

2005 No. 55

PENSIONS

The Pension Protection Fund (Partially Guaranteed Schemes) (Modification) Regulations (Northern Ireland) 2005

Made - - - - - 28th February 2005

Coming into operation in accordance with regulation 1(1)

The Department for Social Development, in exercise of the powers conferred on it by Articles 280(3) and 287(3) of the Pensions (Northern Ireland) Order 2005(a), and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Pension Protection Fund (Partially Guaranteed Schemes) (Modification) Regulations (Northern Ireland) 2005 and shall come into operation –

- (a) for the purposes of this regulation, and regulations 3(4)(d) and (g), 4(2), 5(3)(b), 7, 8(1)(a) and 10(5) for the purpose only of the making of regulations, on 8th March 2005,
- (b) for all other purposes, on 6th April 2005.

(2) In these Regulations –

“the Order” means the Pensions (Northern Ireland) Order 2005;

“partially guaranteed scheme” means an eligible scheme in respect of which a relevant public authority has –

- (a) given a guarantee in relation to –
 - (i) any part of the scheme;
 - (ii) any benefits payable under the scheme rules; or
 - (iii) any members of the scheme, or
- (b) made any other arrangements for the purposes of securing that the assets of the scheme are sufficient to meet any part of its liabilities.

(3) In these Regulations, any reference to a numbered Article is a reference to the Article of the Order bearing that number.

Modification of Part III of the Order

2. In relation to a partially guaranteed scheme, Part III of the Order (the Board of the Pension Protection Fund) applies with the modifications prescribed in these Regulations.

Application and effect

3.—(1) The following Articles of the Order apply as if for “assets of the scheme” in each place where it occurs there were substituted “assets of the unsecured part” –

- (a) Article 111(2)(a) and (4)(a) (duty to assume responsibility for schemes following insolvency event);
- (b) Article 112(2)(a) and (3)(a) (duty to assume responsibility for schemes following application or notification);
- (c) Article 120(5) (power to validate contraventions of Article 119);
- (d) Article 135(9)(a) (application for reconsideration);
- (e) Article 136(9)(a) and (11) (duty to assume responsibility following reconsideration), and
- (f) Article 142(2) (duty to assume responsibility for closed schemes).

(2) The following Articles of the Order apply as if for “an eligible scheme” in each place where it occurs there were substituted “the unsecured part of an eligible scheme” –

- (a) Article 115(1) (protected liabilities);
- (b) Article 147(1) (adjustments to be made where the Board assumes responsibility for a scheme);
- (c) Article 148(1) (postponement of compensation entitlement for the assessment period);
- (d) Article 149(1) (guaranteed minimum pensions);
- (e) Article 153(1) (discharge of liabilities in respect of compensation), and
- (f) Article 154(1) (discharge of liabilities in respect of money purchase benefits).

(3) The following Articles of the Order apply as if for “a scheme” in each place where it occurs there were substituted “an unsecured part” –

- (a) Article 126(1) (Articles 124 and 125: interpretation);
- (b) Article 128(1) (approval of valuation);
- (c) Article 129(2) (binding valuations);
- (d) Article 130(2) (schemes which become eligible schemes);
- (e) Article 131(2) (new schemes created to replace existing schemes);
- (f) Article 141(9) (applications and notifications where closed schemes have insufficient assets);
- (g) Article 144(1) and (5) (transfer notice);
- (h) Article 145(2) and (5) (effect of Board assuming responsibility for a scheme);
- (i) Article 146(1) (the pension compensation provisions);
- (j) Article 150(1) (duty to pay scheme benefits unpaid at assessment date etc.), and
- (k) Article 156(1) (relationship with fraud compensation regime).

(4) The following Articles of the Order apply as if for “the scheme” in each place where it occurs there were substituted “the unsecured part” –

- (a) Article 115(1) (protected liabilities);
- (b) Article 122(3) (payment of scheme benefits);
- (c) Article 124(2)(a) (reviewable ill health pensions);
- (d) Article 125(2), (3)(a), (4) and (5)(a) (effect of a review);
- (e) Article 126(1) and (4) (Articles 124 and 125: interpretation);
- (f) Article 127(2) and (11)(a) and (b) (Board’s obligation to obtain valuation of assets and protected liabilities);
- (g) Article 130(1) (schemes which become eligible schemes);
- (h) Article 135(1), (2)(b) and (c) and (3)(b) and (c) (application for reconsideration);
- (i) Article 136(2) and (5) (duty to assume responsibility following reconsideration);
- (j) Article 138(2)(c) and (5)(b) and (c) (requirement to wind up schemes with sufficient assets to meet protected liabilities);
- (k) Article 141(1) and (3) (applications and notifications where closed schemes have insufficient assets);

- (l) Article 142(1) and (3) (duty to assume responsibility for closed schemes);
- (m) Article 143(3)(b)(ii) (closed schemes: further assessment periods);
- (n) Article 145(1), (2)(a), (3) and (7)(b) (effect of Board assuming responsibility for a scheme);
- (o) Article 147(3)(a) (adjustments to be made where the Board assumes responsibility for a scheme);
- (p) Article 148(1) (postponement of compensation entitlement for the assessment period);
- (q) Article 150(5)(a) and (6) (duty to pay scheme benefits unpaid at assessment date etc.), and
- (r) Article 156(4) and (6) (relationship with fraud compensation regime).

