

2020 No. 162

PENSIONS

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

Made - - - - *30th July 2020*
Coming into operation - *1st August 2020*
Approved by resolution of the Assembly on 5th October 2020

The Department for Communities makes the following Regulations in exercise of the powers conferred by Articles 13HB and 13HF of the Insolvency (Northern Ireland) Order 1989(a) and section 46 of the Corporate Insolvency and Governance Act 2020(b).

In accordance with section 46 of the Corporate Insolvency and Governance Act 2020 these Regulations are made without a draft having been laid before, and approved by a resolution of, the Assembly.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Pension Protection Fund (Moratorium and Arrangements for Companies in Financial Difficulty) Regulations (Northern Ireland) 2020 and shall come into operation on 1st August 2020.

(2) In these Regulations—

“the Board” means the Board of the Pension Protection Fund(c);

“the Insolvency Order” means the Insolvency (Northern Ireland) Order 1989;

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

“relevant CCBS” means a co-operative society or community benefit society, that is registered under the Co-operative and Community Benefit Societies Act (Northern Ireland) 1969(e).

(3) The Interpretation Act (Northern Ireland) 1954(f) shall apply to these Regulations as it applies to an Act of the Assembly.

(a) S.I. 1989/2405 (N.I. 19); Articles 13HB and 13HF were inserted by section 4(1) of the Corporate Insolvency and Governance Act 2020 (c. 12); Article 13HB has been applied to limited liability partnerships by virtue of paragraph 38 of Schedule 3 to that Act and modified by regulation 5(2) of S.I. 2001/1090; see Schedule 2 to S.I. 2009/1804 which applies S.I. 2001/1090 to Northern Ireland

(b) 2020 c. 12

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

(d) 2000 c. 12

(e) 1969 c. 24 (N.I.)

(f) 1954 c. 33 (N.I.)

Board of the Pension Protection Fund rights during a moratorium

2.—(1) Paragraph (2) applies where—

- (a) a moratorium (within the meaning of Part 1A(a) of the Insolvency Order) which on or after the date on which these Regulations come into operation—
 - (i) is in force in relation to a company, LLP or relevant CCBS 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 relevant CCBS 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 relevant CCBS.

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

- (a) Article 13CC(b) of the Insolvency Order (creditor consent for the purposes of Article 13CB), or
- (b) a court order under Article 13FB(4)(c)(c) of the Insolvency Order (challenge to directors' actions),

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.

Sealed with the Official Seal of the Department for Communities on 30th July 2020

(L.S.)

Anne McCleary
A senior officer of the Department for Communities

(a) Part 1A was inserted by section 4(1) of the Corporate Insolvency and Governance Act 2020
(b) Articles 13CB and 13CC were inserted by section 4(1) of the Corporate Insolvency and Governance Act 2020
(c) Article 13FB was inserted by section 4(1) of the Corporate Insolvency and Governance Act 2020

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 1A of the Insolvency (Northern Ireland) Order 1989 is or has been in force in relation to a company, limited liability partnership or relevant co-operative society or community benefit society 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.

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