

2005 No. 590

PENSIONS

The Pension Protection Fund (Entry Rules) Regulations 2005

Made - - - - 10th March 2005

Laid before Parliament 10th March 2005

Coming into force as provided for in regulation 1(2)

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SCHEDULE

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The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 120(3) and (4), 121(5), 122(3), (5) and (8), 123(5), 126(1)(b), (3) and (5), 129(1)(b), (3) and (8), 130(5) and (8), 133(3), 134(3)(a)(iii), 135(4), 138(10)(b) and (12), 139(6), 146(1) and (5), 147(1)(a) and (5), 148(8), 150(5) and (6)(a) to (c), 151(4), (6), (8) and (9)(b), 315(2), (4) and (5) and 318(1) and (4)(a) of the Pensions Act 2004(a), 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 the enactment by virtue of which they are made(b), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Pension Protection Fund (Entry Rules) Regulations 2005.

(2) These Regulations shall come into force—

- (a) for the purposes of regulation 1 (except paragraphs (4) and (5)) and regulation 2, on 1st April 2005; and
- (b) for all other purposes on 6th April 2005.

(3) In these Regulations—

“the Act” means the Pensions Act 2004;

“the 1986 Act” means the Insolvency Act 1986(c);

“the 1988 Act” means the Income and Corporation Taxes Act 1988(d);

“the 1993 Act” means the Pension Schemes Act 1993(e);

“the 1995 Act” means the Pensions Act 1995(f);

“the FSMA” means the Financial Services and Markets Act 2000(g);

“the Authority” has the meaning given in section 124(1) of the 1995 Act (interpretation)(h);

“the Insolvency Rules” means the Insolvency Rules 1986(i);

“multi-employer scheme” has the meaning given in section 307(4) of the Act (modification of the Act in relation to certain categories of pension scheme);

“multi-employer section” means a section of a segregated scheme which has at least two employers in relation to that section;

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- (a) 2004 c. 35. Section 318(1) is cited because of the meaning there given to “prescribed” and “regulations”. Sections 122(3), 126(1), 129(1)(b), 134(3), 146(1) and 147(1)(a) are modified in their application to multi-employer schemes by the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations 2005 (S.I. 2005/441) which also modifies other provisions of Part 2 of the Pensions Act 2004. Sections 129(1), 138(12), 146(1), 147(1)(a) and 151(8) are also modified in their application to partially guaranteed schemes by the Pension Protection Fund (Partially Guaranteed Schemes) (Modification) Regulations 2005 (S.I. 2005/277) which also modifies other provisions of Part 2 of the Pensions Act 2004.
 - (b) See section 317 of the Pensions Act 2004 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 six months beginning with the coming into force of the provisions of that Act by virtue of which the regulations are made.
 - (c) 1986 c. 45.
 - (d) 1988 c. 1.
 - (e) 1993 c. 48.
 - (f) 1995 c. 26.
 - (g) 2000 c. 8.
 - (h) See section 7(2)(b) of the Pensions Act 2004 which provides that “the Authority” in section 124(1) of the Pensions Act 1995 means “the Pensions Regulator”.
 - (i) S.I. 1986/1925 as amended by S.I. 1987/1919, 1989/397, 1991/495, 1993/602, 1995/586, 1999/359, 1999/1022, 2001/763, 2002/1307, 2002/2712, 2003/1750, 2004/584 and 2004/1070.

“non-segregated scheme” means a multi-employer scheme which is not a segregated scheme;
“normal pension age” has the meaning given in section 138(11) of the Act (payment of scheme benefits);

“pensionable service” has the meaning given in section 70(2) of the 1993 Act (interpretation);

“public body” means a government department or any non-departmental public body established by an Act of Parliament or by a statutory instrument made under an Act of Parliament to perform functions conferred on it under or by virtue of that Act or instrument or any other Act or instrument;

“relevant public authority” has the meaning given in section 307(4) of the Act;

“restricted information” has the meaning given in section 197(4) of the Act (restricted information);

“segregated scheme” means a multi-employer scheme which is divided into two or more sections where—

- (a) any contributions payable to the scheme by an employer in relation to the scheme or by a member are allocated to that employer’s or that member’s section; and
- (b) a specified proportion of the assets of the scheme is attributable to each section of the scheme and cannot be used for the purposes of any other section;

“segregated part”—

- (a) in relation to a non-segregated scheme, means a part of the scheme which is created when the rules of the scheme require the trustees or managers, in circumstances where an employer in relation to the scheme ceases to participate in the scheme, to segregate such part of the assets of the scheme as is attributable to the liabilities of the scheme to provide pensions or other benefits to or in respect of the pensionable service of members of the scheme by reference to that employer; and
- (b) in relation to a multi-employer section of a segregated scheme, means a part of the section which is created when the rules of the scheme relating to that section require the trustees or managers of the section, in circumstances where an employer in relation to the section ceases to participate in the scheme, to segregate such part of the assets of the section as is attributable to the liabilities of the section to provide pensions or other benefits to or in respect of the pensionable service of members of the section by reference to that employer; and

“tax approved scheme” means a scheme which is approved or was formerly approved under section 590 (conditions for approval of retirement benefit schemes) or 591 (discretionary approval) of the 1988 Act or in respect of which an application for such approval has been duly made but has not been determined.

(4) Subject to paragraph (5), in these Regulations, “employer”, in relation to an occupational pension scheme which has no active members, includes every person who was the employer of persons in the description of employment to which the scheme relates immediately before the time at which the scheme ceased to have any active members in relation to it.

(5) In these Regulations, “employer”, in relation to a multi-employer scheme, or a section of a multi-employer scheme, includes—

- (a) in the case of a scheme which has no active members, every person who was the employer of persons in the description of employment to which the scheme, or section, relates immediately before the time at which the scheme, or section, ceased to have any active members in relation to it unless, after that time—
 - (i) a debt under section 75 of the 1995 Act^(a) (deficiencies in the assets) becomes due from that person to the scheme, or section; and
 - (ii) either—

(a) Section 75 is amended by section 271 of the Pensions Act 2004.

- (aa) the full amount of the debt has been paid by that person to the trustees or managers of the scheme, or section, or
 - (bb) in circumstances where a legally enforceable agreement has been entered into between that person and the trustees or managers of the scheme, or section, the effect of which is to reduce the amount which is payable in respect of the debt, the reduced amount of the debt has been paid in full by that person to those trustees or managers; and
- (b) in any other case, any person who has ceased to be the employer of persons in the description of employment to which the scheme, or section, relates unless—
- (i) at the time when he so ceased, the scheme, or section, was not being wound up and continued to have active members in relation to it; and
 - (ii) a debt under section 75 of the 1995 Act became due at that time from that person to the scheme, or section, and either—
 - (aa) the full amount of the debt has been paid by that person to the trustees or managers of the scheme, or section, or
 - (bb) in circumstances where a legally enforceable agreement has been entered into between that person and the trustees or managers of the scheme, or section, the effect of which is to reduce the amount which is payable in respect of the debt, the reduced amount of the debt has been paid in full by that person to those trustees or managers.

Schemes which are not eligible schemes

2.—(1) For the purposes of section 126(1)(b) of the Act (eligible schemes), an occupational pension scheme is not an eligible scheme if it is—

- (a) a public service pension scheme under the provisions of which there is no requirement for assets related to the intended rate or amount of benefit under the scheme to be set aside in advance (disregarding requirements relating to additional voluntary contributions);
- (b) a scheme which is made under section 7 of the Superannuation Act 1972^(a) (superannuation of persons employed in local government service etc) which provides pensions to persons employed in local government service;
- (c) a scheme which is made under section 2 of the Parliamentary and Other Pensions Act 1987^(b) (power to provide for pensions for Members of the House of Commons etc);
- (d) a scheme in respect of which a relevant public authority has given a guarantee or made any other arrangements for the purposes of securing that the assets of the scheme are sufficient to meet its liabilities;
- (e) a scheme which is not a tax approved scheme;
- (f) a scheme which provides relevant benefits within the meaning of section 612(1) of the 1988 Act (interpretation) but which is not a relevant statutory scheme within the meaning of section 611A of that Act^(c) (definition of relevant statutory scheme);
- (g) a scheme—
 - (i) which has been categorised by the Commissioners of the Board of Inland Revenue for the purposes of its approval as a centralised scheme for non-associated employers;
 - (ii) which is not contracted-out; and
 - (iii) under the provisions of which the only benefits that may be provided on or after retirement (other than money purchase benefits derived from the payment of

^(a) 1972 c. 11.

^(b) 1987 c. 45.

