

**2011 No. 114**

**PENSIONS**

**The Pension Protection Fund  
(Pensions on Divorce etc.: Charges) Regulations  
(Northern Ireland) 2011**

*Made* - - - -

*16th March 2011*

*Coming into operation* -

*6th April 2011*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by Articles 152A, 185(1)(a) and 287(2) and (3) of the Pensions (Northern Ireland) Order 2005(a).

**Citation, commencement and interpretation**

**1.**—(1) These Regulations may be cited as the Pension Protection Fund (Pensions on Divorce etc.: Charges) Regulations (Northern Ireland) 2011 and shall come into operation on 6th April 2011.

(2) In these Regulations—

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

“implementation period” has the same meaning as in Article 31(1) of the 1999 Order;

“party” means a party to a pension sharing order or provision, or to a pension attachment order or provision;

“pension attachment order or provision” means an order or provision which is made under any of the provisions specified in regulation 2(1)(b) to (f), or (in Scotland) a provision contained in a qualifying agreement corresponding to provision which may be made by an order under section 8(1)(ba) of the Family Law (Scotland) Act 1985(b) (orders for financial provision);

“pension sharing order or provision” means an order or (in Scotland) a provision contained in a qualifying agreement which provides that one party’s shareable rights under a specified occupational pension scheme be subject to pension sharing for the benefit of the other party, and specifies the percentage value or (in Scotland) the amount to be transferred;

“PPF compensation” means compensation payable under the pension compensation provisions specified in Article 146(2) of the 2005 Order or section 162(2) of the Pensions Act 2004(c).

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(a) S.I. 2005/255 (N.I. 1); Article 152A is inserted by section 99 of the Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13 (N.I.))

(b) 1985 c. 37; section 8(1)(ba) was inserted by section 167(1) of the Pensions Act 1995 (c. 26)

(c) 2004 c. 35

## **Information to be provided where the Board is under a duty to comply with a pension sharing or attachment order or provision**

2.—(1) This regulation applies where the Board has assumed responsibility for a scheme in accordance with Chapter 3 of Part III of the 2005 Order (pension protection), and is required to—

- (a) implement a pension sharing order or provision by virtue of the modifications made by the Pension Protection Fund (Pension Sharing) Regulations (Northern Ireland) 2006(a);
- (b) make payments in accordance with an order made under Article 25 of the Matrimonial Causes (Northern Ireland) Order 1978(b) (financial provision orders in connection with divorce proceedings, etc.), which—
  - (i) includes provision made by virtue of Article 27B(c) (pensions) or 27C (pensions: lump sums) of that Order, and
  - (ii) applies in relation to the Board by virtue of Article 27E(d) of that Order (the Pension Protection Fund);
- (c) make payments in accordance with an order made under Part 1 of Schedule 15 to the Civil Partnership Act 2004(e) (financial provision in connection with dissolution, nullity or separation), which—
  - (i) includes provision made by virtue of Part 5(f) of that Schedule (making of Part 1 orders having regard to pension benefits), and
  - (ii) applies in relation to the Board by virtue of Part 6 of that Schedule (Pension Protection Fund compensation etc.);
- (d) make payments in accordance with an order made under section 23 of the Matrimonial Causes Act 1973(g) (financial provision orders in connection with divorce proceedings, etc.), which—
  - (i) includes provision made by virtue of section 25B(h) (pensions) or 25C (pensions: lump sums) of that Act, and
  - (ii) applies in relation to the Board by virtue of section 25E(i) of that Act (the Pension Protection Fund);
- (e) make payments in accordance with an order under Part 1 of Schedule 5 to the Civil Partnership Act 2004 (financial provision in connection with dissolution, nullity or separation), which—
  - (i) includes provision made by virtue of Part 6 of that Schedule (making of Part 1 orders having regard to pension benefits), and
  - (ii) applies in relation to the Board by virtue of Part 7 of that Schedule (Pension Protection Fund compensation etc.);

