

2006 No. 566

PENSIONS

The Occupational Pension Schemes (Pension Protection Levies) (Transitional Period and Modification for Multi-employer Schemes) Regulations 2006

<i>Made</i> - - - -	<i>6th March 2006</i>
<i>Laid before Parliament</i>	<i>9th March 2006</i>
<i>Coming into force</i>	<i>30th March 2006</i>

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 180(1)(a) and (3), 315(2), (4) and (5) and 318(1) of the Pensions Act 2004(a).

This instrument contains regulations 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 it is made(b).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Pension Protection Levies) (Transitional Period and Modification for Multi-employer Schemes) Regulations 2006 and shall come into force on 30th March 2006.

(2) In these Regulations—

“the Act” means the Pensions Act 2004;

“employer” has the meaning given by regulation 1(3) of the Multi-employer Regulations (c) (interpretation of “employer” in relation to certain multi-employer schemes);

“member” has the meaning given by section 318(1) of the Act except that it does not include a person who is entitled only to money purchase benefits(d);

“the Multi-employer Regulations” means the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations 2005(e);

(a) 2004 c. 35. The Pensions Act 2004 (“the Act”) is modified in its application to partially guaranteed schemes by S.I. 2005/277, in its application to multi-employer schemes by S.I. 2005/441, amended by S.I. 2005/993 and 2113, and in its application to hybrid schemes by S.I. 2005/449. Section 318(1) is cited because of the meaning given to “modifications”, “prescribed” and “regulations”.

(b) See section 317(1) of the Act which provides that the Secretary of State must consult such persons as he considers appropriate before making regulations by virtue of the provisions of that Act (other than Part 8). This duty does not apply where regulations are made before the end of six months beginning with the coming into force of the provisions of the Act by virtue of which the regulations are made (see section 317(2)(c)).

(c) Regulation 1(3) of S.I. 2005/441 was substituted by regulation 10(2)(b) of S.I. 2005/2113.

(d) Section 318(1) of the Act provides that “money purchase benefits” has the meaning given by section 181(1) of the Pension Schemes Act 1993 (c. 48). Section 181 was amended by paragraph 18 of the Schedule to S.I. 2005/2053.

(e) S.I. 2005/441, amended by S.I. 2005/993 and 2113.

“multi-employer section” means a section of a segregated scheme which has at least two employers in relation to that section;

“non-segregated scheme” means a multi-employer scheme which is not divided into two or more sections;

“segregated scheme” means a multi-employer scheme which is divided into two or more sections where—

- (a) any contributions payable to the scheme by an employer in relation to the scheme or by a member are allocated to that employer’s or that member’s section; and
- (b) a specified proportion of the assets of the scheme is attributable to each section of the scheme and cannot be used for the purposes of any other section.

Transitional period

2. For the purposes of section 180 of the Act (pension protection levies during the transitional period), the transitional period is the period of 12 months beginning on 1st April 2006.

Modification of section 175 of the Act for the financial year beginning on 1st April 2006: segregated schemes

3.—(1) This regulation applies to a segregated scheme for the financial year beginning on 1st April 2006.

(2) In the case of a segregated scheme to which this regulation applies—

- (a) section 175 of the Act (a) (pension protection levies) shall have effect as if each section of the scheme were a separate scheme; and
- (b) references in section 175(1) of the Act to “eligible schemes” shall be read as if they were references to sections of a scheme in circumstances where those sections, if they were schemes, would not be—
 - (i) money purchase schemes;
 - (ii) schemes which are schemes prescribed or schemes of a description prescribed by virtue of regulations made under section 126(1)(b) of the Act (b) (eligible schemes);
 - (iii) schemes to which section 126(2) of the Act applies; or
 - (iv) schemes which are not eligible schemes by virtue of regulations made under section 126(5) of the Act.

Modification of section 175 of the Act for the financial year beginning on 1st April 2006: non-segregated schemes

4.—(1) This regulation applies to a non-segregated scheme for the financial year beginning on 1st April 2006.

(2) Section 175 of the Act shall be modified so that it shall be read as if—

- (a) in the case of a scheme—
 - (i) to which this regulation applies; and
 - (ii) the rules of which contain a requirement—

(a) Section 175 is modified in relation to segregated schemes by regulation 73, in relation to non-segregated schemes by regulation 74, and in relation to multi-employer sections of segregated schemes by regulation 75, of S.I. 2005/441, amended by regulation 5(10) of S.I. 2005/993.

(b) The regulations made under section 126(1)(b) and (5) are S.I. 2005/590, amended by S.I. 2005/993, 2113, 2153 and 2224.

