
STATUTORY INSTRUMENTS

2005 No. 441

The Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations 2005

PART 6

NON-SEGREGATED SCHEMES:

**SCHEMES WITHOUT PROVISION FOR PARTIAL WIND
UP ON WITHDRAWAL OF A PARTICIPATING EMPLOYER**

Application and effect

61.—(1) This paragraph applies to a multi-employer scheme which is not divided into two or more sections (“non-segregated scheme”) the rules of which do not provide for the partial winding up of the scheme when an employer in relation to the scheme ceases to participate in the scheme in circumstances where—

- (a) an insolvency event occurs in relation to more than one of the employers in relation to the scheme at a time when those employers are the only employers in relation to the scheme;
- (b) the trustees or managers of the scheme become aware that more than one of the employers in relation to the scheme are unlikely to continue as a going concern and meet the requirements prescribed under subsection (1)(b) of section 129 of the Act (applications and notifications for the purposes of section 128) at a time when those employers are the only employers in relation to the scheme.

(2) This paragraph applies to a non-segregated scheme the rules of which do not provide for the partial winding up of the scheme when an employer in relation to the scheme ceases to participate in the scheme in circumstances where—

- (a) an insolvency event occurs in relation to one or more of the employers in relation to the scheme at a time when an insolvency event has occurred in relation to all other employers in relation to the scheme and, where applicable, an insolvency practitioner is still required by law to be appointed to act in relation to each of those employers; or
- (b) one or more of the employers in relation to the scheme is unlikely to continue as a going concern and meets the requirements prescribed under subsection (1)(b) of section 129 of the Act (applications and notifications for the purposes of section 128) at a time when an insolvency event has occurred in relation to all other employers in relation to the scheme and, where applicable, an insolvency practitioner is still required by law to be appointed to act in relation to each of those employers.

Notification of insolvency events, confirmation of scheme status, etc.

62.—(1) Section 120 of the Act (duty to notify insolvency events in respect of employers) shall be modified so that it shall be read as if, in its application to a non-segregated scheme to which paragraph (1) or (2) of regulation 61 applies—

- (a) for subsection (1), there were substituted the following subsection—

“(1) This section applies where, in the case of a multi-employer scheme which is not divided into two or more sections (“a non-segregated scheme”), an insolvency event occurs in relation to any employer in relation to the scheme.”; and

(b) after subsection (2), there were inserted the following subsection—

“(2A) Where the trustees or managers of a non-segregated scheme receive a notice from an insolvency practitioner under subsection (2), they must send a copy of that notice as soon as practicable to all the employers in relation to the scheme.”.

(2) Section 122 of the Act (insolvency practitioner’s duty to issue notices confirming status of scheme) shall be modified so that it shall be read as if, in its application to a non-segregated scheme to which paragraph (1) or (2) of regulation 61 applies—

(a) for subsection (1), there were substituted the following subsection—

“(1) This section applies where an insolvency event has occurred in relation to any employer in relation to a non-segregated scheme.”;

(b) for the words “the employer” in subsection (2), there were substituted the words “each employer”;

(c) for the words “the employer” in paragraph (a) of subsection (3), there were substituted the words “an employer”;

(d) for the words “the employer” in subsection (4), there were substituted the words “an employer”;

(e) for the words “the employer” in subsection (6), there were substituted the words “an employer”; and

(f) after subsection (6) there were inserted the following subsection—

“(6A) Where the trustees or managers of a non-segregated scheme receive a notice issued an insolvency practitioner or a former insolvency practitioner under subsection (6), they must send a copy of that notice as soon as practicable to all the employers in relation to the scheme.”.

(3) Section 123 of the Act (approval of notices issued under section 122) shall be modified so that it shall be read as if, in its application a multi-employer scheme to which paragraph (1) or (2) of regulation 61 applies—

(a) for subsection (1), there were substituted the following subsection—

“(1) This section applies where the Board receives a notice under section 122(6) (“the section 122 notice”) in relation to any employer in relation to a non-segregated scheme at a time when the Board has previously received such a notice in relation to all the other employers in relation to that scheme.”;

(b) for subsection (2), there were substituted the following subsection—

“(2) The Board must determine whether to approve the section 122 notices received in relation to that employer.”;

(c) in subsection (4)—

(i) for the words “in relation to the employer or, if there is no such insolvency practitioner, the employer” in paragraph (d), there were substituted the words “in relation to an employer or, if there is no such insolvency practitioner, that employer”; and

(ii) for the words “in relation to the employer, the employer” in paragraph (e), there were substituted the words “in relation to an employer, that employer”; and

(d) after subsection (4) there were inserted the following subsection—

“(4A) Where the trustees or managers of a non-segregated scheme receive a copy of a determination notice issued by the Board under subsection (4), they must send a copy of that notice as soon as practicable to all the employers in relation to the scheme.”

