
STATUTORY INSTRUMENTS

2006 No. [abcd]

CORPORATION TAX

INCOME TAX

CAPITAL GAINS TAX

INHERITANCE TAX

STAMP DUTY LAND TAX

The Pension Protection Fund (Tax) Regulations 2006

<i>Made</i> - - - -	<i>[2006]</i>
<i>Laid before Parliament</i>	<i>[2006]</i>
<i>Coming into force</i> - -	<i>6th April 2006</i>

The Treasury, in exercise of the powers conferred upon them by section 102 of the Finance Act 2005(a), make the following Regulations:

Citation, commencement and effect

1. These Regulations may be cited as the Pension Protection Fund (Tax) Regulations 2006 and shall come into force on 6th April 2006.

Interpretation

2.—(1) In this regulation—

- (a) paragraph (2) gives the meaning of the abbreviated references to Acts and instruments used in these Regulations, and
- (b) paragraph (3) deals with other expressions used in these Regulations.

(2) In these Regulations—

- “the Pensions Act” (without more) means the Pensions Act 2004(b);
- “the 1988 Act” means the Income and Corporation Taxes Act 1988(c);
- “the 1992 Act” means the Taxation of Chargeable Gains Act 1992(d);

(a) 2005 c. 7.
(b) 2004 c. 35.
(c) 1988 c. 1.
(d) 1992 c. 12.

“the 2003 Act” means the Income Tax (Earnings and Pensions) Act 2003(a);

“the 2004 Act” means the Finance Act 2004(b);

“the 2005 Order” means the Pensions (Northern Ireland) Order 2005(c).

(3) In these Regulations—

“the Board of the Pension Protection Fund” means the body corporate established under section 107 of the Pensions Act;

“dependant” is to be construed in accordance with paragraph 15 of Schedule 28 to the 2004 Act(d);

“dependants scheme pension” is to be construed in accordance with paragraph 16 of Schedule 28 to the 2004 Act(e);

“the Fraud Compensation Fund” has the meaning given by regulation 3(1);

“fraud compensation payment”—

(a) in England, Wales and Scotland means a fraud compensation payment within the meaning of Part 2 of the Pensions Act (see section 182(1) of that Act), and

(b) in Northern Ireland means a fraud compensation payment within the meaning of Part 3 of the 2005 Order (see Article 165(1) of that Order);

“lump sum compensation” means compensation in the form of a lump sum which—

(a) in England, Wales and Scotland is payable in accordance with Schedule 7 to the Pensions Act (pension compensation provisions), and

(b) in Northern Ireland is payable in accordance with Schedule 6 to the 2005 Order (pension compensation provisions);

“Part 4” means Part 4 of the 2004 Act;

“the Pension Protection Fund” has the meaning given by regulation 3(1);

“the Pensions Act Funds” has the meaning given by regulation 3(1);

“the Pensions Act levies” means the levies specified in paragraph (2) or (3) of regulation 3, as the case may require;

“periodic compensation”—

(a) in England, Wales and Scotland is to be construed in accordance with Schedule 7 to the Pensions Act (pension compensation provisions), and

(b) in Northern Ireland is to be construed in accordance with Schedule 6 to the 2005 Order (pension compensation provisions);

“registered pension scheme” has the meaning given by section 832(1) of the 1988 Act(f);

“Schedule 36” means Schedule 36 to the 2004 Act;

“scheme administrator of the Pension Protection Fund” has the meaning given by regulation 17(2);

“scheme pension” is to be construed in accordance with paragraph 2 of Schedule 28 to the 2004 Act(g).

Meaning of “the Pension Protection Fund” and other expressions

3.—(1) In these Regulations—

(a) 2003 c. 1.

(b) 2004 c. 12.

(c) S.I. 2005/255 (N.I. 1).

(d) Paragraph 15 of Schedule 28 was amended by paragraph 26 of Schedule 10 to the Finance Act 2005.

(e) Paragraph 16 of Schedule 28 was amended by paragraph 27 of Schedule 10 to the Finance Act 2005.

(f) The definition of “registered pension scheme” was inserted by paragraph 35(2) of Schedule 35 to the Finance Act 2004.

(g) Paragraph 2 of Schedule 28 was amended by paragraph 11(3) of Schedule 10 to the Finance Act 2005.

“the Pension Protection Fund” means the Fund required to be held, managed and applied by the Board of the Pension Protection Fund under section 110(1)(a) of the Pensions Act;

“the Fraud Compensation Fund” means the Fund required to be held, managed and applied by the Board of the Pension Protection Fund under section 110(1)(b) of the Pensions Act;

“the Pensions Act Funds” means the Pension Protection Fund and the Fraud Compensation Fund.