- (aa) for the trustees or managers to segregate such part of the assets as is attributable to the liabilities of the scheme to provide pensions or other benefits to or in respect of the pensionable service of some or all of the members of the scheme by reference to an employer in relation to that scheme;
- (bb) which would be triggered when such an employer ceased to participate in the scheme,

for paragraph (a) of subsection (2) there were substituted—

“(a) a risk-based pension protection levy is a levy assessed by reference to—

- (i) the difference between the value of the 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,
- (ii) where the Board considers it appropriate, the scheme rules containing a requirement for the trustees or managers of the scheme to segregate such part of the assets of the scheme as is attributable to the scheme’s liabilities to provide pensions or other benefits to or in respect of the pensionable service of some or all of the members by reference to an employer in relation to the scheme in circumstances where that employer ceases to participate in the scheme,

(iii) the likelihood of an insolvency event occurring—

- (aa) where, on or before 31st March 2006, the Board has received sufficient information to assess the likelihood of an insolvency event occurring in relation to each employer in relation to the scheme and such an assessment would reduce the amount of the risk-based pension protection levy which would otherwise be payable, in relation to each employer in relation to that scheme; or

(bb) in all other cases, in relation to the employer who on 31st March 2006 has most members of the scheme or, where two or more employers have most members, each of those employers, and

(iv) if the Board considers it appropriate, one or more other risk factors mentioned in subsection (3), and”;

(b) in the case of a scheme—

- (i) to which this regulation applies; and
- (ii) the rules of which give the trustees or managers an option to segregate such part of the assets as is attributable to the liabilities of the scheme to provide pensions or other benefits to or in respect of the pensionable service of some or all of the members of the scheme by reference to an employer in relation to that scheme when an employer in relation to the scheme ceases to participate in the scheme,

for paragraph (a) of subsection (2) there were substituted—

“(a) a risk-based pension protection levy is a levy assessed by reference to—

- (i) the difference between the value of the 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,
- (ii) where the Board considers it appropriate, the scheme rules containing an option to segregate such part of the assets of the scheme as is attributable to the scheme’s liabilities to provide pensions or other benefits to or in respect of the pensionable

service of some or all of the members by reference to an employer in relation to the scheme in circumstances where that employer ceases to participate in the scheme,

- (iii) the likelihood of an insolvency event occurring–
 - (aa) where, on or before 31st March 2006, the Board has received sufficient information to assess the likelihood of an insolvency event occurring in relation to each employer in relation to the scheme and such an assessment would reduce the amount of the risk-based pension protection levy which would otherwise be payable, in relation to each employer in relation to that scheme; or
 - (bb) in all other cases, in relation to the employer who on 31st March 2006 has most members of the scheme or, where two or more employers have most members, each of those employers, and
 - (iv) if the Board considers it appropriate, one or more other risk factors mentioned in subsection (3), and”;
- (c) in the case of a scheme–
 - (i) to which this regulation applies; and
 - (ii) the rules of which do not contain a requirement–
 - (aa) for the trustees or managers to segregate such part of the assets as is attributable to the liabilities of the scheme to provide pensions or other benefits to or in respect of the pensionable service of some or all of the members of the scheme by reference to an employer in relation to that scheme;
 - (bb) which would be triggered when such an employer ceased to participate in the scheme,

for paragraph (a) of subsection (2) there were substituted–

- “(a) a risk-based pension protection levy is a levy assessed by reference to–
- (i) the difference between the value of the 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,
 - (ii) the likelihood of an insolvency event occurring–
 - (aa) where, on or before 31st March 2006, the Board has received sufficient information to assess the likelihood of an insolvency event occurring in relation to all the employers in relation to the scheme and such an assessment would reduce the amount of the risk-based pension protection levy which would otherwise be payable, in relation to all the employers in relation to that scheme; or
 - (bb) in all other cases, in relation to the employer who on 31st March 2006 has most members of the scheme or, where two or more employers have most members, each of those employers, and
 - (iii) if the Board considers it appropriate, one or more other risk factors mentioned in subsection (3), and”.

Modification of section 175 of the Act for the financial year beginning on 1st April 2006: multi-employer sections of segregated schemes

5.—(1) This regulation applies to a multi-employer section of a segregated scheme for the financial year beginning on 1st April 2006.

(2) Section 175 of the Act shall be modified so that it shall be read as if—

(a) in the case of a section of a scheme—

(i) to which this regulation applies; and

(ii) the rules of which contain a requirement—

(aa) for the trustees or managers to segregate such part of the assets as is attributable to the liabilities of the section to provide pensions or other benefits to or in respect of the pensionable service of some or all of the members of the section by reference to an employer in relation to that section;

(bb) which would be triggered when such an employer ceased to participate in the section,

for paragraph (a) of subsection (2) there were substituted—

“(a) a risk-based pension protection levy is a levy assessed by reference to—

(i) the difference between the value of the assets of the section (disregarding any assets representing the value of any rights in respect of money purchase benefits under the scheme rules relating to the section) and the amount of its protected liabilities,

(ii) where the Board considers it appropriate, the scheme rules containing a requirement for the trustees or managers of the scheme to segregate such part of the assets of the section as is attributable to the liabilities of the section to provide pensions or other benefits to or in respect of the pensionable service of some or all of the members by reference to an employer in relation to the section in circumstances where that employer ceases to participate in the section,

