
STATUTORY INSTRUMENTS

2005 No. 900

PENSIONS

The Pensions Regulator (Notifiable Events) Regulations 2005

Made - - - - 23rd March 2005
Laid before Parliament 31st March 2005
Coming into force - - 6th April 2005

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 69(2), 315(2) and 318(1) of the Pensions Act 2004⁽¹⁾, 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 they are made⁽²⁾, makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Pensions Regulator (Notifiable Events) Regulations 2005, and shall come into force on 6th April 2005.

(2) In these Regulations—

“the Act” means the Pensions Act 2004;

“business” includes trade or profession;

“control” has the meaning given to it in section 435(10) of the Insolvency Act 1986⁽³⁾ (meaning of “associate” – meaning of “control”), and “controlling company” is to be construed accordingly;

“debt” includes a contingent debt;

“director” has the meaning given to it in section 741(1) (“director” and “shadow director”) of the Companies Act 1985⁽⁴⁾;

(1) 2004 c. 35; section 318(1) is cited because of the meaning there given to “prescribed” and “regulations”.

(2) 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 the 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.

(3) 1986 c. 45.

(4) 1985 c. 6; under regulation 4 of, and Part 1 of Schedule 2 to, the Limited Liability Partnerships Regulations 2001 (S.I.2001/1090), section 741 (except subsection (3)) applies to limited liability partnerships with the modifications set out in regulation 4(1).

“key employer posts” means the Chief Executive and any director or partner responsible in whole or in part for the financial affairs of the employer;

“key scheme posts” means the auditor and the actuary appointed to a scheme under section 47(1) of the Pensions Act 1995⁽⁵⁾ (professional advisers);

“scheme assets” means the value of the assets according to the most recent actuarial valuation carried out under section 224 of the Act (actuarial valuations and reports), or if no such valuation has been carried out, the most recent valuation carried out under section 56 of the Pensions Act 1995 (minimum funding requirement) and regulations made thereunder.

Notifiable events

2.—(1) The events prescribed for the purposes of section 69(2)(a) of the Act (duty to notify the Regulator of certain events – prescribed events in respect of an eligible scheme) are—

- (a) any decision by the trustees or managers to take action which will, or is intended to, result in any debt which is or may become due to the scheme not being paid in full;
- (b) two or more changes in the holders of any key scheme post within the previous 12 months;
- (c) a decision by the trustees or managers of a scheme (“the relevant scheme”) to make a transfer payment to, or accept a transfer payment from, another scheme the value of which is more than the lower of—
 - (i) 5 per cent. of the value of the scheme assets of the relevant scheme, and
 - (ii) £1,500,000 (one million five hundred thousand pounds);
- (d) a decision by the trustees or managers to grant benefits, or a right to benefits, on more favourable terms than those provided for by the scheme rules, without either seeking advice from the actuary (appointed under section 47(1) of the Pensions Act 1995) or securing additional funding where such funding was advised by the actuary;
- (e) a decision by the trustees or managers to grant benefits, or a right to benefits, to a member the cost of which is more than the lower of—
 - (i) 5 per cent. of the scheme assets, and
 - (ii) £1,500,000 (one million five hundred thousand pounds).

(2) The events prescribed for the purposes of section 69(2)(b) of the Act (duty to notify the Regulator of certain events – prescribed events in respect of the employer in relation to an eligible scheme) are—

- (a) any decision by the employer to take action which will, or is intended to, result in a debt which is or may become due to the scheme not being paid in full;
- (b) a decision by the employer to cease to carry on business in the United Kingdom;
- (c) where applicable, receipt by the employer of advice that it is trading wrongfully within the meaning of section 214 of the Insolvency Act 1986⁽⁶⁾ (wrongful trading), or circumstances being reached in which a director or former director of the company knows that there is no reasonable prospect that the company will avoid going into insolvent liquidation within the meaning of that section, and for this purpose section 214(4) of that Act applies;

(5) 1995 c. 26.

(6) Section 214 is modified by section 90 of, and Schedule 15 to, the Building Societies Act 1986 (c. 53) and by section 23 of and Schedule 10 to, the Friendly Societies Act 1992 (c. 40). Regulation 5 of the Limited Liability Partnerships Regulations 2001 (S.I. 2001/1090) applies *inter alia* section 214 to limited liability partnerships, with modifications including that references to a company shall include references to a limited liability partnership, and references to a director shall include references to a member (see regulation 5(2)(a) and (b)).

- (d) any breach by the employer of a covenant in an agreement between the employer and a bank or other institution providing banking services, other than where the bank or other institution agrees with the employer not to enforce the covenant;
- (e) any change in the employer's credit rating, or the employer ceasing to have a credit rating;
- (f) where the employer is a company, a decision by a controlling company to relinquish control of the employer company;
- (g) two or more changes in the holders of any key employer posts within the previous 12 months;
- (h) the conviction of an individual, in any jurisdiction, for an offence involving dishonesty, if the offence was committed while the individual was a director or partner of the employer.

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

23 March 2005

Malcolm Wicks
Minister of State,
Department for Work and Pensions

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe those events the occurrence of which there is a duty upon the appropriate person to notify the Pensions Regulator. In relation to events in respect of certain occupational pension schemes the duty falls on the trustees or managers of the scheme; in relation to events in respect of employers in relation to eligible pension schemes, the duty falls on the employers.

The Pensions Regulator is established by section 1 of the Pensions Act 2004 (c. 35) (“the Act”).

The Pensions Regulator has prepared directions and a code of practice which give further information regarding notifiable events.

As these Regulations are made before the expiry of the period of six months beginning with the coming into force of section 69 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.

These regulations have only a negligible impact on business, charities and the voluntary sector. Publication of a full Regulatory Impact Assessment is not necessary for such legislation.