(2) In England, Wales and Scotland, “the Pensions Act levies” means—

- (a) the administration levy referred to in section 117(1) of the Pensions Act;
- (b) the risk-based pension protection levy referred to in section 175(1)(a) of that Act;
- (c) the scheme-based pension protection levy referred to in section 175(1)(b) of that Act;
- (d) the fraud compensation levy referred to in section 189(1) of that Act;
- (e) a levy in respect of eligible schemes imposed by regulations made under section 209(7) of that Act (the Ombudsman for the Board of the Pension Protection Fund).

(3) In Northern Ireland, “the Pensions Act levies” means—

- (a) the administration levy referred to in Article 103(1) of the 2005 Order;
- (b) the risk-based pension protection levy referred to in Article 158(1)(a) of that Order;
- (c) the scheme-based pension protection levy referred to in Article 158(1)(b) of that Order;
- (d) the fraud compensation levy referred to in Article 171(1) of that Order;
- (e) a levy in respect of eligible schemes imposed by regulations made under Article 191(3) of that Order (the PPF Ombudsman).

Application of the Tax Acts: general

4.—(1) The Tax Acts apply in relation to the Pensions Protection Fund in the same way as they apply in relation to a registered pension scheme.

(2) The general rule in paragraph (1) is subject to the further provisions contained in these Regulations.

Application of Part 4 of the 2004 Act: further provisions

5. Section 151 of the 2004 Act (meaning of “member”) applies as if, in Part 4, “member” in relation to the Pension Protection Fund, meant—

- (a) an individual in receipt of compensation from the Pension Protection Fund, or
- (b) an individual who expects to receive such compensation following the assumption of responsibility, by the Board of the Personal Protection Fund, for a scheme of which that individual was a member.

6. Section 152 of the 2004 Act (meaning of “arrangement”) applies as if, in Part 4, “arrangement”, in relation to a member of the Pension Protection Fund, meant an arrangement relating to the member under the Pension Protection Fund.

7. Chapter 2 of Part 4 (registration of pension schemes) does not apply in relation to the Pension Protection Fund.

8. Section 164 of the 2004 Act (authorised member payments) applies as if it also provided that the Board of the Pension Protection Fund was authorised to make the following payments to or in respect of a member—

- (a) loans under section 139 of the Pensions Act (loans to pay scheme benefits);
- (b) loans under Article 123 of the 2005 Order (loans to pay scheme benefits).

9.—(1) For the purposes of Part 4, payment of periodic compensation to a member is treated as payment of a scheme pension to a member of a registered pension scheme (see section 165 of the 2004 Act: pension rules).

(2) The payment of periodic compensation is treated as meeting the condition specified in paragraph 2(2)(a) of Schedule 28 to the 2004 Act.

10.—(1) This regulation applies if the Board of the Pension Protection Fund—

(a) is under a liability imposed by Chapter 3 of Part 2 of the Pension Act (pension protection) to provide compensation to a member, and

(b) provides for the discharge of that liability by the entry into an annuity contract or a number of such contracts.

(2) For the purposes of Part 4, payment of an annuity under an annuity contract is treated as payment of a scheme pension.

(3) If this regulation applies, so much of Pension rule 4 in section 165(1) of the 2004 Act (pension rules) as provides that a scheme pension may only be paid if the member had an opportunity to select a lifetime annuity instead is treated as omitted.

11. For the purposes of Part 4, a payment of lump sum compensation to a member is treated as a payment of a lump sum to a member of a registered pension scheme to which the lump sum rule applies (see section 166 of the 2004 Act: lump sum rule).

12.—(1) For the purposes of Part 4, payment of periodic compensation to a dependant of a member is treated as payment of a dependants' scheme pension in respect of a member of a registered pension scheme (see section 167 of the 2004 Act: pension death benefit rules).

(2) The payment of periodic compensation is treated as meeting the condition specified in paragraph 16(2)(a) of Schedule 28 to the 2004 Act(a).

13.—(1) This regulation applies if the Board of the Pension Protection Fund—

(a) is under a liability imposed by Chapter 3 of Part 2 of the Pension Act (pension protection) to provide compensation to a dependant of a member, and

(b) provides for the discharge of that liability by the entry into an annuity contract or a number of such contracts.

(2) For the purposes of Part 4, payment of an annuity under an annuity contract is treated as payment of a dependants' scheme pension.