^(c) Section 611A of the Income and Corporation Taxes Act 1988 was inserted by section 75 of, and paragraphs 1, 15 and 18(1) of Part 1 of Schedule 6 to, the Finance Act 1988 (c.36).

voluntary contributions by any person) are lump sum benefits which are not calculated by reference to a member's salary;

- (h) a scheme—
 - (i) the only benefits provided by which (other than money purchase benefits) are death benefits, and
 - (ii) under the provisions of which no member has accrued rights (other than rights to money purchase benefits);
- (i) a scheme with such a superannuation fund as is mentioned in section 615(6) of the 1998 Act^(a) (exemption from tax in respect of certain pensions);
- (j) a scheme which does not have its main place of administration registered in the United Kingdom;
- (k) a scheme with fewer than two members;
- (l) a scheme with fewer than twelve members where all the members are trustees of the scheme and either—
 - (i) the rules of the scheme provide that all decisions are made only by the trustees who are members of the scheme by unanimous agreement; or
 - (ii) the scheme has a trustee who is independent in relation to the scheme for the purposes of section 23 of the 1995 Act^(b) (power to appoint independent trustees) and is registered in the register maintained by the Authority in accordance with regulations made under subsection (4) of that section;
- (m) a scheme with fewer than twelve members where all the members are directors of a company which is the sole trustee of the scheme and either—
 - (i) the rules of the scheme provide that all decisions are made only by members of the scheme by unanimous agreement; or
 - (ii) one of the directors of the company is independent in relation to the scheme for the purposes of section 23 of the 1995 Act and is registered in the register maintained by the Authority in accordance with regulations made under subsection (4) of that section;
- (n) the Chatsworth Settlement Estate Pension Scheme;
- (o) the scheme established by the Salvation Army Act 1963^(c); and
- (p) a scheme which, on or after the day appointed for the purposes of section 126(2) of the Act^(d), does not have an employer in relation to the scheme and which has not been authorised under section 153 of the Act (closed schemes) to continue as a closed scheme.

(2) Except as otherwise provided in paragraphs (4) and (5) of this regulation, an occupational pension scheme which would be an eligible scheme but for this paragraph is not an eligible scheme where, at any time, the trustees or managers of the scheme enter into a legally enforceable agreement with an employer in relation to the scheme the effect of which is to reduce the amount of any debt due to the scheme from that employer under section 75 of the 1995 Act which may be recovered by, or on behalf of, those trustees or managers.

(3) Paragraph (2) shall not apply where—

- (a) before the beginning of an assessment period—
 - (i) the trustees or managers of the scheme enter into a legally enforceable agreement with an employer in relation to the scheme the effect of which is to reduce the amount of the debt due to the scheme from that employer under section 75(2) of the 1995 Act which may be recovered by, or on behalf of, those trustees or managers;

(a) Section 615(6) of the Income and Corporation Taxes Act 1988 has effect in relation to trust based occupational pension schemes established in respect of persons wholly employed in a trade or undertaking outside of the United Kingdom.
(b) Section 23 of the 1995 Act is substituted by section 36(3) of the Pensions Act 2004.
(c) 1963 c. xxxii.
(d) See Article 2 of the Pension Protection Fund (Eligible Schemes) Appointed Day Order 2005 (S.I. 2005/599) which provides that the day appointed is 6th April 2005.

- (ii) the value of the scheme's assets would be sufficient to secure benefits for or in respect of members of the scheme which correspond to the amount of compensation which would be payable in relation to the scheme in accordance with the pension compensation provisions if the Board were to assume responsibility for the scheme in accordance with Chapter 3 of Part 2 of the Act (pension protection);
 - (iii) an individual appointed to act as the actuary in relation to the scheme ("the actuary") has provided the Board with a written estimate of the current value of the assets and the protected liabilities of the scheme together with a statement about the effect which the agreement would have on the value of the scheme's assets as recorded in that estimate; and
 - (iv) the Board has determined to validate the estimate and statement provided;
- (b) before the beginning of an assessment period, the trustees or managers of the scheme enter into a legally enforceable agreement with an employer in relation to the scheme, as part of an arrangement under section 425 of the Companies Act 1985(a) (power of company to compromise with creditors or members), the effect of which is to reduce the amount of the debt due to the scheme from that employer under section 75(2) of the 1995 Act which may be recovered by, or on behalf of, those trustees or managers; or
- (c) after the beginning of an assessment period, or a further assessment period(b), the Board is acting as creditor of an employer in relation to the scheme under section 137 of the Act (Board to act as creditor of the employer) and has entered into a legally enforceable agreement with that employer on behalf of the trustees or managers of the scheme the effect of which is to reduce the amount of the debt due to the scheme from that employer under section 75(4) of the 1995 Act which may be recovered by, or on behalf of, those trustees or managers.

(4) Paragraph (2) above shall also not apply in relation to an eligible scheme where, before the beginning of an assessment period in relation to the scheme, a prescribed arrangement is in place pursuant to regulations made under section 75A of the 1995 Act(c) (debt due from the employer in the case of multi-employer schemes).

(5) Where the Board has determined to validate or not to validate an estimate and statement provided to it by the actuary under paragraph (3)(a)(iii), it must issue a notice to this effect ("a validation notice") and must give a copy of that notice to—

- (a) the trustees or managers of the scheme,
- (b) the actuary,
- (c) the insolvency practitioner in relation to the employer in relation to the scheme, and
- (d) the Regulator.

(6) A notice issued by the Board under paragraph (5) shall be in writing and shall contain the following information—

- (a) the name or type of the notice issued;
- (b) the date on which the notice is issued;
- (c) the date on which the Board received the estimate and statement from the actuary;
- (d) the Board's determination to validate or not to validate the estimate and statement received from the actuary;
- (e) a statement of reasons for the Board's determination;
- (f) the address for communications at which the Board may be contacted in connection with the issue of the notice;

(a) 1985 c. 6. Section 425 was amended by section 248(3) of, and paragraphs 3 and 5 of Schedule 17 to, the Enterprise Act 2002 (c. 40).

(b) See section 159 of the Pensions Act 2004 which makes provision in respect of further assessment periods in respect of schemes which are authorised under section 153 of that Act to continue as closed schemes.

(c) Section 75A of the Pensions Act 1995 is inserted by section 272 of the Pensions Act 2004.

- (g) whether the issue of the notice by the Board is a reviewable matter and, if so, the time limit for applying for a review of or appeal against the issue of the notice;
- (h) the date on which the notice issued will become binding; and
- (i) whether or not the notice issued contains any restricted information and, if so, the nature of the restrictions.

(7) The Board's determination to validate or not to validate the estimate and statement provided to it by the actuary under paragraph (3)(a)(iii) above does not take effect—

- (a) until—
 - (i) the Board has issued a notice under paragraph (5) relating to the determination, and
 - (ii) the period within which the issue of that notice may be reviewed by virtue of Chapter 6 of Part 2 of the Act (reviews, appeals and maladministration) has expired, and
- (b) if the issue of the notice was so reviewed, until—
 - (i) the review and any reconsideration,
 - (ii) any reference to the PPF Ombudsman in respect of the issue of the notice, and
 - (iii) any appeal against his determination or directions,

has been finally disposed of.

(8) In this regulation, “PPF Ombudsman” has the meaning given in section 209 of the Act (the Ombudsman for the Board of the Pension Protection Fund).

Schemes which cease to be eligible schemes

3.—(1) Where, after the beginning of an assessment period in relation to an eligible scheme, the scheme ceases to be an eligible scheme in circumstances where—

- (a) the scheme has ceased to be a tax approved scheme, or
- (b) by reason of the death of a member of the scheme, the scheme becomes a scheme described in regulation 2(1)(k), (l) or (m),

the scheme shall, for the purposes of Part 2 of the Act, be treated as remaining an eligible scheme.

(2) Paragraph (1) does not affect the requirement on the Board under section 146(1) of the Act (schemes which become eligible schemes) to refuse to assume responsibility for an eligible scheme if it is satisfied that the scheme was not an eligible scheme throughout the period prescribed in regulation 21.

Notification of insolvency events in respect of employers

4.—(1) The “notification period” in section 120(3) of the Act (duty to notify insolvency events in respect of employers) shall be the period of 14 days beginning on whichever date is the later of—

- (a) the insolvency date; and
- (b) the date on which the insolvency practitioner becomes aware of the existence of the scheme.

