

2005 No. 2153

PENSIONS

**The Pension Protection Fund (Entry Rules) Amendment
Regulations 2005**

<i>Made</i> - - - -	<i>2nd August 2005</i>
<i>Laid before Parliament</i>	<i>3rd August 2005</i>
<i>Coming into force</i> - -	<i>24th August 2005</i>

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 121(5), 125(4)(a), 126(5), 129(1)(b), (1A)(b), (3)(b) and (8), 315(2), (4) and (5) and 318(1) of the Pensions Act 2004(a), and of all other powers enabling him in that behalf, by this instrument, which contains regulations made before the end of the period of six months beginning with the coming into force of the provisions of that Act by virtue of which the regulations are made(b), makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Pension Protection Fund (Entry Rules) Amendment Regulations 2005 and shall come into force on 24th August 2005.

(2) In these Regulations, “the Entry Rules Regulations” means the Pension Protection Fund (Entry Rules) Regulations 2005(c).

Amendment of the Entry Rules Regulations

2.—(1) The Entry Rules Regulations shall be amended in accordance with the following provisions of this regulation.

(2) In regulation 1(3)(d) (citation, commencement and interpretation), in the appropriate alphabetical place, insert—

““the Multi-employer Regulations” means the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations 2005(e);”.

(a) 2004 c.35. The Pensions Act 2004 is modified in its application to partially guaranteed schemes by S.I. 2005/277, in its application to hybrid schemes by S.I. 2005/449, and in its application to multi-employer schemes by S.I. 2005/441 as amended by S.I. 2005/993. Section 129(1A) of the Act was inserted by the modifications in Parts 3 and 6 of S.I. 2005/441 as substituted by regulation 10(3) and (4) of S.I. 2005/2113. Section 318(1) is cited because of the meaning there given to “prescribed” and “regulations”.

(b) See section 317 of the Pensions Act 2004, which provides that the Secretary of State must consult such persons as he considers appropriate before making regulations by virtue of the provisions of that Act (other than Part 8). This duty does not apply where regulations are made before the end of the period of six months beginning with the coming into force of the provisions of the Act by virtue of which the regulations are made.

(c) S.I. 2005/590, as amended by S.I. 2005/993 and S.I. 2005/2113.

(d) Regulation 1(3) was amended by regulation 4 of S.I. 2005/2113.

(e) S.I. 2005/441, as amended by S.I. 2005/993 and S.I. 2005/2113.

- (3) In regulation 2(a) (schemes which are not eligible schemes)—
- (a) in paragraphs (2), (3)(a)(i) and (3)(b), omit “with an employer in relation to the scheme” in each place where it occurs;
 - (b) in paragraphs (2), (3)(a)(i), (3)(b) and (3)(c), omit “from that employer” in each place where it occurs;
 - (c) in paragraph (3)(c), omit—
 - (i) “is acting as creditor of an employer in relation to the scheme under section 137 of the Act (Board to act as creditor of the employer) and”; and
 - (ii) “with that employer”;
 - (d) in paragraph (3)(a)(i) and (b), for “section 75(2)”, in each place where it occurs, substitute “section 75”;
 - (e) in paragraph (3)(c), for “section 75(4)”, substitute “section 75”;
 - (f) in paragraph (5)—
 - (i) at the end of sub-paragraph (b), add “and”; and
 - (ii) for sub-paragraphs (c) and (d), substitute—
 - “(c) the Regulator.”; and
 - (g) after paragraph (8), add—
 - “(9) In their application to a segregated scheme, paragraphs (2) to (7) shall have effect as if each section of the scheme were a separate scheme.”.
- (4) In regulation 5 (prescribed insolvency events)—
- (a) for sub-paragraph (a) of paragraph (1), substitute—
 - “(a) in relation to a company, where—
 - (i) an administration order is made by the court in respect of the company by virtue of any enactment which applies Part 2 of the 1986 Act(b) (administration orders) (with or without modification);
 - (ii) a notice from an administrator under paragraph 83(3) of Schedule B1 to the 1986 Act(c) (moving from administration to creditors’ voluntary liquidation) in relation to the company is registered by the registrar of companies;
 - (iii) the company moves from administration to winding up pursuant to an order of the court under Rule 2.132 of the Insolvency Rules(d) (conversion of administration to winding up – power of court); or
 - (iv) an administrator or liquidator of the company, being the nominee in relation to a proposal for a voluntary arrangement under Part 1 of the 1986 Act (company voluntary arrangements), summons meetings of the company and of its creditors, to consider the proposal, in accordance with section 3(2) of the 1986 Act (summoning of meetings);”;
 - (b) after sub-paragraph (a) of paragraph (1), insert—
 - “(aa) in relation to a partnership, where—
 - (i) the partnership moves from administration to winding up pursuant to an order of the court under Rule 2.61 of the Insolvency Rules (conversion of administration to winding up – power of court) (as applied by an order under section 420 of the 1986 Act(e) (insolvent partnerships)) as that Rule stood

(a) Regulation 2 was amended by regulation 4(a) of S.I. 2005/993.

