 155 of the Act (treatment of closed schemes) shall be modified in its application to a section of a segregated scheme to which regulation 2 applies so that it shall be read as if, for subsection (1), there were substituted the following subsection—

“(1) In this section “closed scheme” means a section of a segregated scheme which is, for the purposes of this Part, an eligible scheme which is authorised under section 153 to continue as a closed section of the scheme.”.

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(4) Section 157 of the Act (applications and notifications where closed schemes have insufficient assets) shall be modified in its application to a section of a segregated scheme to which regulation 2 applies so that it shall be read as if, after subsection (4), there were inserted the following subsection—

“(4A) Where the trustees or managers of a section of a segregated scheme receive a notice from the Board under subsection (4), they must send a copy of that notice as soon as practicable to the trustees or managers of each section of the scheme (if different) and to all the employers in relation to the scheme.”

►¹(5) Section 158 of the Act (duty to assume responsibility for closed schemes) shall be modified in its application to a section of a segregated scheme to which regulation 2 applies so that it shall be read as if, after subsection (3A), there were inserted the following subsection—

“(3B) Where the trustees or managers of a section of a segregated scheme receive a notice from the Board under subsection (3A), they must send a copy of that notice as soon as practicable to the trustees or managers of each section of the scheme (if different) and to all the employers in relation to the scheme.”◄

¹Reg. 11(5) inserted by reg. 2(5) of S.I. 2012/3083 as from 24.1.13.

Transfer notices and assumption of responsibility

12.—(1) Section 160 of the Act (transfer notice) shall be modified in its application to a section of a segregated scheme to which regulation 2 applies so that it shall be read as if—

(a) for the words “required to assume responsibility for a scheme” in subsection (1), there were substituted the words “required to assume responsibility for a section of a segregated scheme”;

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

“(2A) Where the trustees or managers of a section of a 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 the trustees or managers of each section of the scheme (if different) and 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 under subsection (2) to—

- (a) the Regulator, and
- (b) an insolvency practitioner acting in relation to the employer in relation to the section of the scheme in respect of which the transfer notice is issued.”

(2) Section 161 of the Act (effect of Board assuming responsibility for a scheme) shall be modified in its application to a section of a segregated scheme to which regulation 2 applies so that it shall be read as if—

(a) after the word “obligations” in paragraph (b) of subsection (2), there were inserted the words “to or in respect of members of that section”; and

(b) after the words “to or in respect of persons” in paragraph (a) of subsection (4), there were inserted the words “who are or were members of that section”.

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

The pension compensation provisions

13.—(1) Section 162 of the Act (the pension compensation provisions) shall be modified in its application to a section of a segregated scheme to which regulation 2 applies so that it shall be read as if, in subsection (1)—

- (a) for the words “in relation to a scheme”, there were substituted the words “in relation to a section of a segregated scheme”;
- (b) after the word “members” in paragraphs (a) and (b), there were added the words “of that section”;
- (c) after the word “payable” in paragraph (c), there were added the words “to or in respect of members of that section”; and
- (d) at the end of paragraph (d), there were added the words “payable to or in respect of members of that section”.

(2) Section 163 of the Act (adjustments to be made where the Board assumes responsibility for a scheme) shall be modified in its application to a section of a segregated scheme to which regulation 2 applies so that it shall be read as if, after the words “to any member” in paragraph (a) of subsection (2), there were inserted the words “of that section”.

(3) Section 166 of the Act (duty to pay scheme benefits unpaid at assessment date etc) shall be modified in its application to a section of a segregated scheme to which regulation 2 applies so that it shall be read as if, for the words “assumes responsibility for a scheme” in subsection (1), there were substituted the words “assumes responsibility for a section of a segregated scheme with only one employer in relation to that section of the scheme”.

¹Part 3, substituted by reg. 10(3) of S.I. 2005/2113 as from 1.8.05.

►¹PART 3**SEGREGATED SCHEMES:****MULTI-EMPLOYER SECTIONS WITHOUT REQUIREMENT FOR PARTIAL WIND UP ON WITHDRAWAL OF PARTICIPATING EMPLOYER****Application and effect**

14.—(1) This regulation applies to a multi-employer section of a segregated scheme the rules of which do not provide for the partial winding up of the section when an employer in relation to the section ceases to participate in the scheme.

(2) Except as otherwise provided in this Part, in the case of a section of a scheme to which this regulation applies—

- (a) Part 2 of the Act, except Chapter 4 (fraud compensation), shall be read as if it contained the modifications provided for by this Part; and
- (b) references in Part 2 of the Act, except in Chapter 4, to—
 - (i) “scheme rules” shall be read as if they were references to “scheme rules relating to the section”;
 - (ii) “the scheme” shall be read as if they were references to “the section”;
 - (iii) “the employer” shall be read as if they were references to “an employer in relation to the section”; and
 - (iv) “trustees or managers of the scheme” shall, in relation to a multi-employer section of a segregated scheme, be read as if they were references to “trustees or managers with ultimate responsibility for the administration of the section”.

(3) Paragraph (2) shall not have effect in relation to section 174 of the Act (initial levy).

Notification of insolvency events, confirmation of scheme status etc.

15.—(1) Section 120 of the Act (duty to notify insolvency events in respect of employers) shall be modified in its application to a section of a scheme to which regulation 14 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 section of a multi-employer scheme which is divided into two or more sections (“a segregated scheme”) with at least two employers in relation to that section of the scheme (“a multi-employer section”), an insolvency event occurs in relation to any employer in relation to that section.”; and

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

“(2A) Where the trustees or managers of a multi-employer section of a 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 that section of the scheme and to the trustees or managers of each section of the scheme (if different).”.

(2) Section 122 of the Act (insolvency practitioner’s duty to issue notices confirming status of scheme) shall be modified in its application to a section of a scheme to which regulation 14 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 multi-employer section of a segregated scheme.”;

(b) in subsection (2)—

(i) for the words “the employer”, there were substituted the words “an employer”;

(ii) in paragraph (a), after the words “a scheme rescue is not possible”, there were inserted the words “in relation to the relevant section of the scheme”; and

(iii) in paragraph (b), after the words “a scheme rescue has occurred”, there were inserted the words “in relation to the relevant section of the scheme”;

(c) in paragraph (a) of subsection (3), for the words “the employer”, there were substituted the words “an employer”;

(d) in subsection (4)—

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

(ii) for the words “in relation to the scheme”, there were substituted the words “in relation to the section”;

(e) in subsection (5)—

(i) in paragraph (a), for the words “in relation to an occupational pension scheme”, there were substituted the words “in relation to a multi-employer section of a segregated scheme”; and

(ii) in paragraph (b), for the words “in relation to such a scheme”, there were substituted the words “in relation to such a section”;

(f) in subsection (6), for the words “the employer”, there were substituted the words “an employer”; and

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

“(6A) Where the trustees or managers of a multi-employer section of a segregated scheme receive a notice issued by an insolvency practitioner or 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 that section of the scheme and to the trustees or managers of each section of the scheme (if different).”.

(3) Section 123 of the Act (approval of notices issued under section 122) shall be modified in its application to a section of a scheme to which regulation 14 applies so that it shall be read as if—

¹Reg. 15(3)(a) omitted
by reg. 17 of S.I. 2008/
731 as from 6.4.08.

▶¹◀

(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.”; and

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

“(4A) Where the trustees or managers of a multi-employer section of a 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 that section of the scheme and to the trustees or managers of each section of the scheme (if different).”.

(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 section of a scheme to which regulation 14 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 multi-employer section of a segregated scheme”; and

(ii) in paragraphs (a) and (b), 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 multi-employer section of a 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 that section of the scheme and to the trustees or managers of each section of the scheme (if different).”.

(5) Section 125 of the Act (binding notices confirming status of scheme) shall be modified in its application to a section of a scheme to which regulation 14 applies so that it shall be read as if, after subsection (3), there were inserted the following subsection—

“(3A) Where the trustees or managers of a multi-employer section of a 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 that section of the scheme and to the trustees or managers of each section of the scheme (if different).”.

Eligible schemes

16.—(1) Except as otherwise provided in this Part, for the purposes of Part 2 of the Act, except Chapter 4, as it applies to a section of a scheme to which regulation 14 applies, references to “an eligible scheme” shall be read as if they were references to a multi-employer section of a segregated scheme where that section, if it were a scheme, would not be—

- (a) a money purchase scheme; or
- (b) a scheme which is a prescribed scheme or a scheme of a prescribed description under section 126(1)(b) of the Act.

(2) Paragraph (1) shall not apply for the purposes of sections 174 to 181 of the Act (the levies).

Duty to assume responsibility for schemes

17.—(1) Section 127 of the Act (duty to assume responsibility for schemes following insolvency event) shall have effect in relation to a section of a scheme to which regulation 14 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 multi-employer section of a segregated scheme.”;

- (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 a multi-employer section of a segregated scheme which is, for the purposes of this Part, 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 that section of the scheme at a time when those employers are the only employers in relation to that section, or
 - (ii) in relation to an employer in relation to that section of the scheme at a time when all other employers in relation to that section 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)(a) 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)
- (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 section 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 section of a scheme to which regulation 14 applies so that it shall be read as if, for subsection (1),

(a) Subsection (1A) of section 129 of the Pensions Act 2004 (c. 35) is inserted by the modification in paragraph (3)(b) of this regulation.

(b) Subsection (4) of section 129 of the Pensions Act 2004 is substituted by the modification in paragraph (3)(c) of this regulation.

there were substituted the following subsection–

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

- (a) the trustees or managers 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.”(a).

(3) Section 129 of the Act (applications and notifications for the purposes of section 128) shall be modified in its application to a section of a scheme to which regulation 14 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 multi-employer section of a 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 section is unlikely to continue as a going concern at a time when all other employers in relation to that section 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 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 section at a time when all other employers in relation to that section 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 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 section at a time when–

(i) all other employers in relation to that section 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 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

(a) Subsection (1) of section 129 is modified by paragraph (3)(a) of this regulation.

- (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 section,

they must, except where an assessment period has already begun in relation to that section of the scheme, make an application to the Board for it to assume responsibility for the section under section 128.”;

- (b) after subsection (1), there were inserted the following subsections—

“(1A) Where the trustees or managers of a multi-employer section of a segregated scheme which is, for the purposes of this Part, an eligible scheme become aware that an employer in relation to that section—

- (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 section of the scheme in respect of which the notice is given,
- (c) a statement by the trustees or managers of the section 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 section 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 multi-employer section of a 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 that section of the scheme and to the trustees or managers of each section of the scheme (if different).”;

- (c) for subsection (4), there were substituted the following subsection—

“(4) Where, in relation to a multi-employer section of a segregated scheme which is, for the purposes of this Part, an eligible scheme, the Regulator—

- (a) becomes aware that an employer in relation to that section of 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 that section of the scheme at a time when—
 - (i) all other employers in relation to that section of 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 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 section of the scheme,
it must, except where an assessment period has already begun in relation to that section of 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 multi-employer section of a segregated scheme receive 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 that section of the scheme and to the trustees or managers of each section of the scheme (if different).”.

Board’s duty where application or notification received under section 129

18. Section 130 of the Act (Board’s duty where application or notification received under section 129) shall be modified in its application to a section of a scheme to which regulation 14 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) in subsection (2), after the words “a scheme rescue is not possible”, there were inserted the words “in relation to a multi-employer section of a segregated scheme”;
- (c) in subsection (3), after the words “a scheme rescue has occurred”, there were inserted the words “in relation to that section”;
- (d) after subsection (4), there were inserted the following subsection—
“(4A) Where the trustees or managers of a multi-employer section of a 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 that section of the scheme and to the trustees or managers of each section of the scheme (if different).”;
- (e) in subsection (5)—
(i) in paragraph (a), for the words “in relation to an occupational pension scheme”, there were substituted the words “in relation to a multi-employer section of a segregated scheme”; and
(ii) in paragraph (b), for the words “in relation to such a scheme”, there were substituted the words “in relation to such a section”; and
- (f) after subsection (7), there were inserted the following subsection—
“(7A) Where the trustees or managers of a multi-employer section of a 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 that section of the scheme and to the trustees or managers of each section of the scheme (if different).”.

Protected liabilities

19. Section 131 of the Act (protected liabilities) shall be modified in its application to a section of a scheme to which regulation 14 applies so that it shall be read as if, for subsection (1), there were substituted the following subsection—

“(1) For the purposes of this Chapter the protected liabilities, in relation to a multi-employer section of a segregated scheme which is, for the purposes of this Part, an eligible scheme, at a particular time (“the relevant time”) are—

- (a) the cost of securing benefits for and in respect of members of the section which correspond to the compensation which would be payable, in relation to the section, in accordance with the pension compensation provisions (see section 162) if the Board assumed responsibility for the section in accordance with this Chapter,
- (b) the liabilities of the scheme as a whole which are reasonably attributable to the section and which are not liabilities to, or in respect of, its members, and
- (c) the estimated cost of winding up the section.”.

Assessment periods

20. Section 132 of the Act (assessment periods) shall be modified in its application to a section of a scheme to which regulation 14 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 multi-employer section of a 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 that section”; and
 - (iii) after the words “an assessment period”, there were inserted the words “in relation to the section”;
- (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 multi-employer section of a 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 that section of the scheme”; and
- (c) in subsection (5), for the words “section 129(5)(a)”, there were substituted the words “section 129(4)(b)”.

Directions

21. Section 134 of the Act (directions) shall be modified in its application to a section of a scheme to which regulation 14 applies so that it shall be read as if—

- (a) in subsection (2)—
 - (i) for the words “the scheme’s protected liabilities do not exceed its assets”, there were substituted the words “the protected liabilities of the section do not exceed its assets”; and
 - (ii) for the words “in relation to the scheme”, there were substituted the words “in relation to the segregated scheme in question”; and
- (b) in paragraph (a)(i) of subsection (3), for the words “the trustees or managers” there were substituted the words “any trustees or managers”.

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

22. —(1) Section 136 of the Act (power to validate contraventions of section 135) shall be modified in its application to a section of a scheme to which regulation 14

applies so that it shall be read as if—

- (a) in paragraph (c) of subsection (2), 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”; and
- (b) after subsection (2), there were inserted the following subsection—

“(2A) Where the trustees or managers of a multi-employer section of a segregated scheme receive a copy of a 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 that section of the scheme and to the trustees or managers of each section of the scheme (if different).”