(4) Section 124 of the Act (Board’s duty where there is a failure to comply with section 120) shall be modified so that it shall be read as if, in its application to a non-segregated scheme to which paragraph (1) or (2) of regulation 61 applies—

- (a) for the words “This section applies where in relation to an occupational pension scheme” at the beginning of subsection (1), there were substituted the words “This section applies where in relation to a non-segregated scheme”;
- (b) for the words “the employer” in paragraphs (a) and (b) of subsection (1), there were substituted the words “an employer”;
- (c) in subsection (4)—
 - (i) for the words “in relation to the employer” in paragraph (d), there were substituted the words “in relation to an employer”; and
 - (ii) for the words “in relation to the employer, the employer” in paragraph (e), there were substituted the words “in relation to an employer, that employer”; and
- (d) after subsection (4), there were inserted the following subsection—

“(4A) Where the trustees or managers of a non-segregated scheme receive a copy of notice issued by the Board under section 122 by virtue of this section, they must send a copy of that notice as soon as practicable to all the employers in relation to the scheme.”

(5) Section 125 of the Act (binding notices confirming status of scheme) shall be modified so that it shall be read as if, in its application to a non-segregated scheme to which paragraph (1) or (2) of regulation 61 applies—

- (a) in subsection (3)—
 - (i) for the words “the employer” in paragraph (d), there were substituted the words “an employer”; and
 - (ii) for the words “in relation to the employer, the employer” in paragraph (e), there were substituted the words “in relation to an employer, that employer”; and
- (b) after subsection (3), there were inserted the following subsection—

“(3A) Where the trustees or managers of a non-segregated scheme receive a notice from the Board under subsection (3) together with a copy of the binding notice, they must send a copy of the notice and the binding notice as soon as practicable to all the employers in relation to the scheme.”

Eligible schemes

63.—(1) Section 126 of the Act (eligible schemes) shall be modified in its application to a non-segregated scheme to which paragraph (1) or (2) of regulation 61 applies so that it shall be read as if, for the words “an occupational pension scheme” in subsection (1), there were substituted the words “a non-segregated scheme”.

(2) Paragraph (1) shall not have effect in relation to sections 174 to 181 of the Act (the levies).

Duty to assume responsibility for schemes

64.—(1) Section 127 of the Act (duty to assume responsibility for schemes following insolvency event) shall only have effect in relation to a non-segregated scheme in the circumstances described in regulation 61(1) and (2) and, for those purposes, shall be modified so that it shall be read as if—

- (a) in its application to a non-segregated scheme to which paragraph (1) of regulation 61 applies—
- (i) for subsection (1), there were substituted the following subsection—
- “(1) This section applies where a qualifying insolvency event has occurred in relation to more than one employer in relation to a non-segregated scheme which is, for the purposes of this Part, an eligible scheme at a time when those employers are the only employers in relation to the scheme.”; and
- (ii) for subsection (3), there were substituted the following subsection—
- “(3) For the purposes of this section, an insolvency event (“the current event”) in relation to an employer in relation to an eligible scheme is a qualifying insolvency event if—
- (a) it occurs simultaneously in relation to more than one employer at a time when those employers are the only employers in relation to the scheme,
- (b) it occurs on or after the day appointed under section 126(2), and
- (c) it—
- (i) is the first insolvency event to occur in relation to that employer on or after that day, or
- (ii) does not occur within an assessment period (see section 132) in relation to the scheme which began before the occurrence of the current event.”; and
- (b) in its application to a non-segregated scheme to which paragraph (2) of regulation 61 applies—
- (i) for subsection (1) there were substituted the following subsection—
- “(1) This section applies where a qualifying insolvency event has occurred in relation to one or more of the employers in relation to a non-segregated scheme which is, for the purposes of this Part, an eligible scheme at a time when an insolvency event has occurred in relation to all other employers in relation to the scheme and, where applicable, an insolvency practitioner is still required by law to be appointed to act in relation to each of those employers.”; and
- (ii) for subsection (3), there were substituted the following subsection—
- “(3) For the purposes of this section, an insolvency event (“the current event”) in relation to an employer in relation to an eligible scheme is a qualifying insolvency event if—
- (a) it occurs—
- (i) simultaneously in relation to one or more of the employers at a time when that or those employers are the only employers in relation to the scheme, or
- (ii) in relation to an employer at a time when an insolvency event has occurred in relation to all other employers in relation to the scheme and, where applicable, an insolvency practitioner is still required by law to be appointed to act in relation to each of those employers,
- (b) it occurs on or after the day appointed under section 126(2), and
- (c) it—
- (i) is the first insolvency event to occur in relation to that employer on or after that day, or

