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STATUTORY INSTRUMENTS

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**2005 No. 255**

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

**PART III**

**THE BOARD OF THE PENSION PROTECTION FUND**

**CHAPTER 3**

**PENSION PROTECTION**

*The levies*

**Initial levy**

**157.**—(1) Regulations must make provision for imposing a levy ( “the initial levy”) in respect of eligible schemes for the period ( “the initial period”) which—

- (a) begins with the day appointed for this purpose by the regulations, and
- (b) ends on the following 31st March or, if the regulations so provide, 12 months after the day referred to in sub-paragraph (a).

(2) The regulations must prescribe—

- (a) the factors by reference to which the initial levy is to be assessed,
- (b) the rate of the levy, and
- (c) the time or times during the initial period when the levy, or any instalment of the levy, becomes payable.

(3) Regulations under this Article may only be made with the approval of the Department of Finance and Personnel.

**Pension protection levies**

**158.**—(1) For each financial year falling after the initial period, the Board must impose both of the following—

- (a) a risk-based pension protection levy in respect of all eligible schemes;
- (b) a scheme-based pension protection levy in respect of eligible schemes.

In this Chapter “pension protection levy” means a levy imposed in accordance with this Article.

(2) For the purposes of this Article—

- (a)<sup>F1</sup> a risk-based pension protection levy is a levy assessed by reference to—
  - (i) the difference between the value of a scheme's assets (disregarding any assets representing the value of any rights in respect of money purchase benefits under the scheme rules) and the amount of its protected liabilities,

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- (ii) except in relation to any prescribed scheme or scheme of a prescribed description, the likelihood of an insolvency event occurring in relation to the employer in relation to a scheme, and
- (iii) if the Board considers it appropriate, one or more other risk factors mentioned in paragraph (3), and
- (b) a scheme-based pension protection levy is a levy assessed by reference to—
  - (i) the amount of a scheme's liabilities to or in respect of members (other than liabilities in respect of money purchase benefits), and
  - (ii) if the Board considers it appropriate, one or more other scheme factors mentioned in paragraph (4).
- (3) The other risk factors referred to in paragraph (2)(a)(iii) are factors which the Board considers indicate one or more of the following—
  - (a) the risks associated with the nature of a scheme's investments when compared with the nature of its liabilities;
  - (b) such other matters as may be prescribed.
- (4) The other scheme factors referred to in paragraph (2)(b)(ii) are—
  - (a) the number of persons who are members, or fall within any description of member, of a scheme;
  - (b) the total annual amount of pensionable earnings of active members of a scheme;
  - (c) such other factors as may be prescribed.
- (5) The Board must, before the beginning of each financial year, determine in respect of that year—
  - (a) the factors by reference to which the pension protection levies are to be assessed,
  - (b) the time or times by reference to which those factors are to be assessed,
  - (c) the rate of the levies, and
  - (d) the time or times during the year when the levies, or any instalment of levy, becomes payable.
- (6) Different risk factors, scheme factors or rates may be determined in respect of different descriptions of scheme.
- (7) The rate determined in respect of a description of scheme may be nil.
- (8) In this Article—
  - “initial period” is to be construed in accordance with Article 157;
  - “pensionable earnings”, in relation to an active member under a scheme, means the earnings by reference to which a member's entitlement to benefits would be calculated under the scheme rules if he ceased to be an active member at the time by reference to which the factor within paragraph (4)(b) is to be assessed.
- (9) The Board's duty to impose pension protection levies in respect of any financial year is subject to—
  - (a) Article 160 (amounts to be raised by the pension protection levies), and
  - (b) Article 163 (transitional provision).