(2) A notice issued by an insolvency practitioner under section 120(2) of the Act shall be in writing and shall contain the following information—

- (a) the name or type of the notice issued;
- (b) the date on which the notice is issued;
- (c) the name, address and pension scheme registration number of the scheme in respect of which the notice is issued;
- (d) the name of the employer in relation to the scheme in respect of which the notice is issued;

- (e) the nature of the insolvency event which has occurred and the date of the occurrence of that event;
- (f) the name of the insolvency practitioner in relation to the employer in relation to the scheme;
- (g) the date on which the insolvency practitioner in relation to the employer in relation to the scheme was appointed to act or consented to act in relation to that employer or, in any case where the insolvency practitioner is the official receiver, the date on which the official receiver began to act in relation to that employer;
- (h) the address for communications at which the insolvency practitioner may be contacted by the Board in connection with the issue of the notice; and
- (i) whether the notice issued contains any commercially sensitive information.

Prescribed insolvency events

5.—(1) An insolvency event occurs—

- (a) in relation to a company, where an administration order is made by the court in respect of the company by virtue of any enactment which applies Part 2 of the 1986 Act^(a) (administration orders) (with or without modification);
- (b) in relation to a relevant body, where—
 - (i) any of the events referred to in section 121(3) of the Act (insolvency events) occurs in relation to that body by virtue of the application (with or without modification) of any provision of the 1986 Act by or under any other enactment; or
 - (ii) an administration order is made by the court in respect of the relevant body by virtue of any enactment which applies Part 2 of the 1986 Act (with or without modification);
- (c) in relation to a building society, where there is dissolution by consent of the members under section 87 of the Building Societies Act 1986^(b) (dissolution by consent);
- (d) in relation to a friendly society, where there is dissolution by consent of the members under section 20 of the Friendly Societies Act 1992^(c) (dissolution by consent); and
- (e) in relation to an industrial and provident society, where there is dissolution by consent of the members under section 58 of the Industrial and Provident Societies Act 1965^(d) (instrument of dissolution).

(2) In this regulation—

“administration order” means an order whereby the management of the company or relevant body, as the case may be, is placed in the hands of a person appointed by the court;

“relevant body” means—

- (a) a credit union within the meaning given in section 31(1) of the Credit Unions Act 1979^(e) (interpretation);
- (b) a limited liability partnership within the meaning given in section 57(6) of the Act (sections 38 to 56: partnerships and limited liability partnerships);
- (c) a building society within the meaning given in section 119 of the Building Societies Act 1986 (interpretation);
- (d) a person who has permission to act under Part 4 of the FSMA (permission to carry out regulated activities);

(a) Part 2 of the Insolvency Act 1986 was replaced by section 248 of the Enterprise Act 2004 c.40.

(b) 1986 c. 53.

(c) 1992 c. 40.

(d) 1965 c. 12.

(e) 1979 c. 34.

- (e) the society of Lloyd’s and Lloyd’s members who have permission under Part 19 of the FSMA (Lloyd’s);
- (f) a friendly society within the meaning given in the Friendly Societies Act 1992; or
- (g) a society which is registered as an industrial and provident society under the Industrial and Provident Societies Act 1965.

(3) In this regulation, a reference to Part 2 of the 1986 Act (administration orders) shall, insofar as it relates to a company or society listed in section 249(1) of the Enterprise Act 2002 (special administration regimes), have effect as if it referred to Part 2 of the 1986 Act as it had effect immediately before the coming into force of section 248 of the Enterprise Act 2002 (replacement of Part 2 of the Insolvency Act 1986).

Circumstances in which insolvency proceedings in relation to the employer are stayed or come to an end

6.—(1) The prescribed circumstances referred to in section 122(3)(a) of the Act (insolvency practitioner’s duty to issue notices confirming status of scheme) in which insolvency proceedings in relation to an employer in relation to an occupational pension scheme are stayed or come to an end are—

- (a) in a case where the employer is a company, where—
 - (i) the nominee in relation to a proposal for a voluntary arrangement under Part 1 of the 1986 Act (company voluntary arrangements) has submitted a report to the court under section 2 of that Act(a) (procedure where nominee is not the liquidator or administrator) which states that in his opinion meetings of the company and its creditors should be summoned to consider the proposal, but no voluntary arrangement has effect or, where a voluntary arrangement has effect, it later ceases to have effect as the result of a court order under section 6 of the 1986 Act(b) (challenge of decisions);
 - (ii) the directors of the company have filed (or in Scotland, lodged) documents and statements in accordance with paragraph 7(1) (documents to be submitted to court) of Schedule A1(c) (moratorium where directors propose voluntary arrangement) to the 1986 Act but—
 - (aa) the resulting moratorium comes to an end without a voluntary arrangement taking effect, or
 - (bb) where a voluntary arrangement has effect, it later ceases to have effect as a result of a court order under paragraph 38 (challenge of decisions) of Schedule A1 to the 1986 Act;
 - (iii) the appointment of an administrator in respect of the company ceases to have effect except where—
 - (aa) the company moves from administration into winding up pursuant to paragraph 83 (moving from administration to creditor’s voluntary liquidation) of Schedule B1(d) (administration) to the 1986 Act or pursuant to an order of the court under Rule 2.132 of the Insolvency Rules (conversion of administration to winding up – power of court), or
 - (bb) a winding up order is made by the court immediately upon the appointment of the administrator ceasing to have effect;

(a) Section 2 of the Insolvency Act 1986 was amended by sections 1 and 2 of, and Schedules 1 and 2 to, the Insolvency Act 2000 (c. 39).

(b) Section 6 of the Insolvency Act 1986 was amended by section 2 of, and Part 1 of Schedule 2 to, the Insolvency Act 2000.

(c) Schedule A1 to the Insolvency Act 1986 was inserted by section 1 of, and paragraphs 1 and 4 of Schedule 1 to, the Insolvency Act 2000.

(d) Schedule B1 to the Insolvency Act 1986 was inserted by section 248 of, and Schedule 16 to, the Enterprise Act 2002.

- (iv) an administrative receiver within the meaning of section 251 of the 1986 Act (interpretation) appointed in relation to the company vacates office under section 45 of that Act (vacation of office); or
 - (v) all proceedings in the winding up of a company are stayed altogether or an order for the winding up of the company is rescinded or discharged except in circumstances where the court has made an administration order in accordance with paragraph 37 or 38 (application where company in liquidation) of Schedule B1 to the 1986 Act;
- (b) in a case where the employer is an individual, where—
- (i) the nominee in relation to a proposal for a voluntary arrangement under Part 8 of the 1986 Act (individual voluntary arrangements) has submitted a report to the court under section 256(1) (nominee’s report on debtor’s proposal) or 256A(3)(a) (debtor’s proposal and nominee’s report) of that Act which states that in his opinion a meeting of the individual’s creditors should be summoned to consider the proposal but no voluntary arrangement takes effect or, where a voluntary arrangement takes effect, it later ceases to have effect as a result of a court order under section 262(b) of the 1986 Act (challenge of meeting’s decision);
 - (ii) a bankruptcy order against the individual is annulled or rescinded; or
 - (iii) an insolvency administration order in respect of the estate of the individual made in accordance with an order under section 421 of the 1986 Act (insolvent estates of deceased persons) is annulled or rescinded;
- (c) in a case where the employer is a partnership, where—
- (i) the nominee in relation to a proposal for a voluntary arrangement under Part 1 of the 1986 Act (company voluntary arrangements) (as applied by an order under section 420 of that Act (insolvent partnerships)) has submitted a report to the court under section 2 of that Act (procedure where nominee is not the liquidator or administrator) which states that in his opinion meetings of the partnership and its creditors should be summoned to consider the proposal, but no voluntary arrangement has effect or, where a voluntary arrangement has effect, it later ceases to have effect as a result of a court order under section 6 of the 1986 Act (challenge of decisions) (as applied by an order under section 420 of that Act);
 - (ii) the members of the partnership have filed documents and statements in accordance with paragraph 7(1) (documents to be submitted to the court) of Schedule A1 (moratorium where directors propose voluntary arrangement) to the 1986 Act (as applied by an order under section 420 of that Act) but—
 - (aa) the resulting moratorium comes to an end without a voluntary arrangement taking effect, or
 - (bb) where a voluntary arrangement has effect, it later ceases to have effect as a result of a court order under paragraph 38 (application where company in liquidation) of Schedule A1 to the 1986 Act (as applied by an order under section 420 of that Act);
 - (iii) an administration order in relation to a partnership under Part 2 of the 1986 Act(c) (administration orders) is discharged except where—
 - (aa) a winding up order is made by a court immediately upon the discharge of the administration order, or

(a) Section 256A of the Insolvency Act 1986 was inserted by section 3 of, and paragraph 6 of Schedule 3 to, the Insolvency Act 2000 (c. 39).

