STATUTORY RULES OF NORTHERN IRELAND

2005 No. 357

PENSIONS

The Occupational Pension Schemes (Miscellaneous Amendments) Regulations (Northern Ireland) 2005

Made - - - - 29th July 2005
Coming into operation in accordance with regulation 1(1)

The Department for Social Development, in exercise of the powers conferred on it by Articles 2(5)(a), 7(5)(a) and (7)(a), 64(2), 188(4)(a), 189(2), 280(1)(b) and (2)(b) and 287(2) and (3) of, and paragraph 23 of Schedule 6 to, the Pensions (Northern Ireland) Order 2005(**1**), and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Miscellaneous Amendments) Regulations (Northern Ireland) 2005 and shall come into operation on 19th August 2005 except—

(a) this regulation and regulation 3(1), (3) and (4) which shall come into operation on 1st August 2005;

(b) regulation 8(2)(a)(iii) and (v) and (3) to (6) which shall come into operation on 5th December 2005; and

(c) regulation 8(7), in respect of—

(i) a person under the age of 25 on 5th April 2006 who is entitled to receive compensation prior to 6th April 2006, which shall come into operation on the date on which he attains the age of 25; or

(ii) any other person, which shall come into operation on 6th April 2006.

(2) In these Regulations "the Order" means the Pensions (Northern Ireland) Order 2005.

Amendment of the Order

2.—(1) The Order shall be amended in accordance with paragraphs (2) to (4).

(**1**) S.I. 2005/255 (N.I. 1); Part III is modified in its application to partially guaranteed schemes by S.R. 2005 No. 55, in its application to hybrid schemes by S.R. 2005 No. 84, and in its application to multi-employer schemes by S.R. 2005 No. 91

(2) In Article 7(6) (functions exercisable by the Determinations Panel) after sub-paragraph (h) there shall be inserted the following sub-paragraphs—

"(ha) Article 58(7) of that Order (power of the Regulator in prescribed circumstances to extend or further extend the period referred to in Article 58(6) of that Order(**2**) in relation to a schedule of contributions);

(hb) Article 60(7) of that Order (power of the Regulator in prescribed circumstances to extend or further extend the period applicable under Article 60(3) of that Order in relation to securing an increase in value);".

(3) In Schedule 2 (the reserved regulatory functions) after paragraph 15 there shall be inserted the following paragraphs—

"**15A.** The power under Article 58(7) to extend or further extend the period referred to in Article 58(6) of that Order in relation to a schedule of contributions for an occupational pension scheme.

15B. The power under Article 60(7) to extend or further extend the period applicable under Article 60(3) of that Order in relation to securing an increase in the value of the assets of an occupational pension scheme.".

(4) In Schedule 8 (reviewable matters) after paragraph 7 there shall be inserted the following paragraph—

"**7A.** Any determination by the Board under Article 125(2) (determination on a review of an ill health pension that compensation in respect of the pension is to be determined in the prescribed manner).".

(5) Article 7(6)(ha) and (hb) of, and paragraphs 15A and 15B of Schedule 2 to, the Order (as inserted by paragraphs (2) and (3)) shall only have effect in the case of applications made by virtue of Articles 58(7) and 60(7) of the Pensions (Northern Ireland) Order 1995(**3**) on or after the date on which these Regulations come into operation for the exercise of the power to extend or further extend under Article 58(7) or 60(7) of that Order.

Amendment of the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations

3.—(1) The Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations (Northern Ireland) 2005(**4**) shall be amended in accordance with paragraphs (2) to (4).

(2) In regulation 1 (citation, commencement and interpretation)—

(a) in paragraph (2) after the definition of "the Order" there shall be inserted the following definitions—

""the assessment date" means the date on which the assessment period in relation to the scheme or section, or (where there has been more than one such assessment period) the last one, began;

"employer", in relation to a single-employer section of a segregated scheme which has no active members, includes the 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;"; and

(b) for paragraph (3)(**5**) there shall be substituted the following paragraph—

(**2**) Article 58(6) was amended by paragraph 12(1) of Schedule 2 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)). *See also*S.R. 1996 No. 570

(**3**) S.I. 1995/3213 (N.I. 22); Article 60 was amended by S.R. 2002 No. 64. *See also*S.R. 1996 No. 570

(**4**) S.R. 2005 No. 91; relevant amending regulations are S.R. 2005 No. 194

(**5**) Paragraph (3) was amended by regulation 2(2) of S.R. 2005 No. 194

"(3) In the application of Part III of the Order, the definition of "multi-employer scheme" in Article 280(4) and of these Regulations "employer", in relation to a multi-employer scheme that is not a segregated scheme or a multi-employer section of a segregated scheme—

(a) in an assessment period, includes any person who before the assessment date has ceased to be the employer of persons in the description of employment to which the scheme or section relates unless condition A, B, C or D is satisfied where—

(i) condition A is that a debt under Article 75 of the 1995 Order(**6**) became due from that employer and the full amount of the debt has been paid before the assessment date;

(ii) condition B is that—

(aa) such a debt became due;

(bb) a legally enforceable agreement has been entered into the effect of which is to reduce the amount which may be recovered in respect of the debt, and

(cc) the reduced amount has been paid in full before the assessment date;

(iii) condition C is that such a debt became due but before the assessment date it is excluded from the value of the assets of the scheme or section because it is unlikely to be recovered without disproportionate costs or within a reasonable time;

(iv) condition D is that at the time at which any such person ceased to be the employer of persons in the description of employment to which the scheme or section relates the value of the assets of the scheme or section was such that no such debt was treated as becoming due;