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(a) S.R. 2006 No. 282

(b) S.I. 1978/1045 (N.I. 15); Article 25 was amended by Article 5 of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 (S.I. 1989/677 (N.I. 4))

(c) Articles 27B and 27C were inserted by Article 162(1) of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)); Article 27B was amended by paragraph 1 of Schedule 4 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)) and is modified, in cases where the Board becomes involved with or assumes responsibility for a scheme, by S.R. 2006 No. 310; Article 27C was amended by paragraph 2 of Schedule 4 to the Welfare Reform and Pensions (Northern Ireland) Order 1999

(d) Article 27E was inserted by paragraph 1 of Schedule 10 to the Pensions (Northern Ireland) Order 2005 and amended by paragraph 114(4) of Schedule 18 to S.I. 2010/976 and is amended by paragraph 6 of Schedule 5 to the Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13 (N.I.))

(e) 2004 c. 33

(f) Parts 5 and 6 were amended by paragraph 75(3) and (4) of Schedule 18 to S.I. 2010/976

(g) 1973 c. 18; section 23 was amended by section 16 of the Administration of Justice Act 1982 (c. 53)

(h) Sections 25B and 25C were inserted by section 166(1) of the Pensions Act 1995; section 25B was amended by paragraph 1 of Schedule 4 to the Welfare Reform and Pensions Act 1999 (c. 30) and is modified, in cases where the Board becomes involved with or assumes responsibility for a scheme, by S.I. 2006/1932; section 25C was amended by paragraph 2 of Schedule 4 to the Welfare Reform and Pensions Act 1999

(i) Section 25E was inserted by paragraph 3 of Schedule 12 to the Pensions Act 2004 and is amended by paragraph 6 of Schedule 6 to the Pensions Act 2008 (c. 30)

- (f) make payments in accordance with an order made under section 8(1)(ba) of the Family Law (Scotland) Act 1985 (orders for financial provision), which applies in relation to the Board, or
  - (g) make payments under any provision corresponding to provision which may be made by a pension sharing order or an order under section 8(1)(ba) of the Family Law (Scotland) Act 1985 and—
    - (i) which is contained in a qualifying agreement (to which section 28(3) of the Welfare Reform and Pensions Act 1999(a) relates), and
    - (ii) applies in relation to the Board.
- (2) The Board must inform the parties of—
- (a) the date on which the Board assumed responsibility for the scheme, and
  - (b) the fact that the Board will implement the order or provision or, as the case may be, will comply with the pension attachment order or provision.
- (3) The Board must provide the information specified in paragraph (2) within the period of 14 days beginning with the date on which the Board assumed responsibility for the scheme.
- (4) Where the Board has previously provided the information specified in paragraph (2)(a), nothing in this regulation requires that information to be provided again to the same party.

#### **General requirements as to charges**

- 3.—(1) The Board may not recover any of the charges specified in regulation 4 unless—
- (a) before the pension sharing order or provision or pension attachment order or provision was made, the trustees or managers of the scheme had—
    - (i) informed the member or the member’s spouse or civil partner, as the case may be, in writing, of the Board’s intention to recover costs incurred in connection with implementation of a pension sharing order or provision, or compliance with a pension attachment order or provision, and
    - (ii) provided the member or the member’s spouse or civil partner, as the case may be, with a written schedule of the charges which the Board intended to impose, and
  - (b) the Board has provided the party from whom the Board intends to recover the charges with a written schedule of charges owed by that party and the date by which payment in whole or in part is required.
- (2) If a pension sharing order or provision includes provision about the apportionment of charges between the parties to pension sharing, any recovery of charges by the Board must comply with the terms of the order or provision.

#### **Charges in respect of pension sharing and pension attachment**

4. For the purposes of Article 152A(1) of the 2005 Order (charges in respect of pension sharing etc.) the prescribed charges which the Board may recover from the parties are costs which are reasonably incurred by the Board in respect of—
- (a) implementation of a pension sharing order or provision which applies in relation to the Board;
  - (b) provision of information associated with that implementation, and
  - (c) charges which represent the reasonable administrative expenses which the Board has incurred by reason of complying with a pension attachment order or provision.