(2) Section 137(2) of the Act (Board to act as creditor of the employer) shall be modified in its application to a section of a scheme to which regulation 14 applies so that it shall be read as if, for the words “the employer”, there were substituted the words “an employer”.

Valuation of assets

¹Reg. 23(1) substituted & para. (1A) inserted by reg. 2(6) of S.I. 2012/3083 as from 24.1.13.

23.—¹(1) Section 143 of the Act (Board’s obligation to obtain valuation of assets and protected liabilities) shall be modified in its application to a section of a scheme to which regulation 14 applies so that it shall be read as if—

- (a) for the words “the scheme” in subsection (2)(b), there were substituted the words “the relevant section of the scheme”; and
- (b) after subsection (2A), there were inserted the following subsection—

“(2B) Where the trustees or managers of a multi-employer section of a segregated scheme receive a copy of a notice under subsection (2A), they must send a copy of that notice as soon as practicable to all the employers in relation to that section of the scheme and to the trustees or managers of each section of the scheme (if different).”

(1A) Section 143A of the Act (determinations under section 143) shall be modified in its application to a section of a scheme to which regulation 14 applies so that it shall be read as if—

- (a) after subsection (1), there were inserted the following subsection—

“(1A) Where the trustees or managers of a multi-employer section of a segregated scheme receive a copy of a determination under subsection (1), they must send a copy of that determination as soon as practicable to all the employers in relation to that section of the scheme and to the trustees or managers of each section of the scheme (if different).”; and
- (b) for the words “a scheme” in subsection (3), there were substituted the words “the relevant section of a scheme”.◀

(2) Section 144 of the Act (approval of valuation) shall be modified in its application to a section of a scheme to which regulation 14 applies so that it shall be read as if—

- (a) in subsection (1), for the words “obtains a valuation in respect of a scheme”, there were substituted the words “obtains a valuation in respect of the relevant section of the scheme”;
- (b) in paragraph (b)(iii) of subsection (2), 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”; and
- (c) after subsection (2), there were inserted the following subsection—

“(2A) Where the trustees or managers of a multi-employer section of a segregated scheme receive a copy of a valuation from the Board under subsection (2), they must send a copy of that valuation as soon as practicable to all the employers in relation to that section of the scheme and to the trustees or managers of each section of the scheme (if different).”

(3) Section 145 of the Act (binding valuations) shall be modified in its application to a section of a scheme to which regulation 14 applies so that it shall be read as if—

- (a) in subsection (2), for the words “in relation to a scheme”, there were substituted the words “in relation to the relevant section of the scheme”;
- (b) in paragraph (c) of subsection (3), 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”; and
- (c) after subsection (3), there were inserted the following subsection—

“(3A) Where the trustees or managers of a multi-employer section of a segregated scheme receive a notice from the Board under subsection (3) together with a copy of a binding valuation, they must send a copy of the notice and the binding valuation as soon as practicable to all the employers in relation to that section of the scheme and to the trustees or managers of each section of the scheme (if different).”.

Refusal to assume responsibility for a scheme

24.—(1) Section 146 of the Act (schemes which become eligible schemes) shall be modified in its application to a section of a scheme to which regulation 14 applies so that it shall be read as if—

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

“(1) Regulations may provide that where the Board is satisfied that any multi-employer section of a segregated scheme is not, for the purposes of this Part, an eligible scheme throughout such a period as may be prescribed, the Board must refuse to assume responsibility for that section under this Chapter.”;
- (b) in subsection (2)—
 - (i) for the words “a scheme”, there were substituted the words “a section of the scheme”; and
 - (ii) in paragraph (b)(iii), for the words “in relation to the employer or, if there is no such insolvency practitioner, the employer”, there were substituted the words ►¹“in relation to an employer or, if there is no such insolvency practitioner, that employer”◀;
- (c) after subsection (2), there were inserted the following subsection—

“(2A) Where the trustees or managers of a multi-employer section of a segregated scheme receive a copy of a withdrawal 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 that section of the scheme and to the trustees or managers of each section of the scheme (if different).”;
- (d) in paragraph (c) of subsection (4), for the words ►¹“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”; and
- (e) after subsection (4), there were inserted the following subsection—

“(4A) Where the trustees or managers of a multi-employer section of a segregated scheme receive a notice from the Board under subsection (4) 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 that section of the scheme and to the trustees or managers of each section of the scheme (if different).”.

¹Words in reg. 24(1)(b) (ii) & (2)(d) substituted by reg. 5(4)(f)(i) & (ii) of S.I. 2005/993 as from 1.4.05.

(2) Section 147 of the Act (new schemes created to replace existing schemes) shall be modified in its application to a section of a scheme to which regulation 14 applies so that it shall be read as if—

- (a) for subsection (1), there were substituted the following subsection—
- “(1) The Board must refuse to assume responsibility for a new multi-employer section of a segregated scheme (“the new section”) under this Chapter where it is satisfied that—
- (a) the new section was established during such period as may be prescribed,
- (b) an employer in relation to the new section was, at the date of establishment of that section, also the employer in relation to another scheme (“the old scheme”) or another section of the scheme (“the old section”) established before the new section,
- (c) a transfer or transfers of, or a transfer payment or transfer payments in respect of, any rights of members under the old scheme or the old section has or have been made to the new section, and
- (d) the main purpose or one of the main purposes of establishing the new section and making the transfer or transfers, or transfer payment or transfer payments, was to enable those members to receive compensation under the pension compensation provisions in respect of their rights under the new section in circumstances where, in the absence of the transfer or transfers, regulations under section 146 would have operated to prevent such payments in respect of their rights under the old scheme or the old section.”;
- (b) in paragraph (b)(iii) of subsection (2), 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”;
- (c) after subsection (2), there were inserted the following subsection—
- “(2A) Where the trustees or managers of a multi-employer section of a segregated scheme receive a copy of a withdrawal 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 that section of the scheme and to the trustees or managers of each section of the scheme (if different).”;
- (d) in paragraph (c) of subsection (4), 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”; and
- (e) after subsection (4), there were inserted the following subsection—
- “(4A) Where the trustees or managers of a multi-employer section of a segregated scheme receive a notice from the Board under subsection (4) together with a copy of the binding notice, they must send a copy of the notice as soon as practicable to all the employers in relation to that section of the scheme and to the trustees or managers of each section of the scheme (if different).”.
- (3) Section 148 of the Act (withdrawal following issue of section 122(4) notice) shall be modified in its application to a section of a scheme to which regulation 14 applies so that it shall be read as if—
- (a) in paragraph (c) of subsection (5), for the words “the employer”, there were substituted the words “any employer”;
- (b) after subsection (5), there were inserted the following subsection—
- “(5A) Where the trustees or managers of a multi-employer section of a segregated scheme receive a copy of a withdrawal notice issued by the Board under this section, they must send a copy of that notice as soon as practicable to all the employers in relation to that section of the scheme and to the trustees or managers of each section of the scheme (if different).”;
- (c) in paragraph (c) of subsection (7), for the words “the employer”, there were substituted the words “any employer”; and
- (d) after subsection (7), there were inserted the following subsection—

“(7A) Where the trustees or managers of a multi-employer section of a 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 that section of the scheme and to the trustees or managers of each section of the scheme (if different).”.

Reconsideration, closed schemes and requirement to wind up schemes with sufficient assets to meet protected liabilities

25.—(1) Section 151(8) of the Act (application for reconsideration) shall be modified in its application to a section of a scheme to which regulation 14 applies so that it shall be read as if, in the definition of “protected benefits quotation”, for the words from ““protected benefits quotation”, in relation to a scheme, means” to the words “from the reconsideration time—”, there were substituted the following words—

““protected benefits quotation”, in relation to a section of a segregated scheme, means a quotation for one or more annuities from one or more insurers, being companies willing to accept payment in respect of the members of the section from the trustees or managers of the scheme, which would provide in respect of each member of the section from the reconsideration time—”.

(2) Section 152 of the Act (duty to assume responsibility following reconsideration) shall be modified in its application to a section of a scheme to which regulation 14 applies so that it shall be read as if—

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

“(2) The Board must assume responsibility in accordance with this Chapter for a multi-employer section of a segregated scheme if it is satisfied that the value of the assets of the section at the reconsideration time is less than the aggregate of—

(a) the amount quoted in the protected benefits quotation accompanying the application,

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- (b) the liabilities of the scheme as a whole at that time which are reasonably attributable to the section and which are not liabilities to, or in respect of, members of the scheme, and
 - (c) the estimated cost of winding up the section at that time.”;
 - (b) after subsection (3), there were inserted the following subsection–
 - “(3A) Where the trustees or managers of a multi-employer section of a segregated scheme receive a copy of a determination notice from the Board under subsection (3), they must send a copy of that notice as soon as practicable to all the employers in relation to that section of the scheme and to the trustees or managers of each section of the scheme (if different).”;
 - and
 - (c) after subsection (7), there were inserted the following subsection–
 - “(7A) Where the trustees or managers of a multi-employer section of a segregated scheme receive a notice from the Board under subsection (7), they must send a copy of that notice as soon as practicable to all the employers in relation to that section of the scheme and to the trustees or managers of each section of the scheme (if different).”.
- (3) Section 153 of the Act (closed schemes) shall be modified in its application to a section of a scheme to which regulation 14 applies so that it shall be read as if–
- (a) in subsections (2) and (5), for the words “a closed scheme”, there were substituted the words “a closed section of the scheme”; and
 - (b) after subsection (6), there were inserted the following subsection–
 - “(6A) Where the trustees or managers of a multi-employer section of a segregated scheme receive a copy of a determination notice from the Board under subsection (6), they must send a copy of that notice as soon as practicable to all the employers in relation to that section of the scheme and to the trustees or managers of each section of the scheme (if different).”.
- (4) Section 154 of the Act (requirement to wind up schemes with sufficient assets to meet protected liabilities) shall be modified in its application to a section of a scheme to which regulation 14 applies so that it shall be read as if–
- (a) in paragraph (a) of subsection (2), for the words “(scheme rescue not possible but scheme has sufficient assets to meet the protected liabilities)”, there were substituted the words “(scheme rescue not possible in relation to a multi-employer section of a segregated scheme but section has sufficient assets to meet the protected liabilities)”;
 - (b) in subsection (6), for the words “a scheme is wound up”, there were substituted the words “a multi-employer section of a segregated scheme is wound up”;
 - (c) in subsection (11), for the words “winding up of a scheme”, there were substituted the words “winding up of a multi-employer section of a segregated scheme”; and
 - (d) in subsection (12), for the words “in relation to a scheme”, there were substituted the words “in relation to a multi-employer section of a segregated scheme”.
- (5) Section 155 of the Act (treatment of closed schemes) shall be modified in its application to a section of a scheme to which regulation 14 applies so that it shall be read as if, for subsection (1), there were substituted the following subsection–
- “(1) In this section “closed scheme” means a multi-employer section of a segregated scheme which is, for the purposes of this Part, an eligible scheme which is authorised under section 153 to continue as a closed section of the scheme.”.
- (6) Section 157 of the Act (applications and notifications where closed schemes have insufficient assets) shall be modified in its application to a section of a scheme to which regulation 14 applies so that it shall be read as if, after subsection (4), there were inserted the following subsection–

“(4A) Where the trustees or managers of a multi-employer section of a segregated scheme receive 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 that section of the scheme and to the trustees or managers of each section of the scheme (if different).”

¹Para. 7 inserted by reg. 2(7) of S.I. 2012/3083 as from 24.1.13.

►¹(7) Section 158 of the Act (duty to assume responsibility for closed schemes) shall be modified in its application to a section of a scheme to which regulation 14 applies so that it shall be read as if, after subsection (3A), there were inserted the following subsection—

“(3B) Where the trustees or managers of a multi-employer section of a segregated scheme receive a notice from the Board under subsection (3A), they must send a copy of that notice as soon as practicable to all the employers in relation to that section of the scheme and to the trustees or managers of each section of the scheme (if different).”◀

Transfer notice and assumption of responsibility for a scheme

26.—(1) Section 160 of the Act (transfer notice) shall be modified in its application to a section of a scheme to which regulation 14 applies so that it shall be read as if—

(a) in subsection (1), for the words “required to assume responsibility for a scheme”, there were substituted the words “required to assume responsibility for a multi-employer section of a segregated scheme”;

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

“(2A) Where the trustees or managers of a multi-employer section of a 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 that section of the scheme and to the trustees or managers of each section of the scheme (if different).”; 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 section of the scheme in respect of which the transfer notice is given.”

(2) Section 161 of the Act (effect of Board assuming responsibility for a scheme) shall be modified in its application to a section of a scheme to which regulation 14 applies so that it shall be read as if—

(a) in paragraph (b) of subsection (2), after the word “obligations”, there were inserted the words “to or in respect of members of that section”; and

(b) in paragraph (a) of subsection (4), after the words “to or in respect of persons”, there were inserted the words “who are or were members of that section”.

(3) Schedule 6 to the Act (transfer of property, rights and liabilities to the Board) shall be modified in its application to a section of a scheme to which regulation 14 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 multi-employer section of a segregated multi-employer scheme”.

The pension compensation provisions

27.—(1) Section 162(1) of the Act (the pension compensation provisions) shall be modified in its application to a section of a scheme to which regulation 14 applies so that it shall be read as if—

(a) for the words “in relation to a scheme”, there were substituted the words “in relation to a multi-employer section of a segregated scheme”;

- (b) in paragraphs (a) and (b), after the word “members”, there were added the words “of that section”;
- (c) in paragraph (c), after the word “payable”, there were added the words “to or in respect of members of that section”; and
- (d) at the end of paragraph (d), there were added the words “payable to or in respect of members of that section”.

(2) Section 163(2) of the Act (adjustments to be made where the Board assumes responsibility for a scheme) shall be modified in its application to a section of a scheme to which regulation 14 applies so that it shall be read as if, in paragraph (a), after the words “to any member”, there were inserted the words “of that section”.

