
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).

Board’s duties in respect of certain applications under Article 165

166.—(1) This Article applies where, in a case to which sub-paragraphs (a) to (c) of paragraph (4) of Article 165 apply (employer not likely to continue as going concern etc.), the Board receives an application within sub-paragraph (d) of that paragraph.

(2) If the Board is able to confirm—

- (a) that a scheme rescue is not possible, or
- (b) that a scheme rescue has occurred,

it must, as soon as reasonably practicable, issue a notice to that effect.

(3) Where the Board issues a notice under paragraph (2), it must, as soon as reasonably practicable, give a copy of the notice to—

- (a) the Regulator,
- (b) the trustees or managers of the scheme,
- (c) if the trustees or managers did not make the application mentioned in paragraph (1), the person who made that application, and
- (d) any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer.

(4) For the purposes of this Chapter a notice issued under paragraph (2) is not binding until—

- (a) the period within which the issue of the notice may be reviewed by virtue of Chapter 6 has expired, and
- (b) if the issue of the notice is so reviewed—
 - (i) the review and any reconsideration,
 - (ii) any reference to the PPF Ombudsman in respect of the issue of the notice, and
 - (iii) any appeal against his determination or directions,
 has been finally disposed of and the notice has not been revoked, varied or substituted.

(5) Where a notice issued under paragraph (2) becomes binding, the Board must as soon as reasonably practicable give a notice to that effect together with a copy of the binding notice to the persons to whom it is required to give a copy notice under paragraph (3).

(6) A notice under paragraph (5) must be in the prescribed form and contain such information as may be prescribed.

(7) Article 114(5) (circumstances in which scheme rescue can or cannot be confirmed) applies for the purposes of this Article.

Recovery of value

167.—(1) Where an application for a fraud compensation payment is made, the trustees or managers must obtain any recoveries of value, to the extent that they may do so without disproportionate cost and within a reasonable time.

(2) No fraud compensation payment may be made until the date (“the settlement date”) determined by the Board, after consulting the trustees or managers of the scheme in question, as the date after which further recoveries of value are unlikely to be obtained without disproportionate cost or within a reasonable time.

(3) In this Article “recovery of value” means any increase in the value of the assets of the scheme, being an increase attributable to any payment received (otherwise than from the Board) by the trustees or managers of the scheme in respect of any act or omission—

(a) which there are reasonable grounds for believing constituted an offence prescribed for the purposes of sub-paragraph (b) of Article 165(1), and

(b) to which any reduction in value falling within that sub-paragraph was attributable.

(4) It is for the Board to determine whether anything received by the trustees or managers of the scheme is to be treated as a payment received in respect of any such act or omission.

For this purpose “payment” includes any money or money’s worth.

Fraud compensation payments

168.—(1) Where the Board determines to make one or more fraud compensation payments, it must make the payment or payments to the trustees or managers of the scheme in accordance with this Article.

(2) A fraud compensation payment may be made on such terms (including terms requiring repayment in whole or in part) and on such conditions as the Board considers appropriate.

(3) The amount of the payment (or, if there is more than one, the aggregate) must not exceed the difference between—

(a) the amount of the reduction (or, if more than one, the aggregate amount of the reductions) within Article 165(1)(b), and

(b) the amount of any recoveries of value obtained before the settlement date (within the meaning of Article 167(2)).

(4) Subject to paragraph (3), the Board—

(a) must determine the amount of any fraud compensation payment in accordance with regulations made for the purposes of this paragraph, and

(b) must take account of any interim payment already made under Article 169.

(5) The Board must give written notice of its determination under paragraph (4) to—

(a) the Regulator,

(b) the trustees or managers of the scheme,

(c) if the trustees or managers did not make the application under Article 165 (fraud compensation payments), the person who made that application, and

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

Interim payments

169.—(1) The Board may, on an application under Article 165, make a payment or payments to the trustees or managers of an occupational pension scheme if—

(a) it is of the opinion that—

(i) the case is one to which paragraph (1) of that Article applies or may apply, and

(ii) the trustees or managers would not otherwise be able to meet liabilities of a prescribed description, but

(b) it has not determined the settlement date under Article 167.

(2) Amounts payable under this Article must not exceed the amounts determined in accordance with regulations.

