

2005 No. 626

PENSIONS

The Occupational and Personal Pension Schemes (General Levy) Regulations 2005

<i>Made</i> - - - -	<i>9th March 2005</i>
<i>Laid before Parliament</i>	<i>11th March 2005</i>
<i>Coming into force</i> - -	<i>1st April 2005</i>

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The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 168(1) and (4), 175, 181(1) and 182(2) and (3) of the Pension Schemes Act 1993(a), and of all other powers enabling him in that behalf, by this instrument, which is consequential on sections 59 and 239(3) of and paragraph 26 of Schedule 1 and paragraph 28 of Schedule 12 to the Pensions Act 2004(b), and is made before the end of the period of six months beginning with the coming into force of that Act, hereby makes the following Regulations:

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- (a) 1993 c.48. Section 175 was substituted by section 165 of the Pensions Act 1995 (c.26) and amended by paragraph 26 of Schedule 1, paragraph 28 of Schedule 12 and Part 1 of Schedule 13 to the Pensions Act 2004 (c.35). Section 181(1) is cited for the meaning given to “prescribed” and “regulations”.
- (b) 2004 c.35. See section 185 of the Pension Schemes Act 1993 which provides that the Secretary of State must consult such persons as he may consider appropriate before making regulations for the purposes of section 175 of that Act. This duty does not apply where regulations are made before the end of six months beginning with the coming into force of any enactment upon which the regulations are consequential.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Occupational and Personal Pension Schemes (General Levy) Regulations 2005.

(2) These Regulations come into force on 1st April 2005.

(3) These Regulations extend to England and Wales and Scotland.

Interpretation

2.—(1) In these Regulations—

“the 1993 Act” means the Pension Schemes Act 1993;

“the 1995 Act” means the Pensions Act 1995;

“the 2004 Act” means the Pensions Act 2004;

“employer”, in relation to an occupational pension scheme, means the employer of persons in the description of employment to which the scheme relates;

“the general levy” means the levy imposed under section 175 of the 1993 Act by regulation 3(1) or (2);

“managers” has the same meaning as in the 2004 Act (see section 318 of that Act);

“member”—

(a) in relation to an occupational pension scheme, has the meaning given by section 124(1) of the 1995 Act; and

(b) in relation to a personal pension scheme, means a member of the scheme, including a member who has pension credit rights under the scheme,

but does not include a person the only entitlement in respect of whom is to benefits payable on his death;

“pension credit rights” has the meaning given by section 101B of the 1993 Act^(a);

“the reference day” has the meaning given in regulation 5;

“registrable scheme” has the meaning given by section 59(2) of the 2004 Act and regulations made under that section, and “registrable occupational pension scheme” and “registrable personal pension scheme” are to be read accordingly;

“financial year” means a period of 12 months beginning on 1st April;

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

(a) a year specified for the purpose of the scheme in any document comprising the scheme or, if there is none, a period of 12 months beginning on 1st April or on such other date as the trustees select; or

(b) such other period (if any) exceeding 6 months but not exceeding 18 months as is selected by the trustees—

(i) in connection with the commencement or termination of the scheme; or

(ii) in connection with a variation of the date on which the year or period referred to in paragraph (a) is to begin;

“trustees”, in the case of a scheme which is not set up under a trust, means the managers of the scheme;

“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).

(a) Section 101B was inserted by section 37 of the Welfare Reform and Pensions Act 1999 (c.30).

(2) These Regulations do not apply to any scheme which is a Republic of Ireland scheme within the meaning of the Occupational Pension Schemes (Republic of Ireland Schemes Exemption) Regulations 2000(a).

The general levy

3.—(1) The trustees of each registrable occupational pension scheme are liable to pay a levy to the Secretary of State for the purpose of meeting the expenditure referred to in section 175(1) of the 1993 Act, except for expenditure of the Regulatory Authority in connection with its functions in relation to schemes within paragraph (2).

(2) The trustees of each registrable personal pension scheme are liable to pay a levy to the Secretary of State for the purpose of meeting the expenditure referred to in section 175(1) of the 1993 Act, except for expenditure of the Regulatory Authority in connection with its functions in relation to schemes within paragraph (1).

(3) The general levy is payable in respect of each financial year.

