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STATUTORY INSTRUMENTS

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**1997 No. 666**

**PENSIONS**

**The Occupational and Personal Pension  
Schemes (Levy) Regulations 1997**

<i>Made</i>	- - - -	<i>6th March 1997</i>
<i>Laid before Parliament</i>		<i>11th March 1997</i>
<i>Coming into force</i>	- -	<i>1st April 1997</i>

The Secretary of State for Social Security, in exercise of the powers conferred by sections 168(1) and (4), 175(1) to (5), (7) and (9), 181(1) and 182(2) and (3) of the Pension Schemes Act 1993<sup>(1)</sup> and sections 89(2), 124(1), 125(3) and 174(2) and (3) of the Pensions Act 1995<sup>(2)</sup>, and of all other powers enabling him in that behalf, after consulting such persons as he considers appropriate about proposals to make regulation 11 of these Regulations<sup>(3)</sup> and after agreement by the Occupational Pensions Board that proposals to make regulation 13 of these Regulations should not be referred to them<sup>(4)</sup>, by this instrument, which otherwise contains regulations which are consequential upon section 165 of the Pensions Act 1995 and which are made before the end of the period of six months beginning with the coming into force of the enactments under which they are made<sup>(5)</sup>, hereby makes the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Occupational and Personal Pension Schemes (Levy) Regulations 1997 and shall come into force on 1st April 1997.

(2) In these Regulations—

“the 1993 Act” means the Pension Schemes Act 1993;

“the 1995 Act” means the Pensions Act 1995;

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- (1) 1993 c. 48. Section 168 was substituted by section 155(1) of the Pensions Act 1995 (c. 26); section 175 was substituted by section 165 of the Pensions Act 1995; section 181(1) is cited because of the meaning ascribed to “prescribe” and “regulations”.
- (2) 1995 c. 26. Section 124(1) is cited because of the meaning ascribed to “prescribed” and “regulations”.
- (3) See section 120(1) of the Pensions Act 1995 for the requirement for the Secretary of State to consult such persons as he considers appropriate.
- (4) See section 185(6) of the Pension Schemes Act 1993 and section 173(1)(b) of the Social Security Administration Act 1992 (c. 5) which provide that the requirement for the Secretary of State to refer proposals to make regulations to the Occupational Pensions Board contained in section 185(1) of the Pension Schemes Act 1993 shall not apply in any case where the Board agrees that such proposals should not be referred to them.
- (5) See section 185(6) of the Pension Schemes Act 1993 and section 173(5)(a) of the Social Security Administration Act 1992. The requirement in section 185(1) of the Pension Schemes Act 1993 for the Secretary of State to refer proposals to make regulations under section 175 of that Act to the Occupational Pensions Board does not apply to any regulations contained in this instrument which are consequential upon the enactment of section 165 of the Pensions Act 1995 (which substituted the provisions under which those regulations are made).

“the previous Regulations” means the Occupational and Personal Pension Schemes (Levy) Regulations 1995<sup>(6)</sup>;

“address of the scheme” means the place in the United Kingdom, or if more than one, the principal place, at which the management of a registrable scheme is conducted;

“Compensation Board” means the Pensions Compensation Board<sup>(7)</sup>;

“employer” means—

- (a) in relation to an occupational pension scheme in which there are members in pensionable service, the employer of persons in the description or category of employment to which the scheme relates; and
- (b) in relation to an occupational pension scheme which is a frozen scheme, the person who was the employer of persons in the description or category of employment to which the scheme related immediately before the occurrence of the event after which the scheme became a frozen scheme;

“frozen scheme” means a registrable scheme under which benefits continue to be payable to existing members and to which—

- (a) no new members may be admitted;
- (b) no further contributions are payable by or in respect of existing members; and
- (c) no further benefits accrue to existing members although benefits which have already accrued to them may be increased;

“member” means—

- (a) in relation to an occupational pension scheme, any person who—
  - (i) is in pensionable service under the scheme;
  - (ii) has rights under the scheme by virtue of his pensionable service under the scheme; or
  - (iii) has rights under the scheme by virtue of having been allowed transfer credits under the scheme;
- (b) in relation to a personal pension scheme, a member of the scheme, other than a member in respect of whom entitlement under the scheme is only for benefits payable on his death;

“registrable scheme” means an occupational or a personal pension scheme—

- (a) which—
  - (i) is established in the United Kingdom; or
  - (ii) has a place at which its management is conducted in the United Kingdom and has a representative appointed to carry out the functions of a trustee in the United Kingdom; and
- (b) which—
  - (i) is a scheme in respect of which a person has applied for, or received, the approval of the Board of Inland Revenue for the purposes of section 590 or section 591 (other than subsection (2)(g)) of the Income and Corporation Taxes Act 1988<sup>(8)</sup> (conditions for approval of retirement benefit schemes and discretionary approval), or for the purposes of Chapter IV of Part XIV of that Act (personal pension schemes); or

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<sup>(6)</sup> S.I.1995/524.