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**Modifications etc. (not altering text)**

- C1** Art. 158 modified (30.3.2006) by Occupational Pension Schemes (Pension Protection Levies) (Transitional Period and Modification for Multi-employer Schemes) Regulations (Northern Ireland) 2006 (S.R. 2006/84), **reg. 3(2)(a)**
- C2** Art. 158 modified (30.3.2006) by Occupational Pension Schemes (Pension Protection Levies) (Transitional Period and Modification for Multi-employer Schemes) Regulations (Northern Ireland) 2006 (S.R. 2006/84), **reg. 4(2)**
- C3** Art. 158 modified (30.3.2006) by Occupational Pension Schemes (Pension Protection Levies) (Transitional Period and Modification for Multi-employer Schemes) Regulations (Northern Ireland) 2006 (S.R. 2006/84), **reg. 5(2)**
- C4** Art. 158(1) modified (30.3.2006) by Occupational Pension Schemes (Pension Protection Levies) (Transitional Period and Modification for Multi-employer Schemes) Regulations (Northern Ireland) 2006 (S.R. 2006/84), **reg. 3(2)(b)**
- C5** Art. 158(2)(a)(i) applied (with modifications) by S.R. 2005/55, reg. 3(5) (as added (8.3.2010) by Pension Protection Fund and Occupational Pension Schemes (Miscellaneous Amendments) Regulations (Northern Ireland) 2010 (S.R. 2010/32), **reg. 2(5)**)

**Supplementary provisions about pension protection levies**

**159.**—(1) The Board must consult such persons as it considers appropriate in the prescribed manner before making a determination under Article 158(5) in respect of a financial year if—

- (a) that year is the first financial year for which the Board is required to impose levies under Article 158,
- (b) any of the proposed levy factors or levy rates is different, or applies to a different description of scheme, from the levy factors and levy rates in respect of the pension protection levies imposed in the previous financial year, or
- (c) no consultation has been required under this paragraph in relation to the pension protection levies imposed for either of the previous two financial years.

(2) The Board must publish details of any determination under Article 158(5) in the prescribed manner.

**Amounts to be raised by the pension protection levies**

**160.**—(1) Before determining the pension protection levies to be imposed for a financial year, the Board must estimate the amount which will be raised by the levies it proposes to impose.

(2) The Board must impose levies for a financial year in a form which it estimates will raise an amount not exceeding the levy ceiling for the financial year.

(3) The pension protection levies imposed for a financial year must be in a form which the Board estimates will result in at least 80% of the amount raised by the levies for that year being raised by the risk-based pension protection levy.

(4) For the first financial year after the transitional period, regulations may modify paragraph (2) so as to provide that the reference to the levy ceiling for the financial year is to be read as a reference to such lower amount as is prescribed.

(5) For the second financial year after the transitional period and for any subsequent financial year, the Board must impose pension protection levies in a form which it estimates will raise an amount which does not exceed by more than 25% the amount estimated under paragraph (1) in respect of the pension protection levies imposed for the previous financial year.

(6) Whenever the Secretary of State makes an order under section 177(6) of the Pensions Act 2004 (c. 35), the Department may make a corresponding order for Northern Ireland.

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(7) Regulations under paragraph (4) may be made only with the approval of the Department of Finance and Personnel.

(8) In this Article—

- (a) “risk-based pension protection levy” and “scheme-based pension protection levy” are to be construed in accordance with Article 158, and
- (b) “transitional period” has the meaning given by Article 163(3).

#### Modifications etc. (not altering text)

**C6** Art. 160(2) modified (20.11.2006) by [Pension Protection Fund \(Levy Ceiling\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/409\)](#), **reg. 2**

#### Commencement Information

**II** Art. 160 partly in operation; art. 160 not in operation at date of making see art. 1(2); art. 160(1)-(3)(8)(a) in operation at 9.12.2005 by [S.R. 2005/543](#), **art. 2(2)**, **Sch. Pt. 2**; art. 160(8) in operation at 1.4.2006 in so far as not already in operation by [S.R. 2006/95](#), **art. 2(b)**, **Sch. Pt. 2**; art. 160(4)(5)(7) in operation at 1.9.2006 by [S.R. 2006/352](#), **art. 2(1)**

### The levy ceiling

**161.** Whenever the Secretary of State makes an order under section 178 of the Pensions Act 2004 (c. 35), the Department may make a corresponding order for Northern Ireland.

