

**2011 No. 671**

**PENSIONS**

**The Pension Protection Fund (Prescribed Payments and Investment Costs – Amendment) Regulations 2011**

<i>Made</i> - - - -	<i>7th March 2011</i>
<i>Laid before Parliament</i>	<i>10th March 2011</i>
<i>Coming into force</i> - -	<i>1st April 2011</i>

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 173(3)(k), 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 the Secretary of State considers appropriate before making these Regulations.

**Citation and commencement**

1.—(1) These Regulations may be cited as the Pension Protection Fund (Prescribed Payments and Investment Costs – Amendment) Regulations 2011.

(2) These Regulations come into force on 1st April 2011.

**Amendment of the Pension Protection Fund (Prescribed Payments) Regulations 2008**

2.—(1) The Pension Protection Fund (Prescribed Payments) Regulations 2008(b) are amended as follows.

(2) After regulation 1 (citation and commencement), insert—

**“Interpretation**

**1A.** In these Regulations—

“the 2004 Act” means the Pensions Act 2004;

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

(3) In regulation 2 (payments to meet certain costs)—

(a) for the words before paragraph (a), substitute—

“There is to be paid out of the Pension Protection Fund any sums required for the purposes of meeting expenditure incurred by the Board on—”, and

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(a) 2004 c.35. Section 318(1) is cited for the meaning it gives to “prescribed” and “regulations”.  
(b) S.I. 2008/664.  
(c) S.I. 2005/255 (N.I. 1).

- (b) in paragraph (a)—
  - (i) for “Pensions Act 2004”, substitute “2004 Act”, and
  - (ii) for “Pensions (Northern Ireland) Order 2005”, substitute “2005 Order”.
- (4) After regulation 2 (payments to meet certain costs), insert—

**“Payments to meet investment costs**

3.—(1) Any sums required for the purposes of meeting expenditure incurred by the Board<sup>(a)</sup> referred to in paragraphs (2) and (3) are to be paid out of the Pension Protection Fund.

(2) The expenditure referred to in this paragraph is any expenditure which is made in connection with—

- (a) section 113 of the 2004 Act (investment of funds);
- (b) section 114 of the 2004 Act (investment principles) and any regulations made under that section; and
- (c) section 134(2)(a) of the 2004 Act or Article 118(2)(a) of the 2005 Order (directions relating to investment).

(3) The expenditure referred to in this paragraph is any expenditure—

- (a) which relates to any investment made, or expected to be made, by—
  - (i) the Board, or
  - (ii) an occupational pension scheme in relation to which there is an assessment period; and
- (b) which is made in connection with—
  - (i) any other provisions of—
    - (aa) the 2004 Act, except section 111 (supplementary powers) or Part 6 (financial assistance scheme for members of certain pension schemes), or
    - (bb) the 2005 Order, except Article 101(2) (supplementary powers), and in particular the provisions listed in paragraph (4), or
  - (ii) any provisions of regulations made under the 2004 Act or the 2005 Order.

(4) The provisions referred to in paragraph (3)(b)(i) are—

- (a) section 110 of the 2004 Act or Article 101(1) of the 2005 Order (Board’s functions);
- (b) section 115 of the 2004 Act (borrowing);
- (c) sections 174 to 181 of the 2004 Act or Articles 157 to 164 of the 2005 Order (the levies);
- (d) Chapter 5 of Part 2 of the 2004 Act or Chapter 5 of Part 3 of the 2005 Order (gathering information);
- (e) Chapter 6 of Part 2 of the 2004 Act or Chapter 6 of Part 3 of the 2005 Order (reviews, appeals and maladministration); and
- (f) paragraphs 13, 14 and 23(b) of Schedule 5 to the 2004 Act (employees, staff and expenses of the Board).

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(a) The Board of the Pension Protection Fund is established under section 107 of the Pensions Act 2004.

## Payments to meet costs in relation to insolvency

4.—(1) Any sums required for the purposes of meeting expenditure incurred by the Board referred to in paragraphs (2) and (3) are to be paid out of the Pension Protection Fund.

(2) The expenditure referred to in this paragraph is any expenditure made in connection with—

- (a) section 40(5) to (7) of the 2004 Act (content and effect of a section 38 contribution notice) or Article 36(5) to (7) of the 2005 Order (content and effect of an Article 34 contribution notice);
- (b) section 49(5) and (6) of the 2004 Act (content and effect of a section 47 contribution notice) or Article 45(5) and (6) of the 2005 Order (content and effect of an Article 43 contribution notice);
- (c) section 54(5) and (6) of the 2004 Act or Article 50(5) and (6) of the 2005 Order (content and effect of a restoration order);
- (d) section 56(5) to (7) of the 2004 Act (content and effect of a section 55 contribution notice) or Article 52(5) to (7) of the 2005 Order (content and effect of an Article 51 contribution notice);
- (e) section 137 of the 2004 Act or Article 121 of the 2005 Order (Board to act as creditor of the employer); and
- (f) regulation 7A(1)(d) of the Occupational Pension Schemes (Employer Debt) Regulations 2005<sup>(a)</sup> or regulation 7A(1)(d) of the Occupational Pension Schemes (Employer Debt) Regulations (Northern Ireland) 2005<sup>(b)</sup> (regulated apportionment arrangements).

