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STATUTORY RULES OF NORTHERN IRELAND

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**2016 No. 165**

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

**PART 3**

**Pension Protection Fund amendments**

**Amendment of the Pension Protection Fund (Compensation) Regulations**

**4.—(1)** The Pension Protection Fund (Compensation) Regulations (Northern Ireland) 2005**(1)** are amended in accordance with paragraphs (2) to (6).

(2) In regulation 1(2) (interpretation) for the definition of “PPF trivial commutation lump sum”**(2)** substitute—

““PPF trivial commutation lump sum” has the meaning given in regulation 18(2)**(3)** (circumstances in which the portion of compensation to be commuted may exceed 25 per cent);”.

(3) In regulation 2(2) (circumstances where a person shall be entitled to early payment of compensation) for sub-paragraph (b)**(4)** substitute—

“(b) that on the date on which the compensation is to become payable early the person has attained—

(i) except in a case to which head (ii) applies, normal minimum pension age as defined in section 279(1) of the 2004 Act;

(ii) in a case where the person has a protected pension age of less than 50 by virtue of paragraph 22 of Schedule 36 to the 2004 Act**(5)** (rights to take benefit before normal minimum pension age), the age of 50.”.

(4) In regulation 17**(6)** (commutation of periodic compensation)—

(a) in paragraph (1) for “paragraphs (2) and (3)” substitute “paragraph (2)”;

(b) omit paragraph (3).

(5) In regulation 23(3)**(7)** (cash balance schemes: modification of Schedule 6), for “In this regulation” substitute “In this Part”.

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- (1) [S.R. 2005 No. 149](#); relevant amending Regulations are [S.R. 2006 No. 155](#), [S.R. 2010 No. 80](#) and [S.R. 2014 No. 204](#)
- (2) The definition of “PPF trivial commutation lump sum” was inserted by regulation 22(2) of [S.R. 2006 No. 155](#); there are other amendments to regulation 1(2) but none is relevant
- (3) Regulation 18 was substituted by regulation 22(4) of [S.R. 2006 No. 155](#)
- (4) Sub-paragraph (b) was substituted by regulation 4(2)(a) of [S.R. 2010 No. 80](#)
- (5) Paragraph 22 was amended by paragraphs 54 and 55 of Schedule 10 to the Finance Act 2005 (c. 7), paragraph 43 of Schedule 23 to the Finance Act 2006 (c. 25), paragraph 432 of Schedule 1 to the Corporation Tax Act 2010 (c. 4) and paragraph 7 of Schedule 5 to the Finance Act 2014 (c. 26)
- (6) Paragraph (1) was amended and paragraph (3) was added by regulation 22(3) of [S.R. 2006 No. 155](#)
- (7) Paragraph (3) was inserted by regulation 59(4)(d) of [S.R. 2014 No. 204](#)

(6) In Part 10 after regulation 23 insert—

**“Cash balance schemes: modification of Schedule 6**

**23A.**—(1) In its application to a cash balance scheme, paragraph 37 of Schedule 6 applies as if, after sub-paragraph (4) there were inserted—

“(5) In this Schedule references to a lump sum to which a person is entitled, or which a person has been paid, by reason of commuting part of a pension under the scheme include any lump sum to which the person is entitled, or which the person has been paid, by reason of opting to receive a lump sum instead of a pension, or part of a pension, in respect of cash balance benefits under the scheme.”

(2) In its application to a cash balance scheme other than a scheme to which regulation 23 applies, paragraph 37(1) of Schedule 6 applies as if, before the definition of “deferred member” there were inserted—

““cash balance benefit” has the meaning given by regulation 2 of the Pensions (2012 Act) (Transitional, Consequential and Supplementary Provisions) Regulations (Northern Ireland) 2014(8);”.

**Amendment of the Pension Protection Fund (Entry Rules) Regulations**

**5.**—(1) The Pension Protection Fund (Entry Rules) Regulations (Northern Ireland) 2005(9) are amended in accordance with paragraphs (2) to (10).

(2) In regulation 1 (interpretation)—

(a) in paragraph (2)—

(i) after the definition of “EEA state”(10) insert—

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

(ii) after the definition of “home state regulator”(11) insert—

““the Insolvency Regulation” means Council Regulation (EC) No 1346/2000 of 29th May 2000 on insolvency proceedings(12);” and

(b) after paragraph (4) insert—

“(4A) 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(13) (European insolvency event)—

(a) omit paragraph (4);

(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(14) (applications and notifications to the Board) substitute—

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(8) S.R. 2014 No. 204

(9) S.R. 2005 No. 126; relevant amending Regulations are S.R. 2005 Nos. 194, 357, 364 and 387, S.R. 2009 No. 78 and S.R. 2014 No. 195

(10) The definition of “EEA state” was inserted by regulation 2(2) of S.R. 2009 No. 78

(11) The definition of “home state regulator” was inserted by regulation 2(2)(a) of S.R. 2009 No. 78

(12) OJ L 160 30.6.2000, p. 1

(13) Regulation 5A was inserted by regulation 2(2) of S.R. 2014 No. 195

(14) Regulation 7 was amended by regulation 2(5) of S.R. 2005 No. 364 and regulation 2(3) of S.R. 2009 No. 78

### “Applications and notifications to the Board

7.—(1) Except in a case to which regulation 7A applies, the prescribed requirement for the purposes of Article 113(1)(b) and (4)(b) (applications and notifications for the purposes of Article 112) 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<sup>(15)</sup>;
- (c) a company which may be wound up under Part 6 of the Insolvency Order (winding up of unregistered companies)<sup>(16)</sup>;
- (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 6 of the Insolvency Order.

