STATUTORY RULES OF NORTHERN IRELAND

2005 No. 126

PENSIONS

The Pension Protection Fund (Entry Rules) Regulations (Northern Ireland) 2005

Made - - - - 16th March 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), 104(3) and (4), 105(5), 106(3), (5) and (8), 107(5), 110(1)(b), (3) and (5), 113(1)(b), (3) and (8), 114(5) and (8), 117(3), 118(3)(a), 119(4), 122(10)(b) and (12), 123(6), 130(1) and (5), 131(1)(a) and (5), 132(8), 134(5) and (6)(a) to (c), 135(4), (6), (8) and (9)(b) and 287(2) and (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 (Entry Rules) Regulations (Northern Ireland) 2005 and shall come into operation –

(a) for the purposes of this regulation (other than paragraphs (3) and (4)) and regulation 2, on 1st April 2005;

(b) for all other purposes, on 6th April 2005.

(2) In these Regulations –

"the Order" means the Pensions (Northern Ireland) Order 2005;

"the 1988 Act" means the Income and Corporation Taxes Act 1988(**2**);

"the FSMA 2000" means the Financial Services and Markets Act 2000(**3**);

"the Insolvency Rules" means the Insolvency Rules (Northern Ireland) 1991(**4**);

(**1**) S.I.2005/255 (N.I. 1); Articles 106(3) and (5), 110(1), 113(1), 114(5), 118(3), 130(1) and 131(1) are modified in their application to multi-employer schemes by S.R. 2005 No. 91 which also modifies other provisions of Part III; Articles 113(1), 122(12), 130(1), 131(1) and 135(8) are modified in their application to partially guaranteed schemes by S.R. 2005 No. 55 which also modifies other provisions of Part III; *see also* paragraph (iii) of the definition of "relevant person" in Article 118(3)(a) and paragraph (b) of the definition of "audited scheme accounts" in Article 135(8)

(**2**) 1988 c. 1

(**3**) 2000 c. 8

(**4**) S.R. 1991 No. 364; relevant amending rules are S.R. 2002 No. 261

"multi-employer scheme" has the meaning given by Article 280(4) (modification of the Order in relation to certain categories of schemes);

"multi-employer section" means a section of a segregated scheme which has at least 2 employers in relation to that section;

"non-segregated scheme" means a multi-employer scheme which is not a segregated scheme;

"normal pension age" has the meaning given by Article 122(11) (payment of scheme benefits);

"pensionable service" has the meaning given by section 66(2) of the Pension Schemes Act;

"public body" means a government department or any non-departmental public body established by a statutory provision to perform functions conferred on it under that statutory provision or any other statutory provision;

"relevant public authority" has the meaning given by Article 280(4);

"restricted information" has the meaning given by Article 179(4);

"segregated scheme" means a multi-employer scheme which is divided into 2 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 scheme rules 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;

"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.

(3) Subject to paragraph (4), 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.

(4) 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 Article 75(**5**) of the 1995 Order (deficiencies in the assets) becomes due from that person to the scheme, or section, and

(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.

(5) In these Regulations, any reference to a numbered Article is a reference to the Article of the Order bearing that number.

Schemes which are not eligible schemes

2.—(1) For the purposes of Article 110(1)(b) (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 voluntary contributions);

(b) a scheme which is made under Article 9 of the Superannuation (Northern Ireland) Order 1972(**6**) (superannuation of persons employed in local government service, etc.) which provides pensions to persons mentioned in paragraph (1)(a) of that Article;

(c) a scheme which is established under section 48 of the Northern Ireland Act 1998(**7**) (pensions of members), or which was established under Part II of the Ministerial Salaries and Members' Pensions Act (Northern Ireland) 1965(**8**) or Article 3 of the Assembly Pensions (Northern Ireland) Order 1976(**9**);

(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;

(**5**) Article 75 is amended by Article 248 of the Pensions (Northern Ireland) Order 2005
(**6**) S.I. 1972/1073 (N.I. 10)
(**7**) 1998 c. 47
(**8**) 1965 c. 18 (N.I.)
(**9**) S.I. 1976/1779

(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 but which is not a relevant statutory scheme within the meaning of section 611A(**10**) of that Act;

(g) a scheme –

(i) which has been categorised by the Commissioners 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 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)(**11**) of the 1988 Act (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 2 members;

(l) a scheme with fewer than 12 members where all the members are trustees of the scheme and either –

(i) the scheme rules 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 Article 23(**12**) of the 1995 Order (power to appoint independent trustees) and is registered in the register maintained by the Regulator in accordance with regulations made under paragraph (4) of that Article;

(m) a scheme with fewer than 12 members where all the members are directors of a company which is the sole trustee of the scheme and either –

(i) the scheme rules provide that all decisions are made only by the 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 Article 23 of the 1995 Order and is registered in the register maintained by the Regulator in accordance with regulations made under paragraph (4) of that Article;

(n) the scheme established by the Salvation Army Act 1963(**13**), or

(**10**) Section 611A was inserted by paragraph 15 of Schedule 6 to the Finance Act 1989 (c. 26)
(**11**) Section 615(6) 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
(**12**) Article 23 is substituted by Article 32(3) of the Pensions (Northern Ireland) Order 2005
(**13**) 1963 c.xxxii

(o) a scheme which, on or after the day appointed(**14**) by the Department for the purposes of Article 110(2), does not have an employer in relation to the scheme and which has not been authorised under Article 137 (closed schemes) to continue as a closed scheme.

(2) Except as otherwise provided by paragraphs (3) and (4), 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 Article 75 of the 1995 Order (deficiencies in the assets) 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 Article 75(2) of the 1995 Order which may be recovered by, or on behalf of, those trustees or managers;

(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 (pension protection) of Part III of the Order;

(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 Article 418 of the Companies Order (power of company to compromise with creditors and members), the effect of which is to reduce the amount of the debt due to the scheme from that employer under Article 75(2) of the 1995 Order 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(**15**), the Board is acting as creditor of an employer in relation to the scheme under Article 121 (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 Article 75(4) of the 1995 Order which may be recovered by, or on behalf of, those trustees or managers.

(4) Paragraph (2) shall 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 Article 75A(**16**) of the 1995 Order (deficiencies in the assets: 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 and must give a copy of that notice to –

(**14**) *See* Article 2 of S.R. 2005 No. 83 which provides that the day appointed is 6th April 2005

(**15**) *See* Article 143 of the Pensions (Northern Ireland) Order 2005 which makes provision in respect of further assessment periods in respect of schemes which are authorised under Article 137 of that Order to continue as closed schemes

(**16**) Article 75A is inserted by Article 249 of the Pensions (Northern Ireland) Order 2005