<sup>(7)</sup> The Pensions Compensation Board is established under section 78(1) of the Pensions Act 1995.

<sup>(8)</sup> 1988 c. 1.

- (ii) is a scheme which is a public service pension scheme; and
- (c) which—
  - (i) has more than one member; and
  - (ii) provides benefits which are not solely payable on the death of a member, and for the purposes of these Regulations an occupational pension scheme which is a retirement benefits scheme approved under section 591(2)(h) of the Income and Corporation Taxes Act 1988 (discretionary approval) shall be treated as a personal pension scheme;

“Registrar” means the Registrar of Occupational and Personal Pension Schemes;

“registration year” means a period of 12 months beginning on 1st April;

“Regulatory Authority” means the Occupational Pensions Regulatory Authority<sup>(9)</sup>;

“scheme year” in relation to a registrable scheme means—

- (a) a year specified for the purposes of the scheme in any document comprising the scheme or, if none, a period of 12 months commencing 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 commence;

“total membership” means the number of members—

- (a) on the day on which the scheme becomes a registrable scheme, then
- (b) at the end of the second scheme year, then
- (c) at the end of each subsequent scheme year;

“trustees”, in the case of a scheme which is not set up under a trust, means the managers of the scheme, except in relation to a scheme which is established outside the United Kingdom and, in such a case, “trustees” means the person treated by the Commissioners of Inland Revenue for the time being as the administrator of the scheme for the purposes of Chapter I or Chapter IV of Part XIV of the Income and Corporation Taxes Act 1988;

“unallocated assets” means any assets of a scheme which have not been specifically allocated for the provision of benefits to or in respect of members (whether generally or individually).

## **The general levy**

**2.—**(1) For the purpose of meeting expenditure under section 6, Part X and section 174 of the 1993 Act<sup>(10)</sup> and of the Regulatory Authority, the trustees of every registrable occupational pension scheme shall be liable to pay a levy to the Secretary of State.

(2) For the purpose of meeting expenditure under section 6, Part X and section 174 of the 1993 Act, the trustees of every registrable personal pension scheme shall be liable to pay a levy to the Secretary of State.

(3) In these Regulations, the levy payable to the Secretary of State by a registrable scheme under paragraph (1) or (2) above shall be referred to as “the general levy”.

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<sup>(9)</sup> The Occupational Pensions Regulatory Authority is established under section 1(1) of the Pensions Act 1995.

<sup>(10)</sup> Section 174 of the Pension Schemes Act 1993 is amended by section 151 of and paragraph 73 of Schedule 5 to the Pensions Act 1995.

- (4) The general levy shall be payable in respect of each registration year.
- (5) Subject to regulation 8, where, during a registration year, a scheme—
  - (a) becomes a registrable scheme;
  - (b) ceases to be a registrable scheme; or
  - (c) is wound up,

the general levy shall nevertheless be payable in full for that year.

#### **Amount of the general levy**

- 3.—(1) The amount of the general levy payable in respect of each registration year shall be determined by reference to the total membership of a scheme.
- (2) For the purposes of paragraph (1), the general levy shall—
    - (a) in the case of a registrable occupational pension scheme, be calculated in accordance with Part I of the Schedule; and
    - (b) in the case of a registrable personal pension scheme, be calculated in accordance with Part II of the Schedule.

#### **Payment of the general levy**

- 4.—(1) The general levy shall be remitted to the Registrar who shall collect the same on behalf of the Secretary of State.
- (2) The general levy shall, subject to paragraph (3), be payable in advance at the beginning of each registration year and no additional levy or refund shall be payable in respect of any change taking place during that year.
  - (3) In the case of a scheme to which regulation 2(5)(a) applies, the general levy shall be payable on the day on which the scheme becomes a registrable scheme.

