
STATUTORY INSTRUMENTS

1991 No. 1614

The Retirement Benefits Schemes (Restriction on Discretion to Approve) (Small Self-administered Schemes) Regulations 1991

Provisions as to lending and the acquisition of shares

6.—(1) The description of provision specified in this regulation is a provision to the effect that the trustees of the scheme in their capacity as such shall not directly or indirectly lend money—

- (a) to a member of the scheme or a person connected with him, other than an employer in relation to the scheme or any company associated with that employer, or
- (b) to an employer in relation to the scheme, or any company associated with that employer, unless the lending is within the exception contained in paragraph (2).

(2) Lending is within the exception contained in this paragraph—

- (a) only if the amount lent is utilised for the purposes of the borrower's business, and
- (b) if it is—
 - (i) for a fixed term,
 - (ii) at a commercial rate of interest, and
 - (iii) evidenced by an agreement in writing which contains the provisions specified in paragraph (3) and all the conditions on which it is made.

(3) The provisions specified in this paragraph are provisions to the effect that the amount lent shall be immediately repayable—

- (a) if the borrower—
 - (i) is in breach of the conditions of the agreement,
 - (ii) ceases to carry on business, or
 - (iii) becomes insolvent; or
- (b) if it is required to enable the trustees to pay benefits which have already become due under the scheme.

(4) Subject to paragraphs (5) and (6), for the purposes of this regulation a borrower shall be taken to have become insolvent if—

- (a) he has been adjudged bankrupt or has made a composition or arrangement with his creditors;
- (b) he has died and his estate falls to be administered in accordance with an order under section 421 of the Insolvency Act 1986⁽¹⁾ or Article 365 of the Insolvency (Northern Ireland) Order 1989⁽²⁾;
- (c) where the borrower is a company, a winding-up order or an administration order has been made with respect to it, or a resolution for voluntary winding-up has been passed with respect to it, or a receiver or manager of its undertaking has been duly appointed, or

(1) 1986 c. 45.

(2) S.I.1989/2405 (N.I. 19).

possession has been taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge, or a voluntary arrangement is approved under Part I of the Insolvency Act 1986 or Part II of the Insolvency (Northern Ireland) Order 1989.

(5) Until the coming into operation of Article 365 of the Insolvency (Northern Ireland) Order 1989, paragraph (4) above shall have effect in its application to Northern Ireland subject to the following modifications—

- (a) in sub-paragraph (b) of that paragraph for the reference to that Article there shall be substituted a reference to section 30(1) of, and Part I of Schedule 1 to, the Administration of Estates Act (Northern Ireland) 1955⁽³⁾; and
- (b) in sub-paragraph (c) of that paragraph the words from “or an administration order” to “to it” (where those words first occur) and the words from “or a voluntary arrangement” onwards shall be omitted.

(6) In the application of this regulation to Scotland, for sub-paragraphs (a), (b) and (c) of paragraph (4) above there shall be substituted the following sub-paragraphs—

- (a) an award of sequestration has been made on his estate, or he has executed a trust deed for his creditors or has entered into a composition contract;
- (b) he has died and a judicial factor appointed under section 11A of the Judicial Factors (Scotland) Act 1889⁽⁴⁾ is required by the provisions of that section to divide his insolvent estate among his creditors; or
- (c) where the borrower is a company, a winding up order or an administration order has been made, or a resolution for voluntary winding-up is passed with respect to it, or a receiver of its undertaking is duly appointed, or a voluntary arrangement for the purposes of Part I of the Insolvency Act 1986 is approved under that part.

(7) For the purposes of this regulation and of regulation 8 a member of a scheme includes—

- (a) a scheme member;
- (b) a person who is in receipt of a pension from the scheme;
- (c) a person who has left the service of the employer but was a scheme member during that service;
- (d) a person who is in the service of the employer but is no longer a scheme member.

⁽³⁾ 1955 c. 24 (N.I.).

⁽⁴⁾ 1889 c. 39; section 11A was inserted by the Bankruptcy (Scotland) Act 1985 (c. 66), section 75(1) and Schedule 7, paragraph 4.