(ii) does not occur within an assessment period (see section 132) in relation to the scheme which began before the occurrence of the current event.”.

(2) Section 128 of the Act (duty to assume responsibility for schemes following application or notification) shall be modified so that it shall be read as if, in its application to a non-segregated scheme to which—

(a) paragraph (1) of regulation 61 applies, for subsection (1) there were substituted the following subsection—

“(1) This section applies where, in relation to a non-segregated scheme, the trustees or managers of the scheme—

(a) make an application under subsection (1) of section 129 (“a section 129 application”) in relation to more than one employer in relation to the scheme at a time when those employers are the only employers in relation to the scheme, or

(b) receive a notification from the Board under subsection (5)(a) of that section (“a section 129 notification”) in relation to more than one employer in relation to the scheme at a time when those employers are the only employers in relation to the scheme.”;

(b) paragraph (2) of regulation 61 applies, for subsection (1) there were substituted the following subsection—

“(1) This section applies where, in relation to a non-segregated scheme, the trustees or managers of the scheme—

(a) make an application under subsection (1) of section 129 (“a section 129 application”) in relation to one or more employers in relation to the scheme at a time when an insolvency event has occurred in relation to all other employers in relation to the scheme and, where applicable, an insolvency practitioner is still required by law to be appointed to act in relation to each of those employers, or

(b) receive a notification from the Board under subsection (5)(a) of that section (“a section 129 notification”) in relation to one or more employers in relation to the scheme at a time when an insolvency event has occurred in relation to all other employers in relation to the scheme and, where applicable, an insolvency practitioner is still required by law to be appointed to act in relation to each of those employers.”.

Applications and notifications

65.—(1) Section 129 of the Act (applications and notifications for the purposes of section 126) shall be modified so that it shall be read as if, in its application to a non-segregated scheme to which—

(a) paragraph (1) of regulation 61 applies—

(i) for subsection (1) there were substituted the following subsection—

“(1) Where the trustees or managers of a non-segregated scheme which is, for the purposes of this Part, an eligible scheme become aware that—

(a) more than one of the employers in relation to the scheme is unlikely to continue as a going concern at a time when those employers are the only employers in relation to the scheme, and

(b) the prescribed requirements are met in relation to those employers,

they must make an application to the Board for it to assume responsibility for the scheme under section 128.”;

