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STATUTORY INSTRUMENTS

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**2005 No. 1907**

**CORPORATION TAX**

**INCOME TAX**

**CAPITAL GAINS TAX**

The Pension Protection Fund (Tax) (2005-06) Regulations 2005

<i>Made</i>	- - - -	<i>12th July 2005</i>
<i>Laid before the House of</i>		
<i>Commons</i>	- - - -	<i>13th July 2005</i>
<i>Coming into force</i>	- -	<i>3rd August 2005</i>

The Treasury, in exercise of the powers conferred upon them by section 102 of the Finance Act 2005<sup>(1)</sup>, make the following Regulations:

**Citation, commencement and effect**

1.—(1) These Regulations may be cited as the Pension Protection Fund (Tax) (2005-06) Regulations 2005 and shall come into force on 3<sup>rd</sup> August 2005.

(2) These Regulations have effect for the period beginning on 6th April 2005 and ending on 5th April 2006 only.

**Interpretation**

2.—(1) In this regulation—

- (a) paragraph (2) gives the meaning of the abbreviated references to Acts and instruments used in these Regulations, and
- (b) paragraph (3) deals with other expressions used in these Regulations.

(2) In these Regulations—

- “the Pensions Act” (without more) means the Pensions Act 2004<sup>(2)</sup>;
- “the 1988 Act” means the Income and Corporation Taxes Act 1988<sup>(3)</sup>;
- “the 1992 Act” means the Taxation of Chargeable Gains Act 1992<sup>(4)</sup>;

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(1) 2005 c. 7.  
(2) 2004 c. 35.  
(3) 1988 c. 1.  
(4) 1992 c. 12.

“the 2003 Act” means the Income Tax (Earnings and Pensions) Act 2003<sup>(5)</sup>;

“the 2005 Order” means the Pensions (Northern Ireland) Order 2005<sup>(6)</sup>.

(3) In these Regulations—

“the Board of the Pension Protection Fund” means the body corporate established under section 107 of the Pensions Act;

“exempt approved scheme” means an exempt approved scheme within the meaning of Chapter 1 of Part 14 of the 1988 Act (see section 592(1) of that Act);

“the Fraud Compensation Fund” has the meaning given by regulation 3(1);

“fraud compensation payment”—

(a) in England, Wales and Scotland means a fraud compensation payment within the meaning of Part 2 of the Pensions Act (see section 182(1) of that Act), and

(b) in Northern Ireland means a fraud compensation payment within the meaning of Part 3 of the 2005 Order (see Article 165(1) of that Order);

“the Pension Protection Fund” has the meaning given by regulation 3(1);

“the Pensions Act Funds” has the meaning given by regulation 3(1);

“the Pensions Act levies” means the levies specified in paragraph (2) or (3) of regulation 3, as the case may require.

### **Meaning of “the Pension Protection Fund” and other expressions**

3.—(1) In these Regulations—

“the Pension Protection Fund” means the Fund required to be held, managed and applied by the Board of the Pension Protection Fund under section 110(1)(a) of the Pensions Act;

“the Fraud Compensation Fund” means the Fund required to be held, managed and applied by the Board of the Pension Protection Fund under section 110(1)(b) of the Pensions Act;

“the Pensions Act Funds” means the Pension Protection Fund and the Fraud Compensation Fund.

(2) In England, Wales and Scotland, “the Pensions Act levies” means—

(a) the administration levy referred to in section 117(1) of the Pensions Act;

(b) the initial levy referred to in section 174(1) of that Act;

(c) the risk-based pension protection levy referred to in section 175(1)(a) of that Act;

(d) the scheme-based pension protection levy referred to in section 175(1)(b) of that Act;

(e) the fraud compensation levy referred to in section 189(1) of that Act;

(f) a levy in respect of eligible schemes imposed by regulations made under section 209(7) of that Act (the Ombudsman for the Board of the Pension Protection Fund).

(3) In Northern Ireland, “the Pensions Act levies” means—

(a) the administration levy referred to in Article 103(1) of the 2005 Order;

(b) the initial levy referred to in Article 157(1) of that Order;

(c) the risk-based pension protection levy referred to in Article 158(1)(a) of that Order;

(d) the scheme-based pension protection levy referred to in Article 158(1)(b) of that Order;

(e) the fraud compensation levy referred to in Article 171(1) of that Order;

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(5) 2003 c. 1.

(6) S.I.2005/255 (N.I. 1).

- (f) a levy in respect of eligible schemes imposed by regulations made under Article 191(3) of that Order (the PPF Ombudsman).