(3) Section 166(1) of the Act (duty to pay scheme benefits unpaid at assessment date etc) shall be modified in its application to a section of a scheme to which regulation 14 applies so that it shall be read as if, for the words “assumes responsibility for a scheme”, there were substituted the words “assumes responsibility for a multi-employer section of a segregated scheme”. ◀

PART 4

SEGREGATED SCHEMES:

NON-SEGREGATED MULTI-EMPLOYER SECTIONS OF SEGREGATED SCHEMES WITH REQUIREMENT FOR PARTIAL WIND UP ON WITHDRAWAL OF PARTICIPATING EMPLOYER

Application and effect

28.—(1) This regulation applies to a non-segregated multi-employer section of a segregated scheme in circumstances where—

- (a) an insolvency event occurs in relation to an employer in relation to that section; or
- (b) the trustees or managers of the scheme become aware that an employer in relation to that section 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)

(2) Where—

- (a) in relation to an employer in relation to a section of a scheme to which this regulation applies, an event described in paragraph (1)(a) or (b) of this regulation occurs; and
- (b) the requirement in the scheme rules relating to that section for the trustees or managers of the scheme to segregate such part of the assets of the section as is attributable to the liabilities of the section to provide pensions or other benefits to or in respect of the pensionable service of some or all of the members of the section by reference to an employer in relation to the section (“the segregation requirement”) would be triggered when an employer in relation to the section ceases to participate in the scheme,

the segregation requirement shall, in relation to the employer referred to in subparagraph (a) of this paragraph, be deemed to have been triggered immediately after the occurrence of the event described in paragraph (1)(a) or (b) and a segregated part of the section shall be deemed to have been created for and in respect of any period after the occurrence of that event where a withdrawal event within the meaning of section 149(2) of the Act has not occurred in relation to the segregated part.

(3) In this Part—

“non-segregated multi-employer section” means a multi-employer section of a segregated scheme where, under the scheme rules relating to that section, the trustees or managers of the scheme are required, in circumstances where an employer in relation to that section ceases to participate in the scheme, to segregate such part of the assets of the section as are attributable to the liabilities of the section to provide pensions or other benefits to or in respect of the pensionable service of some or all of the members of the section by reference to that employer; and

“segregated part” means a section of a non-segregated multi-employer section which is created when a segregation requirement in the scheme rules relating to that multi-employer section of the scheme has been triggered.

- (4) Except as otherwise provided in this Part, in a case where this regulation applies—
- (a) Part 2 of the Act, except Chapter 4, shall be read as if it contained the modifications provided for by this Part; and
 - (b) references in Part 2 of the Act, except in Chapter 4, to—
 - (i) “scheme rules” shall be read as if they were references to “rules of the scheme which apply to the segregated part”;
 - (ii) “the scheme” shall be read as if they were references to “the segregated part”;
 - (iii) “the employer” shall be read as if they were references to “the employer in relation to the segregated part”; and
 - (iv) “trustees or managers of the scheme” shall, in relation to a non-segregated multi-employer section of a segregated scheme, be read as if they were references to “trustees or managers with ultimate responsibility for the administration of the section”¹; and
 - (c) Part 2 of the Act shall be read as if section 143 were omitted. ◀

¹Words inserted in reg. 28(4)(b)(iv) and 28(4)(c) added by reg. 2(8) of S.I. 2012/3083 as from 24.1.13.

- (5) Paragraph (4) shall not have effect in relation to section 174 of the Act (initial levy).

Notification of insolvency events, confirmation of scheme status etc.

29.—(1) Section 120 of the Act (duty to notify insolvency events in respect of employers) shall be modified in its application to a segregated part to which regulation 28 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 occurs in relation to an employer in relation to a section of a multi-employer scheme which is divided into two or more sections (“a segregated scheme”) with at least two employers in relation to that section of the scheme (“a multi-employer section”) under the rules of which the trustees or managers are required, in circumstances where an employer in relation to that section of the scheme ceases to participate in the scheme, to segregate such part of the assets of the section as is attributable to the liabilities of the section to provide pensions or other benefits to or in respect of the pensionable service of some or all of the members of the section by reference to that employer (“the segregated part”).”; and

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

“(2A) Where the trustees or managers of a segregated part of a multi-employer section of a segregated scheme to which this section applies receive a notice from an insolvency practitioner under subsection (2), they must send a copy of that notice as soon as practicable to the trustees or managers of each section of the scheme (if different) and 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 scheme) shall be modified in its application to a segregated part to which regulation 28 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 an employer in relation to a multi-employer section of a segregated scheme and a segregated part of the section is created.”; and
- (b) in subsection (2)–
 - (i) after the words “a scheme rescue is not possible” in paragraph (a), there were inserted the words “in relation to the relevant segregated part of a multi-employer section of the scheme”; and
 - (ii) after the words “a scheme rescue has occurred” in paragraph (b), there were inserted the words “in relation to the relevant segregated part of a multi-employer section of the scheme”;
 - (c) in subsection (4)
 - (i) after the words “a scheme rescue is not possible” in paragraph (a), there were inserted the words “in relation to the relevant segregated part”; and
 - (ii) after the words “a scheme rescue has occurred” in paragraph (b), there were inserted the words “in relation to the relevant segregated part”;
 - ▶(d) in subsection (5)–
 - (i) in paragraph (a), for the words “in relation to an occupational pension scheme” there were substituted the words “in relation to a segregated part of a multi-employer section of a segregated scheme”; and
 - (ii) in paragraph (b), for the words “in relation to such a scheme” there were substituted the words “in relation to such a segregated part”; and◀
 - (e) after subsection (6), there were inserted the following subsection–

“(6A) Where the trustees or managers of a segregated part of a multi-employer section of a segregated scheme receive a copy of a notice from an insolvency practitioner or former insolvency practitioner under subsection (6), they must send a copy of that notice as soon as practicable to the trustees or managers of each section of the scheme (if different) and 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 segregated part to which regulation 28 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 receives a notice under section 122(6) (“the section 122 notice”) in relation to an employer in relation to a segregated part of a multi-employer section of a segregated scheme.”; and
 - (b) after subsection (4) there were inserted the following subsection–

“(4A) Where the trustees or managers of a segregated part of a multi-employer section of a 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 the trustees or managers of each section of the scheme (if different) and 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 segregated part to which regulation 28 applies so that it shall be read as if–
- (a) for the words “in relation to an occupational pension scheme” in subsection (1), there were substituted the words “in relation to a segregated part of a multi-employer section of a segregated scheme”; and
 - (b) after subsection (4), there were inserted the following subsection–

“(4A) Where the trustees or managers of a segregated part of a multi-employer section of a 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 the trustees or managers of

Para. (d) of reg. 29(2) substituted by reg. 5(5)(a) of S.I. 2005/993 as from 1.4.05.

each section of the scheme (if different) and 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 segregated part to which regulation 28 applies so that it shall be read as if, after subsection (3), there were inserted the following subsection—

“(3A) Where the trustees or managers of a segregated part of a multi-employer section of a 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 the trustees or managers of each section of the scheme (if different) and to all the employers in relation to the scheme.”.

Eligible schemes

30.—(1) Except as otherwise provided in this Part, for the purposes of Part 2 of the Act, except Chapter 4, as it applies in the case of a segregated part to which regulation 28 applies, references to an “eligible scheme” shall be read as if they were references to a segregated part of a multi-employer section of a segregated scheme in circumstances where that segregated part, if it were a scheme, would not be—

- (a) a money purchase scheme; or
- (b) a scheme which is a prescribed scheme or a scheme of a prescribed description under section 126(1)(b) of the Act.

(2) Paragraph (1) shall not apply for the purposes of sections 174 to 181 of the Act (the levies).

Duty to assume responsibility for schemes

31.—(1) Section 127 of the Act (duty to assume responsibility for schemes following insolvency event) shall be modified in its application to a segregated part to which regulation 28 applies so that it shall be read as if, after the words “at the relevant time” in paragraph (a) of subsection (2), there were inserted the words “as determined by the Board’s valuation of the section as a whole under section 143”.

(2) Section 128 of the Act (duty to assume responsibility for schemes following application or notification) shall be modified in its application to a segregated part to which regulation 28 applies so that it shall be read as if, after the words “at the relevant time” in paragraph (a) of subsection (2), there were inserted the words “as determined by the Board’s valuation of the section as a whole under section 143”.

(3) Section 129 of the Act (applications and notifications for the purposes of section 128) shall be modified in its application to a segregated part to which regulation 28 applies so that it shall be read as if—

- (a) after subsection (1), there were inserted the following subsection—

“(1A) Where the trustees or managers of a segregated part of a multi-employer section of a segregated scheme make an application to the Board under subsection (1), they must issue a notice to that effect as soon as practicable to the trustees or managers of each section of the scheme (if different) and to all the employers in relation to the scheme.”; and

- (b) after subsection (5), there were inserted the following subsection—

“(5A) Where the trustees or managers of a segregated part of a multi-employer section of a segregated scheme receive a notice from the Board under subsection (5), they must send a copy of that notice as soon as practicable to the trustees or managers of each section of the scheme (if different) and to all the employers in relation to the scheme.”.

Board’s duty where application or notification received under section 129

32. Section 130 of the Act (Board’s duty where application or notification received under section 129) shall be modified in its application to a segregated part to which regulation 28 applies so that it shall be read as if—

Words in reg. 31(2) omitted by reg. 5(5)(b) of S.I. 2005/993 as from 1.4.05.

- (a) after the words “a scheme rescue is not possible” in subsection (2), there were inserted the words “in relation to a segregated part of a multi-employer section of a segregated scheme”;
- (b) after the words “a scheme rescue has occurred” in subsection (3), there were inserted the words “in relation to that segregated part”;
- (c) after subsection (4), there were inserted the following subsection—

“(4A) Where the trustees or managers of a segregated part of a multi-employer section of a 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 the trustees or managers of each section of the scheme (if different) and to all the employers in relation to the scheme.”;
- ▶¹(d) in subsection (5)—
 - (i) in paragraph (a), for the words “in relation to an occupational pension scheme” there were substituted the words “in relation to a segregated part of a multi-employer section of a segregated scheme”; and
 - (ii) in paragraph (b), for the words “in relation to such a scheme” there were substituted the words “in relation to such a segregated part”; and◀
- (e) after subsection (7), there were inserted the following subsection—

“(7A) Where the trustees or managers of a segregated part of a multi-employer section of a 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 the trustees or managers of each section of the scheme (if different) and to all the employers in relation to the scheme.”.

¹Para. (d) of reg. 32 substituted by reg. 5(5)(c) of S.I. 2005/993 as from 1.4.05.

Protected liabilities

33. Section 131 of the Act (protected liabilities) shall be modified in its application to a segregated part to which regulation 28 applies so that it shall be read as if, for subsection (1), there were substituted the following subsection—

“(1) Except as otherwise provided, for the purposes of this Chapter the protected liabilities, in relation to a segregated part which is, for the purposes of this Part, an eligible scheme, at a particular time (“the relevant time”) are—

- (a) the cost of securing benefits for and in respect of members of the segregated part of a multi-employer section of a segregated scheme which correspond to the compensation which would be payable, in relation to the segregated part, in accordance with the pension compensation provisions (see section 162) if the Board assumed responsibility for the segregated part in accordance with this Chapter,
- (b) a proportion of the liabilities of the scheme as a whole as calculated in the Board’s valuation under section 143, which are not liabilities to, or in respect of, members, and
- (c) the estimated cost of winding up the segregated part.”.

Assessment periods

34. Section 132 of the Act (assessment periods) shall be modified in its application to a segregated part to which regulation 28 applies so that it shall be read as if, after the words “an assessment period” in subsection (2), there were inserted the words “in relation to a segregated part of a multi-employer section of a segregated scheme”.

Directions

35. Section 134 of the Act (directions) shall be modified in its application to a non-segregated multi-employer section to which regulation 28 applies so that it shall be read as if—

- (a) in subsection (2)—

¹Words in reg. 35(a)(i) substituted by reg. 5(5)(d) of S.I. 2005/993 as from 1.4.05.

- (i) for the words “the scheme’s protected liabilities do not exceed its assets”, there were substituted the words ►¹“the protected liabilities of the segregated part do not exceed its assets”◄; and
- (ii) for the words “in relation to the scheme”, there were substituted the words “in relation to the segregated scheme in question”;
- (iii) for the words “the investment of the scheme’s assets” in paragraph (a), there were substituted the words “the investment of the assets of the section”; and
- (b) for sub-paragraph (i) of paragraph (a) of subsection (3), there were substituted the following sub-paragraph—
 - “(i) any trustees or managers of the scheme in relation to which the segregated part relates.”.

Restrictions on winding up, discharge of liabilities etc, and power to validate contraventions of section 135

36.—(1) Section 135 of the Act (restrictions on winding up, discharge of liabilities etc.) shall be modified in its application to a segregated part to which regulation 28 applies so that it shall be read as if—

- (a) after the words “the winding up of the scheme” in subsection (2), there were inserted the words “under or by virtue of the scheme rules”; and
- (b) after subsection (4), there were inserted the following subsection—
 - “(4A) Where an assessment period has begun in relation to a segregated part of a multi-employer section of a segregated scheme, the trustees or managers of the scheme shall not, without the prior approval of the Board, take any action to discharge or transfer any of the assets in that part or any assets that may be assigned to that part.”.

(2) Section 136 of the Act (power to validate contraventions of section 135) shall be modified in its application to a segregated part to which regulation 28 applies so that it shall be read as if, after subsection (2), there were inserted the following subsection—

- “(2A) Where the trustees or managers of a segregated part of a multi-employer section of a segregated scheme receive a copy of a notice from the Board under subsection (2), they must send a copy of that notice as soon as practicable to the trustees or managers of each section of the scheme (if different) and to all employers in relation to the scheme.”.

Board to act as creditor of the employer

37. Section 137 of the Act (Board to act as creditor of the employer) shall be modified in its application to a segregated part to which regulation 28 applies so that it shall be read as if—

- (a) after the words “due to them by the employer” in subsection (2), there were inserted the words “in respect of the protected liabilities that are included in the segregated part”; and
- (b) after subsection (3), there were added the following subsection—
 - “(3A) Where an amount is paid to the trustees or managers of a multi-employer scheme in respect of any debt owed to the scheme by the employer in relation to a segregated part of a multi-employer section of the scheme which does not relate to the employer’s liabilities to or in respect of members of the scheme who are not designated to that segregated part, that amount shall be applied by the trustees or managers of the scheme towards the liabilities of the scheme as a whole.”.

²Reg. 37A inserted by reg. 2(9) of S.I. 2012/3083 as from 24.1.13.

