STATUTORY RULES OF NORTHERN IRELAND

2016 No. 165

PENSIONS

The Pension Protection Fund and Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations (Northern Ireland) 2016

Made - - - -	*15th March 2016*
Coming into operation	*6th April 2016*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 109(1) and (3) and 177(2) and (4) of the Pension Schemes (Northern Ireland) Act 1993(**1**), Articles 74(2) and (3)(e), 89(5)(c)(iii) and 166(3) of the Pensions (Northern Ireland) Order 1995(**2**), and now vested in it(**3**), Articles 106(5), 113(1)(b), (1A)(b) and (3), 114(5)(b), 119(4), 122(9B), 154(2) and 287(2) and (3) of, and paragraphs 24(1) and (2), 25(1) and 33 of Schedule 6 to, the Pensions (Northern Ireland) Order 2005(**4**) and section 83 of the Pension Schemes Act 2015(**5**).

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Pension Protection Fund and Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations (Northern Ireland) 2016 and shall come into operation on 6th April 2016.

(**1**) 1993 c. 49; section 109(1) was amended by section 48(1) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.))

(**2**) S.I. 1995/3213 (N.I. 22); Article 74(2) was amended by Schedule 11 to the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)) and Article 74(3)(e) was added by Article 247(2)(c) of that Order; Article 89(5)(c) was amended by paragraph 46(4)(a) of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11))

(**3**) *See* Article 8(b) of S.R. 1999 No. 481

(**4**) S.I. 2005/255 (N.I. 1); Part 3 is modified in its application to multi-employer schemes by S.R. 2005 No. 91; Article 113 was modified by regulations 17(3) and 65(1) of S.R. 2005 No. 91 for certain cases to read as if paragraph (1A)(b) were inserted (regulation 17 was substituted by regulation 3 of S.R. 2005 No. 357), Article 113(1)(b) is cited in its unmodified form; Articles 119(4)(za) and 122(9B) were inserted respectively by sections 64(3) and 65(10) of the Pension Schemes Act 2015 (c. 8). Paragraphs 24(1) and 25(1) of Schedule 6 were amended respectively by paragraphs 25 and 19(3)(a) of Schedule 4 to the Pensions Act (Northern Ireland) 2012 (c. 3 (N.I.))

(**5**) 2015 c. 8

PART 2

Occupational pension schemes amendments

Amendment of the Occupational Pension Schemes (Winding Up) Regulations

2.—(1) The Occupational Pension Schemes (Winding Up) Regulations (Northern Ireland) 1996(**6**) are amended in accordance with paragraphs (2) and (3).

(2) In regulation 6(2)(b) (arrangements for discharge of liabilities under Article 74) before head (i) insert—

"(ai) in the way mentioned in regulation 8(6)(b)(i)(aa)(**7**) in a case where the proposed lump sum is an uncrystallised funds pension lump sum for the purposes of Part 1 of Schedule 29 to the Finance Act 2004(**8**);".

(3) In regulation 8(6) (requirements to be satisfied by transferee schemes, annuities, etc.)—

(a) in sub-paragraph (a) for "Chapter 5 of Part IV" substitute "Chapter 2 of Part 4ZA(**9**)";

(b) in sub-paragraph (b)(i)(aa) after "trivial commutation lump sum" insert ", an uncrystallised funds pension lump sum".

Amendment of the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations

3. In regulation 2(1B)(b) of the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations (Northern Ireland) 1997(**10**) (commutation of a pension under an occupational pension scheme) for "from the employment of the employer in relation to the scheme," substitute "for the purposes of paragraph (5)(c)(i) of that Article, and".

PART 3

Pension Protection Fund amendments

Amendment of the Pension Protection Fund (Compensation) Regulations

4.—(1) The Pension Protection Fund (Compensation) Regulations (Northern Ireland) 2005(**11**) are amended in accordance with paragraphs (2) to (6).

(2) In regulation 1(2) (interpretation) for the definition of "PPF trivial commutation lump sum"(**12**) substitute—

""PPF trivial commutation lump sum" has the meaning given in regulation 18(2)(**13**) (circumstances in which the portion of compensation to be commuted may exceed 25 per cent);".