(iii) the likelihood of an insolvency event occurring—

(aa) where, on or before 31st March 2006, the Board has received sufficient information to assess the likelihood of an insolvency event occurring in relation to all the employers in relation to the section and such an assessment would reduce the amount of the risk-based pension protection levy which would otherwise be payable, in relation to each employer in relation to that section; or

(bb) in all other cases, in relation to the employer who on 31st March 2006 has most members of the section or, where two or more employers have most members, each of those employers, and

(iv) if the Board considers it appropriate, one or more other risk factors mentioned in subsection (3), and”;

(b) in the case of a section of a scheme—

(i) to which this regulation applies; and

(ii) the rules of which give the trustees or managers an option to segregate such part of the assets as is attributable to the liabilities of the section to provide pensions or other benefits to or in respect of the pensionable service of some or all of the members of the section by reference to an employer in relation to that section when an employer in relation to the section ceases to participate in the section,

for paragraph (a) of subsection (2) there were substituted—

- “(a) a risk-based pension protection levy is a levy assessed by reference to—
- (i) the difference between the value of the assets of the section (disregarding any assets representing the value of any rights in respect of money purchase benefits under the scheme rules relating to the section) and the amount of its protected liabilities,
 - (ii) where the Board considers it appropriate, the scheme rules containing an option to segregate such part of the assets of the section as is attributable to the liabilities of the section to provide pensions or other benefits to or in respect of the pensionable service of some or all of the members by reference to an employer in relation to the section in circumstances where that employer ceases to participate in the section,
 - (iii) the likelihood of an insolvency event occurring—
 - (aa) where, on or before 31st March 2006, the Board has received sufficient information to assess the likelihood of an insolvency event occurring in relation to all the employers in relation to the section and such an assessment would reduce the amount of the risk-based pension protection levy which would otherwise be payable, in relation to each employer in relation to that section; or
 - (bb) in all other cases, in relation to the employer who on 31st March 2006 has most members of the section or, where two or more employers have most members, each of those employers, and
 - (iv) if the Board considers it appropriate, one or more other risk factors mentioned in subsection (3), and”;
- (c) in the case of a section of a scheme—
- (i) to which this regulation applies; and
 - (ii) the rules of which do not contain a requirement—
 - (aa) for the trustees or managers to segregate such part of the assets as is attributable to the liabilities of the section to provide pensions or other benefits to or in respect of the pensionable service of some or all of the members of the section by reference to an employer in relation to that section;
 - (bb) which would be triggered when such an employer ceased to participate in the section,

for paragraph (a) of subsection (2) there were substituted—

- “(a) a risk-based pension protection levy is a levy assessed by reference to—
- (i) the difference between the value of the assets of the section (disregarding any assets representing the value of any rights in respect of money purchase benefits under the scheme rules relating to the section) and the amount of its protected liabilities,
 - (ii) the likelihood of an insolvency event occurring—
 - (aa) where, on or before 31st March 2006, the Board has received sufficient information to assess the likelihood of an insolvency event occurring in relation to all the employers in relation to the section and such an assessment would reduce the amount of the risk-based pension protection levy which would otherwise be payable, in relation to all the employers in relation to that section; or

- (bb) in all other cases, in relation to the employer who on 31st March 2006 has most members of the section or, where two or more employers have most members, each of those employers, and
- (iii) if the Board considers it appropriate, one or more other risk factors mentioned in subsection (3), and”.

Application of regulations 73 to 75 of the Multi-employer Regulations for the financial year beginning on 1st April 2006

6. For the financial year beginning on 1st April 2006, regulations 73(2), 74 and 75 of the Multi-employer Regulations(a) shall not apply.

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

6th March 2006

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

(a) Regulations 74 and 75 of S.I. 2005/441 were amended by regulation 5(10)(b) and (c) of S.I. 2005/993.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations specify the duration of the transitional period for the purposes of section 180 of the Pensions Act 2004 (c. 35) (“the Act”). Section 180 provides for the pension protection levy during the transitional period. The Regulations also make provision in relation to the imposition of a risk-based pension protection levy, in respect of multi-employer schemes, for the financial year beginning on 1st April 2006.

Regulation 2 provides that the transitional period is a period of 12 months beginning on 1st April 2006.

Regulation 3 modifies section 175 of the Act (pension protection levies), in relation to segregated schemes, for the financial year beginning on 1st April 2006.

Regulation 4 modifies section 175 of the Act, in relation to non-segregated schemes, for the financial year beginning on 1st April 2006.

Regulation 5 modifies section 175 of the Act, in relation to multi-employer sections of segregated schemes, for the financial year beginning on 1st April 2006.

Regulation 6 makes provision consequential to regulations 2 to 5.

As these Regulations 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, the requirement for the Secretary of State to consult such persons as he considers appropriate does not apply.

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