►²III health pensions

37A.—(1) Section 141 of the Act (effect of a review) shall be modified in its application to a segregated part to which regulation 28 applies so that it shall be read as if—

- (a) in subsection (4) the words “a determination under section 143(2)(a) or” were omitted; and
- (b) in subsection (5)(a) the words “makes a determination under section 143(2)(a) or” were omitted.

(2) Section 142(1) of the Act (sections 140 and 141: interpretation) shall be modified in its application to a segregated part to which regulation 28 applies so that it shall be read as if, for the words “143(2)(b)” in the definition of “scheme valuation” there were substituted the word “143”.◀

Valuation of assets

38.—(1) Section 143 of the Act (Board’s obligation to obtain valuation of assets and protected liabilities) shall be modified in its application to a segregated part to which regulation 28 applies, so that it shall be read as if—

- (a) for subsection (1), there were substituted the following subsection—
 - “(1) This section applies in a case within subsection (1) of section 127 or 128 which relates to a segregated part of a multi-employer section of a segregated scheme.”;
- ▶¹(b) for subsection (2), there were substituted the following subsection—
 - “(2) For the purposes of determining whether the condition in subsection (2)(a) of the section in question is satisfied, the Board must, as soon as reasonably practicable, obtain an actuarial valuation of the section as a whole and of the segregated part as at the relevant time.”◀
- ▶¹(ba) subsection (2A) were omitted;
- (bb) for the words “a determination made under subsection (2)(a) or an actuarial valuation obtained under subsection (2)(b)” in subsection (4), there were substituted the words “this section”;
- (bc) subsection (5C) were omitted;
- (bd) in subsection (6), the words “for the purposes of an actuarial valuation obtained under subsection (2)(b)” were omitted;◀
- (c) for the words “the scheme’s liabilities” in subsection (7), there were substituted the words “the liabilities of the scheme or the segregated part”;
- ▶¹(ca) in subsection (9)—
 - (i) for the words “requires a determination to be made, or an”, there were substituted the words “requires the”, and
 - (ii) the words “the determination or” were omitted;
- (cb) for the words “requires a determination to be made, or an” in subsection (10), there were substituted the words “requires the”;◀
- (d) in subsection (11)—
 - (i) for the words ““actuarial valuation”, in relation to the scheme, means a written valuation of the assets and protected liabilities of the scheme” in paragraph (a), there were substituted the words ““actuarial valuation”, in relation to the section as a whole and the segregated part, means a written valuation of the assets and protected liabilities of the section as a whole and the segregated part”;
- ▶¹(ia) the words “makes a determination under subsection (2)(a) or” in paragraph (b)(ii) were omitted;◀
 - (ii) the word “and” at the end of paragraph (c)(ii) were omitted; and
 - (iii) after paragraph (d), there were inserted the following paragraph—
 - “(e) “protected liabilities” means, in relation to a multi-employer section of a segregated scheme, the cost of securing benefits for and in respect of members of the section which correspond to the compensation which would be payable, in relation to the section, in accordance with the pension compensation provisions (see section 162) if the Board assumed responsibility for the section in accordance with this Chapter.”.

¹Reg. 38(1)(b) substituted & paras. (1)(ba)-(bd), (1)(ca)-(cb) & (1)(d)(ia) inserted by reg. 2(10)(a)-(e) of S.I. 2012/3083 as from 24.1.13.

Regs. 38-39

¹Words in reg. 38(1)(e) (f) and (g) inserted and substituted by reg. 2(10) of S.I. 2012/1688 as from 23.7.12.

- ▶¹(e) in paragraph (1)(d), after paragraph (i) insert—
 - “(ia) the words “makes a determination under subsection (2)(a) or” in paragraph (b)(ii) were omitted; and”;
- (f) for paragraph (2)(a) substitute—
 - “(a) for the words “obtains a valuation in respect of a scheme under section 143(2)(b)” in subsection (1), there were substituted the words “obtains a valuation or a further valuation in respect of the section as a whole and of the segregated part under section 143”; and”;
- (g) for paragraph (3)(a), substitute—
 - “(a) for the words “a valuation obtained under section 143(2)(b) is not binding” in subsection (1), there were substituted the words “a valuation or a further valuation obtained under section 143 of the section as a whole and of the segregated part is not binding””◀

(2) Section 144 of the Act (approval of valuation) shall be modified in its application to a segregated part to which regulation 28 applies so that it shall be read as if—

²Reg. 38(2)(a) & (3)(a) substituted by reg. 2(10) (f) & (g) of S.I. 2012/3083 as from 24.1.13.

- ▶²(a) for the words “obtains a valuation in respect of a scheme under section 143(2)(b)” in subsection (1), there were substituted the words “obtains a valuation or a further valuation in respect of the section as a whole and of the segregated part under section 143”; and◀
- (b) after subsection (2), there were inserted the following subsection—
 - “(2A) Where the trustees or managers of a segregated part of a multi-employer section of a segregated scheme receive a copy of a valuation from the Board under subsection (2), they must send a further copy of that valuation as soon as practicable to the trustees or managers of each section of the scheme (if different) and to all the employers in relation to the scheme.”.

(3) Section 145 of the Act (binding valuations) shall be modified in its application to a segregated part to which regulation 28 applies so that it shall be read as if—

- ▶²(a) for the words “a valuation obtained under section 143(2)(b) is not binding” in subsection (1), there were substituted the words “a valuation or a further valuation obtained under section 143 of the section as a whole and of the segregated part is not binding”◀
- (b) for the words “in relation to a scheme” in subsection (2), there were substituted the words “in relation to a multi-employer section of a segregated scheme in relation to which there is a segregated part”; and
- (c) after subsection (3), there were inserted the following subsection—
 - “(3A) Where the trustees or managers of a segregated part of a multi-employer section of a segregated scheme receive a notice from the Board under subsection (3) together with a copy of the binding valuation, they must send a copy of the notice and the binding valuation as soon as practicable to the trustees or managers of each section of the scheme (if different) and to all the employers in relation to the scheme.”.

Refusal to assume responsibility for a scheme

39.—(1) Section 146 of the Act (schemes which become eligible schemes) shall be modified in its application to a segregated part to which regulation 28 applies so that it shall be read as if—

- (a) for subsection (1), there were substituted the following subsection—
 - “(1) Regulations may provide that where the Board is satisfied that a multi-employer section of a segregated scheme, or a segregated part of such a section, is not, for the purposes of this Part, an eligible scheme throughout such period as may be prescribed, the Board must refuse to assume responsibility for that section under this Chapter.”;
- (b) for the words “a scheme” in subsection (2), there were substituted the words “a section of the scheme”;

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

“(2A) Where the trustees or managers of a segregated part of a multi-employer section of a segregated scheme receive a copy of a withdrawal notice from the Board under subsection (2), they must send a copy of that notice as soon as practicable to the trustees or managers of each section of the scheme (if different) and to all the employers in relation to the scheme.”; and

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

“(4A) Where the trustees or managers of a segregated part of a multi-employer section of a segregated scheme receive a notice from the Board under subsection (4) 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 the trustees or managers of each section of the scheme (if different) and to all the employers in relation to the scheme.”.

(2) Section 147 of the Act (new schemes created to replace existing schemes) shall be modified in its application to a segregated part to which regulation 28 applies so that it shall be read as if—

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

“(1) The Board must refuse to assume responsibility for a segregated part of a multi-employer section of a segregated scheme (“the new scheme”) under this Chapter where it is satisfied that—

- (a) the new scheme was established during such a period as may be prescribed,
- (b) the employer in relation to the segregated part was, at the date of establishment of the new scheme, also the employer in relation to another scheme (“the old scheme”) or another section of the scheme (“the old section”) established before the new scheme,
- (c) the assignment of scheme assets made to the new scheme has been made in respect of any rights of members under the old scheme, and
- (d) the main purpose or one of the main purposes of establishing the new scheme and making the transfer or transfers, or transfer payment or transfer payments, was to enable those members to receive compensation under the pension compensation provisions in respect of their rights under the new section in circumstances where, in the absence of the transfer or transfers, regulations under section 146 would have operated to prevent such payments in respect of their rights under the old scheme or the old section.”;

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

“(2A) Where the trustees or managers of a segregated part of a multi-employer section of a segregated scheme receive a copy of a withdrawal notice from the Board under subsection (2), they must send a copy of that notice as soon as practicable to the trustees or managers of each section of the scheme (if different) and to all the employers in relation to the scheme.”; and

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

“(4A) Where the trustees or managers of a segregated part of a multi-employer section of a segregated scheme receive a notice from the Board under subsection (4) 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 the trustees or managers of each section of the scheme (if different) and to all the employers in relation to the scheme.”.

¹Words omitted from reg. 39(2)(c) by reg. 5(5)(f) of S.I. 2005/993 as from 1.4.05.

(3) Section 148 of the Act (withdrawal following issue of section 122(4) notice) shall be modified in its application to a segregated part to which regulation 28 applies so that it shall be read as if—

- (a) after subsection (5), there were inserted the following subsection—

“(5A) Where the trustees or managers of a segregated part of a multi-employer section of a segregated scheme receive a copy of a withdrawal notice from the Board under subsection (5), they must send a copy of that notice as soon as practicable to the trustees or managers of each section of the scheme (if different) and to all the employers in relation to the scheme.”; and

- (b) after subsection (7), there were inserted the following subsection—

“(7A) Where the trustees or managers of a segregated part of a multi-employer section of a 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 the trustees or managers of each section of the scheme (if different) and to all the employers in relation to the scheme.”.

Reconsideration

¹Reg. 40(1) substituted by reg. 2(11) of S.I. 2012/3083 as from 24.1.13.

40.—¹(1) Section 151 of the Act (application for reconsideration) shall be modified in its application to a segregated part to which regulation 28 applies, so that it shall be read as if—

- (a) for the words “the determination made by the Board or valuation obtained by the Board in respect of the scheme under section 143(2)” in subsections (2)(b) and (3)(b) there were substituted the words “the valuation obtained by the Board under section 143 in respect of the segregated part”;
- (b) the words “determination or” in paragraphs (a)(ii) and (b)(ii) of subsection (6) were omitted;
- (c) in the definition of “protected benefits quotation” in subsection (8), from the words “in relation to a scheme” to “the reconsideration time” there were substituted—
- “in relation to a segregated part of a multi-employer section of a segregated scheme, means a quotation for one or more annuities from one or more insurers, being companies willing to accept payment in respect of the members of the segregated part from the trustees or managers of the scheme, which would provide in respect of each member of the segregated part from the reconsideration time”; and
- (d) for the words “under section 143(2)(b)” in subsection (10), there were substituted the words “under that section”.◀

(2) Section 152 of the Act (duty to assume responsibility following reconsideration) shall be modified in its application to a segregated part to which regulation 28 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 application is made in respect of a segregated part of a multi-employer section of a segregated scheme in accordance with section 151.”;
- (b) for subsection (2), there were substituted the following subsection—
- “(2) The Board must assume responsibility in accordance with this Chapter for a segregated part of a multi-employer section of a segregated scheme if it is satisfied that the value of the assets of the segregated part at the reconsideration time is less than the aggregate of—
- (a) the amount quoted in the protected benefits quotation accompanying the application;
- (b) a proportion of the amount of the liabilities of the scheme as a whole at that time, as calculated in the Board’s valuation referred to in ²subsection (2) or (3) of section 151◀, which are not liabilities to, or in respect of, members of the scheme;
- (c) the estimated costs of winding up the segregated part at that time.”;

²Words in reg. 40(2)(b) in the substituted s. 152(2)(b) of the Act, substituted by reg. 5(5)(g)(ii) of S.I. 2005/993 as from 1.4.05.

- (c) after subsection (3), there were inserted the following subsection—
“(3A) Where the trustees or managers of a segregated part of a multi-employer section of a segregated scheme receive a copy of a determination notice from the Board under subsection (3), they must send a copy of that notice as soon as practicable to the trustees or managers of each section of the scheme (if different) and to all the employers in relation to the scheme.”; and
- (d) after subsection (7), there were inserted the following subsection—
“(7A) Where the trustees or managers of a segregated part of a multi-employer section of a segregated scheme receive a notice from the Board under subsection (7) together with a copy of the binding determination notice, they must send a copy of the notice and the binding notice as soon as practicable to the trustees or managers of each section of the scheme (if different) and to all the employers in relation to the scheme.”.

►¹Closed schemes, requirement to wind up schemes with sufficient assets and applications and notifications where closed schemes have insufficient assets◄

¹Heading to reg. 41 substituted by reg. 5(5)(h)(i) of S.I. 2005/993 as from 1.4.05.

41.—(1) Section 153 of the Act (closed schemes) shall be modified in its application to a segregated part to which regulation 28 applies so that it shall be read as if—

- (a) for the words “(scheme rescue not possible but scheme has sufficient assets to meet the protected liabilities)” in subsection (1), there were substituted the words “(scheme rescue not possible in relation to a segregated part of a multi-employer section of a segregated scheme but segregated part has sufficient assets to meet the protected liabilities)”;
- (b) for the words “a closed scheme” in subsection (2), there were substituted the words “a closed section of a scheme”;
- (c) for the words “a closed scheme” in subsection (5), there were substituted the words “a closed section of a scheme”;
- (d) after subsection (6), there were inserted the following subsection—
“(6A) Where the trustees or managers of a segregated part of a multi-employer section of a segregated scheme receive a notice from the Board under subsection (6), they must send a copy of that notice as soon as practicable to the trustees or managers of each section of the scheme (if different) and to all the employers in relation to the scheme.”; and
- (e) for the definition of “full buy-out quotation” in subsection (7), there were substituted the following definition—

“full buy-out quotation”, in relation to a segregated part of a multi-employer section of a segregated scheme, means a quotation for one or more annuities from one or more insurers (being companies willing to accept payment in respect of members of the segregated part from the trustees or managers of the scheme) which would provide in respect of each of those members, from a relevant date, benefits in accordance with the member’s entitlement or accrued rights, including pension credit rights, under the scheme rules (other than entitlement or rights in respect of money purchase benefits).”.