#### **The compensation levy**

- 5.—(1) For the purpose of meeting the expenditure of the Compensation Board, the trustees of every registrable occupational pension scheme established by trust shall be liable to pay a levy to the Compensation Board.
- (2) In these Regulations, the levy payable to the Compensation Board shall be referred to as “the compensation levy”.
  - (3) Paragraph (1) above shall not apply in the case of—
    - (a) any occupational pension scheme referred to in paragraph (1)(d) to (g) of regulation 2 of the Occupational Pension Schemes (Pensions Compensation Provisions) Regulations 1997<sup>(11)</sup> (schemes to which the compensation provisions in sections 81 to 85 of the 1995 Act do not apply); and
    - (b) any occupational pension scheme in respect of which the employer cannot become insolvent within the meaning given by section 123 of the 1993 Act (interpretation of Chapter II of Part VII of the 1993 Act).
  - (4) Subject to paragraph (3) above and to regulation 8, where, during a registration year, a scheme to which regulation 5(1) applies—
    - (a) becomes a registrable scheme;
    - (b) ceases to be a registrable scheme; or

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(11) S.I. 1997/665.

(c) is wound up,  
the compensation levy shall nevertheless be payable in full for that year.

#### **Amount of the compensation levy**

6.—(1) The amount of the compensation levy payable in respect of each registration year shall be determined by reference to the total membership of a scheme.

(2) The amount of the compensation levy payable per member in respect of each registration year shall not exceed the amount specified in Part III of the Schedule.

(3) The Compensation Board shall secure that arrangements are made and implemented for giving notice in writing to the trustees of schemes to which regulation 5(1) applies of the amount of the compensation levy payable per member and that reasonable steps are taken to ascertain the address to which such notice should be sent.

#### **Payment of the compensation levy**

7.—(1) The compensation levy shall, subject to paragraph (2), be payable in advance at the beginning of each registration year and no additional levy or refund shall be payable in respect of any change taking place during that year.

(2) In the case of a scheme to which regulation 5(4)(a) applies, the compensation levy shall be payable on the day on which the scheme becomes a registrable scheme.

#### **Waiver of the general levy and the compensation levy**

8.—(1) In the case of schemes to which regulations 2(1) and 5(1) apply, payment of the general levy or the compensation levy shall be waived where the trustees confirm in writing to the Registrar that—

- (a) there is no employer or the employer is insolvent; and
- (b) in the case of a scheme under which all the benefits that may be provided (other than death benefits) are money purchase benefits, there are insufficient unallocated assets in the scheme to meet its levy liabilities in full; or
- (c) in the case of a scheme to which sections 56 to 60 of the 1995 Act (the minimum funding requirement) apply and in respect of which there has been an actuarial valuation of the scheme's assets in accordance with section 57 of that Act (valuation and certification of assets and liabilities), the value of the scheme's assets is less than 100 per cent. of its liabilities; or
- (d) in the case of a scheme to which sections 56 to 60 of the 1995 Act apply and in respect of which there has been no actuarial valuation of the scheme's assets in accordance with section 57 of that Act, the amount by which the scheme's assets exceed its liabilities, in accordance with the last actuarial valuation of the scheme's assets under regulation 8 of the Occupational Pension Schemes (Disclosure of Information) Regulations 1986(12), is less than the total amount of its levy liabilities.

(2) In this regulation, "insolvent" has the meaning given by section 123 of the 1993 Act (interpretation of Chapter II of Part VII of the 1993 Act).

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(12) S.I. 1986/1046. Regulation 8 was revoked by regulation 12 of and Schedule 4 to the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 (S.I. 1996/1655). (The requirement for occupational pension schemes to provide valuations of their assets is now contained in regulation 30 of the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996 (S.I. 1996/1536).)

### **Multi-employer schemes**

**9.**—(1) Where a registrable occupational pension scheme in relation to which there is more than one employer is divided into two or more sections and the provisions of the scheme are such that—

- (a) different sections of the scheme apply to different employers or groups of employers (whether or not more than one section applies to any particular employer or groups including any particular employer);
- (b) 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); and
- (c) 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,

these Regulations shall apply as if each section of the scheme were a separate scheme.

(2) Where—

- (a) a scheme which has been such a scheme as is mentioned in paragraph (1) above is divided into two or more sections some or all of which apply only to members who are not in pensionable service under the section; and
- (b) the provisions of the scheme have not been amended so as to prevent the conditions mentioned in paragraph (1)(a) to (c) above being satisfied in relation to two or more sections; but
- (c) those conditions have ceased to be satisfied in relation to one or more sections (whether before or after 1st April 1997) by reason only of there being no members in pensionable service under the section and no contributions which are to be allocated to it,

these Regulations shall apply as if the section in relation to which those conditions have ceased to be satisfied were a separate scheme.

