

2006 No. 85

PENSIONS

**The Occupational Pension Schemes (Fraud Compensation Levy)
Regulations (Northern Ireland) 2006**

Made - - - - *6th March 2006*

Coming into operation - *1st April 2006*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by Articles 10(3), 75(10) and 87(2) of the Pensions (Northern Ireland) Order 1995(a), and now vested in it(b), and Articles 171(1), (4), (6) and (11) and 287(2) and (3) of the Pensions (Northern Ireland) Order 2005(c).

Citation and commencement

1. These Regulations may be cited as the Occupational Pension Schemes (Fraud Compensation Levy) Regulations (Northern Ireland) 2006 and shall come into operation on 1st April 2006.

Interpretation

2.—(1) In these Regulations—

“the Order” means the Pensions (Northern Ireland) Order 2005;

“life member”, in relation to a scheme, means a person who is an active member but whose service under the scheme is only pensionable service for the purposes of death benefits;

“member”, in relation to a scheme, means a person who is one or more of the following—

- (a) an active member (but not a life member);
- (b) a deferred member (including where a life member would be a deferred member if he were not an active member);
- (c) a pensioner member, or
- (d) a pension credit member;

“the reference day” has the meaning given in regulation 4;

“registrable scheme” means a scheme to which regulation 2 of the Register of Occupational and Personal Pension Schemes Regulations (Northern Ireland) 2005(d) applies;

“relevant public authority” has the meaning given in Article 280(4) (modification of the Order in relation to certain categories of schemes);

(a) S.I. 1995/3213 (N.I. 22); Article 10(3) applies by virtue of Article 286(a) of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)); Article 87(2) was amended by paragraph 60(b) of Schedule 10 to that Order
(b) See Article 8(b) of S.R. 1999 No. 481
(c) S.I. 2005/255 (N.I. 1)
(d) S.R. 2005 No. 93; regulation 2 was amended by regulation 5(3) of S.R. 2006 No. 65

“scheme” means an occupational pension scheme to which Chapter 4 of Part III of the Order (fraud compensation) applies;

“scheme year”, in relation to a scheme, means—

- (a) a year specified for the purposes of the scheme in any document comprising the scheme or, if none, a period of 12 months beginning on 1st April, or on such other date as the trustees or managers select, or
- (b) such other period (if any) exceeding 6 months but not exceeding 18 months as is selected by the trustees or managers in connection with—
 - (i) the commencement or termination of the scheme, or
 - (ii) a variation of the date on which the year or period referred to in paragraph (a) is to begin;

“stakeholder pension scheme” means a stakeholder pension scheme within the meaning of Article 3 of the Welfare Reform and Pensions (Northern Ireland) Order 1999(a) which is established under a trust;

“unallocated assets”, in relation to a scheme, means any assets of the scheme which have not been specifically allocated for the provision of benefits to, or in respect of, members (whether generally or individually).

(2) In these regulations any reference to a numbered Article is a reference to the Article of the Order bearing that number.

The fraud compensation levy

3.—(1) For the purposes of meeting expenditure payable out of the Fraud Compensation Fund, trustees or managers of schemes shall be liable to pay a fraud compensation levy in respect of each financial year.

(2) One fraud compensation levy only shall be payable in respect of each financial year.

(3) The fraud compensation levy payable shall—

- (a) be payable by reference to the total number of members of the scheme on the reference day, and
- (b) not exceed 23 pence per member.

(4) Where a scheme becomes a registrable scheme during a financial year, any fraud compensation levy shall be calculated to reflect the proportion of that year during which the scheme is a registrable scheme.

(5) Where a scheme ceases to be a registrable scheme during a financial year, any fraud compensation levy payable is payable in full for that year.

The reference day

4.—(1) Subject to paragraph (2), the reference day for a scheme is the last day of the scheme year which ended before the beginning of the previous financial year.

(2) If the scheme—

- (a) is established too late to have such a scheme year, or
- (b) has only one member on the day that is a reference day under paragraph (1),

the reference day is the date on which the scheme becomes a registrable scheme.

Payment of the fraud compensation levy

5.—(1) The fraud compensation levy shall be payable on the first day of a financial year (“payable date”).

(a) S.I. 1999/3147 (N.I. 11); Article 3 was amended by Article 262(2) to (4) of the Pensions (Northern Ireland) Order 2005

(2) If the amount of any fraud compensation levy payable is not notified under Article 171(7)(c) (fraud compensation levy: notice of amount of levy) to the trustees or managers of a scheme before the payable date, the levy is payable within the period of 28 days beginning with the date on which the notification is given.

Notices

6.—(1) Subject to paragraph (2), where any fraud compensation levy is payable, the notice referred to in Article 171(6) (fraud compensation levy: notice of rates) must be given—

- (a) in writing to the trustees or managers of the scheme, and
- (b) in a manner which specifies the rates by way of the amount payable per member.

(2) The Board shall take reasonable steps to ascertain the address to which the notice should be sent.

Waiver

7.—(1) Where any fraud compensation levy is payable, the Board shall waive payment of an amount payable by way of the levy if the trustees or managers of the scheme confirm in writing to the Board—

- (a) that—
 - (i) there is no employer in relation to the scheme, or
 - (ii) the employer is insolvent, and
- (b) in the case of a scheme in which all the benefits that may be provided (other than death benefits) are money purchase benefits, there are insufficient unallocated assets in the scheme to meet its liabilities in respect of the payment of the levy in full.

(2) For the purposes of paragraph (1), an employer is insolvent if an insolvency event, within the meaning of Article 105, has occurred in relation to him.

(3) Paragraph (1) shall not apply in the case of a stakeholder pension scheme.