- (ii) after subsection (1), there were inserted the following subsection—
 - “(1A) Where the trustees or managers of a non-segregated scheme make an application to the Board under subsection (1), they must issue a notice to that effect as soon as practicable to all the employers in relation to the scheme.”; and
- (iii) after subsection (5), there were inserted the following subsection—
 - “(5A) Where the trustees or managers of a non-segregated scheme receive a copy of a notice from the Board under subsection (5), they must send a copy of that notice as soon as practicable to all the employers in relation to the scheme.”; and
- (b) paragraph (2) of regulation 61 applies—
 - (i) for subsection (1) there were substituted the following subsection—
 - “(1) Where the trustees or managers of a non-segregated scheme which is, for the purposes of this Part, an eligible scheme become aware that—
 - (a) one or more of the employers in relation to the scheme is unlikely to continue as a going concern at a time when an insolvency event has also occurred in relation to all other employers in relation to the scheme and, where applicable, an insolvency practitioner is still required by law to act in relation to each of those employers, and
 - (b) the prescribed requirements are met in relation to those employers, they must make an application to the Board for it to assume responsibility for the scheme under section 128.”;
 - (ii) after subsection (1) there were inserted the following subsection—
 - “(1A) Where the trustees or managers of a non-segregated scheme make an application to the Board under subsection (1), they must issue a notice to that effect as soon as practicable to all the employers in relation to the scheme.”;
 - (iii) for the words “the employer” in paragraphs (a) and (b) of subsection (4), there were substituted the words “an employer”; and
 - (iv) after subsection (5), there were inserted the following subsection—
 - “(5A) Where the trustees or managers of a non-segregated scheme receive a copy of a notice from the Board under subsection (5), they must send a copy of that notice as soon as practicable to all the employers in relation to the scheme.”.
- (2) Section 130 of the Act (Board’s duty where application or notification received under section 129) shall be modified so that it shall be read as if, in its application to a non-segregated scheme to which paragraph (1) or (2) of regulation 61 applies—
 - (a) after subsection (4), there were inserted the following subsection—
 - “(4A) Where the trustees or managers of a non-segregated scheme receive a copy of notice from the Board under subsection (4), they must send a copy of that notice as soon as practicable to all the employers in relation to the scheme.”; and
 - (b) after subsection (7), there were inserted the following subsection—
 - “(7A) Where the trustees or managers of a non-segregated scheme receive a notice from the Board under subsection (7) together with a copy of the binding notice, they must send a copy of the notice and the binding notice as soon as practicable to all the employers in relation to the scheme.”.

Assessment periods

66. Section 132 of the Act (assessment periods) shall be modified so that it shall be read as if, in its application to a non-segregated scheme to which—

- (a) paragraph (1) of regulation 61 applies—
 - (i) in subsection (2)—
 - (aa) for the words “in relation to an eligible scheme”, there were substituted the words “in relation to a non-segregated scheme which is, for the purposes of this Part, an eligible scheme”;
 - (bb) for the words “the employer”, there were substituted the words “an employer”; and
 - (cc) after the words “an assessment period” in subsection (2), there were inserted the words “in relation to the scheme”; and
 - (ii) for the words “in relation to an eligible scheme, an application is made under section 129(1) or a notification is received under section 129(5)(a), an assessment period” in subsection (4), there were substituted the words “in relation to a non-segregated scheme which is, for the purposes of this Part, an eligible scheme, an application is made under section 129(1) or a notification is received under section 129(5)(a) in respect of more than one employer in relation to the scheme at a time when those employers are the only employers in relation to the scheme, an assessment period in relation to the scheme”; and
- (b) paragraph (2) of regulation 61 applies—
 - (i) in subsection (2)—
 - (aa) for the words “in relation to an eligible scheme”, there were substituted the words “in relation to a non-segregated scheme which is, for the purposes of this Part, an eligible scheme”;
 - (bb) for the words “the employer”, there were substituted the words “an employer”; and
 - (cc) after the words “an assessment period” in subsection (2), there were inserted the words “in relation to the scheme”; and
 - (ii) for the words “in relation to an eligible scheme, an application is made under section 129(1) or a notification is received under section 129(5)(a), an assessment period begins” in subsection (4), there were substituted the words “in relation to a non-segregated scheme which is, for the purposes of this Part, an eligible scheme, an application is made under section 129(1) or a notification is received under section 129(5)(a) in respect of one or more of the employers in relation to the scheme at a time when an insolvency event has occurred in relation to all other employers in relation to the scheme and, where applicable, an insolvency practitioner is still required by law to be appointed to act in relation to each of those employers, an assessment period begins”.

Restrictions on winding up, discharge of liabilities etc and power to validate contraventions of section 135

67.—(1) Section 135 of the Act (restrictions on winding up, discharge of liabilities etc.) shall be modified in its application to a non-segregated scheme to which paragraph (1) or (2) of regulation 61 applies so that it shall be read as if, after subsection (2), there were inserted the following subsection—

“(2A) An employer in relation to a non-segregated scheme must not cease to participate in the scheme during an assessment period.”

(2) Section 136 of the Act (power to validate contraventions of section 135) shall be modified in its application to a non-segregated scheme to which paragraph (1) or (2) of regulation 61 applies so that it shall be read as if, for the words “in relation to the employer or, if there is no such insolvency practitioner, the employer” in paragraph (c) of subsection (2), there were substituted the words “in relation to an employer or, if there is no such insolvency practitioner, that employer”.