(4) But no levy is payable under paragraph (1) or (2) in relation to a scheme in respect of the financial year beginning with 1st April 2005 if the scheme became a registrable scheme (within the meaning of regulation 1(2) of the Occupational and Personal Pension Schemes (Levy) Regulations 1997(b)) in the financial year beginning with 1st April 2004.

(5) The general levy payable in respect of the financial year in which the scheme in relation to which the levy is payable becomes registrable is reduced to the appropriate fraction of the amount that would be payable if the scheme were registrable for the whole of the financial year.

(6) In paragraph (5) “the appropriate fraction” means the fraction the numerator of which is the number of days in the financial year when the scheme is a registrable scheme, and the denominator of which is 365 or, if the financial year ends in a leap year, 366.

(7) Until the amendment made by section 239(3) of the 2004 Act (categories of pension schemes) takes effect—

- (a) paragraph (1) applies as if after the words “occupational pension scheme” there were inserted the words “(other than one which is approved under section 591(2)(h) of the Income and Corporation Taxes Act 1988)”; and
- (b) paragraph (2) applies as if after the words “personal pension scheme” there were inserted the words “and every occupational pension scheme approved under section 591(2)(h) of the Income and Corporation Taxes Act 1988”.

Payment of the general levy

4.—(1) The general levy is to be sent to the Regulatory Authority which is to collect and recover it on behalf of the Secretary of State.

(2) The general levy in respect of a financial year is payable in advance on the first day of that year, unless paragraph (4) applies.

(3) No additional levy or refund of levy is payable in respect of any change taking place during the financial year for which the general levy is payable (including a scheme ceasing to be a registrable scheme), unless regulation 8 applies.

(4) The general levy payable in respect of the financial year in which the scheme in relation to which the levy is payable becomes registrable is payable in arrears on the first day of the following financial year.

(a) S.I. 2000/3198.
(b) S.I. 1997/666.

The reference day

5.—(1) The amount of the general levy payable for a financial year in respect of a scheme is calculated by reference to the number of the scheme's members on the reference day.

(2) The general rule is that the reference day for a scheme is the last day of the scheme year which ended before the beginning of the previous financial year.

(3) But 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 the reference day in accordance with paragraph (2),

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

Amount of the general levy: occupational pension schemes

6.—(1) The amount of the general levy payable for a financial year by virtue of regulation 3(1) in respect of a scheme with the number of members on the reference day that is specified in column 1 of the table in paragraph (2) is—

- (a) the amount specified for such a scheme in column 2 of the table (where M is the number of the scheme's members on the reference day); or
- (b) if no amount is so specified or an amount which is greater is specified for such a scheme in column 3 of the table, the amount specified for such a scheme in column 3.

(2) This is the table—

<i>Number of members on the reference day</i>	<i>Amount of levy calculated by reference to number of members (M)</i>	<i>Minimum amount of levy</i>
2 to 11		£24
12 to 99	£2.50 x M	
100 to 999	£1.80 x M	£250
1,000 to 4,999	£1.40 x M	£1,800
5,000 to 9,999	£1.06 x M	£7,000
10,000 or more	£0.74 x M	£10,600

Amount of the general levy: personal pension schemes

7.—(1) The amount of the general levy payable for a financial year by virtue of regulation 3(2) in respect of a scheme with the number of members on the reference day that is specified in column 1 of the table in paragraph (2) is—

- (a) the amount specified for such a scheme in column 2 of the table (where M is the number of the scheme's members on the reference day); or
- (b) if no amount is so specified or an amount which is greater is specified for such a scheme in column 3 of the table, the amount specified for such a scheme in column 3.

(2) This is the table—

<i>Number of members on the reference day</i>	<i>Amount of levy calculated by reference to number of members (M)</i>	<i>Minimum amount of levy</i>
2 to 11		£10.40
12 to 99	£1.00 x M	
100 to 999	£0.70 x M	£100
1,000 to 4,999	£0.60 x M	£700
5,000 to 9,999	£0.40 x M	£3,000
10,000 or more	£0.30 x M	£4,000

Waiver

8.—(1) Payment of the general levy due under regulation 3(1) is to be waived if the trustees confirm in writing to the Regulatory Authority—

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

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

(3) Section 121 of the 2004 Act (insolvency event, insolvency date and insolvency practitioner) applies for the interpretation of paragraph (2) as it applies for the interpretation of Part 2 of that Act.