(b) Sections 256(1) and 262 of the Insolvency Act 1986 were amended by, and section 256A of that Act was inserted by, section 3 of, and Schedule 3 to, the Insolvency Act 2000 (c. 39).

(c) The Enterprise Act 2003 (Commencement No. 4 and Transitional Provisions and Savings) Order 2003 (S.I. 2003/2093 (C.85)) provided for the law relating to administration under Part 2 of the Insolvency Act 1986, without the amendments and repeals made by the Enterprise Act 2002, to continue to apply insofar as is necessary to give effect to the Insolvent Partnerships Order 1994 (S.I. 1994/2421).

- (bb) the discharge is pursuant to an order of the court for the administration to be converted into winding up under Rule 2.61(1) of the Insolvency Rules (conversion of administration into winding up – power of court) as those rules stood before the coming into force of the Insolvency (Amendment) Rules 2003(a); or
- (iv) all proceedings in a winding up of the partnership are stayed altogether or an order for the winding up of the partnership is rescinded or discharged.

(2) The prescribed circumstances referred to in section 122(3)(a) of the Act in which insolvency proceedings are stayed or come to an end shall also include circumstances where a deed of arrangement made by or in respect of the affairs of an employer in relation to an occupational pension scheme who is an individual who has been registered under the Deeds of Arrangement Act 1914(b) but the deed is void in accordance with the provisions of section 3(1) of that Act (avoidance of deeds of arrangement unless assented to by majority of creditors) .

Applications and notifications to the Board

7. The prescribed requirements referred to in section 129(1)(b) and (4)(b) of the Act (applications and notifications for the purposes of section 128) that are to be met in relation to the employer in relation to an eligible scheme are that the employer is either—

- (a) a public body—
 - (i) in relation to which it is not possible for an insolvency event as defined in section 121 of the Act (insolvency event, insolvency date and insolvency practitioner) to occur; and
 - (ii) which is not the employer in relation to an occupational pension scheme in respect of which a relevant public authority has either—
 - (aa) given a guarantee in relation to any part of the scheme, any benefits payable under the scheme or any member of the scheme, or
 - (bb) made any other arrangements for the purposes of securing that the assets of the scheme are sufficient to meet any part of its liabilities; or
- (b) a charity which is not a company or other body corporate.

Applications and notifications to the Board – further provision

8.—(1) The prescribed period for making an application to the Board under section 129(1) of the Act (applications and notifications for the purposes of section 128) shall be the period of 28 days beginning with the date on which the trustees or managers of an eligible scheme become aware that the employer in relation to the scheme is unlikely to continue as a going concern.

(2) Applications to the Board for the purposes of section 128 of the Act shall be in writing and shall contain the following information—

- (a) a description of the type or purpose of the application;
- (b) the name, address and pension scheme registration number of the scheme in respect of which the application is made;
- (c) the name of the employer in relation to the scheme in respect of which the application is made;
- (d) a statement by the trustees or managers of the scheme that the employer in relation to the scheme is unlikely to continue as a going concern and that the requirements prescribed under section 129(1)(b) of the Act have been met in relation to that employer;
- (e) the date on which the trustees or managers of the scheme became aware that the employer in relation to the scheme is unlikely to continue as a going concern; and

(a) S.I.2003/1730.
 (b) 1914 c. 47.

- (f) the date on which the application was sent to the Board by the trustees or managers of the scheme.

(3) Where the Regulator becomes aware that the employer in relation to an eligible scheme is unlikely to continue as a going concern and that the requirements prescribed under section 129(1)(b) of the Act are met in relation to that employer, the prescribed information to be contained in the notice referred to in section 129(4) of the Act which the Regulator must give to the Board is as follows—

- (a) the name or type of notice issued;
- (b) the date on which the notice is issued;
- (c) the name, address and pension scheme registration number of the scheme in respect of which the notice is issued.;
- (d) the name of the employer in relation to the scheme in respect of which the notice is issued;
- (e) a statement by the Regulator that the employer in relation to the scheme is unlikely to continue as a going concern and that the requirements prescribed under section 129(1)(b) of the Act are met in relation to that employer; and
- (f) the date on which the Regulator became aware that the employer in relation to the scheme is unlikely to continue as a going concern.

(4) Where the Board receives a notice from the Regulator to which paragraph (3) applies, the prescribed information that must be contained in the notice referred to in section 129(5) of the Act which the Board must give to the trustees or managers of the scheme concerned and copy to the employer in relation to that scheme is as follows—

- (a) the name or type of notice issued;
- (b) the date on which the notice is issued;
- (c) the name, address and pension scheme registration number of the scheme in respect of which the notice is issued;
- (d) the name of the employer in relation to the scheme in respect of which the notice is issued;
- (e) a statement that the Board received a notice from the Regulator under section 129(4) of the Act and the date on which that notice was received by the Board;
- (f) the date on which the Regulator became aware that the employer in relation to the scheme is unlikely to continue as a going concern;
- (g) the address for communications at which the Board may be contacted in respect of the issue of the notice; and
- (h) whether the notice issued by the Board contains any restricted information and, if so, the nature of the restrictions.

Confirmation of scheme status by insolvency practitioner

9.—(1) The prescribed matters referred to in section 122(5)(a) of the Act (insolvency practitioner's duty to issue notices confirming status of scheme) which the insolvency practitioner in relation to the employer in relation to the scheme must be able to confirm are—

- (a) in circumstances where the employer is a company, that—
 - (i) the company has been rescued as a going concern and the employer—
 - (aa) retains responsibility for meeting the pension liabilities under the scheme, and
 - (bb) has not entered into an agreement to which paragraph (3)(c) of regulation 2 applies; or
 - (ii) another person or other persons has or have assumed responsibility for meeting the employer's pension liabilities under the scheme;
- (b) in circumstances where the employer is an individual, that—

- (i) there has been a rescue of all or part of the employer's business as a going concern and the employer—
 - (aa) retains responsibility for meeting the pension liabilities under the scheme, and
 - (bb) has not entered into an agreement to which paragraph (3)(c) of regulation 2 applies; or
 - (ii) another person or other persons has or have assumed responsibility for meeting the employer's pension liabilities under the scheme;
 - (c) in circumstances where the employer is a partnership, that—
 - (i) there has been a rescue of all or part of the employer's business and the employer—
 - (aa) retains responsibility for meeting the pension liabilities under the scheme, and
 - (bb) has not entered into an agreement to which paragraph (3)(c) of regulation 2 applies; or
 - (ii) another person or other persons has or have assumed responsibility for meeting the employer's pension liabilities under the scheme.
- (2) The prescribed matters referred to in section 122(5)(b) of the Act which the insolvency practitioner must be able to confirm are—
- (a) in circumstances where the employer is a company—
 - (i) that employer has entered into an agreement to which paragraph (3)(c) of regulation 2 applies; or
 - (ii) that employer is not continuing as a going concern and—
 - (aa) no other person or other persons has or have assumed responsibility for meeting the employer's pension liabilities under the scheme, and
 - (bb) the insolvency practitioner is of the opinion that the employer's pension liabilities under the scheme will not be assumed by another person;
 - (b) in circumstances where the employer is an individual—
 - (i) that employer has entered into an agreement to which paragraph (3)(c) of regulation 2 applies; or
 - (ii) no part of that employer's business is being continued by that employer as a going concern and—
 - (aa) no other person or other persons has or have assumed responsibility for meeting the employer's pension liabilities under the scheme, and
 - (bb) the insolvency practitioner is of the opinion that the employer's pension liabilities under the scheme will not be assumed by another person;
 - (c) in circumstances where the employer is a partnership—
 - (i) that employer has entered into an agreement to which paragraph (3)(c) of regulation 2 applies; or
 - (ii) no part of the employer's business is being continued by one or more of the partners as a going concern and—
 - (aa) no other person or other persons has or have assumed responsibility for meeting the employer's pension liabilities under the scheme, and
 - (bb) the insolvency practitioner is of the opinion that the employer's pension liabilities under the scheme will not be assumed by another person.
- (3) A notice issued by an insolvency practitioner under section 122(2)(a) or (b) of the Act or by a former insolvency practitioner under section 122(4) of the Act shall be in writing and shall contain the following information—
- (a) the name or type of notice issued;
 - (b) the date on which the notice is issued;

- (c) the name, address and pension scheme registration number of the scheme in respect of which the notice is issued;
- (d) the name of the employer in relation to the scheme in respect of which the notice is issued;
- (e) the name of the insolvency practitioner or former insolvency practitioner and the address at which that insolvency practitioner may be contacted by the Board in connection with the issue of the notice;
- (f) a statement by the insolvency practitioner or former insolvency practitioner that, as the case may be, a scheme rescue has occurred or a scheme rescue is not possible or that he has been unable to confirm that a scheme rescue has occurred or that a scheme rescue is not possible;
- (g) if a scheme rescue has occurred, the date or the approximate date of the scheme rescue and, if there is a new employer in relation to the scheme, the name and address of that employer in relation to the scheme;
- (h) if a scheme rescue is not possible, a statement from the insolvency practitioner or former insolvency practitioner as to why, in his opinion, that is not possible;
- (i) if section 122(4) of the Act applies and the former insolvency practitioner has not been able to confirm in relation to the scheme that a scheme rescue is not possible, a statement from that insolvency practitioner as to why, in his opinion, that is the case;
- (j) a statement that the notice issued will not become binding until it has been approved by the Board; and
- (k) whether, in the opinion of the insolvency practitioner or former insolvency practitioner, the notice issued contains any commercially sensitive information.

