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DRAFT STATUTORY INSTRUMENTS

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**2005 No.**

**The Pensions (Northern Ireland) Order 2005**

**PART III**

**THE BOARD OF THE PENSION PROTECTION FUND**

**CHAPTER 3**

**PENSION PROTECTION**

*Assumption of responsibility for a scheme*

**Transfer notice**

**144.**—(1) This Article applies where the Board is required to assume responsibility for a scheme under Article 111, 112, 136 or 142.

(2) The Board must give the trustees or managers a notice (a “transfer notice”).

(3) In a case to which Article 111 or 112 applies, a transfer notice may not be given until the valuation obtained under Article 127 is binding.

(4) In a case to which Article 142 applies, a transfer notice may not be given until the valuation obtained under paragraph (3) of that Article is binding.

(5) A transfer notice may not be given in relation to a scheme during any period when the issue of, or failure to issue, a withdrawal notice under or by virtue of Article 130 or 131 (refusal to assume responsibility) is reviewable (see Article 133(6)(b)).

(6) The Board must give a copy of any notice given under paragraph (2) to—

(a) the Regulator, and

(b) any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer.

(7) This Article is subject to Article 156(1) and (2) (no transfer notice within first 12 months of assessment period or when fraud compensation application is pending).

**Effect of Board assuming responsibility for a scheme**

**145.**—(1) Where a transfer notice is given to the trustees or managers of an eligible scheme, the Board assumes responsibility for the scheme in accordance with this Chapter.

(2) The effect of the Board assuming responsibility for a scheme is that—

(a) the property, rights and liabilities of the scheme are transferred to the Board, without further assurance, with effect from the time the trustees or managers receive the transfer notice,

(b) the trustees or managers of the scheme are discharged from their pension obligations from that time, and

(c) from that time the Board is responsible for securing that compensation is (and has been) paid in accordance with the pension compensation provisions, and, accordingly, the scheme is to be treated as having been wound up immediately after that time.

(3) In paragraph (2)(a) the reference to liabilities of the scheme does not include any liability to, or in respect of, any member of the scheme, other than—

- (a) liabilities in respect of money purchase benefits, and
- (b) such other liabilities as may be prescribed.

(4) In paragraph (2)(b) “pension obligations” in relation to the trustees or managers of the scheme means—

- (a) their obligations to provide pensions or other benefits to or in respect of persons (including any obligation to provide guaranteed minimum pensions within the meaning of the Pension Schemes Act), and
- (b) their obligations to administer the scheme in accordance with the scheme rules and this or any other statutory provision.

(5) Schedule 5 makes provision in respect of the transfer of the property, rights and liabilities of a scheme under paragraph (2)(a).

(6) Regulations may make further provision regarding such transfers.

(7) Without prejudice to the generality of paragraph (6), regulations may authorise the Board to modify a term of a relevant contract of insurance if—

- (a) any rights or liabilities under the contract are transferred to the Board by virtue of paragraph (2)(a), and
- (b) as a result of the transfer, the Board is required, by reason of that term, to pay a specified amount or specified amounts to a specified person who, immediately before the time mentioned in paragraph (2)(a), was a member of the scheme or a person entitled to benefits in respect of such a member.

(8) In paragraph (7)—

“relevant contract of insurance” means a contract of insurance which—

- (a) is entered into with a view to securing the whole or part of the scheme’s liability for—
  - (i) any pension or other benefit payable to or in respect of one particular person whose entitlement to payment of a pension or other benefit has arisen, and
  - (ii) any benefit which will be payable in respect of that person on his death, and
- (b) is a contract—
  - (i) which may not be surrendered, or
  - (ii) in respect of which the amount payable on surrender does not exceed the liability secured;

“specified” means specified in, or determined in accordance with, the contract of insurance.

