

## 2005 No. 277

### PENSIONS

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

*Made* - - - - - 10th February 2005  
*Laid before Parliament* 15th February 2005  
*Coming into force in accordance with regulation 1(1)*

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 307(3), 315(5) and 318(1) of the Pensions Act 2004(a), and of all other powers enabling him in that behalf, by this instrument, which is 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 it is made(b), 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 2005 and shall come into force—

- (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 Act” means the Pensions Act 2004;

“partially guaranteed scheme” means an eligible scheme(c) in respect of which a relevant public authority(d) 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; ►<sup>1</sup>◀

►<sup>1</sup>“secured part” means any part of a partially guaranteed scheme which is not an unsecured part;

“the Treaty” means the Treaty on the Functioning of the European Union(e); and◀

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

<sup>1</sup>Word omitted in defn. of “partially guaranteed scheme” & defns. of “secured part” & “the Treaty” inserted by reg. 2(2)(a) & (b) of S.I. 2010/196 as from 8.3.10.

(a) 2004 c. 35. Section 318(1) is cited because of the meaning there given to “modifications”, “prescribed” and “regulations”.

(b) See section 317 of the Pensions Act 2004 (“the Act”) 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 that Act by virtue of which the regulations are made.

(c) See sections 126 and 307(4) for the meaning of “eligible scheme”.

(d) See section 307(4) of the Act for the meaning of “relevant public authority”.

(e) OJ No. C115, 9.5.2008, p. 47.

- (a) in respect of which no guarantee has been given by a relevant public authority; and
- (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 section 307(3)(b) of the Act have been made.

### Modification of Part 2 of the Act

<sup>1</sup>Reg. 2 renumbered 2(1), words substituted in para. (1); paras. (2)-(3) & reg. 2A inserted by reg. 2(3)-(4) of S.I. 2010/196 as from 8.3.10.

**2.**—<sup>1</sup>(1)◀ In relation to a partially guaranteed scheme, Part 2 of the Act (the Board of the Pension Protection Fund) applies with the modifications prescribed in ▶<sup>1</sup>regulations 3 to 11◀.

▶<sup>1</sup>(2) Paragraph (1) shall not apply where it would give rise to State aid that is incompatible with the internal market within the meaning of Article 107 of the Treaty.

(3) Regulations 2A (schemes to which paragraph (1) of regulation 2 does not apply) and 11 (general interpretation) shall apply where paragraph (1) does not apply to a partially guaranteed scheme by virtue of paragraph (2)◀.

### ▶<sup>1</sup>Schemes to which paragraph (1) of regulation 2 does not apply

**2A.**—(1) This regulation applies to a partially guaranteed scheme to which paragraph (1) of regulation 2 does not apply by virtue of paragraph (2) of that regulation.

(2) Part 2 of the Act shall apply to a scheme referred to in paragraph (1) as if the unsecured part and the secured part of the scheme were separate schemes.

(3) Each part of the scheme referred to in paragraph (1) is an eligible scheme within the meaning of section 126(1) of the Act (eligible schemes) for the purposes of Part 2 of the Act◀.

### Application and effect

**3.**—(1) The following sections of the Act apply as if, for the words “assets of the scheme” each time they occur, there were substituted the words “assets of the unsecured part”–

- (a) section 127(2)(a) and (4)(a) (duty to assume responsibility for schemes following insolvency event);
- (b) section 128(2)(a) and (3)(a) (duty to assume responsibility for schemes following application or notification);
- (c) section 136(5) (power to validate contraventions of section 135);
- ▶<sup>2</sup>(ca) section 143(5B)(b) and (c)(a) (Board’s obligation to obtain valuation of assets and protected liabilities);◀
- (d) section 151(9)(a) (application for reconsideration);
- (e) ▶<sup>2</sup>section 152(2B), (9)(a), (10A)(b)◀ and (11) (duty to assume responsibility following reconsideration); and
- (f) section 158(2) (duty to assume responsibility for closed schemes).

(2) The following sections of the Act apply as if, for the words “an eligible scheme” each time they occur, there were substituted the words “the unsecured part of an eligible scheme”–

- (a) section 131(1) (protected liabilities);
- (b) section 163(1) (adjustments to be made where the Board assumes responsibility for a scheme);

<sup>2</sup>Reg. 3(1)(ca) inserted and words substituted in reg. 3(1)(e) by reg. 8(2) of S.I. 2013/627 as from 30.4.13.

(a) Subsection (5B) was inserted by S.I. 2005/705 and amended by paragraph 5(5) of Sch. 4 to the 2011 Act.

(b) Subsection (2B) was inserted by paragraph 15(3) and subsection (10A) was inserted by paragraph 15(9) of Sch. 4 to the 2011 Act.

- (c) section 164(1) (postponement of compensation entitlement for the assessment period);
- (d) section 165(1) (guaranteed minimum pensions);
- (e) section 169(1) (discharge of liabilities in respect of compensation); and
- (f) section 170(1) (discharge of liabilities in respect of money purchase benefits).

