STATUTORY INSTRUMENTS

2015 No. 547

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Banking Reform) (Pensions) Regulations 2015

Made - - - - 4th March 2015

Coming into force in accordance with regulation 1(2)

The Treasury, in exercise of the powers conferred by sections 142W and 428(3) of the Financial Services and Markets Act 2000(**1**), make the following Regulations.

In accordance with section 429(2) of the Financial Services and Markets Act 2000(**2**), a draft of these Regulations has been laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Financial Services and Markets Act 2000 (Banking Reform) (Pensions) Regulations 2015.

(2) These Regulations come into force on the day after the day on which they are made.

(3) In these Regulations—

"existing pension scheme" means a multi-employer scheme in respect of which a ring-fenced body is an employer;

"FSMA" means the Financial Services and Markets Act 2000;

"multi-employer scheme" means a relevant pension scheme in respect of which there is more than one employer;

"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 of the scheme are allocated to that employer's or to 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;

(**1**) 2000 c.8. Section 142W and all other provisions of Part 9B (sections 142A to 142Z1) was inserted in the Financial Services and Markets Act 2000 (c.8) by the Financial Services (Banking Reform) Act 2013 (c.33), section 4.

(**2**) Section 429(2) was amended by the Financial Services (Banking Reform) Act 2013, section 136(3). There are other amendments but none is relevant.

"shared liability arrangement" means an arrangement under which a ring-fenced body—

(a) provides a guarantee, indemnity or bond in respect of the pension liabilities of any company which, by virtue of regulation 2(2), is not permitted to be an employer with that body in respect of a multi-employer scheme or a section of a segregated scheme; or

(b) is otherwise, or may otherwise become, liable for the whole or part of the pension liabilities of such a company.

Arrangements relating to multi-employer schemes and shared liability arrangements

2.—(1) A ring-fenced body must make arrangements to ensure that on or after the specified date it meets the requirements in paragraphs (2), (5) and (6).

(2) A ring-fenced body must not be an employer in respect of a multi-employer scheme unless either of the conditions in paragraphs (3) or (4) is satisfied.

(3) Condition A is that the only other employers in respect of that scheme are—

(a) wholly-owned subsidiaries of the ring-fenced body;

(b) other ring-fenced bodies in the same group as the ring-fenced body; or

(c) wholly-owned subsidiaries of another ring-fenced body which is in the same group as the ring-fenced body and is an employer in respect of that scheme.

(4) Condition B is that the scheme is a segregated scheme, and—

(a) the ring-fenced body is the only employer in respect of its section of the scheme; or

(b) the only other employers in respect of that section are—

(i) wholly-owned subsidiaries of the ring-fenced body;

(ii) other ring-fenced bodies in the same group as the ring-fenced body; or

(iii) wholly-owned subsidiaries of another ring-fenced body which is in the same group as the ring-fenced body and is an employer in respect of that section.

(5) A ring-fenced body must not continue to be, or become, a party to an arrangement under which it is liable for the whole or any part of the pension liabilities of a wholly-owned subsidiary of another ring-fenced body in the same group, unless the liabilities in question relate to a multi-employer scheme in respect of which—

(a) both ring-fenced bodies are employers; and

(b) Condition A or Condition B is satisfied.

(6) A ring-fenced body must not continue to be, or become, a party to a shared liability arrangement.

(7) Where—

(a) a ring-fenced body, at the date section 142G of FSMA first applies to it, is party to a shared liability arrangement; and

(b) one or more of the other parties to that arrangement refuses to release the ring-fenced body from it, or will only grant release on terms which the ring-fenced body cannot reasonably be expected to meet,

the ring-fenced body may apply to the court for an order under regulation 5(1).

(8) A ring-fenced body which continues to be a party to a shared liability arrangement after the specified date is not to be taken to have contravened the requirement in paragraph (6) if—

(a) the ring-fenced body has made an application to the court under paragraph (7), and either—

(i) that application is still pending before the court; or

(ii) an order made under regulation 5(1) has not come into force; or

(b) the other party to the shared liability arrangement is a company incorporated outside the United Kingdom, and—

(i) the arrangement was entered into before the day on which these Regulations come into force; and

(ii) the ring-fenced body has used its best endeavours to obtain its release from the arrangement.

(9) Paragraph (6) does not apply in relation to any liability or obligation imposed by the Pensions Regulator in the exercise of its powers under section 38, 43 or 47 of the Pensions Act 2004(**3**) or Article 34, 39 or 43 of the Pensions (Northern Ireland) Order 2005(**4**).

(10) In this regulation "specified date", in relation to a ring-fenced body, means—

(a) 1st January 2026; or

(b) if later, the day immediately after the last day of the period of five years beginning with the day on which the body becomes a ring-fenced body.

Trustee and manager powers

3.—(1) For the purpose of enabling a ring-fenced body to meet the requirement in regulation 2(2) the trustees or managers of an existing pension scheme may, at the request of the ring-fenced body—

(a) make any modifications to that scheme permitted under the scheme rules; or

(b) to the extent that scheme rules do not permit such modifications, by resolution make any of the modifications set out in paragraph (2).

(2) The modifications which may be made under the power given to the trustees or managers mentioned in paragraph (1)(b) are—

(a) the restructuring of the existing pension scheme into a segregated scheme;

(b) the allocation of assets and liabilities of the scheme to separate sections of the scheme;

(c) provision for the transfer of assets and liabilities to a new pension scheme; or

(d) in relation to such a modification, a modification required for consequential or incidental purposes.

(3) A modification using the power mentioned in paragraph (1)(b) may not be made under this regulation without the consent of the employers in relation to the existing pension scheme.

(4) Nothing in this regulation gives the trustees or managers of an existing pension scheme power to make a regulated modification.

(5) Where following a request made under paragraph (1) one or more of the trustees or managers of an existing pension scheme unreasonably refuse to take the steps required to modify the scheme, or one or more of the employers in respect of that scheme unreasonably refuse to consent to the modification of the scheme, the ring-fenced body may apply to the court for an order under regulation 5(4).

(6) In this regulation "regulated modification" and "scheme rules" have the same meaning as in section 67A of the Pensions Act 1995(**5**) or Article 67A of the Pensions (Northern Ireland) Order 1995(**6**).

(**3**) 2004 c.35. Section 38 was amended by the Pensions Act 2008 (c.30), paragraphs 2(1), 7 and 8(2) of Schedule 9 and Part 6 of Schedule 11 and the Pensions Act 2011 (c.19), section 26(1) to (3). Section 43 was amended by the Pensions Act 2011, section 26(4) to (6).

(**4**) S.I. 2005/255 (N.I. 1). Article 34 was amended by the Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13 (N.I.)), paragraphs 2(1), 7 and 8(1) of Schedule 8 and Part 5 of Schedule 10 and the Pensions Act (Northern Ireland) 2012 (c. 3 (N.I.)), section 24(1) to (3). Article 39 was amended by the Pensions Act (Northern Ireland) 2012, section 24(4) to (6).

(**5**) 1995 c.26. Section 67A was substituted by the Pensions Act 2004 (c.35), section 262.