### Valuations to determine scheme underfunding

**162.—(1)** For the purposes of enabling risk-based pension protection levies (within the meaning of Article 158) to be calculated in respect of eligible schemes, regulations may make provision requiring the trustees or managers of each such scheme to provide the Board or the Regulator on the Board's behalf—

- (a) <sup>F2</sup> with an actuarial valuation of the scheme at such intervals as may be prescribed, and
- (b) with such other information as the Board may require in respect of the assets and protected liabilities of the scheme at such times as may be prescribed.

(2) For the purposes of this Article, in relation to a scheme—

“an actuarial valuation” means a written valuation of the scheme's assets and protected liabilities prepared and signed by the actuary;

“the actuary” means—

- (a) the actuary appointed under Article 47(1)(b) of the 1995 Order (professional advisers) in relation to the scheme, or
- (b) if no such actuary has been appointed—
  - (i) a person with prescribed qualifications or experience, or
  - (ii) a person approved by the Department.

(3) Regulations under this Article may prescribe how—

- (a) the assets and the protected liabilities of schemes, and
- (b) their amount or value,

are to be determined, calculated and verified.

(4) Subject to any provision made under paragraph (3), those matters are to be determined, calculated and verified in accordance with guidance issued by the Board.

(5) In calculating the amount of any liabilities for the purposes of a valuation required by virtue of this Article, a provision of the scheme rules which limits the amount of the scheme's liabilities by reference to the value of its assets is to be disregarded.

(6) In this Article references to “assets” do not include assets representing the value of any rights in respect of money purchase benefits under the scheme rules.

**F2** mod. by SR 2005/91

### **Pension protection levies during the transitional period**

**163.**—(1) Regulations may provide that in respect of any financial year during the transitional period—

- (a) Articles 158 and 160(3) are to apply with such modifications as may be prescribed;
- (b) Article 160(2) is to apply as if the reference to the levy ceiling for the financial year were a reference to such lower amount as is specified in the regulations.

(2) Regulations which contain provision made by virtue of paragraph (1)(b) may only be made with the approval of the Department of Finance and Personnel.

(3) For the purposes of this Article “the transitional period” means the prescribed period beginning immediately after the initial period (within the meaning of Article 157).

(4) If the transitional period begins with a date other than 1st April, regulations may provide that any provision of this Article or of Articles 158 to 162 applies, with such modifications as may be prescribed, in relation to—

- (a) the period beginning at the same time as the transitional period and ending with the following 31st March, and
- (b) the financial year which begins immediately after that period.

### **Calculation, collection and recovery of levies**

**164.**—(1) This Article applies in relation to—

- (a) the initial levy imposed under Article 157 in respect of a scheme, and
- (b) any pension protection levy imposed under Article 158 in respect of a scheme.

(2) The levy is payable to the Board by or on behalf of—

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

(3) The Board must in respect of the levy—

- (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.

(4) The Board may require the Regulator to discharge, on the Board's behalf, its functions under paragraph (3) in respect of the levy.

(5) Where a scheme is an eligible scheme for only part of the period for which the levy is imposed, except in prescribed circumstances, the amount of the levy payable in respect of the scheme for that period is such proportion of the full amount as that part bears to that period.

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- (6) An amount payable by a person on account of the levy is a debt due from him to the Board.
- (7) An amount so payable may be recovered—
  - (a) by the Board, or
  - (b) if the Board so determines, by the Regulator on its behalf.
- (8) Regulations may make provision relating to—
  - (a) the collection and recovery of amounts payable by way of any levy in relation to which this Article applies;
  - (b) the circumstances in which any such amount may be waived.

**[<sup>F3</sup>Pension protection levy: interest for late payment**

**164A.**—(1) Regulations may make provision for interest to be charged at the prescribed rate in the case of late payment of a pension protection levy.

(2) Interest is payable by or on behalf of the person or persons by or on behalf of whom the levy is payable.

(3) Interest payable by a person by virtue of this Article is a debt due from the person to the Board.

(4) Interest is recoverable by the Board or, if the Board so determines, by the Regulator on its behalf.

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

- (a) the collection and recovery of interest;
- (b) the circumstances in which interest may be waived.]

**F3** Art. 164A inserted (26.2.2010) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 104, 118(1), **Sch. 9 para. 4**; S.R. 2010/50, **art. 2(1)**

**Status:**

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**Changes to legislation:**

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