(3) If this regulation applies, so much of Pension death benefit rule 3 in section 167(1) of the 2004 Act (pension death benefit rules) as provides that a dependants' scheme pension may only be paid if the member or dependant had an opportunity to select a dependants' annuity instead is treated as omitted.

14. For the purposes of Part 4, a payment of lump sum compensation to a dependant of a member is treated as a payment of a lump sum in respect of a member of a registered pension scheme to which the lump sum death benefit rule applies (see section 168 of the 2004 Act: lump sum death benefit rule).

15. Sections 175 to 181 of the 2004 Act (authorised employer payments) do not apply in relation to the Pension Protection Fund.

16. Sections 182 to 185 of the 2004 Act (borrowing) do not apply in relation to the Pension Protection Fund.

17.—(1) Section 186 of the 2004 Act (exemption from tax on certain types of income) applies in relation to each of the Pensions Act Funds as if in subsection (1) for the reference to income tax there were substituted a reference to corporation tax.

(a) Paragraph 16(2) of Schedule 28 was amended by paragraph 27(3) of Schedule 10 to the Finance Act 2005.

(2) The exemption provided by section 186(1) of the 2004 Act (as modified by paragraph (1)) in relation to each of the each of the Pensions Act Funds also applies in respect of—

- (a) any profit, gain or loss on a loan relationship within the meaning of Chapter 2 of Part 4 of the Finance Act 1996^(a) (loan relationships), and
- (b) any amount received on account of the Pensions Act levies.

18. Any amount recovered by an individual’s employer on account of any of the Pensions Act levies is treated in the same way as relievable pension contributions paid during a tax year (see section 188 of the 2004 Act: relief for contributions).

19. Relief on any amount recovered by an individual’s employer on account of any of the Pensions Act levies may be given in accordance with section 193 of the 2004 Act (relief under net pay arrangements).

20. Sections 197 and 198 of the 2004 Act (spreading of relief) do not apply in relation to any sum paid by an employer on account of any of the Pensions Act levies.

21. Section 199 of the 2004 Act (deemed contributions) applies in relation to any sum paid by an employer on account of any of the Pensions Act levies as it applies in relation to a sum paid by an employer in or towards the discharge of any liability of the employer under the enactments specified in subsection (1) of that section.

22. Section 213 of the 2004 Act (surchargeable unauthorised employer payments) does not apply in relation to the Pension Protection Fund.

23.—(1) Benefit crystallisation event 2 (see the Table in section 216(1) of the 2004 Act) does not apply if, after an individual has become entitled to a scheme pension under any of the relevant pension schemes, the individual receives compensation under Schedule 7 to the Pensions Act.

(2) For the purposes of benefit crystallisation event 2 “P” is the amount of the periodic payments which will be payable to the individual in the period of 12 months beginning with the day on which the individual first becomes entitled to a periodic payment (assuming that it remains payable throughout that period at the rate at which it is payable on that day).

(3) For the purposes of benefit crystallisation event 5 “DP” is the annual rate of periodic compensation to which the individual would be entitled if, on the date on which the individual reaches 75, the individual acquired an actual (rather than a prospective) right to receive it.

24. Section 242 of the 2004 Act (de-registration charge) does not apply in relation to the Pension Protection Fund.

25. Chapter 6 of Part 4 of the 2004 Act (schemes that are not registered pension schemes) does not apply in relation to the Pension Protection Fund.

26.—(1) References in Part 4 to the scheme administrator, in relation to a pension scheme (see section 270 of the 2004 Act: meaning of “scheme administrator”), are to be treated as references to the scheme administrator of the Pension Protection Fund.

(2) In paragraph (1) the “scheme administrator of the Pension Protection Fund” means the person appointed by the Board of the Pension Protection Fund to be responsible for the discharge of the functions conferred or imposed on the scheme administrator of the Pension Protection Fund by and under Part 4.

27. Section 271 of the 2004 Act (liability of scheme administrator) applies as if that section also provided that, where the Board of the Pension Protection Fund has assumed responsibility for a scheme in accordance with Chapter 3 of Part 2 of the Pensions Act (pension protection), the scheme administrator of the Pension Protection Fund assumes any existing liabilities of the scheme administrator of the pension scheme for which the Board of the Pension Protection Fund has assumed responsibility, other than any liability to pay a penalty.

(a) 1996 c. 8.

28.—(1) If section 272 of the 2004 Act (trustees etc. liable as scheme administrator) applies in relation to the Pension Protection Fund, the Board of the Pension Protection Fund assume liability by reason of that section applying in relation to that Fund.