(**6**) S.R 1996 No. 621; relevant amending Regulations are S.R. 2005 No. 171 and S.R. 2009 No. 365
(**7**) Regulation 8(6) was added by regulation 11 of S.R. 2005 No. 171 and amended by regulation 5 of S.R. 2009 No. 365
(**8**) 2004 c. 12. *See* paragraph 4A of Schedule 29 (registered pension schemes: authorised lump sums: uncrystallised funds pension lump sum), which was inserted by paragraph 57 of Schedule 1 to the Taxation of Pensions Act 2014 (c. 30)
(**9**) *See* paragraph 50 of Schedule 4 to the Pension Schemes Act 2015
(**10**) S.R. 1997 No. 153; regulation 2(1B) was inserted Article 33(3)(b) of S.I. 2006/744 and amended by regulation 4 of S.R. 2015 No. 155
(**11**) S.R. 2005 No. 149; relevant amending Regulations are S.R. 2006 No. 155, S.R. 2010 No. 80 and S.R. 2014 No. 204
(**12**) The definition of "PPF trivial commutation lump sum" was inserted by regulation 22(2) of S.R. 2006 No. 155; there are other amendments to regulation 1(2) but none is relevant
(**13**) Regulation 18 was substituted by regulation 22(4) of S.R. 2006 No. 155

(3) In regulation 2(2) (circumstances where a person shall be entitled to early payment of compensation) for sub-paragraph (b)(**14**) substitute—

"(b) that on the date on which the compensation is to become payable early the person has attained—

(i) except in a case to which head (ii) applies, normal minimum pension age as defined in section 279(1) of the 2004 Act;

(ii) in a case where the person has a protected pension age of less than 50 by virtue of paragraph 22 of Schedule 36 to the 2004 Act(**15**) (rights to take benefit before normal minimum pension age), the age of 50.".

(4) In regulation 17(**16**) (commutation of periodic compensation)—

(a) in paragraph (1) for "paragraphs (2) and (3)" substitute "paragraph (2)";

(b) omit paragraph (3).

(5) In regulation 23(3)(**17**) (cash balance schemes: modification of Schedule 6), for "In this regulation" substitute "In this Part".

(6) In Part 10 after regulation 23 insert—

"**Cash balance schemes: modification of Schedule 6**

23A.—(1) In its application to a cash balance scheme, paragraph 37 of Schedule 6 applies as if, after sub-paragraph (4) there were inserted—

"(5) In this Schedule references to a lump sum to which a person is entitled, or which a person has been paid, by reason of commuting part of a pension under the scheme include any lump sum to which the person is entitled, or which the person has been paid, by reason of opting to receive a lump sum instead of a pension, or part of a pension, in respect of cash balance benefits under the scheme.".

(2) In its application to a cash balance scheme other than a scheme to which regulation 23 applies, paragraph 37(1) of Schedule 6 applies as if, before the definition of "deferred member" there were inserted—

""cash balance benefit" has the meaning given by regulation 2 of the Pensions (2012 Act) (Transitional, Consequential and Supplementary Provisions) Regulations (Northern Ireland) 2014(**18**);".".

Amendment of the Pension Protection Fund (Entry Rules) Regulations

5.—(1) The Pension Protection Fund (Entry Rules) Regulations (Northern Ireland) 2005(**19**) are amended in accordance with paragraphs (2) to (10).

(2) In regulation 1 (interpretation)—

(a) in paragraph (2)—

(i) after the definition of "EEA state"(**20**) insert—

(**14**) Sub-paragraph (b) was substituted by regulation 4(2)(a) of S.R. 2010 No. 80

(**15**) Paragraph 22 was amended by paragraphs 54 and 55 of Schedule 10 to the Finance Act 2005 (c. 7), paragraph 43 of Schedule 23 to the Finance Act 2006 (c. 25), paragraph 432 of Schedule 1 to the Corporation Tax Act 2010 (c. 4) and paragraph 7 of Schedule 5 to the Finance Act 2014 (c. 26)

(**16**) Paragraph (1) was amended and paragraph (3) was added by regulation 22(3) of S.R. 2006 No. 155

(**17**) Paragraph (3) was inserted by regulation 59(4)(d) of S.R. 2014 No. 204

(**18**) S.R. 2014 No. 204

(**19**) S.R. 2005 No. 126; relevant amending Regulations are S.R. 2005 Nos. 194, 357, 364 and 387, S.R. 2009 No. 78 and S.R. 2014 No. 195

(**20**) The definition of "EEA state" was inserted by regulation 2(2) of S.R. 2009 No. 78

""establishment" has the meaning given in Article 2 of the Insolvency Regulation;";

(ii) after the definition of "home state regulator"(**21**) insert—

""the Insolvency Regulation" means Council Regulation (EC) No 1346/2000 of 29th May 2000 on insolvency proceedings(**22**);"; and

(b) after paragraph (4) insert—

"(4A) In these Regulations, references to the centre of a person's main interests are to be construed in accordance with Article 3 of the Insolvency Regulation.".