#### **Application of the Tax Acts: general**

4.—(1) The Tax Acts apply in relation to each of the Pensions Act Funds in the same way as they apply in relation to an exempt approved scheme.

(2) The general rule in paragraph (1) is subject to the further provisions contained in these Regulations.

#### **Application of the 1988 Act: further provisions**

5. Section 592(2) of the 1988 Act (exemption from income tax in respect of investments) applies in respect of income derived from investments or deposits held for each of the Pensions Act Funds—

- (a) as if for “income tax” there were substituted “corporation tax”, and
- (b) as if after “income derived from investments or deposits” there were inserted “(including any profit, gain or loss on a loan relationship within the meaning of Chapter 2 of Part 4 of the Finance Act 1996(7))”.

6. Section 592(3) of the 1988 Act(8) (exemption from income tax in respect of underwriting commissions) applies in respect of underwriting commissions applied for the purposes of each of the Pensions Act Funds—

- (a) as if for “income tax” there were substituted “corporation tax”, and
- (b) as if for “under Chapter 8 of Part 5 of ITTOIA 2005 (income not otherwise charged)” there were substituted “under Case VI of Schedule D”.

7. Section 592(6A) of the 1988 Act(9) (sums paid towards discharge of liability of an employer) applies in relation to the payment, by an employer, of any sum in respect of any of the Pensions Act levies as it applies in relation to the payment of any sum in or towards the discharge of any liability of an employer under the enactments specified in that subsection.

8.—(1) If at any time section 606 of the 1988 Act (default of scheme administrator etc.) applies in relation to the Pension Protection Fund, the Board of the Pension Protection Fund shall be responsible for the discharge of all duties imposed on the administrator under Chapter 1 of Part 14 of the 1988 Act (whenever arising), and liable for any tax due from the administrator in the administrator’s capacity as such (whenever falling due).

(2) Section 606 of the 1988 Act does not apply in relation to the Fraud Compensation Fund.

9.—(1) For the purposes of section 611AA of the 1988 Act(10) (definition of the administrator), references to the administrator, in relation to the Pension Protection Fund, are to the person who is, or the persons who are, for the time being, appointed by the Board of the Pension Protection Fund to be responsible for the discharge of all duties imposed on the administrator under Chapter 1 of Part 14 of the 1988 Act.

(2) Section 611AA of the 1988 Act does not apply in relation to the Fraud Compensation Fund.

10. Schedule 22 to the 1988 Act (reduction of pension fund surpluses) does not apply in relation to either of the Pensions Act Funds.

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(7) 1996 c. 8.

(8) Section 592(3) was amended by paragraph 252(1) and (2) of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005 (c. 5).

(9) Section 592(6A) was inserted by section 112(6) of the Finance Act 1993 (c. 34).

(10) Section 611AA was inserted by section 103(1) of the Finance Act 1994 (c. 9).

### **Application of the 1992 Act: further provisions**

**11.**—(1) For the purposes of the 1992 Act, any gain accruing to the Board of the Pension Protection Fund from its disposal of investments shall not be a chargeable gain if, or to the extent that, at the time of the disposal, those investments were held by the Board, or on its behalf, for the purposes of one of the Pensions Act Funds.

(2) In paragraph (1) “investments” includes futures contracts and options contracts.

(3) This regulation is to be construed as one with the 1992 Act.

### **Application of the Finance Act 1996: further provisions**

**12.**—(1) No credit or debit shall be required or allowed to be brought into account for the purposes of Chapter 2 of Part 4 of the Finance Act 1996<sup>(11)</sup> (loan relationships) in respect of the Pensions Compensation Board transfer in the case of the transferor.

(2) In paragraph (1) “the Pensions Compensation Board transfer” means the transfer, by the Pensions Compensation Board to the Board of the Pension Protection Fund, of all property, rights and liabilities to which the Pensions Compensation Board was entitled immediately before the transfer.

### **Application of the 2003 Act: further provisions**

**13.** Step 5 of section 54(1) of the 2003 Act (calculation of deemed employment payment under arrangements made by intermediaries) applies in relation to a payment, by the intermediary, of any sum in respect of any of the Pensions Act levies in the same way as it applies in relation to any contributions that may be deducted under that step.

**14.** Section 307 of the 2003 Act (exemption from employment income for death or retirement benefit provision made by employer) applies in relation to the payment of any sum in respect of any of the Pensions Act levies in the same way as it applies in respect of provision made by an employee’s employer for a retirement or death benefit.

