2006 No. 558

PENSIONS

The Occupational Pension Schemes (Fraud Compensation Levy) Regulations 2006

Made - - - -	*1st March 2006*
Laid before Parliament	*8th March 2006*
Coming into force -	*1st April 2006*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 10(3), 75(10), 89(2) and 124(1) of the Pensions Act 1995(**a**) and sections 189(1), (4), (6) and (11), 315(2) and (5) and 318(1) of the Pensions Act 2004(**b**).

Regulations 2 to 10 are made before the end of the period of six months beginning with the coming into force of the provisions of the Pensions Act 2004 by virtue of which they are made(**c**). Regulation 11 is consequential on the commencement of section 189, by virtue of which it is made(**d**).

In accordance with section 120(1) of the Pensions Act 1995 and section 317(1) of the Pensions Act 2004, the Secretary of State has consulted such persons as he considers appropriate before making regulation 12.

Citation and commencement

1. These Regulations may be cited as the Occupational Pension Schemes (Fraud Compensation Levy) Regulations 2006 and shall come into force on 1st April 2006.

Interpretation

2. In these Regulations–

"the Act" means the Pensions Act 2004;

"the Employer Debt Regulations" means the Occupational Pension Schemes (Employer Debt) Regulations 2005(**e**);

(**a**) 1995 c. 26. Section 10(3) applies by virtue of section 314(a) of the Pensions Act 2004 (c. 35). Section 89(2) was amended by paragraph 66(b) of Schedule 12 to, and Part 1 of Schedule 13 to, the Pensions Act 2004. Section 124(1) is cited because of the meaning given to "prescribed" and "regulations".

(**b**) 2004 c. 35. Section 318(1) is cited because of the meaning given to "prescribed" and "regulations".

(**c**) *See* section 317(2)(c) of the Pensions Act 2004 which provides that the obligation under section 317(1) of that Act for the Secretary of State to consult such persons as he considers appropriate before making any regulations by virtue of the provisions of that Act (other than Part 8) does not apply where regulations are made before the end of the period of six months beginning with the coming into force of the provisions of that Act by virtue of which they are made.

(**d**) *See* section 120(2)(d) of the Pensions Act 1995 which provides that the obligation under section 120(1) of that Act for the Secretary of State to consult such persons as he considers appropriate before making any regulations by virtue of the provisions of Part I of that Act does not apply where regulations are consequential upon a specified enactment and are made before the end of the period of six months beginning with the coming into force of that enactment.

(**e**) S.I. 2005/678, to which there are amendments not relevant to these Regulations.

"financial year" means a period of 12 months ending with 31st March;

"life member", in relation to a scheme, means a person who is an active member but whose service under the scheme is only pensionable service for the purposes of death benefits;

"member", in relation to a scheme, means a person who is one or more of the following–

(a) an active member (but not a life member);

(b) a deferred member (including where a life member would be a deferred member if he were not an active member);

(c) a pensioner member; or

(d) a pension credit member;

"registrable scheme" means a scheme to which regulation 2 of the Register of Occupational and Personal Pension Schemes Regulations 2005(**a**) (registrable schemes) applies;

"relevant public authority" has the meaning given in section 307(4) of the Act (modification of the Act in relation to certain categories of schemes);

"scheme" means an occupational pension scheme to which Chapter 4 of Part 2 of the Act (fraud compensation) applies;

"scheme year", in relation to a 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 beginning on 1st April, or on such other date as the trustees or managers select; or

(b) such other period (if any) exceeding 6 months but not exceeding 18 months as is selected by the trustees or managers–

(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 begin;

"stakeholder pension scheme" means a stakeholder pension scheme within the meaning of section 1 of the Welfare Reform and Pensions Act 1999(**b**) (meaning of stakeholder pension scheme) which is established under a trust;

"unallocated assets", in relation to a 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).

The fraud compensation levy

3.—(1) For the purposes of meeting expenditure payable out of the Fraud Compensation Fund, trustees or managers of schemes shall be liable to pay a fraud compensation levy in respect of each financial year.

(2) One fraud compensation levy only shall be payable in respect of each financial year.

(3) The fraud compensation levy payable shall–

(a) be payable by reference to the total number of members of the scheme on the reference day, and

(b) not exceed 23 pence per member.

(4) Where a scheme becomes a registrable scheme during a financial year, any fraud compensation levy payable shall be calculated to reflect the proportion of that year during which the scheme is a registrable scheme.

(5) Where during a financial year a scheme ceases to be a registrable scheme any fraud compensation levy payable is payable in full for that year.

(**a**) S.I. 2005/597.
(**b**) 1999 c. 30.

The reference day

4.—(1) Subject to paragraph (2), the reference day for a scheme is the last day of the scheme year which ended before the beginning of the previous financial year.

(2) If the scheme–

(a) is established too late to have such a scheme year; or

(b) has only one member on the day that is a reference day under paragraph (1),

the reference day is the date on which the scheme becomes a registrable scheme.

Payment of the fraud compensation levy

5.—(1) The fraud compensation levy shall be payable on the first day of a financial year ("payable date").

(2) If the amount of any fraud compensation levy payable is not notified under section 189(7)(c) of the Act (notice of amount of levy) to the trustees or managers of a scheme before the payable date, the levy is payable within the period of 28 days beginning with the date on which the notification is given.

Notices

6.—(1) Subject to paragraph (2), where any fraud compensation levy is payable the notice referred to in section 189(6) of the Act (notice of rates) must be given–

(a) in writing to the trustees or managers of the scheme; and

(b) in a manner which specifies the rates by way of the amount payable per member.

