Pensions Act 2004

2004 CHAPTER 35

PART 2

THE BOARD OF THE PENSION PROTECTION FUND

CHAPTER 3

PENSION PROTECTION

The levies

174 Initial levy

(1) Regulations must make provision for imposing a levy ("the initial levy") in respect of eligible schemes for the period ("the initial period") which—

(a) begins with the day appointed for this purpose by the regulations, and

(b) ends on the following 31st March or, if the regulations so provide, 12 months after the day referred to in paragraph (a).

(2) The regulations must prescribe—

(a) the factors by reference to which the initial levy is to be assessed,

(b) the rate of the levy, and

(c) the time or times during the initial period when the levy, or any instalment of the levy, becomes payable.

(3) Regulations under this section may only be made with the approval of the Treasury.

175 Pension protection levies

(1) For each financial year falling after the initial period, the Board must impose both of the following—

(a) a risk-based pension protection levy in respect of all eligible schemes;

(b) a scheme-based pension protection levy in respect of eligible schemes.

In this Chapter "pension protection levy" means a levy imposed in accordance with this section.

(2) For the purposes of this section—

(a) a risk-based pension protection levy is a levy assessed by reference to—

(i) the difference between the value of a scheme's assets (disregarding any assets representing the value of any rights in respect of money purchase benefits under the scheme rules) and the amount of its protected liabilities,

(ii) except in relation to any prescribed scheme or scheme of a prescribed description, the likelihood of an insolvency event occurring in relation to the employer in relation to a scheme, and

(iii) if the Board considers it appropriate, one or more other risk factors mentioned in subsection (3), and

(b) a scheme-based pension protection levy is a levy assessed by reference to—

(i) the amount of a scheme's liabilities to or in respect of members (other than liabilities in respect of money purchase benefits), and

(ii) if the Board considers it appropriate, one or more other scheme factors mentioned in subsection (4).

(3) The other risk factors referred to in subsection (2)(a)(iii) are factors which the Board considers indicate one or more of the following—

(a) the risks associated with the nature of a scheme's investments when compared with the nature of its liabilities;

(b) such other matters as may be prescribed.

(4) The other scheme factors referred to in subsection (2)(b)(ii) are—

(a) the number of persons who are members, or fall within any description of member, of a scheme;

(b) the total annual amount of pensionable earnings of active members of a scheme;

(c) such other factors as may be prescribed.

(5) The Board must, before the beginning of each financial year, determine in respect of that year—

(a) the factors by reference to which the pension protection levies are to be assessed,

(b) the time or times by reference to which those factors are to be assessed,

(c) the rate of the levies, and

(d) the time or times during the year when the levies, or any instalment of levy, becomes payable.

(6) Different risk factors, scheme factors or rates may be determined in respect of different descriptions of scheme.

(7) The rate determined in respect of a description of scheme may be nil.

(8) In this section—

"initial period" is to be construed in accordance with section 174;

"pensionable earnings", in relation to an active member under a scheme, means the earnings by reference to which a member's entitlement to benefits would be calculated under the scheme rules if he ceased to be an active member at the time by reference to which the factor within subsection (4)(b) is to be assessed.

(9) In this section and sections 176 to 181 "financial year" means a period of 12 months ending with 31st March.

(10) The Board's duty to impose pension protection levies in respect of any financial year is subject to—

(a) section 177 (amounts to be raised by the pension protection levies), and

(b) section 180 (transitional provision).

176 Supplementary provisions about pension protection levies

(1) The Board must consult such persons as it considers appropriate in the prescribed manner before making a determination under section 175(5) in respect of a financial year if—

(a) that year is the first financial year for which the Board is required to impose levies under section 175,

(b) any of the proposed levy factors or levy rates is different, or applies to a different description of scheme, from the levy factors and levy rates in respect of the pension protection levies imposed in the previous financial year, or

(c) no consultation has been required under this subsection in relation to the pension protection levies imposed for either of the previous two financial years.

(2) The Board must publish details of any determination under section 175(5) in the prescribed manner.

177 Amounts to be raised by the pension protection levies

(1) Before determining the pension protection levies to be imposed for a financial year, the Board must estimate the amount which will be raised by the levies it proposes to impose.

(2) The Board must impose levies for a financial year in a form which it estimates will raise an amount not exceeding the levy ceiling for the financial year.

