STATUTORY INSTRUMENTS

2007 No. 771

PENSIONS

The Pension Protection Fund (Waiver of Pension Protection Levy and Consequential Amendments) Regulations 2007

Made - - - -	*9th March 2007*
Laid before Parliament	*9th March 2007*
Coming into force - -	*30th March 2007*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 181(8)(b), 206(4)(a), 207(2), 315(2), (4) and (5) and 318(1) of the Pensions Act 2004(**a**).

In accordance with section 317(1) of that Act the Secretary of State has consulted such persons as he considers appropriate.

Preliminary

Citation and commencement

1.—(1) These Regulations may be cited as the Pension Protection Fund (Waiver of Pension Protection Levy and Consequential Amendments) Regulations 2007.

(2) These Regulations come into force on 30th March 2007.

Interpretation

2.—(1) In these Regulations—

"the Act" means the Pensions Act 2004;

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

"pension protection levy", "risk-based pension protection levy" and "scheme-based pension protection levy" are to be construed in accordance with section 175 of the Act (which provides for the imposition of pension protection levies in respect of eligible schemes);

"relevant benefits" means benefits other than money purchase benefits;

"relevant employment", in relation to a scheme, means any employment to which the scheme applies;

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

(**a**) 2004 c.35. Sections 175 to 181 are modified, in their application to multi-employer schemes which are segregated schemes, by S.I. 2005/441 (amended by S.I. 2005/993 and 2113). Section 318(1) is cited because of the meaning there given to "prescribed" and "regulations".

(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;

"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).

(2) In these Regulations—

(a) references to a scheme include, in the case of a segregated scheme, any section of the scheme; and

(b) references to the dissolution of a company are to the dissolution of the company in accordance with section 201 of the Insolvency Act 1986(**a**) (dissolution on a voluntary winding up).

Waiver of pension protection levy

Waiver of pension protection levy

3.—(1) In respect of any financial year the Board may, in the circumstances specified in any paragraph of regulation 4, waive the amount payable by way of either or both—

(a) the risk-based pension protection levy imposed in respect of a scheme;

(b) the scheme-based pension protection levy imposed in respect of a scheme.

(2) But paragraph (1) is subject to the restrictions specified in regulations 6 and 7.

(3) A waiver may be granted under paragraph (1)—

(a) in the case of a scheme falling within regulation 4(1), either on an application under regulation 5 or of the Board's own initiative;

(b) in any other case, only on an application under regulation 5.

(4) Where the Board receives an application for the grant of a waiver in respect of a scheme, it must determine the application as soon as reasonably practicable and—

(a) if it grants the waiver, it must issue a notice of it and give a copy of the notice to the trustees or managers of the scheme; or

(b) if it refuses to grant the waiver, it must give the trustees or managers notice of the refusal.

(5) A notice under paragraph (4) must be in writing and, in the case of a refusal to grant the waiver, must state the Board's reasons.

(6) The Board may request such additional information from the applicant as it reasonably requires for the purpose of making a determination under paragraph (4).

Circumstances in which pension protection levy may be waived

4.—(1) The circumstances specified in this paragraph are that—

(a) immediately before 6th April 2006, the scheme was a former approved superannuation fund within the meaning of paragraph 1(1)(b) of Schedule 36 to the Finance Act 2004(**b**) (deemed registration of existing schemes); and

(b) the proposed waiver relates to the amount payable by way of any pension protection levy which was imposed for the financial year beginning on 1st April 2006.

(**a**) 1986 c.45. Section 201 is amended by S.I. 2006/3429.

(**b**) 2004 c.12. Paragraph 1 of Schedule 36 makes provision for the deemed registration, with effect from 6th April 2006, of certain schemes or funds for tax purposes under Chapter 2 of Part 4 of that Act.

(2) The circumstances specified in this paragraph are that the scheme is authorised under section 153 of the Act (closed schemes) to continue as a closed scheme.

(3) The circumstances specified in this paragraph are that the Board is satisfied in respect of the scheme that—

(a) no further contributions will be paid towards the scheme by or on behalf of members in respect of relevant benefits; and

(b) all relevant benefits which are payable in accordance with each member's entitlement or accrued rights (including pension credit rights within the meaning of section 124(1) of the Pensions Act 1995(**a**) (interpretation of Part 1)) under the scheme rules will be provided in full by a policy of insurance or an annuity contract, or by more than one such policy or contract.

(4) The circumstances specified in this paragraph are that—

(a) the scheme has no active members;

(b) a liquidator has been appointed for the purposes of a voluntary winding up of the company which, immediately before the time at which the scheme ceased to have any active members, was the employer of persons in relevant employment;

(c) the liquidator has sent to the registrar of companies his final account and return under section 94 of the Insolvency Act 1986 (final meeting prior to dissolution); and

(d) it appears to the Board that it is reasonable to expect that the dissolution of the company will take effect on or before 31st December of the financial year to which the proposed waiver relates (but see regulation 7).

Application for waiver of pension protection levy

5.—(1) The trustees or managers of a scheme may apply to the Board for it to grant a waiver under regulation 3 of the amount payable by way of any pension protection levy in respect of the scheme.