(3) The following sections of the Act apply as if, for the words “a scheme” each time they occur, there were substituted the words “an unsecured part”–

- (a) section 142(1) (sections 140 and 141: interpretation);
- (b) section 144(1) (approval of valuation);
- (c) section 145(2) (binding valuations);
- (d) section 146(2) (schemes which become eligible schemes);
- (e) section 147(2) (new schemes created to replace existing schemes);
- (f) section 157(9) (applications and notifications where closed schemes have insufficient assets);
- (g) section 160(1) and (5) (transfer notice);
- (h) section 161(2) and (5) (effect of Board assuming responsibility for a scheme);
- (i) section 162(1) (the pension compensation provisions);
- (j) section 166(1) (duty to pay scheme benefits unpaid at assessment date etc); and
- (k) section 172(1) (relationship with fraud compensation regime).

(4) The following sections of the Act apply as if, for the words “the scheme” each time they occur, there were substituted the words “the unsecured part”–

- (a) section 131(1) (protected liabilities);
- (b) section 138(3) (payment of scheme benefits);
- (c) section 140(2)(a) (reviewable ill health pensions);
- (d) section 141(2), (3)(a), (4) and (5)(a) (effect of a review);
- (e) section 142(1) and (4) (sections 140 and 141: interpretation);
- (f) section 143(2) ►<sup>1</sup>, (2A)(a), (5A)(a) and (b)(a)◄ and (11)(a) and (b) (Board’s obligation to obtain valuation of assets and protected liabilities);
- <sup>1</sup>(fa) section 143A(1)(b)(b) (determinations under section 143)◄
- (g) section 146(1) (schemes which become eligible schemes);
- (h) section 151(1), (2)(b) and (c) and (3)(b) and (c) (application for reconsideration);
- (i) ►<sup>1</sup>section 152(2), (2A), (2B) (5) and (10A)(c)◄ (duty to assume responsibility following reconsideration);
- (j) section 154(2)(c) and (5)(b) and (c) (requirement to wind up schemes with sufficient assets to meet protected liabilities);
- (k) section 157(1) and (3) (applications and notifications where closed schemes have insufficient assets);
- (l) ►<sup>1</sup>section 158(1), (3) and (3A)(d)◄ (duty to assume responsibility for closed schemes);
- (m) section 159(3)(b)(ii) (closed schemes: further assessment periods);
- (n) section 161(1), (2)(a), (3) and (7)(b) (effect of Board assuming responsibility for a scheme);
- (o) section 163(3)(a) (adjustments to be made where the Board assumes responsibility for a scheme);

<sup>1</sup>Words in reg. 3(4) inserted & substituted by reg. 8(3) of S.I. 2013/627 as from 30.4.13.

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(a) Subsection (2A) was inserted by paragraph 5(2) of Sch. 4 to the 2011 Act and subsection (5A) was inserted by S.I. 2005/705.

(b) Section 143A was inserted by paragraph 6 of Sch. 4 to the 2011 Act.

(c) Subsection (2A) and (2B) was inserted by paragraph 15(3), subsection (5) was amended by paragraph 15(9) of Sch. 4 to the 2011 Act.

(d) Subsection (3) and (3A) were substituted by paragraph 11(2) of Sch. 4 to the 2011 Act.

- (p) section 164(1) (postponement of compensation entitlement for the assessment period);
- (q) section 166(5)(a) and (6) (duty to pay scheme benefits unpaid at assessment date etc); and
- (r) section 172(4) and (6) (relationship with fraud compensation regime).

<sup>1</sup>Para. (5) inserted in reg. 3 by reg. 2(5) of S.I. 2010/196 as from 8.3.10.

►<sup>1</sup>(5) Section 175(2)(a)(i) of the Act (pension protection levies) applies as if, for “a scheme’s assets” there were substituted “the assets of the unsecured part of a scheme”.◄

### **Circumstances in which Board assumes responsibility for eligible schemes**

**4.**—(1) Sections 127 (duty to assume responsibility for schemes following insolvency event) and 128 (duty to assume responsibility for schemes following application or notification) of the Act apply as if, in subsection (2) of each section—

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

(2) Section 129 of the Act (applications and notifications for the purposes of section 128) applies as if, in subsection (1), for the words “responsibility for the scheme” there were substituted the words “responsibility for the unsecured part”.

### **Restrictions on schemes during the assessment period**

**5.**—(1) Section 134 of the Act (directions) applies as if, in subsection (2), for the words “the scheme’s protected liabilities” there were substituted the words “the protected liabilities of the unsecured part”.

(2) Section 136 of the Act (power to validate contraventions of section 135) applies as if, in subsection (1), for the words “the scheme’s protected liabilities” there were substituted the words “the protected liabilities of the unsecured part”.

(3) Section 138 of the Act (payment of scheme benefits) applies as if—

- (a) in subsection (2)(a), for the words “responsibility for the scheme” there were substituted the words “responsibility for the unsecured part”;
- (b) in subsection (12)(a), for the words “member of the scheme” there were substituted the words “member of the unsecured part”.

(4) Section 139 of the Act (loans to pay scheme benefits) applies as if, in subsection (2), after the word “benefits”, in each place where that word appears, there were inserted the words “relating to the unsecured part”.