(2) Section 154 of the Act (requirement to wind up schemes with sufficient assets to meet protected liabilities) shall be modified in its application to a segregated part to which regulation 28 applies so that it shall be read as if—

- (a) for the words “(scheme rescue not possible but scheme has sufficient assets to meet the protected liabilities)” in paragraph (a) of subsection (2), there were substituted the words “(scheme rescue not possible in relation to a segregated part of a multi-employer section of a segregated scheme but segregated part has sufficient assets to meet the protected liabilities)”;
- ²(aa) the words “determination made by the board or” in subsection (5)(b), were omitted;◄

²Sub-para (aa) inserted in reg. 41(2) by reg. 2(12)(a) of S.I. 2012/3083 as from 24.1.13.

- (b) for the words “a scheme is wound up” in subsection (6), there were substituted the words “a segregated part of a multi-employer section of a segregated scheme is wound up”;
- (c) for the words “winding up of a scheme” in subsection (11), there were substituted the words “winding up of a segregated part of a multi-employer section of a segregated scheme”; and
- (d) for the words “in relation to a scheme” in subsection (12), there were substituted the words “in relation to a segregated part of a multi-employer section of a segregated scheme”.

(3) Section 155 of the Act (treatment of closed schemes) shall be modified in its application to a segregated part to which regulation 28 applies so that it shall be read as if—

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

“(1) In this section “closed scheme” means a segregated part of a multi-employer section of a segregated scheme which is, for the purposes of this Part, an eligible scheme which is authorised under section 153 to continue as a closed section of the scheme.”; and

- (b) after the words “The provisions mentioned in subsection (3)” in subsection (2), there were inserted the words “as they apply to a segregated part of a multi-employer section of a segregated scheme”.

(4) Section 156 of the Act (valuations of closed schemes) shall be modified in its application to a segregated part to which regulation 28 applies so that it shall be read as if—

- (a) for the words “closed schemes” in subsection (1) and paragraph (a) of subsection (2), there were substituted the words “a closed segregated part of a multi-employer section of a segregated scheme”; and
- (b) for the words “a closed scheme” in subsection (5), there were substituted the words “a closed segregated part of a multi-employer section of a segregated scheme”.

¹Words in para. (5) of reg. 41 substituted by reg. 5(5)(h)(ii) of S.I. 2005/993 as from 1.4.05.

(5) Section 157 of the Act ¹(applications and notifications where closed schemes have insufficient assets) ¹shall be modified in its application to a segregated part to which regulation 28 applies so that it shall be read as if, after subsection (4), there were inserted the following subsection—

“(4A) Where the trustees or managers of a segregated part of a multi-employer section of a segregated scheme receive a notice from the Board under subsection (4), they must send a copy of that notice as soon as practicable to the trustees or managers of each section of the scheme (if different) and to all the employers in relation to the scheme.”.

²Reg. 41(6) inserted by reg. 2(12)(b) of S.I. 2012/3083 as from 24.1.13.

²(6) Section 158 of the Act (duty to assume responsibility for closed schemes) shall be modified in its application to a segregated part to which regulation 28 applies so that it shall be read as if—

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

“(3) For the purposes of determining whether the condition in subsection (1) is satisfied, the Board must, as soon as reasonably practicable, obtain an actuarial valuation (within the meaning of section 143) of the segregated part as at the relevant time.”;

- (b) subsection (3A) were omitted;

- (c) in subsection (5)—

- (i) for the words “a determination made under subsection (3)(a) and a valuation obtained under subsection (3)(b)” there were substituted the words “a valuation obtained under subsection (3);

- (ii) for the words “a determination made under section 143(2)(a) and a valuation obtained under section 143(2)(b)” there were substituted the words “a valuation obtained under section 143”; and

- (iii) paragraph (aa) were omitted; and

- (d) in subsection (6)–
 - (i) “, 143A” were omitted; and
 - (ii) paragraph (aa) were omitted.”◀

Transfer notices and assumption of responsibility for a scheme

42. —(1) Section 160 of the Act (transfer notice) shall be modified in its application to a segregated part to which regulation 28 applies so that it shall be read as if–

- (a) after subsection (1), there were inserted the following section–

“(1A) This section also applies where the Board is required to assume responsibility for a segregated part of a multi-employer section of a segregated scheme.”;

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

“(2A) Where the trustees or managers of a segregated part of a multi-employer section of a 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 the trustees or managers of each section of the scheme (if different) and to all the employers in relation to the scheme.”;

- ▶¹(ba) for the words “determination made or valuation obtained under section 143(2)” in subsection (3), there were substituted the words “valuation obtained under section 143”;

¹Reg. 42(1)(ba) & (bb) inserted by reg. 2(13) of S.I. 2012/3083 as from 24.1.13.

- (bb) in subsection (4) the words “determination made or” were omitted;”◀

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

“(4B) In a case where the Board is required to assume responsibility for a segregated part of a multi-employer section of a segregated scheme under section 127, 128, 152 or 158, a transfer notice may not be given until the Board has obtained a further actuarial valuation of the assets and protected liabilities of the section as a whole and of the segregated part under section 160A as at the date on which it is required to assume responsibility for the segregated part and that valuation has been approved by the Board and become binding.”; and

- (d) for subsection (6) there were substituted the following subsection–

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

 - (a) the Regulator, and
 - (b) an insolvency practitioner acting in relation to the employer in relation to the segregated part of the multi-employer section of the segregated scheme in respect of which the transfer notice is issued.”.

(2) Section 161 of the Act (effect of Board assuming responsibility for a scheme) shall be modified in its application to a segregated part to which regulation 28 applies so that it shall be read as if–

- (a) after the word “obligations” in paragraph (b) of subsection (2), there were inserted the words “to or in respect of members of the segregated part”; and
- (b) after the words “to or in respect of persons” in paragraph (a) of subsection (4), there were inserted the words “who are or were members of the segregated part”.

(3) Paragraph 1 of Schedule 6 to the Act (transfer of property, rights and liabilities to the Board) shall be modified in its application to a segregated part to which regulation 28 applies so that it shall be read as if, for the words “an occupational pension scheme”, there were substituted the words “a segregated part of a multi-employer section of a segregated multi-employer scheme”.

Further actuarial valuation of segregated parts

43. Part 2 of the Act shall be modified in its application to a segregated part to which regulation 28 applies so that it shall be read as if, after section 160 (transfer notice), there were inserted the following section—

“ Further actuarial valuations of segregated parts

160A.— (1) This section applies in any case where the Board is required to obtain a further actuarial valuation under section 160(4B).

(2) The Board must obtain a further actuarial valuation of the assets and protected liabilities of the section as a whole and of the segregated part as at the date on which the Board is required to assume responsibility for the segregated part.

(3) A valuation obtained by the Board under this section shall have effect as if it were a valuation obtained by the Board under section 143 of the Act (Board’s obligation to obtain valuation of assets and protected liabilities).

(4) For the purposes of this section, subsections (3), (4), (6) to (8) and (11)(a) of section 143 shall apply in relation to a valuation obtained under this section as they apply in relation to a valuation of the section as a whole and of the segregated part obtained under section 143.

(5) In the application of section 143 by virtue of this section—

- (a) subsections (5) and (11)(b) of that section shall apply as if the references to “the relevant time” were to the date on which the Board is required to assume responsibility for the segregated part; and
- (b) references to “assets” do not include assets representing the value of any rights in respect of money purchase benefits under the scheme rules which apply to the segregated part.”.

The pension compensation provisions

44.—(1) Section 162 of the Act (the pension compensation provisions) shall be modified in its application to a segregated part to which regulation 28 applies so that subsection (1) shall be read as if—

- (a) for the words “in relation to a scheme”, there were substituted the words “in relation to a segregated part of a multi-employer section of a segregated scheme”;
- (b) after the word “members” in paragraphs (a) and (b), there were added the words “of that segregated part”;
- (c) after the word “payable” in paragraph (c), there were inserted the words “to or in respect of members of that segregated part”; and
- (d) at the end of paragraph (d), there were added the words “payable to or in respect of members of that segregated part”.

(2) Section 163 of the Act (adjustments to be made where the Board assumes responsibility for a scheme) shall be modified in its application to a segregated part to which regulation 28 applies so that it shall be read as if, after the words “to any member” in paragraph (a) of subsection (2), there were inserted the words “of that segregated part”.

(3) Section 166 of the Act (duty to pay scheme benefits unpaid at assessment date etc) shall be modified in its application to a segregated part to which regulation 28 applies so that it shall be read as if, for the words “assumes responsibility for a scheme” in subsection (1), there were substituted the words “assumes responsibility for a segregated part of a multi-employer section of a segregated scheme”.

PART 5

NON-SEGREGATED SCHEMES:

SCHEMES WITH A REQUIREMENT FOR PARTIAL WIND UP ON THE WITHDRAWAL OF A PARTICIPATING EMPLOYER

Application and effect

45.—(1) This regulation applies to a non-segregated scheme in circumstances where—

- (a) an insolvency event occurs in relation to an employer in relation to the scheme; or
- (b) 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).

(2) Where—

- (a) in relation to an employer in relation to a non-segregated scheme, an event described in paragraph (1)(a) or (b) occurs; and
- (b) the requirement in the scheme rules for the trustees or managers of 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 an employer in relation to the scheme ("the segregation requirement") would be triggered when an employer in relation to the scheme ceases to participate in the scheme,

the segregation requirement shall, in relation to the employer referred to in subparagraph (a) of this paragraph, be deemed to have been triggered immediately after the occurrence of the event described in paragraph (1)(a) or (b) and a segregated part of the scheme shall be deemed to have been created for and in respect of any period after the occurrence of that event where a withdrawal event within the meaning of section 149(2) of the Act has not occurred in relation to the segregated part.

(3) In this Part—

"non-segregated scheme" means a multi-employer scheme which is not divided into two or more sections under the rules of which the trustees or managers are required, 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; and

"segregated part" means a section of a non-segregated scheme which is created when a segregation requirement in the scheme rules has been triggered.

(4) Except as otherwise provided in this Part of these Regulations, in a case where this regulation applies—

- (a) Part 2 of the Act, except Chapter 4, shall be read as if it contained the modifications provided for by this Part; and
- (b) references in Part 2 of the Act, except in Chapter 4, to—
 - (i) "scheme rules" shall be read as if they were references to "rules of the scheme which apply to the segregated part";
 - (ii) "the scheme" shall be read as if they were references to "the segregated part";
 - (iii) "the employer" shall be read as if they were references to "the employer in relation to the segregated part"; and

(iv) “trustees or managers of the scheme” shall, in relation to a segregated part of a non-segregated scheme, be read as if they were references to “trustees or managers with ultimate responsibility for the administration of the segregated part”¹; and

¹Words inserted in reg. 45(4)(b)(iv) and (c) by reg. 2(14) of S.I. 2012/3083 as from 24.1.13.

(c) Part 2 of the Act shall be read as if section 143A were omitted.◀

(5) Paragraph (4) shall not have effect in relation to section 174 of the Act (initial levy).

Notification of insolvency events, confirmation of scheme status etc.

46.—(1) Section 120 of the Act (duty to notify insolvency events in respect of employers) shall be modified in its application to a segregated part to which regulation 45 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 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 are required, 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

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

“(2A) Where the trustees or managers of a segregated part 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 scheme) shall be modified in its application to a segregated part to which regulation 45 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 an employer in relation to a non-segregated scheme and a segregated part of the scheme is created.”;

- (b) in subsection (2)–

(i) after the words “a scheme rescue is not possible” in paragraph (a), there were inserted the words “in relation to a segregated part”; and

(ii) after the words “a scheme rescue has occurred” in paragraph (b), there were inserted the words “in relation to a segregated part”;

- (c) in subsection (4)–

(i) after the words “a scheme rescue is not possible” in paragraph (a), there were inserted the words “in relation to the relevant segregated part”; and

(ii) after the words “a scheme rescue has occurred” there were inserted the words “in relation to the relevant segregated part”;

- (d) in subsection (5)–

(i) in paragraph (a), for the words “in relation to an occupational pension scheme” there were substituted the words “in relation to a segregated part of a non-segregated scheme”; and

(ii) in paragraph (b), for the words “in relation to such a scheme” there were substituted the words “in relation to such a segregated part”; and◀

- (e) after subsection (6), there were inserted the following subsection–

“(6A) Where the trustees or managers of a segregated part of a non-segregated scheme receive a notice issued by an insolvency practitioner or 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.”.

Sub-para. (d) of reg. 46(2) substituted by reg. 5(6)(a)(i) of S.I. 2005/993 as from 1.4.05.

(3) Section 123 of the Act (approval of notices issued under section 122) shall be modified in its application to a segregated part to which regulation 45 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 receives a notice under section 122(6) (“the section 122 notice”) in relation to a segregated part of a non-segregated scheme.”; and

- (b) after subsection (4), there were inserted the following subsection–

“(4A) Where the trustees or managers of a segregated part of a non-segregated scheme receive a copy of a determination 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.”.

(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 segregated part to which regulation 45 applies so that it shall be read as if–

- (a) for the words “This section applies where, in relation to an occupational pension scheme” in subsection (1), there were substituted the words “This section applies where, in relation to a segregated part of a non-segregated scheme”; and

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

“(4A) Where the trustees or managers of a segregated part 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.”.

Words in inserted s.
124(4A) in reg. 46(4)
(b) substituted and
words in para. (5) of
Reg. 46 inserted by reg.
5(6)(a)(ii) & (iii) of S.I.
2005/993 as from
1.4.05.

(5) Section 125 of the Act (binding notices confirming status of the scheme) shall be modified in its application to a segregated part to which regulation 45 applies so that ►it shall be read as if◄ after subsection (3), there were inserted the following subsection—

“(3A) Where the trustees or managers of a segregated part 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.”.

Eligible schemes

47.—(1) Except as otherwise provided in this Part, for the purposes of Part 2 of the Act, except Chapter 4, as it applies in the case of a segregated part to which regulation 45 applies, references to “an eligible scheme” shall be read as if they were references to a segregated part of the scheme in circumstances where that segregated part, if it were a scheme, would not be—

- (a) a money purchase scheme; or
- (b) a scheme which is a prescribed scheme or a scheme of a prescribed description under section 126(1)(b) of the Act.

(2) Paragraph (1) above shall not apply for the purposes of sections 174 to 181 of the Act (the levies).

Duty to assume responsibility for schemes

48.—(1) Section 127 of the Act (duty to assume responsibility for schemes following insolvency event) shall be modified in its application to a segregated part to which regulation 45 applies so that it shall be read as if, after the words “at the relevant time” in paragraph (a) of subsection (2), there were inserted the words “as determined by the Board’s valuation of the scheme under section 143, was less than the amount of the protected liabilities of that part as determined by that valuation”.