(3) The expenditure referred to in this paragraph is any expenditure—

- (a) which relates to the recovery of any debt due, or expected to be due, to—
  - (i) the Board, except a debt under section 181(6), 181A(3) or 189(9) of the 2004 Act<sup>(c)</sup> or Article 164(6), 164A(3) or 171(9) of the 2005 Order<sup>(d)</sup> (payment of levies to the Board), or
  - (ii) an occupational pension scheme, but only where it would be expected to become a debt due to the Board if the Board assumes responsibility for that scheme in accordance with Chapter 3 of Part 2 of the 2004 Act or Chapter 3 of Part 3 of the 2005 Order (pension protection); and
- (b) which is made in connection with—
  - (i) any other provisions of—
    - (aa) the 2004 Act, except section 111 or Part 6, or
    - (bb) the 2005 Order, except Article 101(2),and in particular the provisions listed in paragraph (4), or
  - (ii) any provisions of regulations made under the 2004 Act or the 2005 Order.

(4) The provisions referred to in paragraph (3)(b)(i)—

- (a) section 110 of the 2004 Act or Article 101(1) of the 2005 Order;
- (b) section 134 of the 2004 Act or Article 118 of the 2005 Order (directions);
- (c) Chapter 5 of Part 2 of the 2004 Act or Chapter 5 of Part 3 of the 2005 Order;
- (d) Chapter 6 of Part 2 of the 2004 Act or Chapter 6 of Part 3 of the 2005 Order; and
- (e) paragraphs 13, 14 and 23(b) of Schedule 5 to the 2004 Act.

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(a) S.I. 2005/678. Regulation 7A was inserted by S.I. 2005/2224, substituted by S.I. 2008/731 and amended by S.I. 2008/1068.

(b) S.R. 2005 No. 168. Regulation 7A was inserted by S.R. 2005 No. 387, substituted by S.R. 2008 No. 132 and amended by S.R. 2008 No. 178.

(c) Section 181A was inserted by paragraph 5 of Schedule 10 to the Pensions Act 2008 (c.30).

(d) Article 164A was inserted by paragraph 4 of Schedule 9 to the Pensions (No.2) Act (Northern Ireland) 2008 (c.13 (N.I.)).

### **Payments to meet the costs of transferring UK property, rights and liabilities to the Board**

5. Any sums required for the purposes of meeting expenditure incurred by the Board by virtue of section 161(5) of, and paragraphs 1 to 6 of Schedule 6 to, the 2004 Act or Article 145(5) of, and paragraphs 1 to 6 of Schedule 5 to, the 2005 Order (expenditure associated with transfer of property, rights and liabilities to the Board) are to be paid out of the Pension Protection Fund.

### **Payments to meet supplementary costs**

6.—(1) Subject to paragraph (2), any sums required for the purposes of meeting expenditure incurred by the Board in connection with section 111 of the 2004 Act or Article 101(2) of the 2005 Order are to be paid out of the Pension Protection Fund.

(2) Sums are only to be paid in accordance with paragraph (1) where the expenditure referred to in paragraph (1) relates to the exercise of the Board's functions under the provisions mentioned in paragraph (3).

(3) The provisions referred to in paragraph (2) are—

- (a) the provisions mentioned in regulation 2(a);
- (b) the provisions listed in regulations 3(2) and 4(2);
- (c) the provisions to which regulation 3(3)(b) applies, but only to the extent that the functions listed in those provisions relate to any investment made, or expected to be made, by—
  - (i) the Board, or
  - (ii) an occupational pension scheme in relation to which there is an assessment period;
- (d) the provisions to which regulation 4(3)(b) applies, but only to the extent that the functions listed in those provisions relate to the recovery of any debt due, or expected to be due, to—
  - (i) the Board, except a debt under section 181(6), 181A(3) or 189(9) of the 2004 Act or Article 164(6), 164A(3) or 171(9) of the 2005 Order, or
  - (ii) an occupational pension scheme, but only where it would be expected to become a debt due to the Board if the Board assumes responsibility for that scheme in accordance with Chapter 3 of Part 2 of the 2004 Act or Chapter 3 of Part 3 of the 2005 Order;
- (e) the provisions mentioned in regulation 5; and
- (f) the provisions mentioned in section 173(3)(a) to (j) of the 2004 Act (Pension Protection Fund).".

### **Revocation of the Pension Protection Fund (Payments to meet Investment Costs) Regulations 2005**

3. The Pension Protection Fund (Payments to meet Investment Costs) Regulations 2005(a) are revoked.

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

7th March 2011

*Steve Webb*  
Minister of State,  
Department for Work and Pensions

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(a) S.I. 2005/1610.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Pension Protection Fund (Prescribed Payments) Regulations 2008 (S.I. 2008/664) (“the 2008 Regulations”) – regulation 2. They also revoke the Pension Protection Fund (Payments to meet Investment Costs) Regulations 2005 (S.I. 2005/1610) (“the 2005 Regulations”) – regulation 3. The provisions which were in the 2005 Regulations are included in the new provisions introduced by these Regulations into the 2008 Regulations.

The Board of the Pension Protection Fund (“the Board”) spends money in connection with recovering debts due from employers to the Board and to occupational pension schemes. The Board also spends money in connection with investing those recovered debts and other amounts it is responsible for.

These Regulations provide that these expenditures are to be funded out of the Pension Protection Fund (“the Fund”) rather than out of the administration levy. The funding for the Fund comes from several sources, in particular the pension protection levy under section 175 of the Pensions Act 2004 (c.35).

The expenditure which is charged to the Fund includes any activities of the Board which are related to the recoveries or investment. This includes any incidental expenditure and any expenditure which is conducive to, or helps to facilitate, those activities.

These Regulations also provide that expenditure of the Board in relation to UK property, rights and liabilities is to be paid from the Fund.

A full impact assessment has not been prepared for this instrument as it has no impact on business or civil society organisations.

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STATUTORY INSTRUMENTS

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