
STATUTORY INSTRUMENTS

2016 No. 294

**The Pension Protection Fund and
Occupational and Personal Pension Schemes
(Miscellaneous Amendments) Regulations 2016**

PART 3

Pension Protection Fund amendments

Amendments to the Pension Protection Fund (Entry Rules) Regulations 2005

5.—(1) The Pension Protection Fund (Entry Rules) Regulations 2005(1) are amended as follows.

(2) In regulation 1 (interpretation)(2)—

(a) in paragraph (3)—

(i) after the definition of “EEA regulator”, insert—

““establishment” has the meaning given in Article 2 of the Insolvency Regulation;” and

(ii) after the definition of “home state regulator”, insert—

““the Insolvency Regulation” means Council Regulation (EC) No. 1346/2000 of 29th May 2000 on insolvency proceedings(3);” and

(b) after paragraph (6), insert—

“(7) In these Regulations, references to the centre of a person’s main interests are to be construed in accordance with Article 3 of the Insolvency Regulation.”.

(3) In regulation 5A (European insolvency event)(4)—

(a) omit paragraph (4); and

(b) for paragraph (5) substitute—

“(5) In this regulation “insolvency proceedings” and “liquidator” each has the meaning given by Article 2 of the Insolvency Regulation.”.

(4) For regulation 7 (applications and notifications to the Board)(5), substitute—

“Applications and notifications to the Board

7.—(1) Except in a case to which regulation 7A applies, the prescribed requirement for the purposes of section 129(1)(b) and (4)(b) of the Act (applications and notifications for the

(1) S.I. 2005/590; relevant amending instruments are S.I.s 2005/993, 2005/2113, 2005/2153, 2005/2224, 2009/451, 2010/2628, 2012/917, 2014/1664 and 2014/1711.

(2) Regulation 1 was amended by S.I.s 2005/2113, 2005/2153, 2009/451, 2010/2628, 2011/99, 2012/917, 2014/1711 and 2015/575. There are other amendments to regulation 1 but none is relevant.

(3) OJ L 160 30.6.2000, p. 1.

(4) Regulation 5A was inserted by S.I. 2014/1664.

(5) Regulation 7 was amended by S.I.s 2005/2153 and 2009/451.

purposes of section 128)(6) is that at least one of paragraphs (2), (4) and (5) applies to the employer.

(2) This paragraph applies to an employer if it is not—

- (a) an individual;
- (b) a company as defined in section 1(1) of the Companies Act 2006(7);
- (c) a company which may be wound up under Part 5 of the Insolvency Act 1986 (unregistered companies)(8);
- (d) a partnership; or
- (e) a relevant body as defined in regulation 5(2).

(3) For the purposes of paragraph (2)(c), an employer which is a company incorporated outside the United Kingdom is to be regarded as a company which may be wound up under Part 5 of the Insolvency Act 1986.

(4) This paragraph applies to an employer if it is an EEA insurer or an EEA credit institution.

(5) This paragraph applies to an employer if—

- (a) the centre of the employer's main interests is situated within the territory of a member State other than the United Kingdom;
- (b) insolvency proceedings have been opened against the employer in a member State in accordance with Article 3 of the Insolvency Regulation; and
- (c) the employer does not have an establishment in the United Kingdom.

(6) In this regulation references to a member State do not include Denmark.”.

(5) In regulation 7A (applications and notifications to the Board – multi-employer schemes)(9), for paragraph (2) substitute—

“(2) In the case of a scheme, or a section of a scheme, to which this regulation applies, the prescribed requirement for the purposes of section 129(1A)(b) and (4)(a)(ii) of the Act (applications and notifications for the purposes of section 128) is that at least one of paragraphs (3), (5) and (6) applies to the employer.

(3) This paragraph applies to an employer if it is not—

- (a) an individual;
- (b) a company as defined in section 1(1) of the Companies Act 2006;
- (c) a company which may be wound up under Part 5 of the Insolvency Act 1986;
- (d) a partnership; or
- (e) a relevant body as defined in regulation 5(2).

(4) For the purposes of paragraph (3)(c), an employer which is a company incorporated outside the United Kingdom is to be regarded as a company which may be wound up under Part 5 of the Insolvency Act 1986.

(5) This paragraph applies to an employer if it is an EEA insurer or an EEA credit institution.

(6) This paragraph applies to an employer if—

- (a) the centre of the employer's main interests is situated within the territory of a member State other than the United Kingdom;

(6) See regulation 1(3) of [S.I. 2005/590](#) for the meaning of “the Act”.

(7) [2006 c. 46](#).

(8) [1986 c. 45](#).

(9) Regulation 7A was inserted by [S.I. 2005/2153](#) and amended by [S.I. 2009/451](#).