(2) For the purposes of section 272(4) of the 2004 Act (specification of persons assuming liability) the Board of the Pension Protection Fund are treated as persons who assume liability by virtue of being specified under Head 2.

29. Section 273 of the 2004 Act (members liable as scheme administrator) does not apply in relation to the Pension Protection Fund.

30.—(1) A lifetime allowance enhancement factor may operate in accordance with paragraph 7 of Schedule 36 (primary protection) in relation to all benefits occurring in relation to an individual if some or all of the individual's relevant pre-commencement rights are rights under a pension arrangement relating to that individual under a pension scheme for which the Board of the Pension Protection Fund assume responsibility in accordance with Chapter 3 of Part 2 of the Pensions Act (pension protection).

(2) This regulation is to be construed as one with paragraph 7 of Schedule 36.

31.—(1) This regulation applies if there is a transfer to the Board of the Pension Protection Fund of all sums and assets held for the purposes of, or representing accrued rights under, an arrangement relating to an individual under a registered pension scheme.

(2) For the purposes of paragraph 12 of Schedule 36 (enhanced protection) the transfer is treated as a permitted transfer by virtue of sub-paragraph (8)(b) of that paragraph

(3) This regulation is to be construed as one with paragraph 12 of Schedule 36.

32.—(1) For the purposes of Part 3 of Schedule 36 (pre-commencement benefit rights), the transfer of the property, rights and liabilities of a scheme to the Board of the Pension Protection Fund in accordance with a relevant transfer notice is treated as a block transfer within the meaning given by paragraph 22(6) of Schedule 36.

(2) But for the purposes of determining the compensation payable where the Board of the Pension Protection Fund assumes responsibility for a scheme in accordance with Chapter 3 of Part 2 of the Pensions Act (pension protection), paragraph (1) does not affect the application of—

(a) Schedule 7 to the Pensions Act (pension compensation provisions) or regulations made under that Schedule, or

(b) Schedule 6 to the 2005 Order (pension compensation provisions) or regulations made under that Schedule.

(3) In paragraph (1) a “relevant transfer notice” means—

(a) a transfer notice given under section 160 of the Pensions Act (transfer notices), or

(b) a transfer notice given under Article 144 of the 2005 Order (transfer notices).

33. Paragraphs 35 and 36 of Schedule 36 (winding-up lump sums paid by former approved superannuation funds and right to payment of lump sum death benefit) do not apply in relation to the Pension Protection Fund.

Application of the Inheritance Act 1984: further provisions

34. Section 58 of the Inheritance Act 1984(a) (relevant property) applies in relation to property which is held for the purposes of the Pension Protection Fund as it applies in relation to property which is held for the purposes of a registered pension scheme.

(a) 1984 c. 51. By virtue of section 100(1) and (2) of the Finance Act 1986 (c. 41), on and after 25th July 1986 the Capital Transfer Tax 1984 may be cited as the Inheritance Act 1984, and any reference in that Act to capital transfer tax is to have effect as a reference to inheritance tax, except where the reference relates to a liability arising before 25th July 1986. Section 58 of the Inheritance Tax Act 1984 was amended by section 203(3) of the Finance Act 2004.

Application of the 1988 Act: further provisions

35. Section 56(2) of the 1988 Act(a) (transactions in deposits) does not apply to any profits or gains arising to either of the Pensions Act levies.

36.—(1) Section 413(3) of the 1988 Act (group relief: interpretation) applies as if it provided that two companies shall be deemed to be members of a group of companies if—

- (a) one company is the 75 per cent. subsidiary of the other and neither company is the Board of the Pension Protection Fund, or
- (b) both companies are 75 per cent. subsidiaries of the Board of the Pension Protection Fund.

(2) This regulation is to be construed as one with Chapter 4 of Part 10 of the 1988 Act (group relief).

37.—(1) If the Board of the Pension Protection Fund acquires more than half the ordinary share capital of a company (so that, accordingly, the condition in paragraph (a) of section 769(1) of the 1988 Act(b) is met) there is no change in the ownership of the company for the purposes of sections 767A to 768E of the 1988 Act(c) (change in ownership of company).

(2) This regulation is to be construed as one with sections 767A to 768E of the 1988 Act.

Application of the 1992 Act: further provisions

38.—(1) For the purposes of sections 171 to 181 of the 1992 Act (groups of companies), none of the following may be a member of a group—

- (a) the Board of the Pension Protection Fund;
- (b) the Pension Protection Fund;
- (c) the Fraud Compensation Fund.