### **Ill health pensions**

**6.** Section 140 of the Act (reviewable ill health pensions) applies as if—

- (a) in subsection (4)(a), for the words “under the scheme” there were substituted “under the unsecured part”;
- (b) in subsection (5), for the words “responsibility for the scheme” there were substituted the words “responsibility for the unsecured part”.

### **New schemes created to replace existing schemes**

**7.** Section 147 of the Act (new schemes created to replace existing schemes) applies as if, in subsection (1), after the words “responsibility for” there were inserted the words “the unsecured part of”.

### **Reconsideration**

**8.**—(1) Section 151 of the Act (application for reconsideration) applies as if, in subsection (8)—

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

►<sup>1</sup>(2) Section 152 of the Act (duty to assume responsibility following reconsideration) applies as if–

<sup>1</sup>Reg. 8(2) substituted by reg. 8(4) of S.I. 2013/627 as from 30.4.13.

- (a) in subsection (2B), for the words “protected liabilities” there were substituted the words “protected liabilities of the unsecured part”; and
- (b) in subsection (9)(b), for the words “liabilities of the scheme” there were substituted the words “liabilities of the unsecured part.”◀

### Closed schemes

9.—(1) Section 153 of the Act (closed schemes) applies as if–

- (a) in subsection (3), for the words “in respect of the scheme” there were substituted the words “in respect of the unsecured part”; and
- (b) in subsection (7), in the definition of “full buy-out quotation”–
  - (i) for the words “a scheme” there were substituted the words “an unsecured part”; and
  - (ii) for the words “member of the scheme” there were substituted the words “member of the unsecured part”.

(2) Section 156 of the Act (valuation of closed schemes) applies as if–

- (a) in subsection (1), for the words “actuarial valuations of the scheme” there were substituted the words “actuarial valuations of the unsecured part”;
- (b) in subsection (5), for the words “actuarial valuation of the scheme” there were substituted the words “actuarial valuation of the unsecured part”; and
- (c) in subsection (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**

<sup>1</sup>Reg. 10(za), (zb), words in 10(1)(b) "(8)" inserted & words in 10(1)(b) "(9)" substituted by reg. 8(5) of S.I. 2013/627 as from 30.4.13.

- 10.—**(1) Section 160 of the Act (transfer notice) applies as if—
- ▶<sup>1</sup>(za) in subsection (3) for “determination made or valuation obtained under section 143(2)” substitute “valuation obtained under section 143”;
  - (zb) in subsection (4) the words “determination made or” were omitted;◀
  - (a) after subsection (4), there were inserted the following subsection—
    - “(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 subsection (7), there were added the following subsections—
    - “(8) Subject to subsection (9), the following provisions apply in relation to a valuation obtained under subsection (4A) as they apply in relation to a valuation ▶<sup>1</sup>and not a determination◀ obtained under section 143 (Board’s obligation to obtain valuation of assets and protected liabilities)—
      - (a) subsections (4) to (7) and (11)(a), (b) and (d) of that section;
      - (b) section 144 (approval of valuation); and
      - (c) section 145 (binding valuations), other than subsection (2).
    - (9) In the application of section 143 by virtue of subsection (8), ▶<sup>1</sup>subsections (5), (5A)(b), (5B)(b) and (11)(b)◀ of that section 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) Section 161 of the Act (effect of Board assuming responsibility for a scheme) applied as if in subsection (2)—
- (a) in paragraph (b), after the words “pension obligations” there were inserted the words “in relation to the unsecured part”; and
  - (b) for the words “the scheme is to be treated” there were substituted the words “the unsecured part is to be treated”.
- (3) Section 165 of the Act (guaranteed minimum pensions) applies as if, in subsection (1), for the words “member of the scheme” there were substituted the words “member of the unsecured part”.
- (4) Schedule 6 to the Act (transfer of property, rights and liabilities to the Board) applies as if—
- (a) in paragraph 1, after the word “liabilities” there were inserted the words “of the unsecured part”; and
  - (b) in paragraph 3(1)—
    - (i) after the word “transfer” there were inserted the words “of the unsecured part”; and
    - (ii) after the words “in their capacity as trustees or managers” there were inserted the words “of that part”.
- (5) Schedule 7 to the Act (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 the words “paragraph 1” there were substituted the words “paragraph 2”.

### **General interpretation**

**11.** In relation to a partially guaranteed scheme, section 318 of the Act (general interpretation) applies as if the following definitions were inserted at the appropriate alphabetical places—

““eligible scheme” has the meaning given by section 126;

“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 section 307(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 section 307(3)(b) of the Act have been made.”.

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

10th February 2005

*Malcolm Wicks*  
Minister of State,  
Department for Work and Pensions



**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations are made under section 307(3) of the Pensions Act 2004 (c. 35) (“the Act”) which contains a power to modify the provisions of Part 2 of the Act in relation to partially guaranteed schemes. Part 2 of the Act makes provision in respect of the Board of the Pension Protection Fund (“the Board”), which is established under section 107 of the Act.

The Regulations modify Part 2 of the Act in respect of partially guaranteed schemes. The modifications operate so that the Board 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.

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 of 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.