- (b) insolvency proceedings have been opened against the employer in a member State in accordance with Article 3 of the Insolvency Regulation; and
 - (c) the employer does not have an establishment in the United Kingdom.
- (7) In this regulation references to a member State do not include Denmark.”.
- (6) In regulation 8 (applications and notifications to the Board – further provision)(10)—
 - (a) for paragraph (1), substitute—
 - “(1) Except in a case to which regulation 8A applies, the prescribed period for making an application to the Board under section 129(1) of the Act (applications and notifications for the purposes of section 128) shall be the period of—
 - (a) 28 days; or
 - (b) such longer period of not more than three months as the Board may determine is reasonable in the circumstances of a particular case, beginning with the date on which the trustees or managers of an eligible scheme become aware that the employer in relation to the scheme is unlikely to continue as a going concern.”; and
 - (b) in paragraph (2)—
 - (i) at the end of sub-paragraph (e) omit “and”;
 - (ii) at the end of sub-paragraph (f) insert “; and”;
 - (iii) after sub-paragraph (f) insert—
 - “(g) if the application was not sent to the Board within the period specified in paragraph (1)(a) of this regulation, the reasons for this.”.
- (7) In regulation 9 (confirmation of scheme status by insolvency practitioner)(11)—
 - (a) in paragraph (1)—
 - (i) in the opening words of sub-paragraph (a), for “a company” substitute “not an individual or a partnership”; and
 - (ii) in the opening words of paragraph (i) of sub-paragraph (a), for “the company” substitute “the employer”; and
 - (b) in the opening words of paragraph (2)(a), for “a company” substitute “not an individual or a partnership”.
- (8) In regulation 10(3) (confirmation of scheme status by Board)(12)—
 - (a) in sub-paragraph (a), for the words “the employer is a company, an EEA credit institution or an EEA insurer” substitute “the employer is not an individual or a partnership”; and
 - (b) in sub-paragraph (c), omit the words “but is not an EEA credit institution or an EEA insurer”.
- (9) In regulation 16 (restrictions on winding up, discharge of liabilities etc.)(13)—
 - (a) in the opening words of paragraph (1), for “subsection (2)” substitute “paragraph (2)”; and
 - (b) before sub-paragraph (a) of paragraph (1) insert—
 - “(za) a right or entitlement to benefits that are not money purchase benefits may be converted into, or replaced with, a right or entitlement to money purchase benefits

(10) Regulation 8(1) was amended by [S.I. 2005/2153](#). There are other amendments to regulation 8 but none is relevant.

(11) Regulation 9 was amended by [S.I. 2005/993](#).

(12) Regulation 10 was amended by [S.I. 2009/451](#).

(13) Regulation 16 was amended by S.I.s [2005/993](#) and [2005/2224](#).

under an eligible scheme are where, before the beginning of the assessment period in relation to the scheme, a person has—

- (i) a right or entitlement under the scheme rules in respect of flexible benefits (as defined by section 74 of the Pension Schemes Act 2015⁽¹⁴⁾) that are not money purchase benefits;
- (ii) notified the trustees or managers of the scheme that the person wishes to exercise an option under the scheme rules to convert those benefits (or a portion of them) into, or replace them (or a portion of them) with, money purchase benefits for the purpose of designating sums or assets as available for the payment of drawdown pension, dependants' drawdown pension, nominees' drawdown pension or successors' drawdown pension (as defined by paragraphs 4, 18, 27B and 27G of Schedule 28 to the Finance Act 2004⁽¹⁵⁾, respectively); and
- (iii) complied with any requirements, and satisfied any conditions, to which the exercise of that option is subject¹⁶;

(c) in paragraph (1)(a)—

- (i) in paragraph (i), for “(salary related schemes: right to a statement of entitlement);” substitute “(right to statement of entitlement: benefits other than money purchase); and”; and
- (ii) omit paragraph (ii); and

(d) in paragraph (2)—

- (i) in the opening words, for “A transfer” substitute “A conversion or replacement of benefits under an eligible scheme under paragraph (1)(za), a transfer”; and
- (ii) in sub-paragraph (b), after “reduce the” insert “value or”, and after “amount of” insert “the benefits (or the portion of them) to be converted or replaced,”.

(10) After regulation 17 (payment of scheme benefits)⁽¹⁶⁾, insert—

“Exception to section 138(2A)

17A.—(1) Subject to paragraph (3), during an assessment period in relation to an eligible scheme, benefits in the form of a lump sum may be paid to a member under the scheme rules in the circumstances specified in paragraph (2).

(2) The circumstances specified for the purpose of paragraph (1) are that, before the beginning of the assessment period in relation to the scheme, the member has—

- (a) a right or entitlement under the scheme rules in respect of flexible benefits (as defined by section 74 of the Pension Schemes Act 2015) that are not money purchase benefits;
- (b) notified the trustees or managers of the scheme that the member wishes to exercise an option under the scheme rules to be paid an uncrystallised funds pension lump sum (as defined by paragraph 4A of Schedule 29 to the Finance Act 2004) in respect of those benefits (or a portion of them); and
- (c) complied with any requirements, and satisfied any conditions, to which the exercise of that option is subject.

⁽¹⁴⁾ 2015 c. 8.

⁽¹⁵⁾ Paragraphs 4 and 18 were amended by paragraphs 3 and 13 of Schedule 16 to the Finance Act 2011 (c. 11) respectively and paragraphs 27B and 27G were inserted by paragraph 3 of Schedule 2 to the Taxation of Pensions Act 2014.

⁽¹⁶⁾ Regulation 17 was amended by S.I. 2009/451.

(3) A lump sum shall not be paid by virtue of this regulation unless the trustees or managers of the scheme—

- (a) are satisfied that to do so is consistent with the objective of ensuring that the scheme's protected liabilities do not exceed its assets or, if they do exceed its assets, that the excess is kept to a minimum; and
- (b) reduce the amount of the lump sum to the extent necessary to ensure that it does not exceed the actuarial equivalent of the compensation that would be payable to the member in respect of the benefits (or the portion of them) in respect of which the lump sum is paid in accordance with the pension compensation provisions, if the Board were to assume responsibility for the scheme in accordance with Chapter 3 of Part 2 of the Act.

(4) For the purpose of paragraph (3)(b) the actuarial equivalent of the compensation that would be payable is to be calculated from tables designated by the Board for the purpose of paragraph 24(4) (commutation of periodic compensation) of Schedule 7 to the Act.”.