Confirmation of scheme status by Board

10.—(1) This regulation applies in a case where section 129 of the Act (applications and notifications for the purposes of section 128) applies and where the requirements prescribed in regulation 7 have been met in relation to the employer in relation to an eligible scheme.

(2) The prescribed matters referred to in section 130(5)(a) of the Act (Board's duty where application or notification received under section 129) which the Board must be able to confirm are that—

- (a) all or part of the employer's business has been rescued as a going concern and the employer—
 - (i) retains responsibility for meeting the pension liabilities under the scheme, and
 - (ii) has not entered into an agreement to which paragraph (3)(c) of regulation 2 applies; or
- (b) the Board is satisfied that another person or other persons has or have assumed responsibility for meeting the employer's pension liabilities under the scheme.

(3) The prescribed matters referred to in section 130(5)(b) of the Act which the Board must confirm are that—

- (a) in circumstances where the employer is a company—
 - (i) that employer has entered into an agreement to which paragraph (3)(c) of regulation 2 applies; or
 - (ii) that employer is not continuing as a going concern and—
 - (aa) no other person or other persons has or have assumed responsibility for meeting the employer's pension liabilities under the scheme, and
 - (bb) the Board is of the opinion that the employer's pension liabilities under the scheme will not be assumed by another person;
- (b) in circumstances where the employer is an individual—

- (i) that employer has entered into an agreement to which paragraph (3)(c) of regulation 2 applies; or
 - (ii) no part of the employer's business is being continued by that employer as a going concern and—
 - (aa) no other person or other persons has or have assumed responsibility for meeting the employer's pension liabilities under the scheme, and
 - (bb) the Board is of the opinion that the employer's pension liabilities under the scheme will not be assumed by another person;
 - (c) in circumstances where the employer is a partnership—
 - (i) that employer has entered into an agreement to which paragraph (3)(c) of regulation 2 applies; or
 - (ii) no part of the employer's business is being continued by one or more of the partners as a going concern and—
 - (aa) no other person or other persons has or have assumed responsibility for meeting the employer's pension liabilities under the scheme, and
 - (bb) the Board is of the opinion that the employer's pension liabilities under the scheme will not be assumed by another person.
- (4) A notice issued by the Board under section 130(2) or (3) of the Act shall be in writing and shall contain the following information—
- (a) the name or type of notice issued;
 - (b) the date on which the notice is issued;
 - (c) the name, address and pension scheme registration number of the scheme in respect of which the notice is issued;
 - (d) the name of the employer in relation to the scheme in respect of which the notice is issued;
 - (e) a statement by the Board that a scheme rescue has occurred or that a scheme rescue is not possible;
 - (f) if a scheme rescue has occurred, the date or the approximate date of the scheme rescue and, if there is a new employer in relation to the scheme, the name and address of that employer;
 - (g) if a scheme rescue is not possible, a statement by the Board to that effect;
 - (h) the address for communications at which the Board may be contacted in connection with the issue of the notice;
 - (i) whether the issue of the notice by the Board is a reviewable matter and, if so, the time limit for applying for a review of or appeal against the issue of the notice;
 - (j) the date on which the notice issued will become binding; and
 - (k) whether the notice issued contains any restricted information and, if so, the nature of the restrictions.

Confirmation of scheme status by insolvency practitioner – multi-employer schemes

11.—(1) This regulation applies to—

- (a) a section of a segregated scheme with only one employer in relation to that section;
- (b) a multi-employer section of a segregated scheme; or
- (c) a non-segregated scheme,

where the scheme rules contain a provision for the partial winding up of the scheme, or the section, in circumstances where an employer in relation to the scheme, or the section, ceases to participate in the scheme.

(2) Where, by virtue of section 122 of the Act(a) (insolvency practitioner’s duty to issue notices confirming status of scheme), an insolvency practitioner is required to issue a notice under subsection (2)(a) (a “scheme failure notice”) or (2)(b) (a “scheme rescue notice”) of that section in relation to—

- (a) a section of a segregated scheme;
- (b) a segregated part of a multi-employer section of a segregated scheme; or
- (c) a segregated part of a non-segregated scheme,

to which this regulation applies, regulation 9 shall have effect and shall be read as if, for the words “the scheme” in each place where they appear in that regulation, there were substituted the words “the section” or, as the case may be, “the segregated part”.

(3) Where, by virtue of section 120(3A) or, as the case may be, 129(1B) of the Act(b), the trustees or managers of a scheme or a section of a scheme to which this regulation applies are required to give a non-segregation notice to the Board, the notice shall be in writing and shall contain the following information—

- (a) the name or type of the notice issued;
- (b) the date on which the notice is issued;
- (c) the name, address and pension scheme registration number of the scheme in respect of which the notice is issued;
- (d) the name of the employer in relation to the scheme in respect of which the notice is issued; and
- (e) a statement that the trustees or managers have decided not to exercise the option to segregate under the scheme.

(4) Where, under section 130 of the Act (Board’s duty where application or notification received under section 129), the Board is required to issue a notice under subsection (2) (a “scheme failure notice”) or (3) (a “scheme rescue notice”) of that section in relation to—

- (a) a section of a segregated scheme;
- (b) a segregated part of a multi-employer section of a segregated scheme; or
- (c) a segregated part of a non-segregated scheme,

to which this regulation applies, regulation 10 shall have effect and shall be read as if, for the words “the scheme” in each place where they appear in that regulation, there were substituted the words “the section” or, as the case may be, “the segregated part”.

Confirmation of scheme status by Board – multi-employer schemes

12.—(1) This regulation applies to—

- (a) a non-segregated scheme; or
- (b) a multi-employer section of a segregated scheme,

the rules of which do not contain a provision for the partial winding up of the scheme, or the section, in circumstances where an employer in relation to the scheme, or the section, ceases to participate in the scheme.

(a) Section 122 of the Pensions Act 2004 is modified by the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations 2005 (S.I. 2005/441) in its application to sections and multi-employer sections of segregated schemes and segregated parts of multi-employer sections of segregated schemes and non-segregated schemes.

(b) See Parts 7 and 8 of the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations 2005 (S.I. 2005/441) which modifies Part 2 of the Pensions Act 2004 so that it shall be read as if, in sections 120 and 129, there were inserted new subsections (3A) and (1B) respectively. Parts 7 and 8 of S.I. 2005/441 apply to non-segregated schemes or multi-employer sections of segregated schemes the rules of which give the trustees or managers the option to segregate such part of the assets of the section as is attributable to the liabilities of the section to provide pensions or other benefits to or in respect of the pensionable service of members of that section by reference to an employer in circumstances where that employer has ceased to participate in the scheme.

(2) Where, under section 122(2)(a) of the Act (insolvency practitioner’s duty to issue notices confirming status of scheme), an insolvency practitioner is required to issue a scheme failure notice in relation to a multi-employer section of a segregated scheme or a non-segregated scheme to which this regulation applies, regulation 9(2) shall have effect and shall be read as if—

- (a) in the case of a multi-employer section of a segregated scheme—
 - (i) for the words “no other person or other persons has or have assumed responsibility for meeting the employer’s pension liabilities under the scheme” in sub-paragraph (a)(ii)(aa), there were substituted the words “no other person or other persons has or have assumed responsibility for meeting all of the pension liabilities under the section”; and
 - (ii) for the words “the insolvency practitioner is of the opinion that the employer’s pension liabilities under the scheme will not be assumed by another person” in sub-paragraph (a)(ii)(bb), there were substituted the words “the insolvency practitioner is of the opinion that all of the pension liabilities under the section will not be assumed by another person”; and
- (b) in the case of a non-segregated scheme—
 - (i) for the words “no other person or other persons has or have assumed responsibility for meeting the employer’s pension liabilities under the scheme” in sub-paragraph (a)(ii)(aa), there were substituted the words “no other person or other persons has or have assumed responsibility for meeting all of the pension liabilities under the scheme”; and
 - (ii) for the words “the insolvency practitioner is of the opinion that the employer’s pension liabilities under the scheme will not be assumed by another person” in sub-paragraph (a)(ii)(bb), there were substituted the words “the insolvency practitioner is of the opinion that all of the pension liabilities under the scheme will not be assumed by another person”.

