

2005 No. 84

PENSIONS

**The Pension Protection Fund (Hybrid Schemes)
(Modification) Regulations (Northern Ireland) 2005**

Made - - - - - *10th March 2005*

Coming into operation *6th April 2005*

The Department for Social Development, in exercise of the powers conferred on it by Articles 119(4), 280(1)(a) and (2)(b) and 287(3) of the Pensions (Northern Ireland) Order 2005(a) and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Pension Protection Fund (Hybrid Schemes) (Modification) Regulations (Northern Ireland) 2005 and shall come into operation on 6th April 2005.

(2) In these Regulations, “the Order” means the Pensions (Northern Ireland) Order 2005.

(3) In these Regulations, any reference to a numbered Article, or Schedule, is a reference to the Article of, or Schedule to, the Order bearing that number.

Discharge of liabilities in respect of money purchase benefits during the assessment period

2.—(1) The circumstances prescribed for the purposes of Article 119(4) (restrictions on winding up, discharge of liabilities etc.) are that –

- (a) the scheme concerned is a hybrid scheme, and
- (b) one or more members of the scheme are entitled, or have rights, under the scheme rules to money purchase benefits.

(2) The conditions prescribed for the purposes of Article 119(4) are that –

- (a) a scheme failure notice issued under Article 106 (insolvency practitioner’s duty to issue notices confirming status of scheme) or Article 114 (Board’s duty where application or notification received under Article 113) in relation to the scheme has become binding**(b)**, and
- (b) the –
 - (i) liability of the scheme which is to be discharged is to, or in respect of, a member of the scheme in respect of money purchase benefits, or
 - (ii) member’s rights under the scheme rules which are to be transferred, or in respect of which transfer payments are to be made, are rights to money purchase benefits.

(a) S.I. 2005/255 (N.I. 1)

(b) See Articles 109 and 114(6) of the Pensions (Northern Ireland) Order 2005

(3) In this regulation –

“pension credit rights” means rights to future benefits under the scheme which are attributable (directly or indirectly) to a pension credit, and

“rights” includes pension credit rights.

Modification of Part III of the Order

3.—(1) In relation to a hybrid scheme, Article 118 (directions) applies as if, after paragraph (2), there were inserted the following paragraph –

“(2A) The Board may give a relevant person directions regarding the exercise during that period of his powers in respect of discharging the liabilities of the scheme to, or in respect of, a member of the scheme in respect of money purchase benefits.”.

(2) In relation to a hybrid scheme, in respect of a person who –

(a) is (immediately before the assessment date) a member of that scheme, and

(b) has rights to money purchase benefits under the scheme rules,

Schedule 6 (pension compensation provisions) applies with the modifications prescribed in paragraphs (3) and (4).

(3) Paragraph 20(1)(b) of Schedule 6 (compensation in respect of scheme right to transfer payment or contribution refund) applies as if –

(a) the reference to benefits does not include money purchase benefits, and

(b) the reference to contributions does not include contributions made in respect of money purchase benefits under the scheme.

(4) Schedule 6 applies as if, after paragraph 31 (special provision in relation to certain pensions in payment before the assessment date), there were inserted the following paragraph –

“Special provision in relation to certain persons not entitled to compensation

31A.—(1) Where –

(a) immediately before the assessment date, a person (“the member”) is entitled to present payment of a pension or a lump sum, or has a right to a pension or a lump sum, under the scheme rules, and

(b) the effect of disregarding rules within paragraph 35(2)(a) is that he is not entitled to compensation under paragraph 3, 5, 7, 8, 10, 11, 14, 15 or 19 in respect of a period of pensionable service,

the Board must pay to the member the amount of the contributions made by him to the scheme in respect of that period of pensionable service together with interest on it.

(2) The interest shall be calculated at the base rate on a day-to-day basis from the time the contribution was made by the member to the scheme until the date of repayment and compounded with three-monthly rests.

(3) The amount is payable to the member immediately after the transfer notice given under Article 144 (transfer notice) is received by the trustees or managers of the scheme.

(4) In this paragraph –

(a) references to a pension or a lump sum under the scheme rules, or to a right to a pension or a lump sum under those rules, do not include a pension or a lump sum, or a right to a pension or lump sum, which is a money purchase benefit,

(b) the reference to contributions does not include contributions made to money purchase benefits under the scheme,

(c) “base rate” means the rate for the time being quoted by the reference banks as applicable to sterling deposits or, where there is for the time being more than one such base rate, the rate which, when the base rate quoted by each bank is ranked in a descending sequence of four, is the first in the sequence,

(d) “date of repayment” means the date on which the full amount of the contributions made, together with the interest, is repaid to the person by the Board, and

- (e) “reference banks” means the four largest persons for the time being who –
 - (i) have permission under Part IV of the Financial Services and Markets Act 2000^(a) to accept deposits,
 - (ii) are incorporated in the United Kingdom and carrying on there a regulated activity of accepting deposits, and
 - (iii) quote a base rate applicable to sterling deposits.
- (5) Sub-paragraph (4)(e) must be read with –
 - (a) section 22 of the Financial Services and Markets Act 2000 (regulated activities),
 - (b) any relevant order under that section, and
 - (c) Schedule 2 to that Act.
- (6) Where this paragraph applies to a member, regulations made under paragraph 31 do not apply to that member.”.

Sealed with the Official Seal of the Department for Social Development on 10th March 2005.

(L.S.)

John O’Neill

A senior officer of the Department for Social Development

^(a) 2000 c. 8

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations modify how the provisions of Part III of the Pensions (Northern Ireland) Order 2005 (“the Order”) operate in relation to hybrid schemes. Part III of the Order makes provision in respect of the Board of the Pension Protection Fund (“the Board”), which is established under section 107 of the Pensions Act 2004 (c. 35).

Regulation 2 prescribes the circumstances in which, and the conditions subject to which, the prohibition in Article 119(4) of the Order on transferring, or making transfer payments in respect of, any member’s rights and discharging any liability to, or in respect of, a member, does not apply.

Regulation 3(1) modifies Article 118 of the Order to provide for the Board to give directions to a relevant person (defined in Article 118(3) of the Order) regarding the exercise of his powers during an assessment period (see Article 116 of the Order) in respect of discharging liabilities of the scheme which relate to money purchase benefits. Regulation 3(2) and (3) modifies Schedule 6 to the Order so that compensation is not payable under paragraph 20 in relation to benefits or contributions that relate to money purchase benefits. Regulation 3(2) and (4) allows the Board to repay a person’s contributions to the scheme in respect of a pension or a lump sum (which are not money purchase benefits) in certain cases.

The Pensions (2005 Order) (Commencement No. 1 and Consequential and Transitional Provisions) Order (Northern Ireland) 2005 (S.R. 2005 No. 48 (C. 8)) provides for the coming into operation of some of the enabling provisions under which these Regulations are made as follows –

Articles 119(4) and 280(1)(a), for the purpose of authorising the making of regulations, on 25th February 2005, and for all other purposes on 6th April 2005, and

Article 280(2)(b) on 8th March 2005.

As the Regulations are made before the end of the period of six months beginning with the coming into operation of the provisions of the Order by virtue of which they are made, the requirement to consult under Article 289(1) of the Order does not apply by virtue of paragraph (2)(c) of that Article.

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