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(a) 1999 c. 30

### **Charges in respect of pension sharing and pension attachment – methods of recovery**

5.—(1) In the circumstances prescribed in paragraph (3), and subject to paragraph (4), the Board may recover the charges specified in regulation 4 by using either of the methods specified in paragraph (2).

(2) The methods of recovery specified in this paragraph are—

- (a) requiring payment from a party liable for payment of the charges, and
- (b) deducting the charges from PPF compensation which would otherwise be payable to a party liable for payment of the charges.

(3) The circumstances prescribed in this paragraph are—

- (a) in the case of a pension sharing order or provision, that—
  - (i) the implementation period for the pension sharing order or provision has commenced;
  - (ii) the Board is not aware of any appeal against the order having begun on or after the day on which the order takes effect, and
  - (iii) the Board has informed the party from whom the Board intends to recover the charges of the date on or after which the charges may be recovered, together with details of the methods which may be used to recover the charges, or
- (b) in the case of a pension attachment order or provision, that the circumstances prescribed in sub-paragraph (a)(ii) and (iii) apply.

(4) The Board may not recover any of the charges specified in regulation 4 from a party by using either of the methods prescribed in paragraph (2) if that party has paid in full all the charges for which that party is liable.

Sealed with the Official Seal of the Department for Social Development on 16th March 2011

(L.S.)

*Anne McCleary*  
A senior officer of the Department for Social Development

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations apply where a pension sharing or pension attachment order or provision was made before the Board of the Pension Protection Fund (“the Board”) assumed responsibility for an occupational pension scheme and (in the case of a pension sharing order or provision) was not implemented by the trustees or managers of the scheme prior to the scheme’s transfer to the Pension Protection Fund. The Regulations set out the costs which may be charged to the parties to the order or provision and the circumstances in which the Board may recover the costs of implementing a pension sharing order or provision, or complying with a pension attachment order or provision.

Regulation 1 provides for citation, commencement and interpretation.

Regulation 2 sets out the information that the Board must provide to the parties where a pension sharing order or provision or pension attachment order or provision has been made before the Board assumed responsibility for a scheme, and the Board has become responsible for implementing or complying with the order or provision.

Regulation 3 sets out the circumstances in which the Board may recover costs from the parties to a pension sharing order or provision or an attachment order or provision.

Regulation 4 permits the Board to recover from the parties to a pension sharing order or provision the costs of implementing that order and of providing information associated with implementation of that order. The Board may also recover costs in relation to the reasonable administrative expenses which it has incurred by reason of complying with a pension attachment order or provision.

Regulation 5 sets out the methods by which, and the circumstances in which, the Board may recover the costs.

The Pensions (2008 No. 2 Act) (Commencement No. 5) Order (Northern Ireland) 2011 (S.R. 2011 No. 108 (C. 7)) provides for the coming into operation of section 99 of the Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13 (N.I.)), which inserts Article 152A into the Pensions (Northern Ireland) Order 2005, one of the enabling provisions under which these Regulations are made, for the purpose only of conferring power to make regulations, on 16th March 2011 and in so far as it is not already in operation on 6th April 2011.

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 289(1) of the Pensions (Northern Ireland) Order 2005 does not apply by virtue of paragraph (2)(e) of that Article.

An assessment of the impact of the legislative changes made by Part 3 of the Pensions (No. 2) Act (Northern Ireland) 2008 is included in the Regulatory Impact Assessment which accompanied that Act, a copy of which has been laid in the Business Office and the Library of the Northern Ireland Assembly. Copies of that assessment are available from the Department for Social Development, Social Security Policy and Legislation Division, Level 1, James House, 2-4 Cromac Avenue, Gasworks Business Park, Ormeau Road, Belfast BT7 2JA or from the website: <http://www.dsdni.gov.uk/index/ssa/ssani-publications/ssani-pensions-publications.htm>.

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