Words omitted from reg.
48(2) by reg. 5(6)(b) of
S.I. 2005/993 as from
1.4.05.

(2) Section 128 of the Act (duty to assume responsibility for schemes following application or notification) shall be modified in its application to a segregated part to which regulation 45 applies so that it shall be read as if, after the words ►◄ “at the relevant time” in paragraph (a) of subsection (2), there were inserted the words “as determined by the Board’s valuation of the scheme under section 143, was less than the amount of the protected liabilities of that part as determined by that valuation”.

(3) Section 129 of the Act (applications and notifications for the purposes of section 128) shall be modified in its application to a segregated part to which regulation 45 applies so that it shall be read as if—

(a) after subsection (1), there were inserted the following subsection—

“(1A) Where the trustees or managers of a segregated part of a non-segregated scheme make an application to the Board under subsection (1), they must issue a notice to that effect as soon as practicable to all the employers in relation to the scheme.”; and

(b) after subsection (5), there were inserted the following subsection—

“(5A) Where the trustees or managers of a segregated part of a non-segregated scheme receive 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.”.

Board's duty where application or notification received under section 129

49. Section 130 of the Act (Board's duty where application or notification received under section 129) shall be modified in its application to a segregated part to which regulation 45 applies so that it shall be read as if—

- (a) after the words “a scheme rescue is not possible” in subsection (2), there were inserted the words “in relation to a segregated part of a non-segregated scheme”;
- (b) after the words “a scheme rescue has occurred” in subsection (3), there were inserted the words “in relation to a segregated part”;
- (c) after subsection (4), there were inserted the following subsection—

“(4A) Where the trustees or managers of a segregated part 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.”;

▶¹(d) in subsection (5)—

- (i) in paragraph (a), for the words “in relation to an occupational pension scheme” there were substituted the words “in relation to a segregated part of a non-segregated scheme”; and
- (ii) in paragraph (b), for the words “in relation to such a scheme” there were substituted the words “in relation to such a segregated part”; and ◀

(e) after subsection (7), there were inserted the following subsection—

“(7A) Where the trustees or managers of a segregated part 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.”.

¹Reg. 49(d) substituted by reg. 5(6)(c) of S.I. 2005/993 as from 1.4.05.

Protected liabilities and assessment period

50.—(1) Section 131 of the Act (protected liabilities) shall be modified in its application to a segregated part to which regulation 45 applies so that it shall be read as if, for subsection (1), there were substituted the following subsection—

“(1) Except as otherwise provided, for the purposes of this Chapter the protected liabilities, in relation to a segregated part of a non-segregated scheme which is, for the purposes of this Part, an eligible scheme, at a particular time (“the relevant time”) are—

- (a) the cost of securing benefits for and in respect of members of the segregated part which correspond to the compensation which would be payable, in relation to members of that part in accordance with the pension compensation provisions (see section 162) if the Board assumed responsibility for the segregated part in accordance with this Chapter,
- (b) a proportion of the liabilities of the scheme as a whole, as calculated in the Board's valuation under section 143, which are not liabilities to, or in respect of, members,
- (c) the estimated cost of winding up the segregated part.”.

(2) Section 132 of the Act (assessment periods) shall be modified in its application to a segregated part to which regulation 45 applies so that it shall be read as if, after the words “an assessment period” in subsection (2), there were inserted the words “in relation to a segregated part of a non-segregated scheme”.

Directions

51. Section 134 of the Act (directions) shall be modified in its application to a segregated part to which regulation 45 applies so that it shall be read as if—

- (a) in subsection (2)–
 - (i) for the words “the scheme’s protected liabilities do not exceed its assets”, there were substituted the words “the protected liabilities of the segregated part do not exceed its assets”;
 - (ii) for the words “in relation to the scheme” there were substituted the words “in relation to the non-segregated scheme in question”;
 - (iii) for the words “the investment of the scheme’s assets” in paragraph (a), there were substituted the words “the investment of the assets of the segregated part”; and
- (b) for subparagraph (i) of paragraph (a) of subsection (3), there were substituted the following paragraph–

“(i) any trustees or managers of the scheme in relation to which the segregated part relates.”.

Restrictions on winding up, discharge of liabilities etc and power to validate contraventions of section 135

52.—(1) Section 135 of the Act (restrictions on winding up, discharge of liabilities etc) shall be modified in its application to a segregated part to which regulation 45 applies so that it shall be read as if–

- (a) after the words “the winding up of the scheme” in subsection (2), there were inserted the words “under or by virtue of the scheme rules”; and
- (b) after subsection (4), there were inserted the following subsection–

“(4A) Where an assessment period has begun in relation to a segregated part of a non-segregated scheme, the trustees or managers shall not, without the prior approval of the Board, take any action to discharge or transfer any of the assets in that part or any assets that may be assigned to that part.”.

(2) Section 136 of the Act (power to validate contraventions of section 135) shall be modified in its application to a segregated part to which regulation 45 of these Regulations applies so that it shall be read as if, after subsection (2), there were inserted the following subsection–

“(2A) Where the trustees or managers of a segregated part of a non-segregated scheme receive a 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.”.

Board to act as creditor of the employer

53. Section 137 of the Act (Board to act as creditor of the employer) shall be modified in its application to a segregated part to which regulation 45 applies so that it shall be read as if–

- (a) after the words “due to them by the employer” in subsection (2), there were inserted the words “in respect of the protected liabilities that are included in the segregated part”; and
- (b) after subsection (3), there were added the following subsection–

“(3A) Where an amount is paid to the trustees or managers of a non-segregated multi-employer scheme in respect of any debt owed to the scheme by the employer in relation to a segregated part of the scheme which does not relate to the employer’s liabilities to or in respect of members of the scheme who are not designated to that segregated part, that amount shall be applied by the trustees or managers of the scheme towards the liabilities of the scheme as a whole.”.

¹Reg. 53A inserted by reg. 2(15) of S.I. 2012/3083 as from 24.1.13.

►¹**Ill health pensions**

53A.—(1) Section 141 of the Act (effect of a review) shall be modified in its application to a segregated part to which regulation 45 applies so that it shall be read as if–

- (a) in subsection (4) the words “a determination under section 143(2)(a) or” were omitted; and
- (b) in subsection (5)(a) the words “makes a determination under section 143(2)(a) or” were omitted.

(2) Section 142(1) of the Act (section 140 and 141: interpretation) shall be modified in its application to a segregated part to which regulation 45 applies, so that it shall be read as if for the words “143(2)(b)” in the definition of “scheme valuation” there were substituted the word “143”.◀

Valuation of assets

54.—(1) Section 143 of the Act (Board’s obligation to obtain valuation of assets and protected liabilities) shall be modified in its application to a segregated part to which regulation 45 applies, so that it shall be read as if—

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

“(1) This section applies in a case within subsection (1) of section 127 or 128 which relates to a non-segregated scheme.”; and

- ▶¹(b) for subsection (2) there were substituted the following subsection—

“(2) For the purposes of determining whether the condition in subsection (2)(a) of the section in question is satisfied, the Board must, as soon as reasonably practicable, obtain an actuarial valuation of the section as a whole and of the segregated part as at the relevant time.”◀

- ▶¹(ba) subsection (2A) were omitted;

- (b) for the words “a determination made under subsection (2)(a) or an actuarial valuation obtained under subsection (2)(b)” in subsection (4), there were substituted the words “this section”;

- (bc) subsection (5C) were omitted;

- (bd) in subsection (6), the words “for the purposes of an actuarial valuation obtained under subsection (2)(b)” were omitted;◀

- (c) for the words “the scheme’s liabilities” in subsection (7), there were substituted the words “the liabilities of the scheme or the segregated part”;

- ▶¹(ca) in subsection (9)—

- (i) for the words “requires a determination to be made, or an”, there were substituted the words “requires the”; and

- (ii) the words “the determination or” were omitted;

- (cb) for the words “requires a determination to be made, or an” in subsection (10), there were substituted the words “requires the”;◀

- (d) in subsection (11)—

- (i) for the words ““actuarial valuation”, in relation to the scheme, means a written valuation of the assets and protected liabilities of the scheme” in paragraph (a), there were substituted the words ““actuarial valuation”, in relation to the scheme as a whole and the segregated part, means a written valuation of the assets and protected liabilities of the scheme as a whole and the segregated part”;

- ▶¹(ia) the words “makes a determination under subsection (2)(a) or” in paragraph (b)(ii) were omitted; and◀

- (ii) the word “and” at the end of paragraph (c)(ii) were omitted; and

- (iii) after paragraph (d), there were added the following paragraph—

“(e) “protected liabilities” means, in relation to a non-segregated scheme, the cost of securing benefits for and in respect of members of the scheme which correspond to the compensation which would be payable, in relation to the scheme, in accordance with the pension compensation provisions (see section 162) if the Board assumed responsibility for the scheme in accordance with this Chapter.”.

¹Reg. 54(1)(b) substituted, paras. (1)(ba)-(bd), (1)(ca)-(cb), (1)(d)(ia) inserted & words in para. (1)(c) omitted by reg. 2(16)(a)-(e) of S.I. 2012/1688 as from 23.7.12.

¹Reg. 54(2)(a) & (3)(a) substituted by reg. 2(16) of S.I. 2012/3083 as from 24.1.13.

(2) Section 144 of the Act (approval of valuation) shall be modified in its application to a segregated part to which regulation 45 applies so that it shall be read as if—

- ▶¹(a) for the words “obtains a valuation in respect of a scheme under section 143(2)(b)” in subsection (1), there were substituted the words “obtains a valuation or a further valuation in respect of the section as a whole and of the segregated part under section 143”; and◀
- (b) after subsection (2), there were inserted the following subsection—
“(2A) Where the trustees or managers of a segregated part of a non-segregated scheme receive a copy of a valuation from the Board under subsection (2), they must send a copy of that valuation as soon as practicable to all the employers in relation to the scheme.”.

(3) Section 145 of the Act (binding valuations) shall be modified in its application to a segregated part to which regulation 45 applies so that it shall be read as if—

- ▶¹(a) for the words “a valuation obtained under section 143(2)(b) is not binding” in subsection (1), there were substituted the words “a valuation or a further valuation obtained under section 143 of the section as a whole and of the segregated part is not binding”◀
- (b) for the words “in relation to a scheme” in subsection (2), there were substituted the words “in relation to a non-segregated scheme in relation to which there is a segregated part”; and
- (c) after subsection (3), there were inserted the following subsection—
“(3A) Where the trustees or managers of a segregated part of a non-segregated scheme receive a notice from the Board under subsection (3) together with a copy of the binding valuation, they must send a copy of that notice and the binding valuation as soon as practicable to all the employers in relation to the scheme.”.

Refusal to assume responsibility for a scheme

55.—(1) Section 146 of the Act (schemes which become eligible schemes) shall be modified in its application to a segregated part to which regulation 45 applies, so that it shall be read as if—

- (a) for subsection (1), there were substituted the following subsection—
“(1) Regulations may provide that where the Board is satisfied that a non-segregated scheme, or a segregated part of such a scheme, is not, for the purposes of this Part, an eligible scheme throughout such period as may be prescribed, the Board must refuse to assume responsibility for that part of the scheme under this Chapter.”;
- (b) for the words “a scheme” in subsection (2), there were substituted the words “a segregated part of a non-segregated scheme”;
- (c) after subsection (2), there were inserted the following subsection—
“(2A) Where the trustees or managers of a segregated part of a non-segregated scheme receive a copy of a withdrawal 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
- (d) after subsection (4), there were inserted the following subsection—
“(4A) Where the trustees or managers of a segregated part of a non-segregated scheme receive a notice from the Board under subsection (4) 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.”.

(2) Section 147 of the Act (new schemes created to replace existing schemes) shall be modified in its application to a segregated part to which regulation 45 applies, so that it shall be read as if—

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

“(1) The Board must refuse to assume responsibility for a segregated part of a non-segregated scheme (“the new scheme”) under this Chapter where it is satisfied that–

- (a) the new scheme was established during such period as may be prescribed,
- (b) the employer in relation to the segregated part was, at the date of establishment of the new scheme, also an employer in relation to another scheme (“the old scheme”) established before the new scheme,
- (c) the assignment of scheme assets made to the new scheme has been made in respect of any rights of members under the old scheme, and
- (d) the main purpose or one of the main purposes of establishing the new scheme and making the transfer or transfers or transfer payment or transfer payments was to enable those members to receive compensation under the pension compensation provisions in respect of their rights under the new section in circumstances where, in the absence of the assignment, regulations under section 146 would have operated to prevent such payments in respect of their rights under the old scheme.”;

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

“(2A) Where the trustees or managers of a segregated part of a non-segregated scheme receive a copy of a withdrawal 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) after subsection (4), there were inserted the following subsection–

“(4A) Where the trustees or managers of a segregated part of a non-segregated scheme receive a notice from the Board under subsection (4) 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.”.

(3) Section 148 of the Act (withdrawal following issue of section 122(4) notice) shall be modified in its application to a segregated part to which regulation 45 applies so that it shall be read as if–

(a) after subsection (5), there were inserted the following subsection–

“(5A) Where the trustees or managers of a segregated part of a non-segregated scheme receive a notice from the Board under this section, they must send a copy of that notice as soon as practicable to all the employers in relation to the scheme.”; and

(b) after subsection (7), there were inserted the following subsection–

“(7A) Where the trustees or managers of a segregated part 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.”.

Reconsideration

56.—¹(1) Section 151 of the Act (application for reconsideration) shall be modified in its application to a segregated part to which regulation 45 applies so that it shall be read as if–

- (a) for the words “the determination made by the Board or the valuation obtained by the Board in respect of the scheme under section 143(2)” in subsections (2)(b) and (3)(b), there were substituted the words “the valuation obtained by the Board under section 143 in respect of the segregated part”;

¹Reg. 56(1) substituted by reg. 2(17) of S.I. 2012/3083 as from 24.1.13.