(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<sup>(17)</sup> (applications and notifications to the Board – multi-employer schemes) 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 Article 113(1A)(b) and (4)(a)(ii)<sup>(18)</sup> (applications and notifications for the purposes of Article 112) 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 6 of the Insolvency Order;
- (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 6 of the Insolvency Order.

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

(6) This paragraph applies to an employer if—

<sup>(15)</sup> 2006 c. 46

<sup>(16)</sup> S.I. 1989 /2405 (N.I. 19)

<sup>(17)</sup> Regulation 7A was inserted by regulation 2(6) of S.R. 2005 No. 364 and amended by regulation 2(4) of S.R. 2009 No. 78

<sup>(18)</sup> Paragraph (4) was substituted by the modifications in Parts 3 and 6 of S.R. 2005 No. 91 as substituted by regulation 3(3) and (4) of S.R. 2005 No. 357

- (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.
- (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)—
- (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 Article 113(1) 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”, 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), the reasons for this.”.
- (7) In regulation 9(19) (confirmation of scheme status by insolvency practitioner)—
- (a) in paragraph (1)—
    - (i) in the opening words of sub-paragraph (a) for “a company” substitute “not an individual or a partnership”;
    - (ii) in the opening words of sub-paragraph (a)(i) for “the company” substitute “the employer”;
  - (b) in the opening words of paragraph (2)(a) for “a company” substitute “not an individual or a partnership”.
- (8) In regulation 10(3)(20) (confirmation of scheme status by Board)—
- (a) in the opening words of sub-paragraph (a) for “the employer is a company, an EEA credit institution or an EEA insurer” substitute “the employer is not an individual or a partnership”;
  - (b) in the opening words of sub-paragraph (c) omit “but is not an EEA credit institution or an EEA insurer”.
- (9) In regulation 16(21) (restrictions on winding up, discharge of liabilities etc.)—
- (a) before paragraph (1)(a) 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

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(19) Regulation 9 was amended by regulation 3(3) of [S.R. 2005 No. 194](#)

(20) Regulation 10 was amended by regulation 2(5) of [S.R. 2009 No. 78](#)

(21) Regulation 16 was amended by regulation 3(5) of [S.R. 2005 No. 194](#) and regulation 5 of [S.R. 2005 No. 387](#)

purchase benefits 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<sup>(22)</sup>) 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<sup>(23)</sup> to the Finance Act 2004, respectively), and
  - (iii) complied with any requirements, and satisfied any conditions, to which the exercise of that option is subject;"
- (b) in paragraph (1)(a)—
- (i) in head (i) for "(salary related schemes: right to a statement of entitlement);" substitute "(right to statement of entitlement: benefits other than money purchase), and";
  - (ii) omit head (ii);
- (c) 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";
  - (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<sup>(24)</sup> (payment of scheme benefits) insert—

**"Exception to Article 122(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<sup>(25)</sup> 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.

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<sup>(22)</sup> 2015 c. 8

<sup>(23)</sup> 2004 c. 12; paragraphs 4 and 18 were amended respectively by paragraphs 3 and 13 of Schedule 16 to the Finance Act 2011 (c. 11) and paragraphs 27B and 27G of Schedule 28 were inserted by paragraph 3 of Schedule 2 to the Taxation of Pensions Act 2014 (c. 30)

<sup>(24)</sup> Regulation 17 was amended by regulation 2(6) of S.R. 2009 No. 78

<sup>(25)</sup> Paragraph 4A was inserted by paragraph 57 of Schedule 1 to the Taxation of Pensions Act 2014

(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 3 of the Order.

(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 6 to the Order.”.

#### **Amendment of the Pension Protection Fund (General and Miscellaneous Amendments) Regulations**

**6.**—(1) The Pension Protection Fund (General and Miscellaneous Amendments) Regulations (Northern Ireland) 2006<sup>(26)</sup> are amended in accordance with paragraphs (2) and (3).

(2) In regulation 8 (further provision for discharge of liabilities in respect of money purchase benefits) after paragraph (1) insert—

“(1A) Where, on the date that the Board assumed responsibility for the scheme, the money purchase beneficiary—

- (a) had attained normal minimum pension age, or was within six months of attaining that age, or
- (b) met the ill-health condition in paragraph 1 of Schedule 28 to the 2004 Act,

the notice sent by the Board under paragraph (1) shall also include the information listed in Part 1, and paragraph 12, of Schedule 9A to the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 2014<sup>(27)</sup> (information to be given on the Pensions Guidance).”.

(3) In regulation 9A<sup>(28)</sup> (PPF money purchase lump sums) for paragraph (2) substitute—

“(2) The first condition is that the member has attained normal minimum pension age or meets the ill-health condition in paragraph 1 of Schedule 28 to the 2004 Act.”.

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<sup>(26)</sup> S.R. 2006 No. 155; relevant amending Regulations are S.R. 2013 No. 95

<sup>(27)</sup> S.R. 2014 No. 79; Schedule 9A was inserted by the Schedule to S.R. 2015 No. 154

<sup>(28)</sup> Regulation 9A was inserted by regulation 9(5) of S.R. 2013 No. 95