(2) The Board shall take reasonable steps to ascertain the address to which the notice should be sent.

Waiver

7.—(1) Where any fraud compensation levy is payable, the Board shall waive payment of an amount payable by way of such levy if the trustees or managers of the scheme confirm in writing to the Board–

(a) that–

(i) there is no employer in relation to the scheme, or

(ii) the employer is insolvent; and

(b) in the case of a scheme in 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 liabilities in respect of the payment of the levy in full.

(2) For the purposes of paragraph (1), an employer is insolvent if an insolvency event, within the meaning of section 121 of the Act (insolvency events), has occurred in relation to him.

(3) Paragraph (1) shall not apply in the case of a stakeholder pension scheme.

Multi-employer schemes

8.—(1) If a 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 they meet conditions A and B, the provisions of these Regulations (apart from this regulation) apply as if each section of the scheme were a separate scheme.

(2) Condition A is that contributions payable to the scheme by an employer, or by a member in employment under that employer, are allocated to the section that applies to that employer or, if more than one section applies to the employer, to the section which is appropriate in respect of the employment in question.

(3) Condition B is that 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.

(4) Subject to paragraph (5), for the purposes of paragraph (1), any provisions of the scheme by virtue of which contributions or transfers of assets may be made to make provision for death benefits are disregarded.

(5) Where paragraph (1) applies and, by virtue of any provisions of the scheme, contributions or transfers of assets to make provision for death benefits 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 is also to be treated as a separate scheme.

(6) For the purposes of this regulation, any provisions of the scheme by virtue of which assets attributable to one section may on the winding up of the scheme or a section be used for the purposes of another section are disregarded.

Partially guaranteed schemes

[1]Words inserted in reg. 9(1) & para. (3) added by reg. 7(a) & (b) of S.I. 2010/196 as from 8.3.10.

9.—(1) ►[1]Except where paragraph (3) applies,◄ this regulation applies if a relevant public authority has–

(a) given a guarantee in relation to any part of a scheme, any benefits payable under the scheme, or any member of the scheme; or

(b) made any other arrangements for the purpose of securing that the assets of the scheme are sufficient to meet any part of its liabilities.

(2) The provisions of these Regulations (apart from this regulation) apply as if the scheme did not include any part of the scheme–

(a) in relation to which the guarantee has been given;

(b) which relates to benefits payable under the scheme in relation to which the guarantee has been given; or

(c) which relates to benefits payable under the scheme in relation to the liabilities for which those other arrangements have been made.

►[1](3) This paragraph applies where regulation 2A of the Pension Protection Fund (Partially Guaranteed Schemes) (modification) Regulations 2005 (schemes to which paragraph (1) to regulation 2 does not apply) applies to a scheme.◄

Avoidance of double liability: schemes in Northern Ireland

10.—(1) This regulation applies if, apart from paragraph (2), the fraud compensation levy would be payable in respect of a scheme in respect of which a corresponding Northern Ireland levy is imposed.

(2) The fraud compensation levy is only payable if the address of the scheme is in Great Britain.

(3) For this purpose, the address of the scheme is the place in the United Kingdom at which the management of the scheme is conducted or, if there is more than one such place, the principal such place.

(4) For the purposes of paragraph (1), a fraud compensation levy is a corresponding Northern Ireland levy if it is imposed under provisions equivalent to those made under section 189 of the Act (fraud compensation levy).

Penalties

11. Where any person, without reasonable cause, fails to pay any fraud compensation levy which is payable under regulation 3(1), the Regulator may ►[1]by notice in writing◄ require that person to pay within 28 days, after the levy became due, 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.

[1]Words inserted in reg. 11 by reg. 21(2) of S.I. 2009/615 as from 6.4.09.

[Regulation 12 amends regulation 10 of S.I. 2005/678.]

Signed by authority of the Secretary of State for Work and Pensions.

Stephen C. Timms
Minister of State,
Department for Work and Pensions

1 March 2006

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for when a fraud compensation levy ("the levy") is imposed on occupational pension schemes under section 189 of the Pensions Act 2004 (c. 35) ("the Act"). The levy is payable in order to meet expenditure payable out of the Fraud Compensation Fund (see section 188(3) of the Act for list of expenditure allowed). The Board of the Pension Protection Fund decides the amount of expenditure in respect of which the levy is to be imposed.

Regulation 3 provides for the imposition of the levy on the reference day and the maximum rate of the levy. Regulation 4 defines the reference day.

Regulation 5 provides for the times when the levy is payable.

Regulation 6 makes provision relating to levy notices.

Regulation 7 makes provision relating to the circumstances in which any amount payable by way of levy may be waived.

Regulations 8 and 9 make provision in relation to any scheme which is a multi-employer scheme or has a partial guarantee from a relevant public authority.

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

Regulation 11 sets out the civil penalties the Regulator may impose where the levy has not been paid.

Regulation 12 amends the Occupational Pension Schemes (Employer Debt) Regulations 2005 (S.I. 2005/678) so that any unpaid levy in respect of a money purchase scheme will be treated as a debt due from the employer to the trustees or managers of the scheme.

As regulations 2 to 10 are made before the expiry of the period of six months beginning with the coming into force of the provisions of the Act by virtue of which they are made and regulation 11 is consequential upon the commencement of section 189 of the Act, the requirement for the Secretary of State to consult such persons as he considers appropriate does not apply. However a consultation exercise has nevertheless taken place.

A full regulatory impact assessment has not been produced for this instrument as it has no new impact on the costs to business, charities or the voluntary sector.