STATUTORY RULES OF NORTHERN IRELAND

2005 No. 138

PENSIONS

The Pension Protection Fund (Review and Reconsideration of Reviewable Matters) Regulations (Northern Ireland) 2005

Made - - - -	*18th March 2005*
Coming into operation	*6th April 2005*

The Department for Social Development, in exercise of the powers conferred on it by Articles 189 and 287(1) to (3) of 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 Pension Protection Fund (Review and Reconsideration of Reviewable Matters) Regulations (Northern Ireland) 2005 and shall come into operation on 6th April 2005.

(2) In these Regulations –

"the Order" means the Pensions (Northern Ireland) Order 2005 and any reference to a numbered Article or Schedule is a reference to the Article of, or the Schedule to, the Order bearing that number;

"employer", in relation to an occupational pension scheme that 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;

"employer", in relation to a multi-employer scheme, or a section of a multi-employer scheme, includes –

(a) in the case of a scheme that 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 Article 75 of the 1995 Order(**2**) (deficiencies in the assets) becomes due from that person to the scheme, or section, and

(**1**) S.I.2005/255 (N.I. 1); Part II 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**) Article 75 is amended by Article 248 of the Pensions (Northern Ireland) Order 2005

(ii) 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; 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 Article 75 of the 1995 Order 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;

"interested person" means, in relation to a reviewable matter specified in any paragraph in column 1 of the Schedule to these Regulations, the person prescribed in relation to that matter in the corresponding paragraph in column 2 or, as the case may be, a representative of that person appointed under regulation 28.

Duty to give a review decision

2. The Board must give a review decision on any reviewable matter on the written application of an interested person.

Time for making an application for a review decision

3.—(1) Subject to paragraph (2), any application for a review decision on any reviewable matter must be made –

(a) in the case of an application concerning the approval of a valuation under Article 128(2)(a) (approval of valuation), by sending it to the Board before the end of a period of two months beginning with the date on which the trustees or managers of the scheme provide a summary of the valuation to members of the scheme in accordance with regulations made under Article 185(1)(b)(ii) (provision of information to members of schemes etc.);

(b) in the case of an application concerning the determination of a person's entitlement to compensation under Article 146 (the pension compensation provisions), at any time after the determination is made;

(c) in all other cases, by sending it to the Board before the end of a period of 28 days beginning with the date on which the Board issues the determination, direction or other decision in respect of the reviewable matter.

(2) Subject to paragraph (3), where the circumstances of a case are such that, in the opinion of the Board, it is reasonable for an application to be made after the end of the period specified in

paragraph (1)(a) or (c), the Board must give a review decision if the application is made within such further period as the Board considers to be reasonable.

(3) Paragraph (2) shall not apply to –

(a) the issue of a notice under Article 106 (insolvency practitioner's duty to issue notices confirming status of scheme) by virtue of Article 108 (Board's duty where there is a failure to comply with Article 106);

(b) the issue of a determination notice under Article 107(4) (approval of notices issued under Article 106);

(c) the issue of –

(i) a scheme failure notice under Article 114(2) (Board's duty where application or notification received under Article 113), or

(ii) a withdrawal notice under Article 114(3);

(d) the issue of a notice under Article 120(2) (power to validate contraventions of Article 119);

(e) the approval of the valuation under Article 128(2)(a) (approval of valuation);

(f) the issue of a withdrawal notice under Article 130(2)(a) (schemes which become eligible schemes);

(g) the issue of a withdrawal notice under Article 131(2)(a) (new schemes created to replace existing schemes);

(h) the issue of a withdrawal notice under Article 132(3) or (4) (withdrawal following issue of Article 106(4) notice);

(i) the issue of a determination notice under Article 136(3) (duty to assume responsibility following reconsideration); or

(j) the issue of a determination notice under Article 137(6) (closed schemes).

Matters to be addressed or included in an application for a review decision

4.—(1) An application for a review decision on any reviewable matter must include –

(a) the name and address of the interested person making the application;

(b) the date on which any –

(i) determination;

(ii) direction, or

(iii) other decision,

was issued by the Board;

(c) the grounds on which the application is made;

(d) in the case of a representative, the name and address of the person represented by him.

(2) An application must be signed and dated by the interested person.