Circumstances in which Board assumes responsibility for eligible schemes

4.—(1) Articles 111 (duty to assume responsibility for schemes following insolvency event) and 112 (duty to assume responsibility for schemes following application or notification) apply as if, in paragraph (2) of each Article –

- (a) for “responsibility for the scheme” there were substituted “responsibility for the unsecured part”, and
- (b) in sub-paragraph (a), after “protected liabilities” there were inserted “of that part”.

(2) Article 113 (applications and notifications for the purposes of Article 112) applies as if, in paragraph (1), for “responsibility for the scheme” there were substituted “responsibility for the unsecured part”.

Restrictions on schemes during the assessment period

5.—(1) Article 118 (directions) applies as if, in paragraph (2), for “the scheme’s protected liabilities” there were substituted “the protected liabilities of the unsecured part”.

(2) Article 120 (power to validate contraventions of Article 119) applies as if, in paragraph (1), for “the scheme’s protected liabilities” there were substituted “the protected liabilities of the unsecured part”.

- (3) Article 122 (payment of scheme benefits) applies as if –
 - (a) in paragraph (2)(a), for “responsibility for the scheme” there were substituted “responsibility for the unsecured part”;
 - (b) in paragraph (2)(a), for “member of the scheme” there were substituted “member of the unsecured part”.

(4) Article 123 (loans to pay scheme benefits) applies as if, in paragraph (2), after “benefits” in both places where it occurs there were inserted “relating to the unsecured part”.

Ill health pensions

- 6.** Article 124 (reviewable ill health pensions) applies as if –
 - (a) in paragraph (4)(a), for “under the scheme” there were substituted “under the unsecured part”;
 - (b) in paragraph (5), for “responsibility for the scheme” there were substituted “responsibility for the unsecured part”.

New schemes created to replace existing schemes

7. Article 131 (new schemes created to replace existing schemes) applies as if, in paragraph (1), after “responsibility for” there were inserted “the unsecured part of”.

Reconsideration

- 8.**—(1) Article 135 (application for reconsideration) applies as if, in paragraph (8) –
 - (a) in the definition of “audited scheme accounts”, for “a scheme” there were substituted “an unsecured part”, and

- (b) in the definition of “protected benefits quotation” –
 - (i) for “a scheme” there were substituted “an unsecured part”;
 - (ii) for “member of the scheme” there were substituted “member of the unsecured part”;
 - and
 - (iii) in paragraph (a) of that definition, for “responsibility for the scheme” there were substituted “responsibility for the unsecured part”.

(2) Article 136 (duty to assume responsibility following reconsideration) applies as if, in paragraph (9)(b), for “liabilities of the scheme” there were substituted “liabilities of the unsecured part”.

Closed schemes

- 9.**—(1) Article 137 (closed schemes) applies as if –
- (a) in paragraph (3), for “in respect of the scheme” there were substituted “in respect of the unsecured part”; and
 - (b) in paragraph (7), in the definition of “full buy-out quotation” –
 - (i) for “a scheme” there were substituted “an unsecured part”; and
 - (ii) for “member of the scheme” there were substituted “member of the unsecured part”.
- (2) Article 140 (valuations of closed schemes) applies as if –
- (a) in paragraph (1), for “actuarial valuations of the scheme” there were substituted “actuarial valuations of the unsecured part”;
 - (b) in paragraph (5), for “actuarial valuation of the scheme” there were substituted “actuarial valuation of the unsecured part”, and
 - (c) in paragraph (6) –
 - (i) for the definition of “actuarial valuation” there were substituted the following definition –
 - “ “actuarial valuation” means a written valuation of –
 - (a) the assets of the unsecured part,
 - (b) the full liabilities, and
 - (c) the protected liabilities in relation to the unsecured part,
 prepared and signed by the actuary;”.
 - (ii) for the definition of “full scheme liabilities” there were substituted the following definition –
 - “ “full liabilities” means –
 - (a) the liabilities under the scheme rules to or in respect of members of the unsecured part,
 - (b) other liabilities of the unsecured part, and
 - (c) the estimated cost of winding up the unsecured part;”.