(b) Part 2 of the Insolvency Act 1986 (c.45) was substituted by section 248 of the Enterprise Act 2002 (c.40).

(c) Schedule B1 was inserted by section 248 of the Enterprise Act 2002.

(d) Part 2 of the Insolvency Rules 1986 (S.I. 1986/1925), including Rule 2.132, was substituted by S.I. 2003/1730.

(e) Section 420 was amended by S.I. 2002/1037.

before the coming into force of the Insolvency (Amendment) Rules 2003(a);
or

- (ii) an administrator, liquidator or trustee of the partnership, being the nominee in relation to a proposal for a voluntary arrangement under Part 1 of the 1986 Act (as applied by an order under section 420 of the 1986 Act), summons meetings of the members of the partnership and of the partnership's creditors, to consider the proposal, in accordance with section 3(2) of the 1986 Act (as applied by an order under section 420 of the 1986 Act);”.

(5) In regulation 7 (applications and notifications to the Board)—

- (a) for “The prescribed requirements”, substitute “Except in a case to which regulation 7A applies, the prescribed requirements”;
- (b) in paragraph (a)(i), after “defined in”, insert “, or in regulations made under,”;
- (c) at the end of paragraph (a)(ii)(bb), omit “or”; and
- (d) at the end of paragraph (b), add—

“; or

- (c) a trade union within the meaning of section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992(b) (meaning of trade union) in relation to which it is not possible for an insolvency event as defined in, or in regulations made under, section 121 of the Act to occur”.

(6) After regulation 7, insert—

“Applications and notifications to the Board – multi-employer schemes

7A.—(1) This regulation applies to—

- (a) a multi-employer section to which Part 3 of the Multi-employer Regulations(c) (segregated schemes: multi-employer sections without requirement for partial wind up on withdrawal of a participating employer) applies which is, for the purposes of Part 2 of the Act, an eligible scheme; and
- (b) a non-segregated scheme to which Part 6 of the Multi-employer Regulations(d) (non-segregated schemes: schemes without provision for partial wind up on withdrawal of a participating employer) applies which is, for the purposes of Part 2 of the Act, an eligible scheme.

(2) In the case of a scheme, or a section of a scheme, to which this regulation applies, the prescribed requirements referred to in section 129(1A)(b) and (4)(a)(ii) of the Act(e) (applications and notifications for the purposes of section 128) that are to be met in relation to an employer in relation to the scheme, or the section, are that he is either—

- (a) a public body—
 - (i) in relation to which it is not possible for an insolvency event as defined in, or in regulations made under, section 121 of the Act (insolvency event, insolvency date and insolvency practitioner) to occur; and
 - (ii) which is not an employer in relation to a scheme, or a section of a scheme, in respect of which a relevant public authority has either—
 - (aa) given a guarantee in relation to any part of the scheme, or section, any benefits payable under the scheme, or section, or any member of the scheme, or section, or

(a) S.I. 2003/1730.

(b) 1992 c.52.

(c) Part 3 is substituted by regulation 10(3) of S.I. 2005/2113.

(d) Part 6 is substituted by regulation 10(4) of S.I. 2005/2113.

(e) Subsection (4) is substituted by the modifications in Parts 3 and 6 of S.I. 2005/441 as substituted by regulation 10(3) and (4) of S.I. 2005/2113.

(bb) made any other arrangements for the purposes of securing that the assets of the scheme, or section, are sufficient to meet any part of its liabilities;

- (b) a charity which is not a company or other body corporate; or
- (c) a trade union within the meaning of section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992 (meaning of trade union) in relation to which it is not possible for an insolvency event as defined in, or in regulations made under, section 121 of the Act to occur.”.

(7) At the beginning of regulation 8(1)(a) (applications and notifications to the Board – further provision), for “The prescribed period”, substitute “Except in a case to which regulation 8A applies, the prescribed period”.

(8) After regulation 8, insert—

“Applications and notifications to the Board – further provision for multi-employer schemes

8A.—(1) This regulation applies to—

- (a) a multi-employer section to which Part 3 of the Multi-employer Regulations (segregated schemes: multi-employer sections without requirement for partial wind up on withdrawal of a participating employer) applies which is, for the purposes of Part 2 of the Act, an eligible scheme; and
- (b) a non-segregated scheme to which Part 6 of the Multi-employer Regulations (non-segregated schemes: schemes without provision for partial wind up on withdrawal of a participating employer) applies which is, for the purposes of Part 2 of the Act, an eligible scheme.