- (b) the words “determination or” in paragraphs (a)(ii) and (b)(ii) of subsection (6) were omitted;
- (c) in the definition of “protected benefits quotation” in subsection (8), from the words “in relation to a scheme” to “the reconsideration time” there were substituted—
 - “in relation to a segregated part of a non-segregated scheme, means a quotation for one or more annuities from one or more insurers, being companies willing to accept payment in respect of members of the segregated part from the trustees or managers of the scheme, which would provide in respect of each member of the segregated part from the reconsideration time”; and
- (d) for the words “under section 143(2)(b)” in subsection (10), there were substituted “under that section”.◀

(2) Section 152 of the Act (duty to assume responsibility following reconsideration) shall be modified in its application to a segregated part to which regulation 45 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 application is made in respect of a segregated part of a non-segregated scheme in accordance with section 151.”;
- (b) for subsection (2), there were substituted the following subsection—
 - “(2) The Board must assume responsibility in accordance with this Chapter for a segregated part of a non-segregated scheme if it is satisfied that the value of the assets of the segregated part at the reconsideration time is less than the aggregate of—
 - (a) the amount quoted in the protected benefits quotation accompanying the application;
 - (b) a proportion of the amount of the liabilities of the scheme as a whole at that time, as calculated in the Board’s valuation of the segregated part referred to in ▶¹subsection (2) or (3) of section 151◀, which are not liabilities to, or in respect of, members of the scheme;
 - (c) the estimated costs of winding up the segregated part at that time.”;
- (c) after subsection (3), there were inserted the following subsection—
 - “(3A) Where the trustees or managers of a segregated part of a non-segregated scheme receive a copy of a determination notice from the Board under subsection (3), they must send a copy of that notice as soon as practicable to all the employers in relation to the scheme.”;
- (d) after subsection (7), there were inserted the following subsection—
 - “(7A) Where the trustees or managers of a segregated part 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.”.

¹Words in substituted s. 152(2)(b) in reg. 56(2) (b) substituted by reg. 5(6)(d) of S.I. 2005/993 as from 1.4.05.

²Heading to reg. 57 substituted by reg. 5(6)(e) of S.I. 2005/993 as from 1.4.05.

▶²Closed schemes, requirement to wind up schemes with sufficient assets and applications and notifications where closed schemes have insufficient assets◀

57.—(1) Section 153 of the Act (closed schemes) shall be modified in its application to a segregated part to which regulation 45 applies so that it shall be read as if—

- (a) for the words “(scheme rescue not possible but scheme has sufficient assets to meet the protected liabilities)” in subsection (1), there were substituted the words “(scheme rescue not possible in relation to segregated part of a non-segregated scheme but segregated part has sufficient assets to meet the protected liabilities)”;

- (b) for the words “a closed scheme” in subsection (2), there were substituted the words “a closed section of a scheme”;
- (c) for the words “a closed scheme” in subsection (5), there were substituted the words “a closed section of a scheme”;
- (d) after subsection (6), there were inserted the following subsection—

“(6A) Where the trustees or managers of a segregated part of a non-segregated scheme receive a copy of a determination notice from the Board under subsection (6), they must send a copy of that notice as soon as practicable to all the employers in relation to the scheme.”; and
- (e) for the definition of “full buy-out quotation” in subsection (7), there were substituted the following definition—

““full buy-out quotation”, in relation to a segregated part of a non-segregated scheme, means a quotation for one or more annuities from one or more insurers (being companies willing to accept payment in respect of members of the segregated part from the trustees or managers of the scheme) which would provide in respect of each of those members, from a relevant date, benefits in accordance with the member’s entitlement or accrued rights, including pension credit rights, under the scheme rules (other than entitlement or rights in respect of money purchase benefits),”.

(2) Section 154 of the Act (requirement to wind up schemes with sufficient assets to meet protected liabilities) shall be modified in its application to a segregated part to which regulation 45 applies so that it shall be read as if—

- (a) for the words “(scheme rescue not possible but scheme has sufficient assets to meet the protected liabilities)” in subsection (2), there were substituted the words “(scheme rescue not possible in relation to a segregated part of a non-segregated scheme but segregated part has sufficient assets to meet the protected liabilities)”;
- ▶¹(aa) the words “determination made by the board or” in subsection (5)(b), were omitted; ◀
- (b) for the words “a scheme is wound up” in subsection (6), there were substituted the words “a segregated part of a non-segregated scheme is wound up”;
- (c) for the words “winding up of a scheme” in subsection (11), there were substituted the words “winding up of a segregated part of a non-segregated scheme”; and
- (d) for the words “in relation to a scheme” in subsection (12), there were substituted the words “in relation to a segregated part of a non-segregated scheme”.

¹Para. (2)(aa) of reg. 57 inserted by reg. 2(18)(a) of S.I. 2012/3083 as from 24.1.13.

(3) Section 155 of the Act (treatment of closed schemes) shall be modified in its application to a segregated part to which regulation 45 applies, so that it shall be read as if—

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

“(1) In this section “closed scheme” means a segregated part of a non-segregated scheme which is, for the purpose of this Part, an eligible scheme which is authorised under section 153 to continue as a closed section of the scheme.”; and
- (b) after the words “The provisions mentioned in subsection (3)” in subsection (2), there were inserted the words “as they apply to a segregated part of a non-segregated scheme”.

(4) Section 156 of the Act (valuations of closed schemes) shall be modified in its application to a segregated part to which regulation 45 applies, so that it shall be read as if—

- (a) for the words “closed schemes” in subsection (1) and paragraph (a) of subsection (2), there were substituted the words “a closed segregated part of a non-segregated scheme which is authorised under section 153 to continue as a closed section of a scheme”; and

- (b) for the words “closed scheme” in subsection (5), there were substituted the words “closed segregated part of a non-segregated scheme which is authorised under section 153 to continue as a closed section of a scheme”.

(5) Section 157 of the Act (applications and notifications where closed schemes have sufficient assets) shall be modified in its application to a segregated part to which regulation 45 applies so that it shall be read as if, after subsection (4), there were inserted the following subsection—

“(4A) Where the trustees or managers of a segregated part of a non-segregated scheme receive 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.”.

¹Reg. 57(6), 58(1)(ba) & (bb) inserted by reg. 2(18) & (19) of S.I. 2012/3083 as from 24.1.13.

►¹(6) Section 158 of the Act (duty to assume responsibility for closed schemes) shall be modified in its application to a segregated part to which regulation 45 applies so that it shall be read as if—

- (a) for subsection (3), there were inserted the following subsection—

“(3) For the purposes of determining whether the condition in subsection (1) is satisfied the Board must, as soon as reasonably practicable, obtain an actuarial valuation (within the meaning of section 143) of the segregated part as at the relevant time.”;

- (b) subsection (3A) were omitted;

- (c) in subsection (5)—

(i) for the words “a determination made under subsection (3)(a) and a valuation obtained under subsection (3)(b)” there were substituted the words “a valuation obtained under subsection (3)”;

(ii) for the words “a determination made under section 143(2)(a) and a valuation obtained under section 143(2)(b)” there were substituted the words “a valuation obtained under section 143”; and

(iii) paragraph (aa) were omitted; and

- (d) in subsection (6)—

(i) “, 143A” were omitted; and

(ii) paragraph (aa) were omitted.”. ◀

Transfer notices and assumption of responsibility for a scheme

58.—(1) Section 160 of the Act (transfer notice) shall be modified in its application to a segregated part to which regulation 45 applies, so that it shall be read as if—

- (a) after subsection (1), there were inserted the following subsection—

“(1A) This section also applies where the Board is required to assume responsibility for a segregated part of a non-segregated scheme.”.

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

“(2A) Where the trustees or managers of a segregated part 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.”;

►¹(ba) for the words “determination made or valuation obtained under section 143(2)” in subsection (3), there were substituted the words “valuation obtained under section 143”;

(bb) in subsection (4) the words “determination made or” were omitted; ◀

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

“(4B) In a case where the Board is required to assume responsibility for a segregated part of a non-segregated scheme under section 127, 128, 152 or 158, a transfer notice may not be given until the Board has obtained a further actuarial valuation of the assets and protected liabilities of the scheme as a whole and of the segregated part under section 160A as at the

date on which it is required to assume responsibility for the segregated part and that valuation has been approved by the Board and become binding.”; and

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

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

- (a) the Regulator, and
- (b) an insolvency practitioner acting in relation to the employer in relation to the segregated part of the multi-employer scheme in respect of which the transfer notice is issued.”.

(2) Section 161 of the Act (effect of Board assuming responsibility for a scheme) shall be modified in its application to a segregated part to which regulation 45 applies, so that it shall be read as if—

- (a) after the word “obligations” in paragraph (b) of subsection (2), there were inserted the words “to or in respect of members of the segregated part”; and
- (b) after the words “to or in respect of persons” in paragraph (a) of subsection (4), there were inserted the words “who are or were members of that segregated part”.

(3) Paragraph 1 of Schedule 6 to the Act (transfer of property, rights and liabilities) shall be modified in its application to a segregated part to which regulation 45 applies so that it shall be read as if, for the words “an occupational pension scheme”, there were substituted the words to “a segregated part of a non-segregated multi-employer scheme”.

Further actuarial valuation of segregated parts

59. Part 2 of the Act shall be modified in its application to a segregated part to which regulation 45 applies so that it shall be read as if, after section 160 (transfer notice), there were inserted the following section—

“Further actuarial valuations of segregated parts

160A.—(1) This section applies in any case where the Board is required to obtain a further actuarial valuation under section 160(4B).

(2) The Board must obtain a further actuarial valuation of the assets and protected liabilities of the scheme as a whole and of the segregated part as at the date on which the Board is required to assume responsibility for that section.

(3) A valuation obtained by the Board under this section shall have effect as if it were a valuation obtained by the Board under section 143 (Board’s obligation to obtain valuation of assets and protected liabilities).

(4) For the purposes of this section, subsections (3), (4), (6) to (8) and (11)(a) of section 143 shall apply in relation to a valuation of the scheme as a whole and of the segregated part obtained under this section as they apply in relation to a valuation obtained under section 143.

(5) In the application of section 143 by virtue of this section—

- (a) subsections (5) and (11)(b) of that section shall apply as if the references to “the relevant time” were to the date on which the Board is required to assume responsibility for the segregated part; and
- (b) references to “assets” do not include assets representing the value of any money purchase benefits under the scheme rules which apply to the segregated part.”.

The pension compensation provisions

60.—(1) Section 162 of the Act (the pension compensation provisions) shall be modified in its application to a segregated part to which regulation 45 applies so that it shall be read as if, in subsection (1)—

- (a) for the words “in relation to a scheme”, there were substituted the words “in relation to a segregated part of a non-segregated scheme”;
- (b) after the word “members” in paragraphs (a) and (b), there were added the words “of that segregated part”;
- (c) after the word “payable” in paragraph (c), there were inserted the words “to or in respect of members of that part”; and
- (d) at the end of paragraph (d), there were added the words “payable to or in respect of members of that segregated part”.

(2) Section 163 of the Act (adjustments to be made where the Board assumes responsibility for a scheme) shall be modified in its application to a segregated part to

which regulation 45 applies so that it shall be read as if, after the words “to any member” in paragraph (a) of subsection (2), there were inserted the words “of that part”.

(3) Section 166 of the Act (duty to pay benefits unpaid at assessment date) shall be modified in its application to a segregated part to which regulation 45 applies so that it shall be read as if, for the words “assumes responsibility for a scheme” in subsection (1), there were substituted the words “assumes responsibility for a segregated part of a non-segregated scheme”.

►¹PART 6

NON-SEGREGATED SCHEMES:

SCHEMES WITHOUT PROVISION FOR PARTIAL WIND UP ON WITHDRAWAL OF A PARTICIPATING EMPLOYER

¹Part 6 substituted by
reg. 10(4) of S.I. 2005/
2113 as from 1.8.05.

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—

¹Reg. 62(3)(a) omitted
by reg. 17 of S.I. 2008/
731 as from 6.4.08.

►¹◄

(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.”.

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)[21] 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)[22],

(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[23] (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 ►¹143A(4)(c) (Determinations under section 143), ◀¹ 144(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”.

¹Words in reg. 68 inserted by reg. 2(20) of S.I. 2012/3083 as from 24.1.13.

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”. ◀

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 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—

¹Words in reg. 71(3)
(a)(ii) inserted by reg.
5(8)(a) of S.I. 2005/993
as from 1.4.05.

- (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 to 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.”.

Words in inserted s. 122(2A) in reg. 71(3)(b) substituted by reg. 5(8)(b) of S.I. 2005/993 as from 1.4.05.

PART 8

SEGREGATED SCHEMES:

MULTI-EMPLOYER SECTIONS OF SEGREGATED SCHEMES WITH AN OPTION TO SEGREGATE ON THE WITHDRAWAL OF A PARTICIPATING EMPLOYER

Application and effect

72.—(1) This regulation applies to a multi-employer section of a segregated scheme in circumstances—

- (a) where—
- (i) an insolvency event occurs in relation to an employer in relation to that section; or
 - (ii) the trustees or managers of the scheme become aware that an employer in relation to that section 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 section ceases to participate in the scheme, to segregate such part of the assets of the scheme as is attributable to the liabilities of the section 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 multi-employer section of a segregated scheme to which this regulation applies—
- (a) the trustees or managers of that section shall be deemed to have exercised the option to segregate under the scheme rules so as to create a segregated part of the section 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 that section as if it contained the modifications provided for in Part 4 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 section of a multi-employer scheme which is divided into two or more sections (“a segregated scheme”) with at least two employers in relation to that section of the scheme (“a multi-employer section”) under the rules of which the trustees or managers of that section have an option, in circumstances where an employer in relation to that section of the scheme ceases to participate in the scheme, to segregate such part of the assets of the section as is attributable to the liabilities of the section to provide pensions or other benefits to or in respect of the pensionable service of some or all of the members of that section by reference to that employer (“the segregated part”).”;
 - (ii) after subsection (3), there were inserted the following subsection—

“(3A) If, where this section applies to a multi-employer section of a segregated scheme, the trustees or managers of the section decide not to exercise the option to segregate under the scheme rules so as to create a segregated part of that section 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 multi-employer section of a segregated scheme receives a non-segregation notice under subsection (3A) of section 120 from the trustees or managers of that section, he must as soon as practicable issue a notice under subsection (2)(b) (a “withdrawal notice”) in relation to that section.”; 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 multi-employer section of a 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 section under section 128 where they become aware that—
- (a) an employer in relation to the section 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 a section of the scheme ceases to participate in the scheme, for the trustees or managers to segregate such part of the assets of the section as is attributable to the liabilities of the section 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 multi-employer section of a segregated scheme, the trustees or managers of the section decide not to exercise the option to segregate under the scheme rules so as to create a segregated part of that section 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 the notice to the Regulator.”; and
- “(1C) Where the Board receives a non-segregation notice from the trustees or managers of a multi-employer section of a 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 that section.”.