Multi-employer schemes

8.—(1) If a scheme in relation to which there is more than one employer is divided into two or more sections and the provisions of the scheme are such that they meet conditions A and B, the provisions of these Regulations (apart from this regulation) apply as if each section of the scheme were a separate scheme.

(2) Condition A is that contributions payable to the scheme by an employer, or by a member in employment under that employer, are allocated to the section that applies to that employer or, if more than one section applies to the employer, to the section which is appropriate in respect of the employment in question.

(3) Condition B is that a specified part or proportion of the assets of the scheme is attributable to each section and cannot be used for the purposes of any other section.

(4) Subject to paragraph (5), for the purposes of paragraph (1), any provisions of the scheme by virtue of which contributions or transfers of assets may be made to make provision for death benefits are disregarded.

(5) Where paragraph (1) applies and, by virtue of any provisions of the scheme, contributions or transfers of assets to make provision for death benefits are made to a section (“the death benefits section”) the assets of which may only be applied for the provision of death benefits, the death benefits section is also to be treated as a separate scheme.

(6) For the purposes of this regulation, any provisions of the scheme by virtue of which assets attributable to one section may on the winding up of the scheme or a section be used for the purposes of another section are disregarded.

Partially guaranteed schemes

- 9.**—(1) This regulation applies if a relevant public authority has—
- (a) given a guarantee in relation to any part of a scheme, any benefits payable under the scheme, or any member of the scheme, or
 - (b) made any other arrangements for the purpose of securing that the assets of the scheme are sufficient to meet any part of its liabilities.
- (2) The provisions of these Regulations (apart from this regulation) apply as if the scheme did not include any part of the scheme—
- (a) in relation to which the guarantee has been given;
 - (b) which relates to benefits payable under the scheme in relation to which the guarantee has been given, or
 - (c) which relates to benefits payable under the scheme in relation to the liabilities for which those other arrangements have been made.

Avoidance of double liability: schemes in Great Britain

- 10.**—(1) This regulation applies if, apart from paragraph (2), the fraud compensation levy would be payable in respect of a scheme in respect of which a corresponding Great Britain levy is imposed.
- (2) The fraud compensation levy is only payable if the address of the scheme is in Northern Ireland.
- (3) For this purpose, the address of the scheme is the place in the United Kingdom at which the management of the scheme is conducted or, if there is more than one such place, the principal such place.
- (4) For the purposes of paragraph (1), a fraud compensation levy is a corresponding Great Britain levy if it is imposed under provisions equivalent to those made under Article 171 (fraud compensation levy).

Penalties

- 11.** Where any person, without reasonable cause, fails to pay any fraud compensation levy which is payable under regulation 3(1), the Regulator may require that person to pay within 28 days, after the levy became due, a penalty which shall—
- (a) in the case of an individual, not exceed £1,000, and
 - (b) in any other case, not exceed £10,000.

Amendment of the Occupational Pension Schemes (Employer Debt) Regulations

- 12.** In regulation 10 of the Occupational Pension Schemes (Employer Debt) Regulations (Northern Ireland) 2005^(a) (money purchase schemes: fraud and levy deficiencies etc.)—
- (a) in paragraph (2) after “general levy” there shall be inserted “or fraud compensation levy”;
 - (b) in paragraph (4) after the definition of “the criminal deficit” there shall be inserted the following definition—
 - ““the fraud compensation levy” means the levy imposed in accordance with Article 171 of the 2005 Order;”.

(a) S.R. 2005 No. 168 to which there are amendments not relevant to these Regulations

Sealed with the Official Seal of the Department for Social Development on 6th March 2006.



John O'Neill

A senior officer of the Department for Social Development

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for when a fraud compensation levy (“the levy”) is imposed on occupational pension schemes under Article 171 of the Pensions (Northern Ireland) Order 2005 (“the 2005 Order”). The levy is payable in order to meet expenditure payable out of the Fraud Compensation Fund (see section 188(3) of the Pensions Act 2004 (c.35) for list of expenditure allowed). The Board of the Pension Protection Fund decides the amount of expenditure in respect of which the levy is to be imposed.

Regulation 3 provides for the imposition of the levy on the reference day and the maximum rate of the levy.

Regulation 4 defines the reference day.

Regulation 5 provides for the times when the levy is payable.

Regulation 6 makes provision relating to levy notices.

Regulation 7 makes provision relating to the circumstances in which any amount payable by way of levy may be waived.

Regulations 8 and 9 make provision in relation to any scheme which is a multi-employer scheme or has a partial guarantee from a relevant public authority.

Regulation 10 makes provision to avoid duplication of payments where the levy is payable under corresponding provisions which have effect in Great Britain.

Regulation 11 sets out the civil penalties the Pensions Regulator may impose where the levy payable has not been paid.

Regulation 12 amends the Occupational Pension Schemes (Employer Debt) Regulations (Northern Ireland) 2005 so that any unpaid levy in respect of a money purchase scheme will be treated as a debt due from the employer to the trustees or managers of the scheme.

The Pensions (2005 Order) (Commencement No. 7) Order (Northern Ireland) 2005 (S.R. 2005 No. 543 (C. 37)) provides for the coming into operation of Article 171(1), (4), (6) and (11) (remainder) of the 2005 Order, some of the enabling provisions under which these Regulations are made, for the purpose only of authorising the making of regulations, on 1st January 2006 and for all other purposes on 1st April 2006.

As these Regulations make in relation to Northern Ireland only provision corresponding to provision contained in regulations made by the Secretary of State for Work and Pensions in relation to Great Britain, the requirement to consult under Article 117(1) of the Pensions (Northern Ireland) Order 1995 and Article 289(1) of the 2005 Order does not apply by virtue of paragraph (2)(e) of each of those Articles.

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