### **The pension compensation provisions**

**146.**—(1) Schedule 6 makes provision for compensation to be paid in relation to a scheme for which the Board assumes responsibility in accordance with this Chapter, including provision for—

- (a) periodic compensation to be paid to or in respect of members,
- (b) lump sum compensation to be paid to members,
- (c) a cap to be imposed on the periodic compensation and lump sum compensation payable, and

(d) annual increases to be made to periodic compensation.

(2) In this Part references to the pension compensation provisions are to the provisions of, and the provisions made by virtue of, this Article, Articles 124 to 126, 145(2)(c), 148 and 152 and Schedule 6. (Those references do not include any provision of, or made by virtue of, Article 154 (discharge of liabilities in respect of money purchase benefits)).

### **Adjustments to be made where the Board assumes responsibility for a scheme**

**147.**—(1) This Article applies where the Board assumes responsibility for an eligible scheme in accordance with this Chapter.

(2) Any benefits (other than money purchase benefits) which—

(a) were payable under the scheme rules to any member, or to any person in respect of any member, during the period beginning with the assessment date and ending with the receipt by the trustees or managers of the transfer notice, and

(b) have been paid before the trustees or managers receive the transfer notice,

are to be regarded as going towards discharging any liability of the Board to pay compensation to the member or, as the case may be, person in accordance with the pension compensation provisions.

(3) Regulations may provide that, in prescribed circumstances, where—

(a) a member of the scheme died before the commencement of the assessment period, and

(b) during the period mentioned in paragraph (2)(a), a person became entitled under the scheme rules to a benefit of a prescribed description in respect of the member,

the benefit, or any part of it, is for the purposes of paragraph (2), to be treated as having become payable before the assessment date.

(4) The Board must—

(a) if any amount paid, during the period mentioned in paragraph (2)(a), by the trustees or managers of the scheme to a member, or to a person in respect of a member, exceeded the entitlement of that member or person under the pension compensation provisions, take such steps as it considers appropriate (including adjusting future compensation payments made in accordance with those provisions) to recover an amount equal to the aggregate of—

(i) the amount of the excess, and

(ii) interest on that amount, at the prescribed rate, for the period which begins when the excess was paid by the trustees or managers and ends with the recovery of the excess, and

(b) if any amount so paid was less than that entitlement (or no amount was paid in respect of that entitlement), pay an amount to the member or person concerned equal to the aggregate of—

(i) the amount of the shortfall, and

(ii) interest on that amount, at the prescribed rate, for the period which begins when the shortfall ought to have been paid by the trustees or managers and ends with the payment of the shortfall by the Board.

(5) In paragraph (4) references to an amount paid do not include—

(a) an amount paid in respect of any money purchase benefit, or

(b) any other amount of a prescribed description.

(6) Nothing in paragraph (4) requires the Board—

(a) to recover any amount from a person in such circumstances as may be prescribed, or

(b) to recover from any person any amount which it considers to be trivial.

(7) In this Article “assessment date” is to be construed in accordance with Schedule 6.

### **Postponement of compensation entitlement for the assessment period**

**148.**—(1) Regulations may provide that, where the Board assumes responsibility for an eligible scheme, the entitlement of any member of the scheme to compensation under this Chapter is, in such circumstances as may be prescribed, postponed for the whole or any part of the assessment period for which he continued in employment after attaining normal pension age.

(2) Regulations under paragraph (1) may provide that the postponement is on such terms and conditions (including those relating to increments) as may be prescribed.

(3) In paragraph (1) the reference to “normal pension age” is to normal pension age, within the meaning of paragraph 34 of Schedule 6, in relation to the pension or lump sum in respect of which the entitlement to compensation arises.

### **Guaranteed minimum pensions**

**149.**—(1) The Board must notify the Commissioners of Inland Revenue where, by reason of it assuming responsibility for an eligible scheme in accordance with this Chapter, the trustees or managers of the scheme are discharged from their liability to provide a guaranteed minimum pension (within the meaning of the Pension Schemes Act) to or in respect of a member of the scheme.