(2) The prescribed period for making an application to the Board under section 129(1)(a) or (b) of the Act(b) (applications and notifications for the purposes of section 128) shall be—

- (a) where the application is under section 129(1)(a) of the Act, the period of 28 days beginning with the date on which the trustees or managers of a scheme, or a section of a scheme, become aware that the conditions for making an application to the Board under that section of the Act are met in relation to that scheme or section; or
- (b) where the application is under section 129(1)(b) of the Act, the period of 28 days beginning with—
 - (i) 24th August 2005 if the trustees or managers of a scheme, or a section of a scheme, are aware on that date that the conditions for making an application to the Board under that section of the Act were met in relation to that scheme or section between 6th April 2005 and that date; or
 - (ii) the date on which the trustees or managers of a scheme, or a section of a scheme, become aware after 24th August 2005 that the conditions for making an application to the Board under that section of the Act are met in relation to that scheme or section.

(3) Applications to the Board for the purposes of section 128 of the Act(c) (duty to assume responsibility for schemes following application or notification) shall, where the application is made under section 129(1)(a) of the Act, be in writing and shall contain the following information—

(a) Regulation 8 is amended by regulation 4(b) of S.I. 2005/993.
(b) Section 129(1) is substituted by the modifications in Parts 3 and 6 of S.I. 2005/441 as substituted by regulation 10(3) and (4) of S.I. 2005/2113.
(c) Section 128(1) is substituted by the modifications in Parts 3 and 6 of S.I. 2005/441 as substituted by regulation 10(3) and (4) S.I. 2005/2113.

- (a) a description of the type or purpose of the application;
- (b) the name, address and pension scheme registration number of the scheme, or section of the scheme, in respect of which the application is made;
- (c) the name of the employer in relation to the scheme, or section of the scheme, in respect of which the application is made;
- (d) a statement by the trustees or managers of the scheme, or section of the scheme, that the conditions for making an application to the Board under section 129(1)(a) of the Act have been met;
- (e) the date on which the trustees or managers of the scheme, or section of the scheme, became aware that the conditions for making an application to the Board under section 129(1)(a) of the Act were met; and
- (f) the date on which the application was sent to the Board by the trustees or managers of the scheme or section of the scheme.

(4) Applications to the Board for the purposes of section 128 of the Act shall, where the application is made under section 129(1)(b) of the Act, be in writing and shall contain the following information—

- (a) a description of the type or purpose of the application;
- (b) the name, address and pension scheme registration number of the scheme, or section of the scheme, in respect of which the application is made;
- (c) the name of each employer in relation to the scheme, or section of the scheme, in respect of which the application is made;
- (d) the name of the person who is no longer an employer or the persons who are no longer employers in relation to the scheme, or section of the scheme, at the time referred to in section 129(4)(b) of the Act;
- (e) a statement by the trustees or managers of the scheme, or section of the scheme, that the conditions for making an application to the Board under section 129(1)(b) of the Act have been met;
- (f) the date on which the trustees or managers of the scheme, or section of the scheme, became aware that the conditions for making an application to the Board under section 129(1)(b) of the Act were met; and
- (g) the date on which the application was sent to the Board by the trustees or managers of the scheme or section of the scheme.

(5) Where the Regulator becomes aware that the conditions for making a notification to the Board under section 129(4)(a) of the Act are met in relation to a scheme, or a section of a scheme, which is, for the purposes of Part 2 of the Act, an eligible scheme, the notice which the Regulator must give to the Board under that section of the Act shall be in writing and shall contain the following information—

- (a) the name or type of notice given;
- (b) the date on which the notice is given;
- (c) the name, address and pension scheme registration number of the scheme, or section of the scheme, in respect of which the notice is given;
- (d) the name of the employer in relation to the scheme, or section of the scheme, in respect of which the notice is given;
- (e) a statement by the Regulator that the employer referred to in sub-paragraph (d) is unlikely to continue as a going concern and meets the requirements specified in regulation 7A(2); and
- (f) the date on which the Regulator became aware of the matter in respect of which the statement is provided by it under sub-paragraph (e).

