

**EXPLANATORY MEMORANDUM TO  
THE PENSION PROTECTION FUND (ENTRY RULES) (AMENDMENT)  
REGULATIONS 2014**

**2014 No. 1664**

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
  - 2.1 The Pension Protection Fund (Entry Rules) (Amendment) Regulations 2014 (“the Regulations”) amend a set of existing regulations on the rules for occupational pension schemes’ entry into the Pension Protection Fund.
  - 2.2 The Regulations make a minor, temporary addition to the Pension Protection Fund (Entry Rules) Regulations 2005 (SI 2005/590) (“the 2005 Regulations”) to allow members of certain schemes, including the UK Olympic Airlines pension scheme, to access the protection provided by the Pension Protection Fund.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**

The factual background to the making of this Instrument is set out in Paragraph 7, below. At one time, Olympic Airlines had an establishment in the United Kingdom and secondary insolvency proceedings could have been taken, as permitted by the Insolvency Regulation EC 1346/2000. The result of litigation is that Olympic Airlines’ establishment in the United Kingdom had ceased to exist by the time secondary insolvency proceedings were begun. This Instrument is intended to address the gap that occurred as a result of the litigation, and provide a procedure to restore to the pension scheme of Olympic Airlines the protection it was granted at first instance but which it then lost on appeal.

4. **Legislative Context**
  - 4.1 The Pension Protection Fund was established by Part 2 of the Pensions Act 2004 (c.35) (“the 2004 Act”). Protection is provided to members of occupational pension schemes that meet certain conditions and satisfy the rules for entry in the 2005 Regulations. The Regulations amend the 2005 Regulations by creating a new insolvency event for the purposes of section 121 of the 2004 Act.

- 4.2 The Regulations will allow schemes that meet the criteria to gain access to the Pension Protection Fund.

## **5. Territorial Extent and Application**

This instrument applies to Great Britain.

Separate but corresponding provision will be made for Northern Ireland.

## **6. European Convention on Human Rights**

The Regulations are subject to negative resolution procedure and do not amend primary legislation. No statement is required.

## **7. Policy background**

### Pension Protection Fund

- 7.1 The Pension Protection Fund is a statutory fund that protects members of eligible defined benefit and hybrid occupational pension schemes by paying them pension compensation if:
- their scheme's sponsoring employer experiences a qualifying insolvency event;
  - there is no possibility of a scheme rescue; and
  - there are insufficient assets in the scheme to pay benefits at Pension Protection Fund compensation levels.

- 7.2 When the Pension Protection Fund assumes responsibility for a scheme it pays eligible members pension compensation.

### Olympic Airlines UK pension scheme

- 7.3 The Olympic Airlines UK pension scheme is an underfunded eligible occupational pension scheme, whose sponsoring employer was capable of having a qualifying insolvency event. The result of litigation was that there was no such insolvency event (*The Trustees of the Olympic Airlines SA Pension & Life Insurance Scheme v Olympic Airlines SA* [2013] EWCA Civ 643).
- 7.4 It was always the Government's intention that a scheme with all the characteristics of the Olympic Airlines UK scheme should have been able to transfer into the Pension Protection Fund. Its failure to do so has prompted the Government to act to resolve this issue.

### New qualifying insolvency event

- 7.5 These Regulations provide further, but very restrictive, access for schemes to the Pension Protection Fund. They create a new insolvency event for the sponsoring employer of a scheme that is eligible for the Pension Protection Fund, where that employer had the main centre of

its interests in a Member State of the European Economic Area (“EEA”) other than the United Kingdom.

- 7.6 Where the scheme’s sponsoring employer is subject to insolvency proceedings in that Member State of the EEA and the proceedings have not come to an end, the Regulations provide that there is an insolvency event on the fifth anniversary of the start of insolvency proceedings in the EEA Member State.
- 7.7 The Regulations impose further conditions, which are:
- an order to wind up the employer must have been granted by the court;
  - following this a Pension Protection Fund assessment period would have begun in relation to the scheme had the order not been set aside; and
  - the winding up order must have been set aside by the court because the court did not have jurisdiction to grant the order as the employer did not have an establishment in the United Kingdom at the relevant time.
- 7.8 The Regulations refer to article 2 of Council Regulation (E.C.) 1346/2000 of 29 May 2000 for the meaning to be given to “establishment”, “insolvency proceedings” and “liquidator”.
- 7.9 The Regulations will cease to have effect on 21 July 2017.

## **8. Consultation outcome**

- 8.1 A two week, targeted consultation was conducted on a draft of the Regulations, from 28 May to 10 June 2014. The draft Regulations were sent to relevant organisations.
- 8.2 Six responses were received to the consultation. Generally, respondents welcomed the Regulations and made positive comments.
- 8.3 Most of the respondents commented that the Regulations set out a very narrow set of circumstances that have to be met. This led them to express concerns that schemes would not be able to meet these conditions.
- 8.4 One queried whether the Olympic Airlines pension scheme would be able to meet the conditions due to a technical failure or a shortcoming in the Greek legal process.
- 8.5 Most respondents wanted the Regulations to cover other circumstances where there is a non-UK sponsoring employer of a scheme that is eligible for the Pension Protection Fund. One respondent cited examples such as where an employer has undertaken a re-organisation and no longer has a presence in the UK and where the employer has its main centre of interests outside the EEA.

- 8.6 One respondent recommended that a change be made to the Regulations to include members of the Olympic Airlines UK pension scheme.
- 8.7 No specific reasons were given to explain why the UK Olympic Airlines pension scheme would not be able to meet the conditions. The Government is of the view that this scheme can meet the conditions imposed by the Regulations.
- 8.8 It was not the Government's intention to give wider coverage for eligible schemes sponsored by non-UK employers in these Regulations. Such a change would require a more fundamental amendment to the 2005 Regulations.

## **9. Guidance**

- 9.1 The Board of the Pension Protection Fund will provide guidance and advice on the operational processes used to implement the changes this instrument introduces.
- 9.2 The DWP will have copies of the Regulations and be in a position to explain the policy intention behind them to members of the public.

## **10. Impact**

- 10.1 This instrument will have no direct impact on business or civil society.
- 10.2 There are no costs to business or any other cost implications. It was always intended that the Pension Protection Fund would provide for the UK Olympic Airlines pension scheme to come into the Pension Protection Fund.
- 10.3 A full impact assessment has not been prepared for this instrument.

## **11. Regulating small businesses**

This legislation does not apply to small business.

## **12. Monitoring & review**

The Department for Work and Pensions will continue to work closely with the Board of the Pension Protection Fund to ensure the legislative framework for the Pension Protection Fund remains appropriate.

## **13. Contact**

Any queries regarding this instrument are to be directed to Gabrielle Park at the Department for Work and Pensions, Tel: 020 7449 7427 or e-mail: Gabrielle.Park@dwp.gsi.gov.uk.

