STATUTORY RULES OF NORTHERN IRELAND

2006 No. 155

PENSIONS

The Pension Protection Fund (General and Miscellaneous Amendments) Regulations (Northern Ireland) 2006

Made - - - - 24th March 2006
Coming into operation in accordance with regulation 1(1)

The Department for Social Development makes the following Regulations in exercise of the powers conferred by Articles 110(1)(b), 135(9)(b), 145(6) and (7), 147(3), (4)(a)(ii) and (b)(ii) and (6)(a), 150(5), 152(1) and (2)(a) to (c), (e) and (f), 154(2) and (3), 155(4), 162(3), 164(5) and (8)(a) and 287(2) and (3) of, and paragraph 24(1) and (2) of Schedule 6 to, the Pensions (Northern Ireland) Order 2005(**1**).

PART 1

Preliminary

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Pension Protection Fund (General and Miscellaneous Amendments) Regulations (Northern Ireland) 2006 and shall come into operation—

(a) in the case of this regulation and regulations 19, 20 and 23, on 1st April 2006, and

(b) in all other cases, on 6th April 2006.

(2) In these Regulations—

"the 2004 Act" means the Finance Act 2004(**2**);

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

"appropriate personal pension scheme" means a personal pension scheme that is an appropriate scheme for the purposes of section 3(4) of the Pension Schemes Act(**3**) (issue of contracting-out and appropriate scheme certificates);

(**1**) S.I.2005/255 (N.I. 1)
(**2**) 2004 c. 12
(**3**) 1993 c. 49; section 3(4) was amended by paragraph 15 of Schedule 3 to the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22))

"base rate" means the rate for the time being quoted by the reference banks as applicable to sterling deposits or, where there is for the time being more than one such base rate, the rate which, when the base rate quoted at each bank is ranked in a descending sequence of four, is the first in the sequence;

"beneficiary" means a person entitled to PPF compensation;

"dependant" means—

(a) a child of the family who is financially dependent on the person, and who is aged less than 18, or

(b) a child of the family who is financially dependent on the person, who is aged less than 23 and who is either—

(i) attending a qualifying course, or

(ii) incapable of engaging in full time paid employment due to a condition that falls within the definition of a disability under the Disability Discrimination Act 1995(**4**);

"family" means a person's spouse, civil partner or relevant partner and any dependants;

"the FSMA" means the Financial Services and Markets Act 2000(**5**);

"lump sum compensation" means—

(a) any lump sum compensation payments made in relation to a person, payable under the pension compensation provisions specified in Article 146(2) of the Order (the pension compensation provisions), or

(b) any lump sum payments made in relation to a person, payable under Article 150 of the Order (duty to pay scheme benefits unpaid at assessment date etc.);

"normal minimum pension age" has the meaning given in section 279 of the 2004 Act (other definitions);

"normal pension age" has the meaning given in section 175 of the Pension Schemes Act (normal pension age);

"pension annuity" means an annuity that can—

(a) only be purchased at, or after, normal minimum pension age;

(b) be purchased before normal pension age where the scheme rules so provide in accordance with paragraph 22(4) of Schedule 36 of the 2004 Act(**6**) (pension schemes etc: transitional provisions and savings), or

(c) be purchased after normal pension age where the scheme rules so provide;

"periodic compensation" means—

(a) any periodic compensation payments made in relation to a person, payable under the pension compensation provisions specified in Article 146(2) of the Order, or

(b) any periodic payments made in relation to a person, payable under Article 150 of the Order (duty to pay scheme benefits unpaid at assessment date etc.);

"PPF compensation" means any payments made under the pension compensation provisions as specified in Article 146(2) of the Order;

"qualifying course" means a full time educational or vocational course at a recognised educational establishment where in pursuit of that course, the time spent receiving instruction or tuition, undertaking supervised study, examination or practical work or taking part in any

(**4**) 1995 c. 50
(**5**) 2000 c. 8
(**6**) Paragraph 22(4) is amended by paragraph 54(5) of Schedule 10 to the Finance Act 2005 (c. 7)

exercise, experiment or project for which provision is made in the curriculum of the course, exceeds 12 hours per week in normal term time, and shall include any gaps between the ending of one course and the commencement of another, where the person is enrolled on and commences the latter course;

"reference banks" means the four largest persons for the time being (by reference to gross assets)(**7**) who—

(a) have permission under Part 4 of the FSMA (permission to carry on regulated activities) to accept deposits, and

(b) are incorporated in the United Kingdom and carrying on there a regulated activity of accepting deposits, and quote a base rate applicable to sterling deposits;

"registered pension scheme" has the meaning given in section 150(2) of the 2004 Act (meaning of pension scheme);

"relevant partner" means a person of either sex who was not married to, or in a civil partnership with, the member—

(a) who was living with the member as if that person and the member were husband and wife, or

(b) in the case of two adults of the same sex, as if they were civil partners,

and, for the purposes of these Regulations, two adults of the same sex are to be regarded as living together as civil partners if they would have been regarded as living together as husband and wife were they instead two adults of opposite sex;

"stakeholder pension scheme" has the meaning given in Article 3 of the 1999 Order(**8**) (meaning of "stakeholder pension scheme");

"trivial commutation lump sum" has the meaning given in paragraph 7 of Schedule 29 to the 2004 Act (trivial commutation lump sum).

(3) In paragraph (2), in the definition of "reference banks", paragraph (b) must be read with—

(a) section 22 of the FSMA (the classes of activity and categories of investment);

(b) any relevant order under that section, and

(c) Schedule 2 to the FSMA (regulated activities).