(6) Where the Regulator is aware that the conditions for making an application to the Board under section 129(4)(b) of the Act are met in relation to a scheme, or a section of a

scheme, which is, for the purposes of Part 2 of the Act, an eligible scheme, the notice which the Regulator must give to the Board under that section of the Act shall be in writing and shall contain the following information—

- (a) the name or type of notice given;
- (b) the date on which the notice is given;
- (c) the name, address and pension scheme registration number of the scheme, or section of the scheme, in respect of which the notice is given;
- (d) the name of each employer in relation to the scheme, or section of the scheme, in respect of which the notice is given;
- (e) the name of the person who is no longer an employer or the persons who are no longer employers in relation to the scheme, or section of the scheme, at the time referred to in section 129(4)(b) of the Act;
- (f) a statement by the Regulator that the person or persons referred to in sub-paragraph (e) is no longer an employer or are no longer employers in relation to the scheme, or section of the scheme, at the time referred to in section 129(4)(b) of the Act; and
- (g) the date on which the Regulator became aware of the matter in respect of which the statement is provided by it under sub-paragraph (f).

(7) Where the Board receives a notice from the Regulator to which paragraph (5) or (6) applies, the notice referred to in section 129(5) of the Act which the Board must give to the trustees or managers of the scheme, or section of the scheme, concerned and copy to any employer in relation to that scheme, or section, shall be in writing and shall contain the following information—

- (a) the name or type of the notice given;
- (b) the date on which the notice is given;
- (c) the name, address and pension scheme registration number of the scheme, or section of the scheme, in respect of which the notice is given;
- (d) a statement that the Board received the notice from the Regulator under section 129(4)(a) or (b) of the Act and the date on which the notice was received by the Board;
- (e) where the notice referred to in sub-paragraph (d) is a notice under section 129(4)(a) of the Act, the date on which the Regulator became aware that the employer in relation to the scheme, or section of the scheme, is unlikely to continue as a going concern;
- (f) where the notice referred to in sub-paragraph (d) is a notice under section 129(4)(b) of the Act, the date on which the Regulator became aware that the person or persons referred to in paragraph (6)(e) is no longer an employer or are no longer employers in relation to the scheme, or section of the scheme, at the time referred to in section 129(4)(b) of the Act;
- (g) the address for communications at which the Board may be contacted in respect of the giving of the notice; and
- (h) whether the notice given by the Board contains any restricted information and, if so, the nature of the restrictions.”.

(9) In regulation 13(a) (confirmation of scheme status – binding notices), after paragraph (1), insert the following paragraph—

“(1A) Where a notice issued under section 122 of the Act becomes binding, the notice which the Board must give under section 125(3) of the Act (binding notices confirming status of scheme) shall be in writing.”.

(a) Regulation 13 was amended by regulation 4 of S.I. 2005/993.

Signed by authority of the Secretary of State for Work and Pensions.

2nd August 2005

Stephen C. Timms
Minister of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Pension Protection Fund (Entry Rules) Regulations 2005 (S.I. 2005/590) (“the Entry Rules Regulations”).

In particular—

—paragraph (2) of regulation 2 inserts a definition of the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations 2005 (S.I.2005/441) (“the Multi-employer Regulations”);

—paragraph (3)(a) to (e) of regulation 2 amends regulation 2 of the Entry Rules Regulations where it refers to the “employer” and corrects cross references to section 75 of the Pensions Act 1995 (c.26). Paragraph (3)(f) omits regulation 2(5)(c) of the Entry Rules Regulations. Paragraph (3)(g) amends regulation 2 of the Entry Rules Regulations to provide that paragraphs (2) to (7) of that regulation apply to each section of a segregated scheme as if it were a separate scheme;

—paragraph (4) of regulation 2 amends regulation 5 of the Entry Rules Regulations to add further insolvency events where a company or partnership in administration commences winding up or where a proposal for a voluntary arrangement is made;

—paragraph (5) of regulation 2 amends regulation 7 of the Entry Rules Regulations to provide that where the employer is a trade union in relation to which it is not possible for an insolvency event to occur, the trustees or managers of an eligible scheme must apply to the Board of the Pension Protection Fund (“the Board”) for it to assume responsibility for that scheme under section 128 of the Pensions Act 2004 (c.35) (“the Act”) where the condition in section 129(1)(a) of the Act is satisfied. It also makes an amendment consequential to paragraph (6);

—paragraphs (6) to (8) of regulation 2 make amendments to regulations 7 and 8 of the Entry Rules Regulations which are consequential upon provisions of the substituted Parts 3 and 6 of the Multi-employer Regulations, including the insertion of new regulations 7A and 8A; and

—paragraph (9) of regulation 2 amends regulation 13 of the Entry Rules Regulations to provide that a notice given by the Board under section 125(3) of the Act shall be in writing.

As these Regulations are made before the expiry of the period of six months beginning with the coming into force of the provisions of the Act by virtue of which they are made, the requirement for the Secretary of State to consult such persons as he considers appropriate does not apply.

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.

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