Words in reg. 72(3)(c)
(ii) substituted by reg.
5(9) of S.I. 2005/993 as
from 1.4.05.

PART 9

MULTI-EMPLOYER SCHEMES: THE PENSION PROTECTION LEVIES

Modification of sections 175 to 181 of the Act: segregated schemes

- 73.—(1) This regulation applies to a segregated scheme.
- (2) In the case of a segregated scheme to which this regulation applies—
- (a) sections 175 to 181 of the Act (pension protection levies) shall have effect as if each section of the scheme were a separate scheme; and
- (b) references in sections 175 to 181 to “an eligible scheme” shall be read as if they were references to a section of the scheme in circumstances where that section, if it were a scheme, would not be—

- (i) a money purchase scheme; or
- (ii) a scheme which is a prescribed scheme or a scheme of a prescribed description under section 126(1)(b) of the Act (eligible schemes).

(3) For the purposes of this regulation, section 179 of the Act (valuations to determine scheme underfunding) shall be modified so that it shall be read as if, for the words “an actuarial valuation of the scheme” in ►subsection (1)(a)◀, there were substituted the words “an actuarial valuation of the section”.

Words in reg. 73(3) substituted by reg. 5(10)(a) of S.I. 2005/993 as from 1.4.05.

Modification of sections 175 to 181 of the Act: non-segregated schemes

74.—(1) This regulation applies to a multi-employer scheme which is not divided into two or more sections (“a non-segregated scheme”).

(2) In the case of a scheme to which this regulation applies, references to “an eligible scheme” in sections 175 to 181 of the Act (pension protection levies) are to a non-segregated scheme which—

- (a) is not a money purchase scheme; or
- (b) is not a prescribed scheme or a scheme of a prescribed description under section 126(1)(b) of the Act (eligible schemes).

(3) Section 175 of the Act shall be modified so that it shall be read as if—

- (a) in the case of a scheme to which this regulation applies, the rules of which contain a requirement for the trustees or managers to segregate such part of the assets as is attributable to the liabilities of the scheme 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 an employer in relation to the scheme which would be triggered when such an employer ceased to participate in the scheme, for paragraph (a) of subsection (2), there were substituted the following paragraph—

“(a) ►a risk-based pension protection levy is a levy assessed by reference to◀—

- (i) the difference between the value of the scheme’s assets (disregarding any assets representing the value of any rights in respect of money purchase benefits under the scheme rules) and the amount of its protected liabilities,
- (ii) where the Board considers it appropriate, the scheme rules containing a requirement for the trustees or managers of 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 an employer in relation to the scheme in circumstances where that employer ceases to participate in the scheme,
- (iii) except in relation to any prescribed scheme or scheme of a prescribed description, the likelihood of an insolvency event occurring in relation to each employer in relation to the scheme, and
- (iv) if the Board considers it appropriate, one or more other risk factors mentioned in subsection (3), and”;

- (b) in the case of a scheme to which this regulation applies, the rules of which give the trustees or managers an option to segregate such part of the assets as is attributable to the liabilities of the section to provide pensions or other benefits to or in respect of the pensionable service of some or all of the members of the section by reference to an employer in relation to that section when an employer in relation to the section ceases to participate in the scheme, for paragraph (a) of subsection (2), there were substituted the following paragraph—

Words in s. 175(2)(a) in reg. 74(3) substituted by reg. 5(10)(b)(i) of S.I. 2005/993 as from 1.4.05.

- “(a) ► a risk-based pension protection levy is a levy assessed by reference to ◀—
- (i) the difference between the value of the scheme’s assets (disregarding any assets representing the value of any rights in respect of money purchase benefits under the scheme rules) and the amount of its protected liabilities,
 - (ii) where the Board ► considers ◀ it appropriate, whether or not the scheme rules containing a requirement for the trustees or managers of 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 an employer in relation to the scheme in circumstances where that employer ceases to participate in the scheme,
 - (iii) except in relation to any prescribed section or section of a prescribed description, the likelihood of an insolvency event occurring in relation to each employer in relation to the scheme, and
- (iv) if the Board considers it appropriate, one or more other risk factors mentioned in subsection (3), and”;
- (c) in the case of a scheme to which this regulation applies, the rules of which do not contain a requirement for the trustees or managers to segregate such part of the assets as is attributable to the liabilities of the scheme 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 an employer in relation to that scheme which would be triggered when such an employer ceased to participate in the scheme, ► ◀ for paragraph (a) of subsection (2), there were substituted the following paragraph—

Words in s. 175(2)(a) in reg. 74(3)(b) substituted by reg. 5(10)(b)(i) of S.I. 2005/993 as from 1.4.05.

Words in s. 175(2)(a)(ii) in reg. 74(3)(b), substituted by reg. 5(10)(b)(ii) of S.I. 2005/993 as from 1.4.05.

Words in reg. 74(3)(c) omitted by reg. 5(10)(b)(iii) of S.I. 2005/993 as from 1.4.05.

- “(a) a risk based pension protection levy is assessed by reference to—
- (i) the difference between the value of the scheme’s assets (disregarding any assets representing the value of any rights in respect of money purchase benefits under the scheme rules) and the amount of its protected liabilities,
 - (ii) except in relation to any prescribed scheme or scheme of a prescribed description, the likelihood of an insolvency event occurring in relation to all the employers in relation to the scheme, and
 - (iii) if the Board considers it appropriate, one or more other risk factors mentioned in subsection (3), and”.

Modification of sections 175 to 181 of the Act: multi-employer sections of segregated schemes

75.—(1) This regulation applies to a multi-employer section of a segregated scheme.

(2) Section 175 of the Act shall be modified so that it shall be read as if—

- (a) in the case of a section of a scheme to which this regulation applies, the rules of which contain a requirement for the trustees or managers to segregate such part of the assets as is attributable to the liabilities of the section to provide pensions or other benefits to or in respect of the pensionable service of some or all of the members of the section by reference to an employer in relation to that section which would be triggered when an employer in relation to the section ceased to participate in the scheme, for paragraph (a) of subsection (2), there were substituted the following paragraph—

- “(a) ► a risk-based pension protection levy is a levy assessed by reference to ◀—
- (i) the difference between the value of the assets of the section (disregarding any assets representing the value of any rights

Words in substituted s. 175(2)(a) in reg. 75(2)(a) substituted by reg. 5(10)(c) of S.I. 2005/993 as from 1.4.05.

- in respect of money purchase benefits under the scheme rules) and the amount of its protected liabilities,
- (ii) where the Board considers it appropriate, whether or not the scheme rules relating to the section contain a requirement for the trustees or managers of the scheme to segregate such part of the assets of the section as is attributable to the liabilities of the section to provide pensions or other benefits to or in respect of the pensionable service of some or all of the members by reference to an employer in relation to the section in circumstances where that employer ceases to participate in the scheme,
 - (iii) except in relation to any prescribed section or section of a prescribed description, the likelihood of an insolvency event occurring in relation to each employer in relation to the section, and
 - (iv) if the Board considers it appropriate, one or more other risk factors mentioned in subsection (3), and”;
- (b) in the case of a section of a scheme to which this regulation applies, the rules of which give the trustees or managers an option to segregate such part of the assets as is attributable to the liabilities of the section to provide pensions or other benefits to or in respect of the pensionable service of some or all of the members of the section by reference to an employer in relation to that section when an employer in relation to the section ceases to participate in the scheme, for paragraph (a) of subsection (2), there were substituted the following paragraph—

Words in s. 175(2)(a) in reg. 75(2)(b), substituted by reg. 5(10)(c) of S.I. 2005/993 as from 1.4.05.

- “(a) ► a risk-based pension protection levy is a levy assessed by reference to◄—
- (i) the difference between the value of the assets of the section (disregarding any assets representing the value of any rights in respect of money purchase benefits under the scheme rules) and the amount of its protected liabilities,
 - (ii) where the Board considers it appropriate, whether or not the scheme rules relating to the section contain a requirement for the trustees or managers of the scheme to segregate such part of the assets of the section as is attributable to the liabilities of the section to provide pensions or other benefits to or in respect of the pensionable service of some or all of the members by reference to an employer in relation to the section in circumstances where that employer ceases to participate in the scheme,
 - (iii) except in relation to any prescribed section or section of a prescribed description, the likelihood of an insolvency event occurring in relation to each employer in relation to the section, and
 - (iv) if the Board considers it appropriate, one or more other risk factors mentioned in subsection (3), and”;
- (c) in the case of a section of a scheme to which this regulation applies, the rules of which do not contain a requirement for the trustees or managers to segregate such part of the assets as is attributable to the liabilities of the section to provide pensions or other benefits to or in respect of the pensionable service of some or all of the members of the section by reference to an employer in relation to that section which would be triggered when an employer in relation to the section ceased to participate in the scheme, for paragraph (a) of subsection (2), there were substituted the following paragraph—
- “(a) a risk based pension protection levy is assessed by reference to—
- (i) the difference between the value of the assets of the section (disregarding any assets representing the value of any rights

- in respect of money purchase benefits under the scheme rules) and the amount of its protected liabilities,
- (ii) except in relation to any prescribed section or section of a prescribed description, the likelihood of an insolvency event occurring in relation to all the employers in relation to the section, and
 - (iii) if the Board considers it appropriate, one or more other risk factors mentioned in subsection (3), and”.

PART 10

FINANCIAL ASSISTANCE SCHEME FOR MEMBERS OF CERTAIN PENSION SCHEMES

Modification of section 286 of the Act

76. Section 286 of the Act (financial assistance for members of certain pension schemes) shall be modified in its application to a multi-employer scheme so that it shall be read as if, for paragraph (c) of the definition of “qualifying pension scheme” in subsection (2), there were substituted the following paragraph—

“(c) one, some or all of the employers in relation to which satisfy such conditions as may be prescribed at such time as may be prescribed, and”.

Signed by authority of the Secretary of State for Work and Pensions

2nd March 2005

Malcolm Wicks
Minister of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under section 307(1)(b) and (2)(b) and (e) of the Pensions Act 2004 (c. 35) (“the Act”) which contain a power to modify the provisions of Part 2 and section 286 of the Act as they apply in relation to multi-employer schemes. Part 2 of the Act makes provision in respect of the functions of the Board of the Pension Protection Fund (“the Board”) which is established under section 107 of the Act. Section 286 of the Act makes provision in respect of the financial assistance scheme for members of certain pension schemes.

Part 1 of the Regulations provides for citation and commencement. It also contains a general interpretation provision.

Part 2 of the Regulations modifies Part 2 of the Act as it applies in relation to a section of a segregated multi-employer scheme with only one employer in relation to that section so that Part 2 of the Act can apply in relation to such a section as if it were separate scheme.

Part 3 of these Regulations modifies Part 2 of the Act as it applies in relation to a section of a segregated multi-employer scheme with at least two employers in relation to that section (“a multi-employer section”). It applies where the scheme rules relating to a multi-employer section do not contain any provision for the partial winding up of the section in specified circumstances. Part 2 of the Act is modified so that an assessment period is not triggered in relation to a multi-employer section of a segregated scheme unless an insolvency event has occurred in relation to all of the employers in relation to that section of the scheme or where all of the employers in relation to that section of the scheme are unlikely to continue as a going concern and meets prescribed requirements.

Part 4 of the Regulations modifies Part 2 of the Act as it applies in relation to a non-segregated multi-employer section of a segregated multi-employer scheme. It applies where the scheme rules relating to that section contain a provision for the partial winding up of the section in certain specified circumstances. Part 2 of the Act is modified so that an assessment period is triggered in respect of a segregated part of such a multi-employer section which is created when an insolvency event has occurred in relation to an employer in relation to the section or where an employer in relation to the section is unlikely to continue as a going concern and meets prescribed requirements.

Part 5 of the Regulations modifies Part 2 of the Act as it applies in relation to a non-segregated multi-employer scheme the rules of which contain a provision for the partial winding up of the scheme in certain specified circumstances. Part 2 of the Act is modified so that an assessment period is not triggered in respect of a segregated part of such a scheme which is created when an insolvency event has occurred in relation to an employer in relation to the scheme or where an employer in relation to the scheme is unlikely to continue as a going concern and meets prescribed requirements.

Part 6 of the Regulations modifies Part 2 of the Act as it applies in relation to a non-segregated multi-employer scheme the rules of which do not contain a provision for the partial winding up of the section in certain specified circumstances. Part 2 of the Act is modified so that an assessment period is not triggered in respect of such a scheme unless an insolvency event has occurred in relation to all of the employers in relation to the scheme or where all of the employers in relation to the scheme are unlikely to continue as a going concern and meet prescribed requirements.

Part 7 of the Regulations modifies Part 2 of the Act as it applies in relation to a non-segregated scheme the rules of which contain an option for the trustees or managers of 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 members by reference to an employer in relation to the scheme in specified circumstances. The modifications of Part 2 of the Act which are provided for in Part 5 of the Regulations are to apply in respect of such a scheme unless 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.

Similarly, Part 8 of the Regulations modifies Part 2 of the Act as it applies in relation to a multi-employer section of a segregated scheme the rules of which contain an option for the trustees or managers of the scheme to segregate such part of the assets of the section which are attributable to the liabilities of the section to provide pensions or other benefits to or in respect of the pensionable service of members by reference to an employer in relation to the section in specified circumstances. The modifications of Part 2 of the Act provided for in Part 4 of the Regulations are to apply in respect of such a section of such a scheme unless trustees or managers of the section decide not to exercise the option to segregate under the scheme rules so as to create a segregated part of the section.

Part 9 of the Regulations modifies sections 175 to 181 of the Act (pension protection levies) as they apply in respect of multi-employer schemes or sections of multi-employer schemes to which the Parts 2 to 8 of these Regulations apply.

Part 10 of the Regulations modifies the definition of “qualifying pension scheme” in section 286(2) of the Act. Section 286 of the Act makes provision in respect of the special assistance scheme for members of certain categories of pension schemes.

As these Regulations are made before the expiry of the period of six months beginning with the coming into force of the provisions of the Act by virtue of which they are made, the requirement for the Secretary of State to consult such persons as he considers