(3) The Board may, except in prescribed circumstances, recover so much of any payment made under paragraph (1) as it considers appropriate if, after the payment is made, it determines—

(a) that the case is not one to which Article 165(1) applies, or

(b) that the amount of the payment was excessive.

(4) Subject to that, a payment under paragraph (1) may be made on such terms (including terms requiring repayment in whole or in part) and on such conditions as the Board considers appropriate.

Board's powers to make fraud compensation transfer payments

170.—(1) This Article applies where—

- (a) the Board assumes responsibility for a scheme in accordance with Chapter 3,
- (b) the value of the assets of the scheme was reduced after the relevant date but before the transfer notice (within the meaning of Article 144) was received by the trustees or managers of the scheme and there are reasonable grounds for believing that the reduction was attributable to an act or omission constituting an offence prescribed for the purposes of Article 165(1)(b), and
- (c) no application was made under Article 165 in respect of that reduction (or any such application was withdrawn before it was determined).

(2) The Board may transfer an amount from the Fraud Compensation Fund to the Pension Protection Fund (“fraud compensation transfer payment”) in respect of the reduction in value, subject to the provisions of this Article.

(3) The Board must obtain any recoveries of value, to the extent that it may do so without disproportionate cost and within a reasonable time.

(4) No fraud compensation transfer payment may be made until the date determined by the Board as the date after which further recoveries of value are unlikely to be obtained without disproportionate cost and within a reasonable time.

(5) In this Article “recovery of value” means any increase in the value of the Pension Protection Fund, being an increase attributable to any payment received (otherwise than under this Article) by the Board in respect of any act or omission—

- (a) which there are reasonable grounds for believing constituted an offence prescribed for the purposes of Article 165(1)(b), and
- (b) to which any reduction in value falling within paragraph (1)(b) was attributable.

(6) It is for the Board to determine whether anything received by it is to be treated as a payment received in respect of any such act or omission.

For this purpose “payment” includes any money or money’s worth.

(7) The amount of any fraud compensation transfer payment (or, if there is more than one, the aggregate) must not exceed the difference between—

- (a) the amount of the reduction (or, if more than one, the aggregate amount of the reductions) within paragraph (1)(b), and
- (b) the amount of any recoveries of value obtained by the Board before the date determined by the Board under paragraph (4).

(8) Subject to paragraph (7), the Board must determine the amount of any fraud compensation transfer payment in accordance with regulations made for the purposes of this paragraph.

(9) In this Article “the relevant date” has the meaning given by Article 165(10).

The levy

Fraud compensation levy

171.—(1) For the purposes of meeting expenditure payable out of the Fraud Compensation Fund, regulations may provide for the imposition of a levy (“fraud compensation levy”) in respect of occupational pension schemes.

(2) Paragraph (1) does not apply in relation to any scheme which is prescribed or of a description prescribed under Article 165(1)(a) (schemes not eligible for fraud compensation).

(3) A fraud compensation levy imposed in respect of a scheme is payable to the Board by or on behalf of—

- (a) the trustees or managers of the scheme, or
- (b) any other prescribed person.

(4) A fraud compensation levy is so payable at prescribed times and at a rate, not exceeding the prescribed rate, determined by the Board.

(5) In determining the amount of expenditure in respect of which a fraud compensation levy is to be imposed, the Board may take one year with another (and, in doing so, must have regard to expenditure estimated to be incurred in current or future periods and to actual expenditure incurred in previous periods).

(6) Notice of the rates determined by the Board under paragraph (4) must be given to prescribed persons in the prescribed manner.

(7) The Board must in respect of any fraud compensation levy imposed under this Article—

- (a) determine the schemes in respect of which it is imposed,
- (b) calculate the amount of the levy in respect of each of those schemes, and
- (c) notify any person liable to pay the levy in respect of the scheme of the amount of the levy in respect of the scheme and the date or dates on which it becomes payable.

(8) The Board may require the Regulator to discharge, on the Board’s behalf, its functions under paragraph (7) in respect of the levy.

(9) An amount payable by a person on account of a fraud compensation levy is a debt due from him to the Board.

(10) An amount so payable may be recovered—

- (a) by the Board, or
- (b) if the Board so determines, by the Regulator on its behalf.

(11) Without prejudice to the generality of paragraph (1), (9) or (10), regulations under this Article may include provision relating to—

- (a) the collection and recovery of amounts payable by way of levy under this Article;
- (b) the circumstances in which any such amount may be waived.