Assumption of responsibility

- 10.**—(1) Article 144 (transfer notice) applies as if –
- (a) after paragraph (4), there were inserted the following paragraph –
 - “(4A) The Board shall, as soon as reasonably practicable after it is required to assume responsibility for an unsecured part, obtain a further actuarial valuation of the assets and protected liabilities of that part as at the date on which it is required to assume responsibility for that part; and a transfer notice may not be given in relation to the unsecured part until that valuation has been approved by the Board and become binding.”;
 - (b) after paragraph (7), there were added the following paragraphs –
 - “(8) Subject to paragraph (9), the following provisions apply in relation to a valuation obtained under paragraph (4A) as they apply in relation to a valuation obtained

under Article 127 (Board's obligation to obtain valuation of assets and protected liabilities) –

- (a) paragraphs (4) to (7) and (11)(a), (b) and (d) of that Article;
- (b) Article 128 (approval of valuation); and
- (c) Article 129 (binding valuations), other than paragraph (2).

(9) In the application of Article 127 by virtue of paragraph (8), paragraphs (5) and (11)(b) of that Article apply as if the references to the “relevant time” were to the date on which the Board is required to assume responsibility for the unsecured part.”.

(2) Article 145 (effect of Board assuming responsibility for a scheme) applies as if in paragraph (2) –

- (a) in sub-paragraph (b), after “pension obligations” there were inserted “in relation to the unsecured part”; and
- (b) for “the scheme is to be treated” there were substituted “the unsecured part is to be treated”.

(3) Article 149 (guaranteed minimum pensions) applies as if, in paragraph (1), for “member of the scheme” there were substituted “member of the unsecured part”.

(4) Schedule 5 to the Order (transfer of property, rights and liabilities to the Board) applies as if –

- (a) in paragraph 1, after “liabilities” there were inserted “of the unsecured part”, and
- (b) in paragraph 3(1) –
 - (i) after “transfer” there were inserted “of the unsecured part”, and
 - (ii) after “in their capacity as trustees or managers” there were inserted “of that part”.

(5) Schedule 6 to the Order (pension compensation provisions) applies as if –

(a) for paragraphs 1 and 2 there were substituted the following paragraphs –

“1. This Schedule applies for the purposes of determining the compensation payable where the Board assumes responsibility for an unsecured part in accordance with this Chapter.

2. In this Schedule –

- (a) references to “the assessment date” are to the date on which the assessment period in relation to the scheme, or (where there has been more than one such assessment period) the last one, began; and
- (b) references to “the scheme” are to the unsecured part for which the Board has assumed responsibility.”, and

(b) in paragraph 37(1), in the definition of “the scheme”, for “paragraph 1” there were substituted “paragraph 2”.

General interpretation

11. In relation to a partially guaranteed scheme, Article 2 (general interpretation) applies as if there were inserted the following definitions at the appropriate alphabetical places –

“ “eligible scheme” has the meaning given by Article 110;

“partially guaranteed scheme” means an eligible scheme in respect of which a relevant public authority has –

- (a) given a guarantee in relation to –
 - (i) any part of the scheme;
 - (ii) any benefits payable under the scheme rules; or
 - (iii) any members of the scheme; or
- (b) made any other arrangements for the purposes of securing that the assets of the scheme are sufficient to meet any part of its liabilities;

“relevant public authority” has the meaning given by Article 280(4);

“unsecured part” means any part of a partially guaranteed scheme –

- (a) in respect of which no guarantee has been given by a relevant public authority;
- (b) which relates to benefits payable under the scheme in respect of which –
 - (i) no such guarantee has been given, and
 - (ii) no other arrangements as are mentioned in Article 280(3)(b) have been made.”.

Sealed with the Official Seal of the Department for Social Development on 28th February 2005.

(L.S.)

John O'Neill

A senior officer of the Department for Social Development

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations modify the operation of Part III of the Pensions (Northern Ireland) Order 2005 (“the Order”) in respect of partially guaranteed schemes. The modifications operate so that the Board of the Pension Protection Fund only takes into account the assets and liabilities of the unsecured part of a partially guaranteed scheme and can only assume responsibility for that part.

The Pensions (2005 Order) (Commencement No. 1 and Consequential and Transitional Provisions) Order (Northern Ireland) 2005 No. 48 (C. 5) provides for the coming into operation of Article 280(3) of the Order, one of the enabling provisions under which these regulations are made, on 25th February 2005 for the purpose of authorising the making of regulations and for all other purposes on 8th March 2005. As the Regulations are made before the end of the period of six months beginning with the coming into operation of the provisions of the Order by virtue of which they are made, the requirement to consult under Article 289(1) of the Order does not apply by virtue of paragraph (2)(c) of that Article.

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