
DRAFT STATUTORY INSTRUMENTS

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The Pensions (Northern Ireland) Order 2005

PART III

THE BOARD OF THE PENSION PROTECTION FUND

CHAPTER 4

FRAUD COMPENSATION

Entitlement to fraud compensation

Cases where fraud compensation payments can be made

165.—(1) The Board shall, in accordance with this Article, make one or more payments (in this Part referred to as “fraud compensation payments”) in respect of an occupational pension scheme if—

- (a) the scheme is not a prescribed scheme or a scheme of a prescribed description,
 - (b) the value of the assets of the scheme has been reduced since the relevant date and the Board considers that there are reasonable grounds for believing that the reduction was attributable to an act or omission constituting a prescribed offence,
 - (c) paragraph (2), (3) or (4) applies,
 - (d) an application is made which meets the requirements of paragraph (5), and
 - (e) the application is made within the authorised period.
- (2) This paragraph applies where—
- (a) a qualifying insolvency event has occurred in relation to the employer in relation to the scheme,
 - (b) after that event, a scheme failure notice has been issued under Article 106(2)(a) in relation to the scheme and that notice has become binding, and
 - (c) a cessation event has not occurred in relation to the scheme in respect of a cessation notice which has been issued during the period—
 - (i) beginning with the occurrence of the insolvency event, and
 - (ii) ending immediately before the issuing of the scheme failure notice under Article 106(2)(a),and the occurrence of such a cessation event in respect of a cessation notice issued during that period is not a possibility.
- (3) This paragraph applies where—
- (a) in relation to the scheme, an application has been made under paragraph (1), or a notification has been given under paragraph (5)(a), of Article 113, and

- (b) in response to that application, or the notice given by the Regulator under paragraph (4) of that Article, the Board has issued a scheme failure notice under Article 114(2) in relation to the scheme and that notice has become binding.
- (4) This paragraph applies where—
 - (a) the scheme is not an eligible scheme,
 - (b) the employer in relation to the scheme is unlikely to continue as a going concern,
 - (c) the prescribed requirements are met in relation to the employer,
 - (d) the application under this Article states that the case is one in relation to which sub-paragraphs (b) and (c) apply, and
 - (e) in response to that application the Board has issued a notice under Article 166(2) confirming that a scheme rescue is not possible in relation to the scheme and that notice has become binding.
- (5) An application meets the requirements of this paragraph if—
 - (a) it is made by a prescribed person, and
 - (b) it is made in the prescribed manner and contains the prescribed information.
- (6) Subject to paragraph (7), an application is made within the authorised period if it is made within the period of 12 months beginning with the later of—
 - (a) the time of the relevant event, or
 - (b) the time when the auditor or actuary of the scheme, or the trustees or managers, knew or ought reasonably to have known that a reduction of value falling within paragraph (1)(b) had occurred,or within such longer period as the Board may determine in any case.
- (7) No application for fraud compensation may be made under this Article in respect of a scheme once a transfer notice is given in relation to the scheme under Article 144.
- (8) For the purposes of this Article, an insolvency event (“the current event”) in relation to the employer is a qualifying insolvency event if—
 - (a) it occurs on or after the day appointed under Article 110(2), and
 - (b) either—
 - (i) it is the first insolvency event to occur in relation to the employer on or after that day, or
 - (ii) a cessation event has occurred in relation to the scheme in respect of a cessation notice issued during the period—
 - (a) beginning with the occurrence of the last insolvency event which occurred before the current event, and
 - (b) ending with the occurrence of the current event.
- (9) For the purposes of this Article—
 - (a) a cessation event in relation to a scheme occurs when a cessation notice in relation to the scheme becomes binding,
 - (b) a “cessation notice” means—
 - (i) a withdrawal notice issued in relation to the scheme under Article 106(2)(b) (scheme rescue has occurred),
 - (ii) a withdrawal notice issued in relation to the scheme under Article 114(3) (scheme rescue has occurred),

- (iii) a withdrawal notice issued in relation to the scheme under Article 132 (no insolvency event has occurred or is likely to occur),
 - (iv) a notice issued in relation to the scheme under Article 166(2)(b) (scheme rescue has occurred), or
 - (v) a notice issued under Article 106(4) (inability to confirm status of scheme) in a case where the notice has become binding and Article 132 does not apply,
- (c) the occurrence of a cessation event in relation to a scheme in respect of a cessation notice issued during a particular period (“the specified period”) is a possibility until each of the following is no longer reviewable—
- (i) any cessation notice which has been issued in relation to the scheme during the specified period;
 - (ii) any failure to issue such a cessation notice during the specified period;
 - (iii) any notice which has been issued by the Board under Chapter 2 or 3 which is relevant to the issue of a cessation notice in relation to the scheme during the specified period or to such a cessation notice which has been issued during that period becoming binding;
 - (iv) any failure to issue such a notice as is mentioned in head (iii), and
- (d) the issue of, or failure to issue, a notice is to be regarded as reviewable—
- (i) during the period within which it may be reviewed by virtue of Chapter 6, and
 - (ii) if the matter is so reviewed, until—
 - (a) the review and any reconsideration,
 - (b) any reference to the PPF Ombudsman in respect of the matter, and
 - (c) any appeal against his determination or directions,has been finally disposed of.
- (10) In this Article—
- “auditor” and “actuary”, in relation to an occupational pension scheme, have the meaning given by Article 47 of the 1995 Order;
- “the relevant event” means—
- (a) in a case where paragraph (2) applies in relation to an eligible scheme, the event within sub-paragraph (a) of that paragraph,
 - (b) in any other case where paragraph (2) applies, the issue of the scheme failure notice under Article 106(2)(a) mentioned in sub-paragraph (b) of that paragraph,
 - (c) in a case where paragraph (3) applies, the event within sub-paragraph (a) of that paragraph, and
 - (d) in a case where paragraph (4) applies, the trustees or managers becoming aware that sub-paragraphs (b) and (c) of that paragraph apply in relation to the scheme;
- “the relevant date” means—
- (a) in the case of an occupational pension scheme established under a trust, 6th April 1997, and
 - (b) in any other case, the day appointed by the Department by order for the purposes of this Article.
- (11) This Article is subject to Article 167(2) (no fraud compensation payments to be made until settlement date determined).