(3) Where, under section 122(2)(b) of the Act (insolvency practitioner’s duty to issue notices confirming status of scheme), an insolvency practitioner is required to issue a scheme rescue notice in relation to a multi-employer section of a segregated scheme or a non-segregated scheme to which this regulation applies, regulation 9(1) shall have effect and shall be read as if—

- (a) in the case of a multi-employer section of a segregated scheme—
 - (i) for the words “retains responsibility for meeting the pension liabilities under the scheme” in each place where they appear, there were substituted the words “assumes responsibility for meeting all of the pension liabilities under the section”; and
 - (ii) for the words “another person or other persons has or have assumed responsibility for meeting the employer’s pension liabilities under the scheme” in each place where they appear, there were substituted the words “another person or other persons has or have assumed responsibility for meeting all of the pension liabilities under the section”; and
- (b) in the case of a non-segregated scheme—
 - (i) for the words “retains responsibility for meeting the pension liabilities under the scheme” in each place where they appear, there were substituted the words “assumes responsibility for meeting all of the pension liabilities under the scheme”; and
 - (ii) for the words “another person or other persons has or have assumed responsibility for meeting the employer’s pension liabilities under the scheme” in each place where they appear, there were substituted the words “another person or other persons has or have assumed responsibility for meeting all of the pension liabilities under the scheme”.

(4) Where, under section 130(2) of the Act (Board’s duty to issue notices confirming status of scheme), the Board is required to issue a scheme failure notice in relation to a multi-employer section of a segregated scheme or a non-segregated scheme to which this regulation applies, regulation 10(3) shall have effect and shall be read as if—

- (a) in the case of a multi-employer section of a segregated scheme—
 - (i) for the words “no other person or other persons has or have assumed responsibility for meeting the employer’s pension liabilities under the scheme” in sub-paragraph (a)(ii)(aa), there were substituted the words “no other person or other persons has or have assumed responsibility for meeting all of the pension liabilities under the section”; and
 - (ii) for the words “the Board is of the opinion that the employer’s pension liabilities under the scheme will not be assumed by another person” in sub-paragraph (a)(ii)(bb), there were substituted the words “the Board is of the opinion that all of the pension liabilities under the section will not be assumed by another person”; and
- (b) in the case of a non-segregated scheme—
 - (i) for the words “no other person or other persons has or have assumed responsibility for meeting the employer’s pension liabilities under the scheme” in sub-paragraph (a)(ii)(aa), there were substituted the words “no other person or other persons has or have assumed responsibility for meeting all of the pension liabilities under the scheme”; and
 - (ii) for the words “the Board is of the opinion that the employer’s pension liabilities under the scheme will not be assumed by another person” in sub-paragraph (a)(ii)(bb), there were substituted the words “the Board is of the opinion that all of the pension liabilities under the scheme will not be assumed by another person”.

(5) Where, under section 130(3) of the Act (Board’s duty to issue notices confirming status of scheme), the Board is required to issue a scheme rescue notice in relation to a multi-employer section of a segregated scheme or a non-segregated scheme to which this regulation applies, regulation 10(2) shall have effect and shall be read as if—

- (a) in the case of a multi-employer section of a segregated scheme—
 - (i) for the words “retains responsibility for meeting the pension liabilities under the scheme” in sub-paragraph (a)(i), there were substituted the words “assumes responsibility for meeting all of the pension liabilities under the section”; and
 - (ii) for the words “the Board is satisfied that another person or other persons has or have assumed responsibility for meeting the employer’s pension liabilities under the scheme” in sub-paragraph (b), there were substituted the words “the Board is satisfied that another person or other persons has or have assumed responsibility for meeting all of the pension liabilities under the section”; and
- (b) in the case of a non-segregated scheme—
 - (i) for the words “retains responsibility for meeting the pension liabilities under the scheme” in sub-paragraph (a)(i), there were substituted the words “assumes responsibility for meeting all of the pension liabilities under the scheme”; and
 - (ii) for the words “the Board is satisfied that another person or other persons has or have assumed responsibility for meeting the employer’s pension liabilities under the scheme” in sub-paragraph (b), there were substituted the words “the Board is satisfied that another person or other persons has or have assumed responsibility for meeting all of the pension liabilities under the scheme”.

Confirmation of scheme status – binding notices

13.—(1) Where the Board determines to approve or not to approve a notice issued by an insolvency practitioner or former insolvency practitioner in relation to an employer in relation to a scheme under section 122 of the Act (insolvency practitioners duty to issue notices confirming status of scheme), the determination notice which the Board must issue under section 122(4) of the Act to that effect shall be in writing and shall contain the following information—

- (a) the name or type of notice issued;
- (b) the date on which the notice is issued;

- (c) the name, address and pension scheme registration number of the scheme in respect of which the notice is issued;
- (d) the name of the employer in relation to the scheme in respect of which the notice is issued;
- (e) a statement that the Board received a notice from the insolvency practitioner, or former insolvency practitioner, under section 122 of the Act, the effect of that notice and the date on which it was issued by the insolvency practitioner;
- (f) the name of the insolvency practitioner, or former insolvency practitioner;
- (g) a statement of whether or not the Board has determined to approve the notice issued by the insolvency practitioner or former insolvency practitioner under section 122 of the Act;
- (h) the address for communications at which the Board may be contacted in connection with the issue of the notice; and
- (i) whether the notice issued by the Board contains any restricted information and, if so, the nature of the restriction.

(2) Where a notice issued under section 130(2) or (3) of the Act becomes binding, the notice which the Board must issue under section 130(7) of the Act to that effect shall be in writing and shall contain the following information—

- (a) the name or type of notice issued;
- (b) the date on which the notice is issued;
- (c) the name, address and pension scheme registration number of the scheme in respect of which the notice is issued;
- (d) the name of the employer in relation to the scheme in respect of which the notice is issued;
- (e) a statement that the notice issued under section 130(2) or (3) of the Act has become binding;
- (f) the date on which the notice under section 130(2) or (3) of the Act was issued; and
- (g) whether the notice issued by the Board contains any restricted information and, if so, the nature of the restriction.

Contributions to schemes

14. During an assessment period in relation to an eligible scheme, the prescribed circumstances in which further contributions may be paid to the scheme by an employer in relation to the scheme are where those contributions relate to—

- (a) all or any part of that employer’s liability for any debt due from him to the scheme under section 75 of the 1995 Act which has not yet been discharged; and
- (b) the value of an asset of the scheme arising from a debt or obligation referred to in section 143(5)(a) to (d) of the Act (Board’s obligation to obtain valuation of assets and protected liabilities).

Directions

15. The prescribed person who may be a “relevant person” in relation to an eligible scheme for the purposes of section 134 of the Act (directions) is any individual who is appointed by the trustees or managers of the scheme as the scheme administrator responsible for the discharge of the functions conferred or imposed on the scheme administrator of the scheme by or under Part 4 of the Finance Act 2004^(a) (pension schemes etc).

(a) 2004 c. 12.

Restrictions on winding up, discharge of liabilities etc

16.—(1) Subject to subsection (2) below, the prescribed circumstances in which—

- (a) a transfer or transfer payment in respect of a member's rights under the scheme rules may be made by the trustees or managers of the scheme are where a member has, before the beginning of an assessment period in relation to the scheme—
 - (i) been provided with a written statement of entitlement of the amount of the cash equivalent at the guarantee date of any benefits which have accrued to or in respect of him under the applicable rules pursuant to an application made by that member under section 93A(1) of the 1993 Act^(a) (salary related schemes: right to a statement of entitlement);
 - (ii) acquired a right to a guaranteed cash equivalent by virtue of section 94(1)(a) of the 1993 Act (right to a cash equivalent); and
 - (iii) made an application under section 95 of the 1993 Act (ways of taking right to cash equivalent) requiring the trustees or managers of the scheme to use the cash equivalent to which he has acquired a right in whichever of the ways specified in subsection (2) of that section and has not withdrawn that application; and
- (b) other steps may be taken by the trustees or managers of the scheme to discharge any liability of the scheme to or in respect of a member of the scheme in respect of—
 - (i) a pension or other benefit (except an ill health pension); and
 - (ii) a refund of contributions,

are where the member became entitled to the pension or benefit or to the refund of contributions before the beginning of an assessment period in relation to the scheme.

