

2005 No. 92

PENSIONS

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

Made - - - - - *11th March 2005*

Coming into operation *1st April 2005*

ARRANGEMENT OF REGULATIONS

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The Department for Social Development, in exercise of the powers conferred by sections 164(1) and (4), 170 and 177(2) to (4) of the Pension Schemes (Northern Ireland) Act 1993(a), and now vested in it(b), 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 Occupational and Personal Pension Schemes (General Levy) Regulations (Northern Ireland) 2005 and shall come into operation on 1st April 2005.

(2) In these Regulations –

“the Act” means the Pension Schemes (Northern Ireland) Act 1993;

(a) 1993 c. 49; section 164 was substituted by Article 151 of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)) and section 170 was substituted by Article 161 of that Order and is amended by paragraph 3 of Schedule 1 to, and paragraph 23 of Schedule 10 to, and Schedule 11 to, the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1))

(b) See Article 8(b) of S.R. 1999 No. 481

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

“the 1997 Regulations” means the Occupational and Personal Pension Schemes (Levy) Regulations (Northern Ireland) 1997(b);

“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 170 of the Act by regulation 2(1) or (2);

“managers” has the meaning given by Article 2(2) of the Order;

“member” –

(a) in relation to an occupational pension scheme, has the meaning given by Article 121(1) of the Pensions (Northern Ireland) Order 1995(c); 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 97B of the Act(d);

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

“registrable scheme” has the meaning given by Article 55(5) of the Order and regulations made under that Article, and “registrable occupational pension scheme” and “registrable personal pension scheme” are to be construed accordingly;

“the Regulatory Authority” means the Pensions Regulator;

“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).

(3) 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 (Northern Ireland) 2000(e).

(4) Subject to paragraph (5), the Interpretation Act (Northern Ireland) 1954(f) shall apply to these Regulations as it applies to an Act of the Assembly.

(5) For the purposes of these Regulations, notwithstanding section 39(2) of the Interpretation Act (Northern Ireland) 1954, where a period of time is expressed to begin on, or to be reckoned from, a particular day, that day shall be included in the period.

(a) S.I. 2005/255 (N.I. 1)

(b) S.R. 1997 No. 142; relevant amending regulations are S.R. 1998 No. 85

(c) S.I. 1995/3213 (N.I. 22); the definition of “member” was amended by paragraph 50(2) of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11))

(d) Section 97B was inserted by Article 34 of the Welfare Reform and Pensions (Northern Ireland) Order 1999

(e) S.R. 2000 No. 382

(f) 1954 c. 33 (N.I.)

The general levy

2.—(1) The trustees of each registrable occupational pension scheme are liable to pay a levy to the Department for the purpose of meeting the expenditure referred to in section 170(1) of the 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 Department for the purpose of meeting the expenditure referred to in section 170(1) of the Act, except for expenditure of the Regulatory Authority in connection with its functions in relation to schemes within paragraph (1).

(3) Subject to paragraph (4), the general levy is payable in respect of each financial year.

(4) 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 1997 Regulations (a)) 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 coming into operation of Article 216(3) of the Order (categories of pension schemes) –

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

(b) paragraph (2) applies as if after “personal pension scheme” there were inserted “and every occupational pension scheme approved under section 591(2)(h) of the Income and Corporation Taxes Act 1988”.

Payment of the general levy

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

(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 7 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.

The reference day

4.—(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

(a) The definition of “registrable scheme” was amended by regulation 2 of S.R. 1998 No. 85

(b) 1988 c. 1

(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

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

TABLE

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<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 × M	
100 to 999	£1.80 × M	£250
1,000 to 4,999	£1.40 × M	£1,800
5,000 to 9,999	£1.06 × M	£7,000
10,000 or more	£0.74 × M	£10,600

Amount of the general levy: personal pension schemes

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

TABLE

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<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 × M	
100 to 999	£0.70 × M	£100
1,000 to 4,999	£0.60 × M	£700
5,000 to 9,999	£0.40 × M	£3,000
10,000 or more	£0.30 × M	£4,000

Waiver

7.—(1) Payment of the general levy due under regulation 2(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) Article 105 of the Order (insolvency event, insolvency date and insolvency practitioner) applies for the interpretation of paragraph (2) as it applies for the interpretation of Part III of the Order.

Multi-employer schemes

8.—(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) 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 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 Great Britain

9.—(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 Great Britain levy is imposed.

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

(3) For the purposes of paragraph (1), a levy is a corresponding Great Britain levy if it is imposed under any equivalent provision to section 170 of the Act and regulation 2.

(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

10.—(1) If a levy for which any person was liable under regulation 2 of the 1997 Regulations 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 which is to collect and recover it on behalf of the Department.

(2) Where 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 which is to collect and recover it on behalf of the Pensions Compensation Board.

Penalties

- 11.**—(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 10,

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

12.—(1) Subject to regulation 10 and paragraph (2), the following regulations are hereby revoked –

- (a) the Occupational and Personal Pension Schemes (Levy) Regulations (Northern Ireland) 1997;
- (b) regulation 2 of the Occupational and Personal Pension Schemes (Levy and Register) (Amendments) Regulations (Northern Ireland) 1998(a);
- (c) the Occupational and Personal Pension Schemes (Levy) (Amendment) Regulations (Northern Ireland) 1999(b);
- (d) the Occupational and Personal Pension Schemes (Levy) (Amendment) Regulations (Northern Ireland) 2000(c);
- (e) regulation 7 of the Pension Sharing (Consequential and Miscellaneous Amendments) Regulations (Northern Ireland) 2000(d);
- (f) regulation 12 of the Occupational Pension Schemes (Republic of Ireland Schemes Exemption) Regulations (Northern Ireland) 2000.

(2) Without prejudice to section 29 of the Interpretation Act (Northern Ireland) 1954, so far as anything done under or by virtue of the 1997 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.

Sealed with the Official Seal of the Department for Social Development on 11th March 2005.

(L.S.)

John O'Neill

A senior officer of the Department for Social Development

(a) S.R. 1998 No. 85
(b) S.R. 1999 No. 106
(c) S.R. 2000 No. 60
(d) S.R. 2000 No. 335

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations revoke and replace the Occupational and Personal Pension Schemes (Levy) Regulations (Northern Ireland) 1997 (“the 1997 Regulations”).

Regulation 1 provides for citation, commencement and interpretation.

Regulations 2 to 7 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 (c. 35)), 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 8 makes provision for the application of these Regulations in the case of multi-employer schemes.

Regulation 9 makes provision to avoid duplication of payments where a levy is payable under corresponding provisions which have effect in Great Britain.

Regulation 10 makes transitional provision about the payment of the levy for which schemes are liable under regulation 2 or 5 of the 1997 Regulations.

Regulation 11 provides for the imposition of financial penalties in respect of any failure to pay the levy.

Regulation 12 makes revocations and savings.

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