(b) in any other case, includes any person who before the assessment date has ceased to be the employer of persons in the description of employment to which the scheme or section relates unless condition A, B, C or D is satisfied where—

(i) condition A is that a debt under Article 75 of the 1995 Order became due from that employer and the full amount of the debt has been paid before the assessment date;

(ii) condition B is that—

(aa) such a debt became due;

(bb) a legally enforceable agreement has been entered into the effect of which is to reduce the amount which may be recovered in respect of the debt, and

(cc) the reduced amount has been paid in full before the assessment date;

(iii) condition C is that such a debt became due but before the assessment date it is excluded from the value of the assets of the scheme or section because it is unlikely to be recovered without disproportionate costs or within a reasonable time;

(**6**) Article 75 was amended by Article 248 of the Pensions (Northern Ireland) Order 2005

(iv) condition D is that at the time at which any such person ceased to be the employer of persons in the description of employment to which the scheme or section relates the value of the assets of the scheme or section was such that no such debt was treated as becoming due.".

(3) For Part III (segregated schemes: multi-employer sections without requirement for partial wind up on withdrawal of participating employer) there shall be substituted the following Part—

"PART III

SEGREGATED SCHEMES: MULTI-EMPLOYER SECTIONS WITHOUT REQUIREMENT FOR PARTIAL WIND UP ON WITHDRAWAL OF A PARTICIPATING EMPLOYER

Application and effect

14.—(1) This regulation applies to a multi-employer section of a segregated scheme the rules of which do not provide for the partial winding up of the section when an employer in relation to the section ceases to participate in the scheme.

(2) Except as otherwise provided in this Part, in the case of a section of a scheme to which this regulation applies—

(a) Part III of the Order, except Chapter 4 (fraud compensation), shall be read as if it contained the modifications provided for by this Part; and

(b) references in Part III of the Order, except in Chapter 4, to—

(i) "scheme rules" shall be read as if they were references to "scheme rules relating to the section";

(ii) "the scheme" shall be read as if they were references to "the section";

(iii) "the employer" shall be read as if they were references to "an employer in relation to the section", and

(iv) "trustees or managers of the scheme" shall, in relation to a multi-employer section of a segregated scheme, be read as if they were references to "trustees or managers with ultimate responsibility for the administration of the section".

(3) Paragraph (2) shall not have effect in relation to Article 157 (initial levy).

Notification of insolvency events, confirmation of scheme status etc.

15.—(1) Article 104 (duty to notify insolvency events in respect of employers) shall be modified in its application to a section of a scheme to which regulation 14 applies so that it shall be read as if—

(a) for paragraph (1) there were substituted the following paragraph—

"(1) This Article applies where, in the case of a section of a multi-employer scheme which is divided into two or more sections ("a segregated scheme") with at least two employers in relation to that section of the scheme ("a multi-employer section"), an insolvency event occurs in relation to any employer in relation to that section."; and

(b) after paragraph (2) there were inserted the following paragraph—

"(2A) Where the trustees or managers of a multi-employer section of a segregated scheme receive a notice from an insolvency practitioner under

paragraph (2), they must send a copy of that notice as soon as practicable to all the employers in relation to that section of the scheme and to the trustees or managers of each section of the scheme (if different).".

(2) Article 106 (insolvency practitioner's duty to issue notices confirming status of scheme) shall be modified in its application to a section of a scheme to which regulation 14 applies so that it shall be read as if—

(a) for paragraph (1) there were substituted the following paragraph—

"(1) This Article applies where an insolvency event has occurred in relation to any employer in relation to a multi-employer section of a segregated scheme.";

(b) in paragraph (2)—

(i) for "the employer" there were substituted "an employer";

(ii) in sub-paragraph (a) after "a scheme rescue is not possible" there were inserted "in relation to the relevant section of the scheme", and

(iii) in sub-paragraph (b) after "a scheme rescue has occurred" there were inserted "in relation to the relevant section of the scheme";

(c) in paragraph (3)(a) for "the employer" there were substituted "an employer";

(d) in paragraph (4)—

(i) for "the employer" there were substituted "an employer", and

(ii) for "in relation to the scheme" there were substituted "in relation to the section";

(e) in paragraph (5)—

(i) in sub-paragraph (a) for "in relation to an occupational pension scheme" there were substituted "in relation to a multi-employer section of a segregated scheme", and

(ii) in sub-paragraph (b) for "in relation to such a scheme" there were substituted "in relation to such a section";

(f) in paragraph (6) for "the employer" there were substituted "an employer"; and

(g) after paragraph (6) there were inserted the following paragraph—

"(6A) Where the trustees or managers of a multi-employer section of a segregated scheme receive a notice issued by an insolvency practitioner or former insolvency practitioner under paragraph (6), they must send a copy of that notice as soon as practicable to all the employers in relation to that section of the scheme and to the trustees or managers of each section of the scheme (if different).".

(3) Article 107 (approval of notices issued under Article 106) shall be modified in its application to a section of a scheme to which regulation 14 applies so that it shall be read as if—

(a) for paragraph (1) there were substituted the following paragraph—

"(1) This Article applies where the Board receives a notice under Article 106(6) ("the Article 106 notice") in relation to any employer in relation to a multi-employer section of a segregated scheme at a time when the Board has previously received such a notice in relation to all other employers in relation to that section of the scheme.";

(b) for paragraph (2) there were substituted the following paragraph—

"(2) The Board must determine whether to approve the Article 106 notice received in relation to that employer."; and

(c) after paragraph (4) there were inserted the following paragraph—