(3) For the purposes of paragraphs (1) and (2), there shall be disregarded any provisions of the scheme by virtue of which contributions or transfers of assets may be made to make provision for death benefits; and where those paragraphs apply and those contributions or transfers 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 shall also be treated as if it were a separate scheme for the purposes of these Regulations.

(4) For the purposes of paragraphs (1) to (3), there shall be disregarded any provisions of the scheme by virtue of which, on the winding up of the scheme or a section, assets attributable to one section may be used for the purposes of another section.

### **Avoidance of duplication of payments**

**10.** Where, but for this regulation, the general levy or, as the case may be, the compensation levy would be payable in respect of the same registrable scheme under both these Regulations and any equivalent provision which has effect in Northern Ireland, that levy shall only be payable under these Regulations where the address of the scheme is in Great Britain.

### **Modification of section 75 of the 1995 Act**

**11.** Section 75 of the 1995 Act (deficiencies in the assets) shall apply in the case of schemes which are money purchase schemes with the following modifications—

- (a) for subsection (1) substitute—

“(1) If, in the case of a scheme which is a money purchase scheme, the value at the applicable time of the unallocated assets of the scheme is less than an amount payable by way of levy under section 175 of the Pension Schemes Act 1993, then an amount equal to the difference shall be treated as a debt due from the employer to the trustees or managers of the scheme.”;

(b) omit subsection (2);

(c) for subsection (3) substitute—

“(3) In this section—

“applicable time”, in relation to an amount payable by way of levy, means the time when the levy first becomes payable to the Secretary of State or, as the case may be, the Compensation Board or such later time as the trustees or managers may agree with the employer;

“employer” means—

- (a) in relation to an occupational pension scheme in which there are members in pensionable service, the employer of persons in the description or category of employment to which the scheme relates; and
- (b) in relation to an occupational pension scheme which is a frozen scheme, the person who was the employer of persons in the description or category of employment to which the scheme related immediately before the occurrence of the event after which the scheme became a frozen scheme;

“frozen scheme” means a registrable scheme under which benefits continue to be payable to existing members and to which—

- (a) no new members may be admitted;
- (b) no further contributions are payable by or in respect of existing members; and
- (c) no further benefits accrue to existing members although benefits which have already accrued to them may be increased; and

“registrable scheme” means an occupational or a personal pension scheme—

- (a) which—
  - (i) is established in the United Kingdom; or
  - (ii) has a place at which its management is conducted in the United Kingdom and has a representative appointed to carry out the functions of a trustee in the United Kingdom; and
- (b) which—
  - (i) is a scheme in respect of which a person has applied for, or received, the approval of the Board of Inland Revenue for the purposes of section 590 or section 591 (other than subsection (2)(g)) of the Income and Corporation Taxes Act 1988 (conditions for approval of retirement benefit schemes and discretionary approval), or for the purposes of Chapter IV of Part XIV of that Act (personal pension schemes); or
  - (ii) is a scheme which is a public service pension scheme; and
- (c) which—
  - (i) has more than one member; and

(ii) provides benefits which are not solely payable on the death of a member,

and, for this purpose, an occupational pension scheme which is a retirement benefits scheme approved under section 591(2)(h) of the Income and Corporation Taxes Act 1988 (discretionary approval) shall be treated as a personal pension scheme;

“unallocated assets”, in the case of a money purchase 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).”;

(d) omit subsection (4);

(e) for subsection (5) substitute—

“(5) The value at the applicable time of the unallocated assets shall be taken to be the value as certified in a statement by the scheme auditor.”;

(f) omit subsections (6), (9) and (10).

### **Transitional provision**

**12.** Where the trustees of an occupational or a personal pension scheme which became a registrable scheme before 1st April 1997 have not paid in full the amount of the levy for which they are liable under the previous Regulations, they shall be liable under these Regulations to pay that amount by 30th June 1997.

### **Penalties**

**13.** Where any person fails, without reasonable cause, to comply with the requirement to pay a levy under regulation 2, 5 or 12 of these Regulations, the Regulatory Authority may require that person to pay, within 28 days, a penalty which shall—

(a) in the case of an individual, not exceed £1,000; and

(b) in any other case, not exceed £10,000.

### **Revocation and saving**

**14.—(1)** The previous Regulations are hereby revoked.

(2) Anything done under, or by virtue of, any regulation revoked by these Regulations, if it could have been done under, or for the purpose of the corresponding provision of these Regulations, shall be deemed to have been done under or by virtue of the corresponding provision of these Regulations and anything begun under, or by virtue of, any such regulation may be continued under these Regulations as if begun under these Regulations.