(2) A transfer or transfer payment in respect of a member's rights under a scheme or a refund of a member's contributions to a scheme shall not be made unless the trustees or managers of the scheme—

- (a) are satisfied that to do so is consistent with the objective of ensuring that the scheme's protected liabilities do not exceed its assets or, if they do exceed its assets, that the excess is kept to a minimum; and
- (b) reduce the amount of the transfer or transfer payment or the refund of contributions by the extent necessary to ensure that it does not exceed the cost of securing benefits for and in respect of members of the scheme which correspond to the compensation that would be payable, in relation to the scheme, in accordance with the pension compensation provisions if the Board were to assume responsibility for the scheme in accordance with Chapter 3 of Part 2 of the Act.

(3) For the purposes of this regulation, a member is entitled to—

- (a) a pension or other benefit where he has reached normal pension age; and
- (b) a refund of contributions when he has—
 - (i) requested and received a quotation from the trustees or managers of the scheme showing the amount of the contributions which may be refunded in respect of his accrued rights to benefits under the scheme, and
 - (ii) notified the trustees or managers of the scheme in writing of his agreement to accept a refund of contributions on the basis of the quotation.

(4) In this regulation—

“the guarantee date” has the meaning given in section 93A(2) of the 1993 Act; and

“the applicable rules” has the meaning given in section 94(2) of the 1993 Act.

(a) Section 93A was inserted by section 153 of the Pensions Act 1995.

Payment of scheme benefits

17.—(1) The commencement of a member’s pension or payment of a member’s lump sum or other benefits under an eligible scheme may be postponed for the whole or any part of an assessment period in relation to the scheme for which he continues in employment after attaining normal pension age in circumstances where—

- (a) the trustees or managers of the scheme have not received a notice from the Board to the effect that a notice issued by an insolvency practitioner or former insolvency practitioner in relation to the employer in relation to the scheme which confirms that a scheme rescue is not possible has become binding; or
- (b) the trustees or managers of the scheme have not received a binding scheme failure notice issued by the Board in respect of the scheme under section 130(2) of the Act.

(2) Where—

- (a) an active member of an eligible scheme has died before the commencement of an assessment period in relation to the scheme; and
- (b) during the assessment period, a person becomes entitled under the scheme rules to a death in service benefit payable in respect of that member,

that benefit is, for the purposes of section 138(2) of the Act (payment of scheme benefits), to be treated as having become payable before the commencement of the assessment period.

Loans to pay scheme benefits

18.—(1) The prescribed rate of interest referred to in section 139(6) of the Act (loans to pay scheme benefits) shall be the base rate.

(2) The rate of interest referred to in paragraph (1) above shall be calculated on a day to day basis from the date on which a loan is made by the Board to the trustees or managers of an eligible scheme to the date of payment and compounded with three-monthly rests.

(3) In this regulation—

“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 at each bank is ranked in a descending sequence of four, is the first in the sequence;

“date of payment” means the date on which the full amount of the loan, together with interest, is repaid to the Board by the trustees or managers of the scheme to which the loan has been made;

“reference banks” means the four largest persons for the time being who—

- (a) have permission under Part 4 of the FSMA (permission to carry on regulated activities) to accept deposits,
- (b) are incorporated in the United Kingdom and carrying on there a regulated activity of accepting deposits, and quote a base rate applicable to sterling deposits.

(4) Paragraph (3)(b) above must be read with—

- (a) section 22 of the FSMA (the classes of activity and categories of investment),
- (b) any relevant order under that section, and
- (c) Schedule 2 to that Act (regulated activities).

Withdrawal following issue of section 122(4) notice

19.—(1) A notice issued by the Board under section 148(3) or (4) of the Act (withdrawal following issue of section 122(4) notice) shall be in writing and shall contain the following information—

- (a) the name or type of notice issued;

- (b) the date on which the notice is issued;
- (c) the name, address and pension scheme registration number of the scheme in respect of which the notice is issued;
- (d) the name of the employer in relation to the scheme in respect of which the notice is issued;
- (e) if the notice is issued pursuant to a determination by the Board under section 148(3) of the Act, a statement of the Board's determination and the date on which that determination was made;
- (f) if the notice is issued by the Board under section 148(4) of the Act, a statement by the Board of the basis on which the notice is issued;
- (g) the address for communications at which the Board may be contacted in connection with the issue of the notice;
- (h) whether the issue of the notice by the Board is a reviewable matter and, if so, the time limit for applying for a review of or appeal against the issue of the notice;
- (i) the date on which the notice issued will become binding; and
- (j) whether the notice issued contains any restricted information and, if so, the nature of the restrictions.

(2) Where a notice issued by the Board under section 148(3) or (4) of the Act becomes binding, the notice which the Board must issue to this effect under section 148(7) of the Act shall be in writing and shall contain the following information—

- (a) the information described in paragraph (1)(a) to (g) of this regulation;
- (b) the date on which the withdrawal notice referred to in paragraph (1) of this regulation was issued;
- (c) a statement that the withdrawal notice referred to in paragraph (1) of this regulation has become binding; and
- (d) the date on which the Board ceases to be involved with the scheme in respect of which the binding notice is issued.

Consequences of the Board ceasing to be involved with a scheme

20.—(1) Where an assessment period in relation to an eligible scheme comes to an end by virtue of the Board ceasing to be involved with the scheme following a the issue of a withdrawal notice under section 122(2)(b) of the Act (scheme rescue has occurred) in relation to the scheme which has become binding then, subject to paragraphs (2) and (3), benefits are to accrue under the scheme rules to or in respect of any member of the scheme in respect of any period of service in employment during that assessment period which, but for section 133(5) of the Act (no benefits may accrue to or in respect of members during an assessment period), would have qualified that member for those benefits under the scheme rules.

(2) No benefits shall accrue under scheme rules to or in respect of any member of the scheme in the circumstances described in paragraph (1) unless contributions are paid to the scheme by or on behalf of that member before whichever is the earlier of—

- (a) the end of the period of one year beginning with the date on which the assessment period in relation to the scheme came to an end, or
- (b) the end of the period beginning with the date on which the assessment period in relation to the scheme came to an end and ending at least 28 days before the date on which the member requests the trustees or managers of the scheme to put his entitlement to a pension or other benefits under the scheme into payment.

(3) Where, during the period prescribed in paragraph (2)(a) or (b), contributions are paid to a scheme by or on behalf of a member in respect of any period of that member's employment during an assessment period, contributions shall also become payable to the scheme by the employer in relation to the scheme in respect of that period of the member's employment during that assessment period.

(4) Where, during the period prescribed in paragraph (2)(a) or (b), contributions are paid to a scheme by or on behalf of a member of the scheme or by the employer in relation to the scheme in respect of any period of that member's employment during an assessment period, those contributions must be accepted by the trustees or managers of the scheme for the assessment period or for any part of that period.

Refusal to assume responsibility – schemes which become eligible schemes

21.—(1) The prescribed period referred to in section 144(1) of the Act (schemes which become eligible schemes) throughout which the Board must be satisfied that an occupational pension scheme is not an eligible scheme shall—

- (a) in the case of a scheme which was established at least three years before the date on which an assessment period began in relation to the scheme, be the period of three years preceding the date on which that assessment period began; and
- (b) in the case of a scheme which was established less than three years before the date on which an assessment period began in relation to a scheme, be the period beginning with the date on which the scheme was established and ending on the date on which that assessment period began.

(2) Paragraph (1) shall have effect in relation to—

- (a) a section of a segregated scheme;
- (b) a multi-employer section of a segregated scheme; or
- (c) a segregated part of—
 - (i) a multi-employer section of a segregated scheme; or
 - (ii) a non-segregated scheme,

as if that section, or segregated part, were a separate occupational pension scheme(a).

Refusal to assume responsibility – new schemes created to replace existing schemes

22.—(1) The prescribed period referred to in section 147(1)(a) of the Act (new schemes created to replace existing schemes) during which the Board must be satisfied that a new occupational pension scheme was established shall be the period of three years preceding the date on which an assessment period began in relation to the scheme.

(2) Paragraph (1) above shall have effect in relation to—

- (a) a section of a segregated scheme,
- (b) a multi-employer section of a segregated scheme, or
- (c) a segregated part of—
 - (i) a multi-employer section of a segregated scheme, or
 - (ii) a non-segregated scheme,

as if that section, or segregated part, were a separate occupational pension scheme(b).