(3) In regulation 5A(**23**) (European insolvency event)—

(a) omit paragraph (4);

(b) for paragraph (5) substitute—

"(5) In this regulation "insolvency proceedings" and "liquidator" each has the meaning given by Article 2 of the Insolvency Regulation.".

(4) For regulation 7(**24**) (applications and notifications to the Board) substitute—

"**Applications and notifications to the Board**

7.—(1) Except in a case to which regulation 7A applies, the prescribed requirement for the purposes of Article 113(1)(b) and (4)(b) (applications and notifications for the purposes of Article 112) is that at least one of paragraphs (2), (4) and (5) applies to the employer.

(2) This paragraph applies to an employer if it is not—

(a) an individual;

(b) a company as defined in section 1(1) of the Companies Act 2006(**25**);

(c) a company which may be wound up under Part 6 of the Insolvency Order (winding up of unregistered companies)(**26**);

(d) a partnership, or

(e) a relevant body as defined in regulation 5(2).

(3) For the purposes of paragraph (2)(c), an employer which is a company incorporated outside the United Kingdom is to be regarded as a company which may be wound up under Part 6 of the Insolvency Order.

(4) This paragraph applies to an employer if it is an EEA insurer or an EEA credit institution.

(5) This paragraph applies to an employer if—

(a) the centre of the employer's main interests is situated within the territory of a member State other than the United Kingdom;

(b) insolvency proceedings have been opened against the employer in a member State in accordance with Article 3 of the Insolvency Regulation, and

(c) the employer does not have an establishment in the United Kingdom.

(6) In this regulation references to a member State do not include Denmark.".

(**21**) The definition of "home state regulator" was inserted by regulation 2(2)(a) of S.R. 2009 No. 78
(**22**) OJ L 160 30.6.2000, p. 1
(**23**) Regulation 5A was inserted by regulation 2(2) of S.R. 2014 No. 195
(**24**) Regulation 7 was amended by regulation 2(5) of S.R. 2005 No. 364 and regulation 2(3) of S.R. 2009 No. 78
(**25**) 2006 c. 46
(**26**) S.I. 1989 /2405 (N.I. 19)

(5) In regulation 7A(**27**) (applications and notifications to the Board – multi-employer schemes) for paragraph (2) substitute—

"(2) In the case of a scheme, or a section of a scheme, to which this regulation applies, the prescribed requirement for the purposes of Article 113(1A)(b) and (4)(a)(ii)(**28**) (applications and notifications for the purposes of Article 112) is that at least one of paragraphs (3), (5) and (6) applies to the employer.

(3) This paragraph applies to an employer if it is not—

(a) an individual;

(b) a company as defined in section 1(1) of the Companies Act 2006;

(c) a company which may be wound up under Part 6 of the Insolvency Order;

(d) a partnership, or

(e) a relevant body as defined in regulation 5(2).

(4) For the purposes of paragraph (3)(c), an employer which is a company incorporated outside the United Kingdom is to be regarded as a company which may be wound up under Part 6 of the Insolvency Order.

(5) This paragraph applies to an employer if it is an EEA insurer or EEA credit institution.

(6) This paragraph applies to an employer if—

(a) the centre of the employer's main interests is situated within the territory of a member State other than the United Kingdom;

(b) insolvency proceedings have been opened against the employer in a member State in accordance with Article 3 of the Insolvency Regulation, and

(c) the employer does not have an establishment in the United Kingdom.

(7) In this regulation references to a member State do not include Denmark.".

(6) In regulation 8 (applications and notifications to the Board – further provision)—

(a) for paragraph (1) substitute—

5.—"(1) Except in a case to which regulation 8A applies, the prescribed period for making an application to the Board under Article 113(1) shall be the period of—

(a) 28 days, or

(b) such longer period of not more than three months as the Board may determine is reasonable in the circumstances of a particular case,

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.", and

(b) in paragraph (2)—

(i) at the end of sub-paragraph (e) omit "and";

(ii) at the end of sub-paragraph (f) insert ", and", and

(iii) after sub-paragraph (f) insert—

"(g) if the application was not sent to the Board within the period specified in paragraph (1)(a), the reasons for this.".

(7) In regulation 9(**29**) (confirmation of scheme status by insolvency practitioner)—

(**27**) Regulation 7A was inserted by regulation 2(6) of S.R. 2005 No. 364 and amended by regulation 2(4) of S.R. 2009 No. 78

(**28**) Paragraph (4) was substituted by the modifications in Parts 3 and 6 of S.R. 2005 No. 91 as substituted by regulation 3(3) and (4) of S.R. 2005 No. 357

(**29**) Regulation 9 was amended by regulation 3(3) of S.R. 2005 No. 194