(2) Notification under paragraph (1) must be given as soon as reasonably practicable.

(3) In section 43 of the Pension Schemes Act (further provision concerning entitlement to a guaranteed minimum pension for the purposes of section 42), after subsection (7) add—

“(8) For the purposes of section 42, a person shall be treated as entitled to a guaranteed minimum pension to which he would have been entitled but for the fact that the trustees or managers were discharged from their liability to provide that pension on the Board of the Pension Protection Fund assuming responsibility for the scheme.”.

### **Duty to pay scheme benefits unpaid at assessment date etc.**

**150.**—(1) This Article applies where the Board assumes responsibility for a scheme in accordance with this Chapter.

(2) Subject to paragraph (4), the Board must pay any amount by way of pensions or other benefits which a person had become entitled to payment of under the scheme rules before the assessment date but which remained unpaid at the time the transfer notice was received by the trustees or managers of the scheme.

(3) If, immediately before the assessment date, the person is entitled to the amount but has postponed payment of it, paragraph (2) does not apply.

(4) Paragraph (2) does not apply in relation to the amount of—

- (a) any transfer payment, or
- (b) any payment in respect of a refund of contributions.

(5) Regulations may provide that, in prescribed circumstances, where—

- (a) a member of the scheme died before the commencement of the assessment period, and
- (b) during the period beginning with the assessment date and ending with the receipt by the trustees or managers of the transfer notice, a person became entitled under the scheme rules to a benefit of a prescribed description in respect of the member,

that person's entitlement to the benefit, or to any part of it, is, for the purposes of paragraph (2), to be treated as having arisen before the assessment date.

(6) Regulations may make provision requiring the Board, in such circumstances as may be prescribed, to take such steps (including making payments) as may be prescribed in respect of rights of prescribed descriptions to which members of the scheme were entitled immediately before the commencement of the assessment period.

(7) For the purposes of regulations made under paragraph (6)—

- (a) this Chapter (other than this paragraph), and
- (b) the scheme rules (including any relevant legislative provision within the meaning of Article 2(4)),

are to have effect subject to such modifications as may be prescribed.

(8) In this Article "assessment date" is to be construed in accordance with Schedule 6.

### **Modification of Chapter where liabilities discharged during assessment period**

**151.**—(1) Regulations may modify any of the provisions of this Chapter as it applies to cases—

- (a) where any liability to provide pensions or other benefits to or in respect of any member or members under a scheme is discharged during an assessment period in relation to the scheme by virtue of—
  - (i) regulations under Article 119(4), or
  - (ii) the Board validating any action mentioned in Article 119(9), or
- (b) where, in prescribed circumstances, any such liability of a prescribed description is discharged on the assessment date but before the commencement of the assessment period.

(2) In this Article "assessment date" is to be construed in accordance with Schedule 6.

### **Administration of compensation**

**152.**—(1) Regulations may make further provision regarding the operation and administration of this Chapter.

(2) Regulations under paragraph (1) may, in particular, make provision—

- (a) prescribing the manner in which and time when compensation is to be paid (including provision requiring periodic compensation to be paid by instalments);
- (b) for calculating the amounts of compensation according to a prescribed scale or otherwise adjusting them to avoid fractional amounts or facilitate computation;
- (c) prescribing the circumstances and manner in which compensation to which a person ("the beneficiary") is entitled may be made to another person on behalf of the beneficiary for any purpose (including the discharge in whole or in part of an obligation of the beneficiary or any other person);
- (d) for the payment or distribution of compensation to or among persons claiming to be entitled on the death of any person and for dispensing with strict proof of their title;
- (e) for the recovery of amounts of compensation paid by the Board in excess of entitlement (together with interest on such amounts for the period from payment until recovery);
- (f) specifying the circumstances in which payment of compensation can be suspended.

(3) In this Article "compensation" means compensation payable under Schedule 6 or under Article 125(2).