
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision relating to various requirements under Part 2 of the Pensions Act 2004 (c. 35) (“the Act”).

Regulation 1 provides for citation, commencement and interpretation and includes an extension of the meaning of “employer” for the purposes of these Regulations.

Regulation 2 sets out those schemes which are not “eligible schemes” for the purposes of Part 2 of the Act and which are not able to receive compensation from the Board of the Pension Protection Fund (“the Board”) pursuant to the pension compensation provisions in that Part of the Act. The Board is established under section 107 of the Act.

Regulation 3 provides that where, after the beginning of an assessment period in relation to an eligible scheme, the scheme ceases to be an eligible scheme in prescribed circumstances, the scheme shall, for the purposes of Part 2 of the Act, be treated as remaining an eligible scheme.

Regulation 4 makes provision in respect of the period in which an insolvency practitioner is required to notify the Board of the occurrence of an insolvency event in relation to the employer in relation to an eligible scheme. If an insolvency event is a “qualifying insolvency event” within the meaning of Part 2 of the Act, the start of an assessment period will be triggered in relation to an eligible scheme and the scheme will become subject to the various requirements in Part 2 of the Act.

Regulation 5 provides for certain events in relation to certain types of bodies (such as building societies, friendly societies and limited liability partnerships) to be classified as insolvency events for the purposes of Part 2 of the Act.

Regulation 6 sets out the circumstances in which insolvency proceedings in relation to the employer in relation to an eligible scheme are stayed or come to an end. Where these circumstances exist, the insolvency practitioner will be required to issue a notice to the effect that he is not able to confirm whether a scheme rescue has occurred or is not possible. This may lead to the Board ceasing to be involved with a scheme.

Regulation 7 makes provision in respect of applications and notifications to the Board under section 129 of the Act for it to assume responsibility for an eligible scheme in circumstances where the employer in relation to the scheme is unlikely to continue as a going concern and meets prescribed requirements.

Regulation 8 sets out the time limit for making applications to the Board under section 129 of the Act. Regulation 8 also makes provision in respect of the form and content of such applications and about the form and content of notifications to the Board which the Pensions Regulator is required to make in circumstances where it becomes aware that an employer in relation to an eligible scheme is unlikely to continue as a going concern and meets prescribed requirements.

Regulations 9 and 10 set out the circumstances which must exist before an insolvency practitioner in relation to an employer in relation to an eligible scheme or the Board is able to determine whether or not a scheme rescue has occurred or is not possible in relation to the scheme. They also make provision regarding the form and content of the notices which must be issued by the insolvency practitioner or the Board in order to confirm the status of a scheme. Regulations 11 and 12 modify the application of regulations 9 and 10 so as to make similar provision in respect of multi-employer schemes.

Status: This is the original version (as it was originally made).

Regulation 13 makes provision regarding the form and content of binding notices confirming the status of a scheme. A notice is not binding until the period in respect of which it is possible for the issue of the notice to be reviewed under Chapter 6 of Part 2 of the Act has expired or, if an application for a review has been made, until the review or any subsequent appeal has been conclusively resolved.

Regulation 14 makes provision in respect of the types of payments that may be made to a scheme during an assessment period.

Regulation 15 makes provision in respect of the “relevant person” in relation to an eligible scheme to whom the Board may issue directions under section 134 of the Act.

Regulation 16 provides for the circumstances in which a transfer payment may be made during an assessment period in respect of a member’s rights under an eligible scheme. It also provides for the other circumstances in which the trustees or managers of a scheme may take steps to discharge a member’s rights under an eligible scheme during an assessment period.

Regulation 17 makes provision in respect of the circumstances where a member of an eligible scheme may postpone the receipt of his entitlement to a pension or lump sum payment under the scheme during an assessment period.

Regulation 18 makes provision in respect of the rate of interest which is payable by the trustees or managers of an eligible scheme to which the Board has made a loan to pay scheme benefits under section 139 of the Act. It also makes provision in respect of how the rate of interest payable is to be calculated.

Regulation 19 makes provision in respect of the form and content of withdrawal notices issued by the Board under section 148 of the Act.

Regulation 20 makes provision in respect of the accrual of benefits under a scheme in respect of an assessment period in relation to an eligible scheme when that assessment period comes to an end.

Regulations 21 and 22 make provision in respect of the period in relation to which the Board is to determine whether or not to refuse to assume responsibility for a scheme under sections 146 and 147 of the Act. Regulation 23 makes provision in respect of the form and content of withdrawal notices issued by the Board under sections 146 and 147 of the Act.

Regulation 24 makes provision in respect of the form and content of applications for reconsideration made under section 151 of the Act. It also makes provision in respect of the time limits for making such applications and the documents which are to accompany the application.

Regulation 25 and the Schedule make provision in respect of the prescribed form and content of the audited scheme accounts and report from the auditor which is to accompany an application for reconsideration.

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.

An assessment of the compliance costs to business of the measures arising from the Act, including these Regulations, has been placed in the libraries of both Houses of Parliament. Copies may be obtained from the Department for Work and Pensions, Regulatory Impact Unit, 3rd Floor, The Adelphi, 1- 11 John Adam Street, London WC2N 6HT.