**15.**—(1) Section 583 of the 2003 Act (unauthorised payments of pension income from approved retirement benefits schemes) applies in relation to a payment made out of funds which are held for the purposes of the Pension Protection Fund if the following two conditions are met.

(2) The first condition is that the payment is not expressly authorised under Part 2 of the Pensions Act.

(3) The second condition is that the payment is made to or for the benefit of—

(a) an employee, or

(b) an ex-spouse of an employee,

who has entitlements under a scheme for which the Board of the Pension Protection Fund has assumed responsibility under Chapter 3 of Part 2 of the Pensions Act.

### **Fraud compensation payments and other related payments**

**16.**—(1) Receipt of a payment to which this regulation applies shall not be regarded as a disposal of an asset for the purposes of capital gains tax or for the purposes of corporation tax on chargeable gains.

(2) This regulation applies to—

(a) a fraud compensation payment under section 185 of the Pensions Act;

(b) an interim payment under section 186 of the Pensions Act;

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(11) 1996 c. 8.

- (c) a fraud compensation payment under Article 168 of the 2005 Order;
- (d) an interim payment under Article 169 of the 2005 Order;
- (e) a payment made by the Board of the Pension Protection Fund under section 83 of the Pensions Act 1995<sup>(12)</sup>;
- (f) a payment in anticipation made by the Board of the Pension Protection Fund under section 84 of that Act;
- (g) a payment made by the Board of the Pension Protection Fund under Article 81 of the Pensions (Northern Ireland) Order 1995<sup>(13)</sup>;
- (h) a payment in anticipation made by the Board of the Pension Protection Fund under Article 82 of that Order.

12th July 2005

*Dave Watts*  
*Tom Watson*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

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<sup>(12)</sup> 1995 c. 26.

<sup>(13)</sup> S.I. 1995/3213 (N.I. 22).

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## EXPLANATORY NOTE

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

In the Pensions Act 2004 (c. 35), Part 2 establishes and deals with the Board of the Pension Protection Fund. The Board is a body corporate, and has two main functions. First, the Board administers the Pension Protection Fund, from which compensation will be paid to members of certain pension schemes which are underfunded and no longer have a solvent sponsoring employer; and (secondly) the Board is to administer the Fraud Compensation Fund, from which compensation will be paid to certain pension schemes which no longer have a solvent sponsoring employer in cases of fraud and misappropriation of scheme assets.

The Finance Act 2004 (c. 12), in Part 4, made new provision relating to pension schemes; but this new provision does not take effect until 6th April 2006.

These Regulations, made under powers conferred by section 102 of the Finance Act 2005 (c. 7), make provision for the application of income tax, corporation tax and capital gains tax in relation to the Board, the Pension Protection Fund and the Fraud Compensation Fund during the period beginning on 6th April 2005 and ending on 5th April 2006: that is to say, during the period before the new provision made by the Finance Act 2004 takes effect.

These Regulations deal with various preliminary matters in regulations 1 to 3. Regulation 4 then contains the principal provision, stating that the Tax Acts apply to the Pension Protection Fund and the Fraud Compensation Fund in the same way as they apply to an exempt approved scheme: a particular type of pension scheme dealt with in section 592(1) of the Income and Corporation Taxes Act 1988 (c. 1).

Regulations 5 to 10 and 13 to 15 then make further detailed modifications of the Tax Acts with the object of ensuring that the tax treatment of the Pension Protection Fund is equivalent to the tax treatment of an exempt approved scheme, and that the tax treatment of the income of the Fraud Compensation Fund is also equivalent to the tax treatment of the income of an exempt approved scheme.

Regulation 11 ensures that gains and losses accruing on disposals of investments held by the Board of the Pension Protection Fund for the purposes of the Pension Protection Fund or the Fraud Compensation Fund are not chargeable gains or allowable losses.

Regulation 12 ensures that the transfer of the loan relationships held by the Pensions Compensation Board to the Board of the Pension Protection Fund has no tax consequences.

Regulation 16 eliminates any possibility that receipt of a fraud compensation payment or of one of a number of related payments may be liable to capital gains tax or to corporation tax on chargeable gains.

Authority for the retrospective effect of these Regulations is given by section 102(6) of the Finance Act 2005.

No regulatory impact assessment has been prepared for these Regulations, since the effect on business will be negligible. However, information about the impact of the Pension Protection Fund on business can be found in the Regulatory Impact Assessment for the Pensions Bill 2004, published at [www.dwp.gov.uk/resourcecentre/ria](http://www.dwp.gov.uk/resourcecentre/ria).