Multi-employer schemes

9.—(1) If—

- (a) an occupational pension scheme in relation to which there is more than one employer is divided into two or more sections; and
- (b) 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 that employer's section (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) 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) But if 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 purpose 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.

Avoidance of double liability: schemes in Northern Ireland

10.—(1) This regulation applies if, apart from paragraph (2), the general levy would be payable in respect of a scheme in respect of which a corresponding Northern Ireland levy is imposed.

(2) The general levy is only imposed in respect of that scheme if the address of the scheme is in Great Britain.

(3) For the purposes of paragraph (1) a levy is a corresponding Northern Ireland levy if it is imposed under any equivalent provision to section 175 of the 1993 Act and regulation 3.

(4) For the purposes of paragraph (2) 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 place.

Levies under earlier regulations remaining unpaid

11.—(1) If a levy for which any person was liable under regulation 2 of the Occupational and Personal Pension Schemes (Levy) Regulations 1997 immediately before 1st April 2005 has not been paid in full before that date, that person must pay the outstanding amount to the Regulatory Authority and they are to collect and recover it on behalf of the Secretary of State.

(2) If a levy for which any person was liable under regulation 5 of those Regulations immediately before that date has not been paid in full before that date, that person must pay the outstanding amount to the Regulatory Authority and they are to collect and recover it on behalf of the Compensation Board.

Penalties

12.—(1) If any person fails without reasonable cause to comply with the requirement—

- (a) to pay the general levy under these Regulations; or
- (b) to pay any amount required to be paid under regulation 11,

the Regulatory Authority may require that person to pay a penalty within 28 days.

(2) In the case of an individual, that penalty must not exceed £1,000.

(3) In the case of any other person, that penalty must not exceed £10,000.

Revocation and savings

13.—(1) The Occupational and Personal Pension Schemes (Levy) Regulations 1997 are revoked (but subject to regulation 11 and paragraph (2)).

(2) Without prejudice to sections 17 and 23 of the Interpretation Act 1978^(a), so far as anything done under or by virtue of those Regulations could have been done under or for the purposes of these Regulations, it is to have effect as if it had been so done.

Signed by authority of the Secretary of State for Work and Pensions.

Malcolm Wicks
Minister of State,
Department for Work and Pensions

9th March 2005

(a) 1978 c.30.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and replace the Occupational and Personal Pension Schemes (Levy) Regulations 1997 (S.I. 1997/666) (“the 1997 Regulations”).

Regulation 1 provides for citation and commencement.

Regulation 2 provides for interpretation.

Regulations 3 to 8 make provision for the imposition and payment of a levy (“the general levy”) for the purpose of meeting the cost of the Pensions Ombudsman, the Regulatory Authority (including its establishment under the Pensions Act 2004), grants made by the Regulatory Authority to advisory bodies, and the scheme established under section 106 of that Act for legal assistance in connection with proceedings before the Pensions Regulator Tribunal. They also make provision as to how the amount of the levy is to be determined, the times at which it is to be paid, and the circumstances in which it may be waived.

Regulation 9 makes provision for the application of these Regulations in the case of multi-employer schemes.

Regulation 10 makes provision to avoid duplication of payments where a levy is payable under corresponding provisions which have effect in Northern Ireland.

Regulation 11 makes transitional provision about the payment of levy for which schemes are liable under regulation 2 or 5 of the 1997 Regulations.

Regulation 12 provides for the imposition of financial penalties in respect of any failure to pay the levy.

Regulation 13 revokes the 1997 Regulations.

As these Regulations are made before the expiry of the period of six months beginning with the coming into force of the provisions of the 2004 Act on which they are consequential, the requirement for the Secretary of State to consult such persons as he considers appropriate does not apply.

An assessment of the impact on business, charities or the voluntary sector of the provisions in these Regulations was included in the Regulatory Impact Assessment that accompanied the Pensions Act 2004. A copy of that assessment has been placed in the libraries of both Houses of Parliament. Copies may be obtained from the Department for Work and Pensions, Regulatory Impact Unit, level 3, Adelphi, 1-11 John Adam Street, London WC2N 6HT.

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