Signed by authority of the Secretary of State for Social Security.

6th March 1997

*Oliver Heald*  
Parliamentary Under-Secretary of State,  
Department of Social Security

SCHEDULE

Regulations 3(2) and 6(2)

AMOUNT OF THE GENERAL LEVY AND MAXIMUM  
AMOUNT PER MEMBER OF THE COMPENSATION LEVY

Part I

The amount of the general levy in the case of registrable occupational pension schemes shall be calculated by reference to the following sub-paragraphs—

- (a) where the total membership of the scheme is at least 2 but not greater than 11, £8.75;
- (b) where the total membership of the scheme is at least 12 but not greater than 99, the amount calculated by multiplying £1.05 by the total membership of the scheme;
- (c) where the total membership of the scheme is at least 100 but not greater than 999, the greater of—
  - (i) the amount calculated by multiplying 75p by the total membership of the scheme, or
  - (ii) £105;
- (d) where the total membership of the scheme is at least 1,000 but not greater than 4,999, the greater of—
  - (i) the amount calculated by multiplying 60p by the total membership of the scheme, or
  - (ii) £750;
- (e) where the total membership of the scheme is at least 5,000 but not greater than 9,999, the greater of—
  - (i) the amount calculated by multiplying 45p by the total membership of the scheme, or
  - (ii) £3,000;
- (f) where the total membership of the scheme is 10,000 or over, the greater of—
  - (i) the amount calculated by multiplying 30p by the total membership of the scheme, or
  - (ii) £4,500.

Part II

The amount of the general levy in the case of registrable personal pension schemes shall be calculated by reference to the following sub-paragraphs—

- (a) where the total membership of the scheme is at least 2 but not greater than 11, £3.60;
- (b) where the total membership of the scheme is at least 12 but not greater than 99, the amount calculated by multiplying 30p by the total membership of the scheme;
- (c) where the total membership of the scheme is at least 100 but not greater than 999, the greater of—
  - (i) the amount calculated by multiplying 21p by the total membership of the scheme, or
  - (ii) £30;
- (d) where the total membership of the scheme is at least 1,000 but not greater than 4,999, the greater of—
  - (i) the amount calculated by multiplying 17p by the total membership of the scheme, or
  - (ii) £210;

- (e) where the total membership of the scheme is at least 5,000 but not greater than 9,999, the greater of—
  - (i) the amount calculated by multiplying 12p by the total membership of the scheme, or
  - (ii) £850;
- (f) where the total membership of the scheme is 10,000 or over, the greater of—
  - (i) the amount calculated by multiplying 8p by the total membership of the scheme, or
  - (ii) £1,200.

### Part III

The maximum amount per member of the compensation levy is 23p.

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#### EXPLANATORY NOTE

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

These Regulations revoke and replace the Occupational and Personal Pension Schemes (Levy) Regulations 1995 (“the previous Regulations”).

Regulation 1 provides for citation, commencement and interpretation.

Regulations 2 to 8 and the Schedule make provision for the payment of levies for the purposes of meeting the cost of the Pensions Ombudsman, the Occupational Pensions Regulatory Authority, the Pensions Compensation Board, the Registrar of Occupational and Personal Pension Schemes and certain grants made to advisory bodies by the Occupational Pensions Regulatory Authority. They also make provision as to the manner in which the amounts of the levies are to be determined, the manner in which the levies are to be paid and the circumstances in which payment of the levies shall be waived.

Regulation 9 makes provision for payment of the levies in the case of multi-employer schemes.

Regulation 10 makes provision to avoid the duplication of payments where a levy is payable under equivalent provisions which have effect in Northern Ireland.

Regulation 11 modifies the provisions of section 75 of the Pensions Act 1995 in the case of occupational pension schemes which are money purchase schemes.

Regulation 12 makes transitional provision for the payment under these Regulations of the amount of the levy for which schemes are liable under the previous Regulations.

Regulation 13 provides for the imposition of financial penalties by the Occupational Pensions Regulatory Authority in respect of any failure to pay a levy under these Regulations.

Regulation 14 revokes the previous Regulations with a saving.

An assessment of the compliance cost to business of the measures arising from the Pensions Act 1995, including these Regulations, has been placed in the libraries of both Houses of Parliament. Copies can be obtained by post from the Department of Social Security, 11th Floor, Adelphi, 1-11 John Adam Street, London WC2N 6HT.

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