Form and content of withdrawal notices issued under sections 146 and 147 of the Act

23.—(1) A notice issued under section 146(2) or 147(2) of the Act (“a withdrawal notice”) shall be in writing and shall contain the following information—

- (a) the name or type of the notice issued;

(a) Section 146(1) of the Pensions Act 2004 is modified by the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations 2005 (S.I.2005/441) in its application to sections and multi-employer sections of segregated schemes and segregated parts of multi-employer sections of segregated schemes and non-segregated schemes.

(b) Section 147(1) of the Pensions Act 2004 is modified by the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations 2005 (S.I. 2005/441) in its application to sections and multi-employer sections of segregated schemes and segregated parts of multi-employer sections of segregated schemes and non-segregated schemes.

- (b) the date on which the notice is issued;
- (c) the name, address and pension scheme registration number of the scheme in respect of which the notice is issued,
- (d) the name of the employer in relation to the scheme in respect of which the notice is issued;
- (e) a statement that the Board has refused to assume responsibility for the scheme in respect of which the notice is issued;
- (f) the period in relation to which the Board is satisfied that the scheme in respect of which the notice is issued is not an eligible scheme;
- (g) a statement of reasons for the Board's decision to refuse to assume responsibility for the scheme in respect of which the notice is issued;
- (h) whether the issue of the notice by the Board is a reviewable matter and, if so, the time limits for applying for a review of or appeal against the issue of that notice;
- (i) the date on which the notice issued will become binding;
- (j) the address for communications at which the Board may be contacted in respect of the issue of the notice; and
- (k) whether the notice issued contains restricted information and, if so, the nature of any restrictions.

(2) Where a notice to which this regulation applies becomes binding, the Board shall issue a notice to that effect ("a binding notice") which shall be in writing and shall contain the following information—

- (a) the information described in paragraph (1)(a) to (f) and (j) and (k);
- (b) the date on which the withdrawal notice referred to in paragraph (1) was issued; and
- (c) a statement that the withdrawal notice referred to in paragraph (1) has become binding.

Applications for reconsideration

24.—(1) An application for reconsideration under section 151 of the Act (application for reconsideration) shall be made in writing and shall be accompanied by—

- (a) a protected benefits quotation in relation to the scheme, and
- (b) audited scheme accounts in relation to the scheme for the period which—
 - (i) begins with the date of the last audited scheme accounts in relation to the scheme, and
 - (ii) ends on any day within the period of six months preceding the date on which the application is made.

(2) An application for reconsideration shall contain the following information—

- (a) a description of the type or purpose of the application;
- (b) the name, address and pension scheme registration number of the scheme in respect of which the application is made;
- (c) the name and address of the employer in relation to the scheme;
- (d) the name and address of the trustees or managers of the scheme in respect of which the application is made;
- (e) the date on which the trustees or managers of the scheme received a binding scheme failure notice issued by the Board in respect of the scheme;
- (f) the date on which the trustees or managers of the scheme received a binding valuation notice issued by the Board in respect of the scheme;
- (g) the date on which the application was sent to the Board by the trustees or managers of the scheme;
- (h) the cost quoted in the protected benefits quotation which accompanies the application;

- (i) the value of the assets of the scheme adjusted to take into account any outstanding liabilities of the scheme which are not covered by the protected benefits quotation which accompanies the application; and
- (j) the estimated cost of winding the scheme up.

(3) The prescribed period referred to in section 151(6) of the Act as “the authorised period” for making an application for reconsideration is the period of six months.

Form and content of audited scheme accounts

25. The prescribed requirements referred to in section 151(9)(b) (application for reconsideration) which are to apply in respect of the preparation of audited scheme accounts are that those accounts shall—

- (a) contain the information specified in the Schedule;
- (b) show a true and fair value of—
 - (i) the financial transactions of the scheme during the period to which the accounts relate (“the accounting period”);
 - (ii) the amount and disposition of the assets at the end of the accounting period; and
 - (iii) the liabilities of the scheme, other than the liabilities to pay pensions and benefits, after the end of the accounting period; and
- (c) include a report by the auditor in writing as to whether or not in his opinion the requirements of paragraphs (a) and (b) above are satisfied.

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

10th March 2005

Malcolm Wicks
Minister of State,
Department for Work and Pensions

SCHEDULE

Regulation 25

**CONTENTS OF ACCOUNTS AUDITED BY THE AUDITOR OF THE
SCHEME**

1. An account of the financial additions to, withdrawals from and changes to the value of the fund during the accounting period.

2.—(1) A statement, as at the end of the accounting period, of the assets at market value, or trustees’ or managers’ estimate thereof where the market value is not readily ascertainable, and liabilities of the scheme, other than liabilities to pay pensions and benefits after the end of the accounting period—

- (a) giving, in the case of any assets which are stated at an estimate of their market value, the reason why the valuation is an estimate;
- (b) showing the distribution of the investment and other assets of the scheme between each of the following categories (where none of the investments falls within a particular category, that fact is not required to be stated), namely—
 - (i) insurance policies;

- (ii) public sector fixed interest investments and separately quoted securities and unquoted securities;
 - (iii) other fixed interest investments and separately showing quoted securities and unquoted securities;
 - (iv) index-linked securities and separately showing quoted securities and unquoted securities;
 - (v) equities (including convertible shares) and separately showing quoted equities and unquoted equities;
 - (vi) property (which in this paragraph means any right or interest in freehold or leasehold land or buildings);
 - (vii) unit trusts invested in property;
 - (viii) other unit trusts;
 - (ix) managed funds (other than unit trusts) invested in property;
 - (x) other managed funds (not being unit trusts);
 - (xi) loans (whether or not secured by mortgages);
 - (xii) cash deposits and cash in hand;
 - (xiii) investments and other assets not included in heads (i) to (xii) above; and
- (c) showing separately, in the case of investments in each category, investments in the United Kingdom and investments outside the United Kingdom, and in the case of cash investments mentioned in heads (vii) to (x) of sub-paragraph (b) investments where the company operating the unit trust or managed fund is, and where it is not, a company registered in the United Kingdom.

(2) Where the assets include insurance policies which are specifically allocated to the provision of benefits for, and which provide all the benefits payable under the scheme to, particular members or other persons in respect of particular members or both, those policies must be included in the statement and there must be a note of the existence of such policies but that entry need not include their market value or an estimate.

(3) Where the assets—

- (a) are invested only for the purposes of securing additional money purchase benefits derived from additional voluntary contributions to which section 111 of the 1993 Act (voluntary contributions) applies; and
- (b) are specifically allocated to the provision of additional benefits for particular members or other persons in respect of particular members (or both),

a note that paragraph (a) and (b) apply must be included in the statement, but that entry need not include the market value or an estimate of value of those assets.

3. Where any assets or liabilities are denominated in currencies other than sterling, a translation of those assets into sterling and an explanation of the basis on which they have been translated.

4. Particulars of any investment (other than in UK Government securities) in which more than 5 per cent. of the total value of the net assets of the scheme is invested, and if any such investment is an insurance policy, a statement of its main characteristics.

5. Where the scheme has employer-related investments, within the meaning of section 40(2) of the 1995 Act (restriction on employer related investments), a statement—

- (a) as to the percentage of the scheme's resources invested in such investments at the end of the accounting period; and
- (b) if that percentage exceeds 5 per cent., as the percentage of the scheme's resources which are investments to which regulation 6 of the Occupational Pension Schemes (Investment)

Regulations 1996(a) (investments to which restrictions on employer related investments do not apply) applies.

6. In respect of every other amount shown in the accounts other than the amounts referred to in paragraph 7, a statement of the corresponding amount for the scheme year previous to the accounting period, except in a case where regulation 2 of the Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) Regulations 1996(b) (requirement for trustees or managers to obtain documents) is complied with by the trustees or managers of a scheme for the first time.

7. The total amount of the purchases and the total amount of the sales of investments during the accounting period.

8. A statement whether the accounts have been prepared in accordance with the Statement of Recommended Practice, the guidelines (“Financial Reports of Pension Scheme”) published by the Pensions Research Accountants Group(c) or another organisation approved for this purpose by the Accounting Standards Board, current at the end of the accounting period and, if not, an indication of where there are any material departures from those guidelines.

(a) S.I.1996/3127. Regulation 6 was amended by S.I. 1997/819 and S.I. 1999/1849.

(b) S.I.1996/1975. Regulation 2 was amended by S.I. 200/398 and S.I. 200/3198.

(c) Copies of this guidance can be obtained from Croner CCH Group Limited, 145 London Road, Kingston-upon-Thames, Surrey, KT2 6SR.

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.

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.