Notice of an application for a review decision

5. On receipt of an application made under regulation 3 the Board must, if it is of the opinion that an interested person other than the person making the application may be materially affected by the review decision, notify that person –

(a) that an application has been received; and

(b) of the grounds on which the application has been made.

Review decisions other than on an application

6.—(1) The Board may give a review decision in respect of a reviewable matter otherwise than on an application.

(2) Paragraph (1) does not apply to any reviewable matter specified in regulation 3(3)(a) to (j) in respect of which there has been any determination, direction, or other decision which has become binding by virtue of or under the Order.

Notice of reviews other than on application

7.—(1) Where the Board decides to give a review decision in respect of a reviewable matter under regulation 6(1) it must notify any interested person.

(2) For the purposes of paragraph (1) an interested person means a person who, in the opinion of the Board, may be materially affected by the review decision or, as the case may be, the representative of that person appointed under regulation 28.

Provision of written representations to the Board

8.—(1) Subject to paragraph (2) –

(a) an interested person notified by the Board under regulation 5 of an application for a review decision on any reviewable matter; or

(b) an interested person notified under regulation 7(1),

may make written representations to the Board in respect of that matter.

(2) Any representations made under paragraph (1) must be received by the Board by such time as the Board may reasonably require.

Matters to be considered in giving a review decision

9.—(1) In giving a review decision under regulation 2 the Board must take into account –

(a) any information or documentation provided by the interested person making the application;

(b) any representations made by an interested person in accordance with regulation 8(1)(a);

(c) any other matters that appear to it to be relevant, including any relevant change of circumstances since the determination, direction or other decision was made or the failure occurred.

(2) In giving a review decision under regulation 6(1) the Board must take into account –

(a) any representations made by an interested person or, as the case may be, a representative of that person in accordance with regulation 8(1)(b);

(b) any other matters that appear to it to be relevant, including any relevant change of circumstances since the determination, direction or other decision was made or the failure occurred.

Time for giving review decision

10.—(1) Subject to paragraph (2), the Board must give a review decision under regulation 2 before the end of a period of 28 days beginning with –

(a) the date on which it receives the application for a review decision; or

(b) the last date by which any documents or information that the Board has required a person to provide in accordance with a notice given under Article 173 (notices requiring provision of information) are to have been provided,

whichever is the later.

(2) If the Board is not able to give a review decision before the end of the period specified in paragraph (1) it must send an interim reply to –

(a) the interested person making the application; and

(b) any interested person notified of the application under regulation 5,

setting out the reasons for the delay and the expected date for issuing the review decision.

(3) Subject to paragraph (4), the Board must give a review decision under regulation 6(1) before the end of a period of 28 days beginning with –

(a) the date on which the Board notified any interested person that it had decided to give a review decision in respect of a reviewable matter otherwise than on an application; or

(b) the last date by which any documents or information that the Board has required a person to provide in accordance with a notice given under Article 173 (notices requiring provision of information) are to have been provided,

whichever is the later.

(4) If the Board is not able to give a review decision before the end of the period specified in paragraph (3) it must send an interim reply to any person notified of the decision under regulation 7(1) setting out the reasons for the delay and the expected date for issuing the review decision.

Powers on giving a review decision

11. In giving a review decision under regulation 2 or 6(1) the Board may –

(a) vary or revoke the determination, direction or other decision already made by the Board in respect of the reviewable matter;

(b) substitute a different determination, direction or decision;

(c) provide for such variations, revocations or substitutions, or any determinations, directions or other decisions made as a result of the review decision, to be treated as if they were made at such time (which may be a time prior to the making of the review decision) as the Board considers appropriate;

(d) provide for any notice varied, substituted, issued or given by the Board as a result of the review decision to be treated as if it were issued or given at such time (which may be a time prior to the making of the review decision) as the Board considers appropriate;

(e) deal with the matters arising on the review decision as if they had arisen on the original determination, direction or decision;

(f) pay such compensation as the Board considers appropriate to such persons as it may determine;

(g) make savings and transitional provision.

Matters to be included in a review decision

12. A review decision given under regulation 2 or 6(1) must be given in writing and must include –

(a) reasons for the decision;

(b) an explanation as to whether and, if so, to what extent that decision –