Valuation of assets

68.—(1) Section 144 of the Act (approval of valuation) shall be modified in its application to a non-segregated scheme to which paragraph (1) or (2) of regulation 61 applies so that it shall be read as if, for the words “in relation to the employer or, if there is no such insolvency practitioner, the employer” in paragraph (b)(iii) of subsection (2), there were substituted the words “in relation to an employer or, if there is no such insolvency practitioner, that employer”.

(2) Section 145 of the Act (binding valuations) shall be modified in its application to a non-segregated scheme to which paragraph (1) or (2) of regulation 61 applies so that it shall be read as if, for the words “in relation to the employer or, if there is no such insolvency practitioner, the employer” in paragraph (c) of subsection (3), there were substituted the words “in relation to an employer or, if there is no such insolvency practitioner, that employer”.

Refusal to assume responsibility

69.—(1) Section 146 of the Act (schemes which become eligible schemes) shall be modified in its application to a non-segregated scheme to which paragraph (1) or (2) of regulation 61 applies so that it shall be read as if—

- (a) for the words “in relation to the employer or, if there is no such insolvency practitioner, the employer” in paragraph (b)(iii) of subsection (2), there were substituted the words “in relation to an employer or, if there is no such insolvency practitioner, that employer”; and
- (b) for the words “in relation to the employer or, if there is no such insolvency practitioner, the employer” in paragraph (c) of subsection (4), there were substituted the words “in relation to an employer or, if there is no such insolvency practitioner, that employer”.

(2) Section 147 of the Act (new schemes created to replace existing schemes) shall be modified in its application to a non-segregated scheme to which paragraph (1) or (2) of regulation 61 applies so that it shall be read as if—

- (a) for the words “in relation to the employer or, if there is no such insolvency practitioner, the employer” in paragraph (b)(iii) of subsection (2), there were substituted the words “in relation to an employer or, if there is no such insolvency practitioner, that employer”; and
- (b) for the words “in relation to the employer or, if there is no such insolvency practitioner, the employer” in paragraph (c) of subsection (4), there were substituted the words “in relation to an employer or, if there is no such insolvency practitioner, that employer”.

(3) Section 148 of the Act (withdrawal following issue of section 122(4) notice) shall be modified in its application to a non-segregated scheme to which paragraph (1) or (2) of regulation 61 applies so that it shall be read as if—

- (a) for the words “the employer” in paragraph (c) of subsection (5), there were substituted the words “any employer”; and
- (b) for the words “the employer” in paragraph (c) of subsection (7), there were substituted the words “any employer”.

Transfer notices and the pension compensation provisions

70.—(1) Section 160 of the Act (transfer notice) shall be modified in its application to a non-segregated scheme to which paragraph (1) or (2) of regulation 61 applies so that it shall be read as if—

(a) for the words “where the Board is required to assume responsibility for a scheme” in subsection (1), there were substituted the words “where the Board is required to assume responsibility for a non-segregated scheme”;

(b) after subsection (2), there were inserted the following subsection—

“(2A) Where the trustees or managers of a non-segregated scheme receive a transfer notice from the Board under subsection (2), they must send a copy of that notice as soon as practicable to all the employers in relation to the scheme.”; and

(c) for subsection (6) there were substituted the following subsection—

“(6) The Board must give a copy of the transfer notice under subsection (2) to—

(a) the Regulator, and

(b) an insolvency practitioner acting in relation to every employer in relation to the scheme in respect of which the transfer notice is issued.”.

(2) Paragraph 1 of Schedule 6 to the Act (transfer of property, rights and liabilities) shall be modified in its application to a non-segregated scheme to which paragraph (1) or (2) of regulation 61 applies so that it shall be read as if, for the words “an occupational pension scheme”, there were substituted the words “a non-segregated multi-employer scheme”.

(3) Paragraph 1 of Schedule 7 to the Act (pension compensation provisions) shall be modified in its application to a non-segregated scheme to which paragraph (1) or (2) of regulation 61 applies so that it shall be read as if, for the words “an eligible scheme”, there were substituted the words “a non-segregated multi-employer scheme which is, for the purposes of Part 2, an eligible scheme”.