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STATUTORY INSTRUMENTS

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**1995 No. 3213**

**The Pensions (Northern Ireland) Order 1995**

**PART II**

**OCCUPATIONAL PENSIONS**

*The compensation provisions*

**Cases where compensation provisions apply**

**79.**—(1) Subject to paragraph (2), this Article applies to an application for compensation under Article 80 in respect of an occupational pension scheme if all the following conditions are met—

- (a) the scheme is a trust scheme,
- (b) the employer is insolvent,
- (c) the value of the assets of the scheme has been reduced, and there are reasonable grounds for believing that the reduction was attributable to an act or omission constituting a prescribed offence,
- (d) in the case of a salary related trust scheme, immediately before the date of the application the value of the assets of the scheme is less than 90 per cent. of the amount of the liabilities of the scheme, and
- (e) it is reasonable in all the circumstances that the members of the scheme should be assisted by the Compensation Board paying to the trustees of the scheme, out of funds for the time being held by them, an amount determined in accordance with the compensation provisions.

(2) Paragraph (1) does not apply in respect of a trust scheme falling within a prescribed class or description; and paragraph (1)(c) applies only to reductions in value since the appointed day.

(3) In this Part, “the compensation provisions” means the provisions of this Article and Articles 80 to 83; and in the compensation provisions as they relate to a trust scheme—

- (a) “the application date” means the date of the application for compensation under Article 80,
- (b) “the appointed day” means the day appointed under Article 1 for the commencement of this Article,
- (c) “the insolvency date” means the date on which the employer became insolvent,
- (d) “the settlement date” means the date determined by the Compensation Board, after consulting the trustees, to be the date after which further recoveries of value are unlikely to be obtained without disproportionate cost or within a reasonable time,
- (e) “the shortfall at the application date” means the amount of the reduction falling within paragraph (1)(c) or (if there was more than one such reduction) the aggregate of the reductions, being the amount or aggregate immediately before the application date,

- (f) “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 Compensation Board) by the trustees of the scheme in respect of any act or omission—
- (i) which there are reasonable grounds for believing constituted a prescribed offence, and
  - (ii) to which any reduction in value falling within paragraph (1)(c) was attributable.

(4) It is for the Compensation Board to determine whether anything received by the trustees of the scheme is to be treated as a payment received for any such act or omission as is referred to in paragraph (3)(f); and in this Article “payment” includes any money or money’s worth.

(5) Where this Article applies to an application for compensation under Article 80, the trustees must obtain any recoveries of value, to the extent that they may do so without disproportionate cost and within a reasonable time.

(6) If paragraph (5) is not complied with, Article 3 applies to any trustee who has failed to take all such steps as are reasonable to secure compliance.

(7) Article 56(3) and (4) applies for the purposes of the compensation provisions as it applies for the purposes of Articles 56 to 61.

(8) Section 119 of the Pension Schemes Act (meaning of insolvency) applies for the purposes of the compensation provisions as it applies for the purposes of Chapter II of Part VII of that Act (unpaid scheme contributions).

### **Applications for payments**

**80.**—(1) Compensation may be paid under Article 81 only on an application to which Article 79 applies made within the qualifying period by a prescribed person.

(2) An application under this Article must be made in the manner, and give the information, required by the Compensation Board.

(3) For the purposes of this Article the “qualifying period”, subject to paragraph (5), is the period expiring with the period of twelve months mentioned in paragraph (4).

(4) The period of twelve months referred to in paragraph (3) is that beginning with the later of the following times—

- (a) the insolvency date,
- (b) when the auditor or actuary of the scheme, or the trustees, knew or ought reasonably to have known that a reduction of value falling within Article 79(1)(c) had occurred,

being, in each case, a time after the appointed day.

(5) The Compensation Board may extend, or further extend, the qualifying period.

### **Amount of compensation**

**81.**—(1) Where, in the opinion of the Compensation Board, Article 79 applies to an application for compensation under Article 80 in respect of a trust scheme, and the Board have determined the settlement date, the Board may make a payment or payments to the trustees of the scheme in accordance with this Article.

(2) The amount of any payment must be determined in accordance with regulations and must take account of any payment already made under Article 82, and the Compensation Board must give written notice of their determination to the person who made the application under Article 80 and (if different) to the trustees.

(3) The amount of the payment or (if there is more than one) the aggregate—

- (a) must not exceed 90 per cent. of the shortfall at the application date, together with interest at the prescribed rate for the prescribed period on the shortfall or (if the shortfall comprises more than one reduction in value) on each of the reductions, and also,
- (b) in the case of a salary related scheme, must not exceed the amount which, on the settlement date, is required to be paid to the trustees of the scheme in order to secure that the value on that date of the assets of the scheme is equal to 90 per cent. of the amount on that date of the liabilities of the scheme.

### **Payments made in anticipation**

**82.**—(1) The Compensation Board may, on an application for compensation under Article 80, make a payment or payments to the trustees of a trust scheme where in their opinion—

- (a) Article 79 applies, or may apply, to the application, and
- (b) the trustees would not otherwise be able to meet liabilities falling within a prescribed class,

but the Board have not determined the settlement date.

(2) Amounts payable under this Article must be determined in accordance with regulations.

(3) Where any payment is made under this Article, the Compensation Board may, except in prescribed circumstances—

- (a) if they subsequently form the opinion that Article 79 does not apply to the application for compensation in respect of the scheme, or
- (b) if they subsequently form the opinion that the amount of the payment was excessive,

recover so much of the payment as they consider appropriate.

### **Surplus funds**

**83.**—(1) Section 85 of the Pensions Act 1995(1) (surplus funds) shall extend to Northern Ireland.

(2) In subsection (1) of that section (distribution of funds surplus to the Compensation Board's requirements for the purposes of Part I of that Act), after "Part" insert "or any corresponding provisions in force in Northern Ireland".

### **Modification of compensation provisions**

**84.** Regulations may modify the compensation provisions in their application to trust schemes falling within a prescribed class or description.