STATUTORY RULES OF NORTHERN IRELAND

2007 No. 157

PENSIONS

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

Made - - - -	*9th March 2007*
Coming into operation -	*30th March 2007*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by Articles 164(8)(b), 188(4)(a), 189(2) and 287(2) and (3) of the Pensions (Northern Ireland) Order 2005(**a**).

Preliminary

Citation and commencement

1. These Regulations may be cited as the Pension Protection Fund (Waiver of Pension Protection Levy and Consequential Amendments) Regulations (Northern Ireland) 2007 and shall come into operation on 30th March 2007.

Interpretation

2.—(1) In these Regulations—

"the Order" means the Pensions (Northern Ireland) Order 2005;

"pension protection levy", "risk-based pension protection levy" and "scheme-based pension protection levy" are to be construed in accordance with Article 158 of the Order (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) 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;

(**a**) S.I. 2005/255 (N.I. 1); Articles 158 to 164 are modified in their application to multi-employer schemes which are segregated schemes by Part IX of S.R. 2005 No. 91

"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 Article 166(**a**) of the Insolvency Order (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) 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 of the scheme 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.

(2) The circumstances specified in this paragraph are that the scheme is authorised under Article 137 of the Order (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**) Article 166 was amended by regulation 3(1)(d) of 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

(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 Article 121(1)(**a**) of the 1995 Order) 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 Article 80 of the Insolvency Order (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 Article 164(3)(c) of the Order (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.

(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.

(**a**) The definition of "pension credit rights" was inserted by paragraph 50(3) of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11))

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 8 to the Order

8. In Schedule 8 to the Order (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 (Northern Ireland) 2007 (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

9. In the Schedule to the Pension Protection Fund (Review and Reconsideration of Reviewable Matters) Regulations (Northern Ireland) 2005(**a**) (interested person) after paragraph 19 insert—

"19A. Paragraph 19A	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 (Northern Ireland) 2007 (waiver of payment of the pension protection levy).".

Sealed with the Official Seal of the Department for Social Development on 9th March 2007

(L.S.)

John O'Neill
A senior officer of the Department for Social Development

(**a**) S.R. 2005 No. 138; relevant amending Regulations are S.R. 2005 No. 357

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 8 to the Pensions (Northern Ireland) Order 2005 ("the Order") 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. 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 (Northern Ireland) 2005 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).

As these Regulations make in relation to Northern Ireland only provision corresponding to provision contained in regulations made by the Secretary of State for Work and Pensions in relation to Great Britain, the requirement to consult under Article 289(1) of the Order does not apply by virtue of paragraph (2)(e) of that Article.

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