(2) An application under this regulation must be made—

(a) before the end of the period of 28 days commencing with the notification date specified in paragraph (3); and

(b) in such manner as the Board may direct.

(3) The notification date specified in this paragraph is—

(a) the date on which the person liable to pay the levy is notified under section 181(3)(c) of the Act (notification of amount of levy and date or dates on which it becomes payable); or

(b) if more than one date is notified for payment to be made in instalments, the earliest such date.

Restrictions as to grant of waiver

6.—(1) This regulation applies where an application is made for the grant of a waiver under regulation 3 in respect of a financial year.

(2) No waiver may be granted in respect of the amount payable in respect of a scheme by way of—

(a) the risk-based pension protection levy, if the amount payable by way of that levy in respect of the scheme has already been paid;

(b) the scheme-based pension protection levy, if the amount payable by way of that levy in respect of the scheme has already been paid.

(**a**) 1995 c.26. The definition of "pension credit rights" is inserted by paragraph 61(3) of Schedule 12 to the Welfare Reform and Pensions Act 1999 (c.30).

(3) In the case of a scheme falling within regulation 4(3), no waiver may be granted in respect of the amount payable by way of the scheme-based pension protection levy unless, in addition to the circumstances specified in regulation 4(3), the Board is also satisfied that there are insufficient unallocated assets in the scheme to meet its liabilities in respect of the payment of that levy in full.

Waiver cancelled in the event of non-dissolution of a company in voluntary winding up

7.—(1) This regulation applies where a waiver is granted under regulation 3 in respect of a financial year to a scheme falling within regulation 4(4).

(2) The date on which the waiver takes effect is postponed until the Board is satisfied that the company being wound up has been dissolved on or before 31st December of the financial year in question.

(3) Where the Board is not satisfied that the requirements of paragraph (2) have been met, the waiver is cancelled and the Board must re-notify the trustees or managers of the scheme of the amount of the pension protection levy in respect of the scheme, stating the date or dates on which that amount is now payable.

Consequential amendments

Amendment of Schedule 9 to the Act

8. In Schedule 9 to the Act(**a**) (reviewable matters), after paragraph 19 insert—

"**19A.** Any determination by the Board of an application for the grant of a waiver under regulation 3 of the Pension Protection Fund (Waiver of Pension Protection Levy and Consequential Amendments) Regulations 2007 (S.I. 2007/771) (waiver of payment of the pension protection levy) or the failure to make such a determination.".

Amendment of the Schedule to the Pension Protection Fund (Review and Reconsideration of Reviewable Matters) Regulations 2005

9. After paragraph 19 of the Schedule to the Pension Protection Fund (Review and Reconsideration of Reviewable Matters) Regulations 2005(**b**) (interested persons who may apply for review of matters specified in Schedule 9 to the Act)—

(a) in the first column, insert—

"**19A.** Paragraph 19A";

(b) in the second column, insert—

"**19A.** The trustees or managers of the scheme in respect of which the trustees or managers have made an application for the grant of a waiver under regulation 3 of the Pension Protection Fund (Waiver of Pension Protection Levy and Consequential Amendments) Regulations 2007 (S.I. 2007/771) (waiver of payment of the pension protection levy).".

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

James Purnell
Minister of State,
9th March 2007 Department for Work and Pensions

(**a**) Schedule 9 is amended by S.I. 2005/600 and 2113 and S.I. 2006/685. It is also modified in relation to partially guaranteed schemes by S.I. 2005/600, in relation to multi-employer schemes by S.I. 2005/441 (amended by S.I. 2005/993 and 2113) and for transitional purposes by S.I. 2005/1720.

(**b**) S.I. 2005/669, amended by S.I. 2005/993, 2113 and 2184 and S.I. 2006/685.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations specify the circumstances in which amounts payable by way of any pension protection levy may be waived. Consequential amendments are also made to provide for a review of decisions taken by the Board of the Pension Protection Fund ("the Board") in determining applications for a waiver.

Regulation 3 provides that, in the circumstances specified in regulation 4, a waiver may be granted by the Board in respect of a scheme. The waiver may relate to the risk-based pension protection levy payable in respect of the scheme or to the scheme-based pension protection levy, or to both.

A waiver may be granted on an application made under regulation 5 by the trustees or managers of the scheme. In the case of a pension protection levy payable in respect of a former approved superannuation fund, the Board may also grant the waiver of its own initiative. The Board must determine any application and notify the applicant of its decision.

Regulations 6 and 7 set out detailed restrictions applying in connection with the grant of a waiver.

Regulation 8 amends Schedule 9 to the Pensions Act 2004 (c.35) to provide for review of any determination made by the Board in response to an application for the grant of a waiver under regulation 3 of these Regulations. The amendment also allows for a review of any failure to make such a determination.

Regulation 9 amends the Schedule to the Pension Protection Fund (Review and Reconsideration of Reviewable Matters) Regulations 2005 (S.I. 2005/669) so as to specify that it is the trustees or managers of schemes applying for a waiver who may seek to review the Board's decision on the application (or its failure to decide).

These Regulations have only a negligible impact on business, charities and the voluntary sector. Publication of a full Regulatory Impact assessment is not necessary for such legislation.

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