

2020 No. 693

PENSIONS

**The Pension Protection Fund (Moratorium and Arrangements
and Reconstructions for Companies in Financial Difficulty)
Regulations 2020**

Approved by both Houses of Parliament

Made - - - - at 12.38 p.m. on 6th July 2020

Laid before Parliament at 5.00 p.m. on 6th July 2020

Coming into force - - 7th July 2020

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by section A51 and A55(1) of the Insolvency Act 1986(a), sections 901I, 1291 and 1292 of the Companies Act 2006(b) and section 43 of the Corporate Insolvency and Governance Act 2020(c).

In accordance with section 1291 of the Companies Act 2006, as modified by section 901I(8) of that Act, and section 43 of the Corporate Insolvency and Governance Act 2020 this instrument is made without a draft having been laid before, and approved by a resolution of, each House of Parliament.

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Pension Protection Fund (Moratorium and Arrangements and Reconstructions for Companies in Financial Difficulty) Regulations 2020, and come into force on 7th July 2020.

(2) This regulation and regulation 3 extend to England and Wales, Scotland and Northern Ireland.

(3) Regulation 2 extends to England and Wales and Scotland.

(4) In these Regulations—

“the 1986 Act” means the Insolvency Act 1986;

“the 2006 Act” means the Companies Act 2006;

“CIO” means a Charitable Incorporated Organisation;

(a) 1986 c. 45. Section A51 was inserted by section 1 of the Corporate Insolvency and Governance Act 2020 (c. 12). Section A51 has been applied to LLPs by virtue of paragraph 38 of Schedule 3 to that Act and modified by regulation 5(2) of S.I. 2001/1090. Section A51 has been applied to CIOs by virtue of paragraph 49 of Schedule 3 to that Act.

(b) 2006 c. 46. Section 901I was inserted by section 7 of, and Schedule 9 to, the Corporate Insolvency and Governance Act 2020 (c. 12). Section 901I has been applied with modifications to LLPs by virtue of regulation 4 of, and Schedule 3 to, the Limited Liability Partnerships (Amendment etc.) Regulations 2020 (S.I. 2020/643).

(c) 2020 c. 12.

“LLP” means a limited liability partnership registered under the Limited Liabilities Partnerships Act 2000(a);

“the Board” means the Board of the Pension Protection Fund(b).

Board of the Pension Protection Fund rights in respect of a moratorium

2.—(1) Paragraph (2) applies where—

(a) a moratorium (within the meaning of Part A1 of the 1986 Act(c)) which on or after the date on which these Regulations come into force—

(i) is in force in relation to a company, LLP or CIO that is an employer in respect of an eligible scheme; or

(ii) is or has been in force in relation to a company, LLP or CIO that has been an employer in respect of an eligible scheme at any time during the moratorium; and

(b) the trustees or managers of the scheme are a creditor of the company, LLP or CIO.

(2) The rights which are exercisable by the trustees or managers of the scheme as a creditor of the company, LLP or CIO under or by virtue of—

(a) section A12 (creditor consent for the purposes of section A11) of the 1986 Act(d); or

(b) a court order under section A44(4)(c) (challenge to directors’ actions) of the 1986 Act(e),

are instead to be exercised by the Board to the exclusion of the trustees or managers of the scheme.

(3) Before exercising a right under paragraph (2) the Board must consult the trustees or managers of the scheme.

Board of the Pension Protection Fund rights when arrangement or reconstruction for company in financial difficulty is proposed

3.—(1) This regulation applies where—

(a) a company or LLP in respect of which a compromise or arrangement (within the meaning of section 901A of the 2006 Act (application of this part)(f)) is proposed is an employer in respect of an eligible scheme; and

(b) the trustees or managers of the scheme are a creditor of the company or LLP to whom the compromise or arrangement is proposed.

(2) The Board may exercise those rights exercisable under Part 26A of the 2006 Act (arrangements and reconstructions: companies in financial difficulty)(g) by the trustees or managers of the scheme as a creditor of the company or LLP as if the Board is a creditor of the company.

(3) The Board may exercise the rights mentioned in paragraph (2) in addition to the exercise of those rights by the trustees or managers of the scheme.

(4) But the rights which are exercisable by the trustees or managers of the scheme as a creditor of the company or LLP to vote in a meeting summoned under section 901C(1) of the 2006 Act (court order for holding of meeting)(h) are instead to be exercised by the Board to the exclusion of the trustees or managers of the scheme.

(5) Before exercising the right under paragraph (4) the Board must consult the trustees or managers of the scheme.

(a) 2000 c. 12.

(b) The Board of the Pension Protection Fund is established under section 107 of the Pensions Act 2004 (c. 35).

(c) Part A1 was inserted by section 1 of the Corporate Insolvency and Governance Act 2020 (c. 12).

(d) Sections A11 and A12 were inserted by section 1 of the Corporate Insolvency and Governance Act 2020 (c. 12).

(e) Section A44 was inserted by section 1 of the Corporate Insolvency and Governance Act 2020 (c. 12).

(f) Section 901A was inserted by section 7 of, and schedule 9 to, the Corporate Insolvency and Governance Act 2020 (c. 12).

(g) Part 26A was inserted by section 7 of, and schedule 9 to, the Corporate Insolvency and Governance Act 2020 (c. 12).

(h) Section 901C was inserted by section 7 of, and schedule 9 to, the Corporate Insolvency and Governance Act 2020 (c. 12).

12.38 p.m. on 6th July 2020

Thérèse Coffey
Secretary of State for Work and Pensions
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, in certain circumstances, give the Board of the Pension Protection Fund (“the Board”) rights that are normally exercised by a pension scheme’s trustees or managers where they are creditors. Where the trustees or managers lose their rights as a result the Board is required to consult with them.

Regulation 2 applies when a moratorium under Part A1 of the Insolvency Act 1986 (c. 45) is or has been in force in relation to a company, Limited Liability Partnership (“LLP”) or Charitable Incorporated Organisation (“CIO”) which is, or has been at some point while the moratorium has been in force, an employer in respect of an eligible pension scheme. It gives the Board the right, instead of the trustees or managers, to participate in decisions as to whether to extend the moratorium and decisions in relation to a challenge to the directors’ actions. The Board must consult the trustees or managers before exercising those rights.

Regulation 3 applies when a restructuring plan (a compromise or arrangement) is proposed under Part 26A of the Companies Act 2006 (c. 46) in relation to a company or LLP which is an employer in respect of an eligible pension scheme and the trustees or managers of the scheme are a creditor of that company or LLP to whom the compromise or arrangement is proposed. It gives the Board, in addition to the trustees or managers, the rights exercisable by the trustees or managers as creditors under Part 26A. It gives the Board, instead of the trustees or managers, the right to vote on a compromise or arrangement and the Board must consult the trustees or managers before exercising this right.

A full impact assessment has not been produced for this instrument as no impact, or no significant impact on the private, public or voluntary sectors is foreseen.

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£4.90

UK0693 09/2020 19585

www.legislation.gov.uk/ukxi/2020/693

ISBN 978-0-11-130125-8



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