PART 2

Assumption of responsibility

Board's power to modify relevant contracts

2.—(1) Where Article 145(1) of the Order (effect of the Board assuming responsibility for a scheme) applies, and the Board considers that a contract relating to the property, rights or liabilities of the scheme contains terms or conditions that the Board considers to be onerous (whether triggered by the insolvency event in relation to the eligible scheme or otherwise) the Board may—

(a) disapply any such term or condition, or

(b) substitute for the term or condition, a term or condition that the Board considers to be reasonable.

(2) Where—

(**7**) Listings of banks and their gross assets are produced and published in publications such as "The Banker". This information is also available on that publication's websitewww.thebanker.com

(**8**) S.I. 1999/3147 (N.I. 11); Article 3 was amended by Article 262 of the Pensions (Northern Ireland) Order 2005

(a) any rights or liabilities under a relevant contract of insurance are transferred to the Board by virtue of Article 145(2)(a) of the Order, and

(b) as a result of that transfer, the Board is required, by reason of a term of that contract, to pay a specified amount, or specified amounts to a specified person who, immediately before the time mentioned in Article 145(2)(a) of the Order, was a member of the scheme or a person entitled to benefits in respect of such a member,

the Board may modify that term of that contract so that benefit under that contract shall be payable to the Board.

Power to treat death in service lump sum benefits as having become payable before the assessment date

3. Where—

(a) a member of an eligible scheme died before the commencement of the assessment period in relation to the scheme;

(b) during the period mentioned in Article 147(2)(a) of the Order (adjustments to be made where the Board assumes responsibility for a scheme), a person became entitled under the scheme rules to a death in service lump sum benefit in respect of that member, and

(c) that death in service lump sum benefit is calculated and paid by the trustees or managers of the eligible scheme on or after the assessment date but before the date the trustees or managers receive the transfer notice in respect of that scheme,

for the purposes of Article 147(2) of the Order, that death in service lump sum benefit shall be treated as having become payable before the assessment date.

Power to pay death in service lump sum benefits

4. Where—

(a) a member of an eligible scheme died before the commencement of the assessment period in relation to the scheme, and

(b) during the period beginning with the assessment date and ending with the receipt by the trustees or managers of the transfer notice, a person became entitled under the scheme rules to a death in service lump sum benefit in respect of that member,

that person's entitlement to that benefit shall, for the purposes of Article 150(2) of the Order (duty to pay scheme benefits unpaid at assessment date etc.), be treated as having arisen before the assessment date.

Interest on overpayments and underpayments created during the assessment period

5. The prescribed rate for interest for the purposes of—

(a) Article 147(4)(a) of the Order, or

(b) Article 147(4)(b) of the Order,

shall be the base rate.

Circumstances where the Board is not required to recover overpaid scheme benefits

6.—(1) Where the Board determines that an amount referred to in Article 147(4)(a) of the Order has been paid to a member, or to a person in respect of a member, it shall notify that member or person in writing that—

(a) it has so determined;

(b) it has a duty to recover that amount, and

(c) if the person in receipt of that amount believes that recovery of that amount would cause hardship to that member or person with a right to scheme benefits, or his family he should—

(i) notify the Board in writing that he believes that hardship would be so caused ("the hardship notification") within one month of the date the Board notifies him that such an amount has been paid to him, and

(ii) provide any supporting evidence to the Board that hardship would be so caused within one month of the date of the hardship notification.

(2) Where the Board receives a hardship notification in accordance with paragraph (1)(c)(i), it shall determine, having regard to any evidence provided under paragraph (1)(c)(ii), whether recovery of the overpayment would cause hardship to—

(a) the member or the member's family, or

(b) in the case of a person who was in receipt of scheme benefits in respect of a member, to that person with a right to scheme benefits, or that person's family.

(3) Where recovery would cause such hardship, the Board shall not recover that amount.

(4) The Board is not required to recover such an amount where recovery would not be conducive to the prudent management of its financial affairs.

Manner of discharge of liabilities in respect of money purchase benefits

7.—(1) Subject to regulation 8, in respect of a case to which Article 154(1) of the Order (discharge of liabilities in respect of money purchase benefits) applies, the Board must secure that liabilities in respect of money purchase benefits transferred to the Board under Article 145 are discharged (or in the case of protected rights, given effect to) by way of—

(a) a transfer payment to—

(i) in the case of—

(aa) protected rights, an appropriate personal pension scheme, or

(bb) rights that are not protected rights, a personal pension scheme(**9**), or

(ii) an occupational pension scheme(**10**);

(b) the purchase of a pension annuity;

(c) the taking out of a policy of insurance or a number of such policies;

(d) assuring the benefits of a policy of insurance or a number of such policies, or

(e) in the circumstances described in regulation 9, a trivial commutation lump sum payment.

(2) Where a person is entitled under the scheme rules to money purchase benefits which include protected rights and rights which are not protected rights, the Board may discharge such rights together where it discharges those rights as if all those rights were protected rights.

(3) Any transfer payment made in relation to protected rights (or, if a transfer payment gives effect to both protected rights and rights which are not protected rights, that part of it which gives effect to protected rights)—

(a) shall be of an amount at least equal to the cash equivalent of the protected rights to which effect is being given, as calculated and verified in a manner consistent with regulations

(**9**) The definition of "personal pension scheme" in section 1(1) of the Pension Schemes (Northern Ireland) Act 1993 was substituted by Article 216(3) of the Pensions (Northern Ireland) Order 2005. *See also* paragraph (2) of that Article

(**10**) The definition of "occupational pension scheme" in section 1(1) of the Pension Schemes (Northern Ireland) Act 1993 was substituted by Article 216(3) of the Pensions (Northern Ireland) Order 2005. *See also* paragraphs (2) and (4) of that Article