(2) This regulation is to be construed as one with the 1992 Act.

39.—(1) For the purposes of the 1992 Act, any gain accruing to the Board of the Pension Protection Fund from its disposal of investments shall not be a chargeable gain if, or to the extent that, at the time of the disposal, those investments were held by the Board, or on its behalf, for the purposes of one of the Pensions Act Funds.

(2) In paragraph (1) “investments” includes futures contracts and options contracts.

(3) This regulation is to be construed as one with the 1992 Act.

Application of the 2003 Act: further provisions

40. Step 5 of section 54(1) of the 2003 Act (calculation of deemed employment payment under arrangements made by intermediaries) applies in relation to a payment, by the intermediary, of any sum in respect of any of the Pensions Act levies in the same way as it applies in relation to any contributions that may be deducted under that step.

41. Section 307 of the 2003 Act (exemption from employment income for death or retirement benefit provision made by employer) applies in relation to the payment of any sum in respect of any of the Pensions Act levies in the same way as it applies in respect of provision made by an employee’s employer for a retirement or death benefit.

(a) Section 56(2) was amended by paragraph 34(2) of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005 (c. 5).

(b) Section 769(1) was amended by paragraph 4(2) of Schedule 26 to the Finance Act 1995 (c. 4) and by section 116(5) of and paragraph 32 of Schedule 5 to, the Finance Act 1998 (c. 36).

(c) Section 767A was inserted by section 135(1) of the Finance Act 1994 (c. 9) and section 768E was inserted by paragraph 4(3) of Schedule 30 to the Finance Act 2002 (c. 23).

42. Section 579A of the 2003 Act^(a) (pensions) applies in relation to periodic compensation as it applies to any pension under a registered pension scheme.

43. A lump sum paid under Schedule 7 to the Pensions Act (pension compensation provisions) is treated as if it were a lump sum paid under a registered pension scheme to which subsection (1) of section 636A of the 2003 Act^(b) (exemption for certain lump sums under registered pension schemes) applied.

Application of the Finance Act 2003: further provisions

44.—(1) Paragraph 8 of Schedule 4 to the Finance Act 2003^(c) (debt as consideration) does not apply in relation to the Pension Protection Fund if—

- (a) the Board of the Pension Protection Fund acquires a chargeable interest as part of its assumption of responsibility for a scheme in accordance with Chapter 3 of Part 2 of the Pensions Act (pension protection), and
- (b) the chargeable interest is held by the Board of the Pension Protection Fund as an investment.

(2) Paragraph 1 of Schedule 7 to the Finance Act 2003 (group relief) applies in relation to a group of companies of which the Board of the Pension Protection Fund is a member as if, in the case of each reference to 75%, there were substituted a reference to 50%.

(3) For the purposes of paragraph 3(1) of Schedule 7 (withdrawal of group relief) there is no withdrawal of group relief if the vendor is the Board of the Pension Protection Fund.

(4) This regulation is to be construed as one with Part 4 of the Finance Act 2003 (stamp duty land tax).

Fraud compensation payments and other related payments

45.—(1) Receipt of a payment to which this regulation applies shall not be regarded as a disposal of an asset for the purposes of capital gains tax or for the purposes of corporation tax on chargeable gains.

(2) This regulation applies to—

- (a) a fraud compensation payment under section 185 of the Pensions Act;
- (b) an interim payment under section 186 of the Pensions Act;
- (c) a fraud compensation payment under Article 168 of the 2005 Order;
- (d) an interim payment under Article 169 of the 2005 Order;
- (e) a payment made by the Board of the Pension Protection Fund under section 83 of the Pensions Act 1995^(d);
- (f) a payment in anticipation made by the Board of the Pension Protection Fund under section 84 of that Act;
- (g) a payment made by the Board of the Pension Protection Fund under Article 81 of the Pensions (Northern Ireland) Order 1995^(e);
- (h) a payment in anticipation made by the Board of the Pension Protection Fund under Article 82 of that Order.

(a) Section 579A was inserted by paragraph 6 of Schedule 31 to the Finance Act 2004.

(b) Section 636A was inserted by paragraph 11 of Schedule 31 to the Finance Act 2004.

(c) 2003 c. 14.

(d) 1995 c. 26.

(e) S.I. 1995/3213 (N.I. 22).

[Date] 2006

A. Commissioner
A. N. Other
Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

[Remarks relating to a Regulatory Impact Assessment will need to be included.]