(3) The pension protection levies imposed for a financial year must be in a form which the Board estimates will result in at least 80% of the amount raised by the levies for that year being raised by the risk-based pension protection levy.

(4) For the first financial year after the transitional period, regulations may modify subsection (2) so as to provide that the reference to the levy ceiling for the financial year is to be read as a reference to such lower amount as is prescribed.

(5) For the second financial year after the transitional period and for any subsequent financial year, the Board must impose pension protection levies in a form which it estimates will raise an amount which does not exceed by more than 25% the amount estimated under subsection (1) in respect of the pension protection levies imposed for the previous financial year.

(6) The Secretary of State may by order substitute a different percentage for the percentage for the time being specified in subsection (5).

(7) Before making an order under subsection (6), the Secretary of State must consult such persons as he considers appropriate.

(8) Regulations under subsection (4), or an order under subsection (6), may be made only with the approval of the Treasury.

(9) In this section—
  (a) "risk-based pension protection levy" and "scheme-based pension protection levy" are to be construed in accordance with section 175, and
  (b) "transitional period" has the meaning given by section 180(3).

178 The levy ceiling

(1) The Secretary of State must, before the beginning of each financial year for which levies are required to be imposed under section 175, specify by order the amount which is to be the levy ceiling for that year for the purposes of section 177.

(2) An order under subsection (1) in respect of the first financial year for which levies are imposed under section 175 may be made only with the approval of the Treasury.

(3) Subject to subsection (8), the amount specified under subsection (1) for a financial year ("the current year") after the first year for which levies are imposed under section 175 must be—
  (a) where it appears to the Secretary of State that the level of earnings in the review period has increased, the amount specified under subsection (1) for the previous financial year increased by the earnings percentage for that review period specified under subsection (6), and
  (b) in any other case, the amount specified under subsection (1) for the previous financial year.

(4) In subsection (3)—

"level of earnings" means the general level of earnings obtaining in Great Britain;

"review period" in relation to the current year means the period of 12 months ending with the prescribed date in the previous financial year.

(5) For the purposes of subsection (3), the Secretary of State must, in respect of each review period, review the general level of earnings obtaining in Great Britain and any changes in that level; and for the purposes of such a review the Secretary of State may estimate the general level of earnings in such manner as he thinks appropriate.

(6) Where it appears to the Secretary of State that the general level of earnings has increased during the review period, he must by order specify the percentage by which that level has so increased ("the earnings percentage").

(7) The Secretary of State must discharge the duties imposed by subsections (5) and (6) in respect of a review period before the beginning of the prescribed period which ends at the time the first financial year after the review period begins.

(8) The Secretary of State may, on the recommendation of the Board and with the approval of the Treasury, make an order under subsection (1) in respect of a financial year

which specifies an amount exceeding the amount required to be specified under subsection (3).

(9) Before making a recommendation for the purposes of subsection (8), the Board must consult such persons as it considers appropriate in the prescribed manner.

179 Valuations to determine scheme underfunding

(1) For the purposes of enabling risk-based pension protection levies (within the meaning of section 175) to be calculated in respect of eligible schemes, regulations may make provision requiring the trustees or managers of each such scheme to provide the Board or the Regulator on the Board's behalf—

(a) with an actuarial valuation of the scheme at such intervals as may be prescribed, and

(b) with such other information as the Board may require in respect of the assets and protected liabilities of the scheme at such times as may be prescribed.

(2) For the purposes of this section, in relation to a scheme—

"an actuarial valuation" means a written valuation of the scheme's assets and protected liabilities prepared and signed by the actuary;

"the actuary" means—

(a) the actuary appointed under section 47(1)(b) of the Pensions Act 1995 (c. 26) (professional advisers) in relation to the scheme, or

(b) if no such actuary has been appointed—

(i) a person with prescribed qualifications or experience, or

(ii) a person approved by the Secretary of State.

(3) Regulations under this section may prescribe how—

(a) the assets and the protected liabilities of schemes, and

(b) their amount or value,

are to be determined, calculated and verified.

(4) Subject to any provision made under subsection (3), those matters are to be determined, calculated and verified in accordance with guidance issued by the Board.

(5) In calculating the amount of any liabilities for the purposes of a valuation required by virtue of this section, a provision of the scheme rules which limits the amount of the scheme's liabilities by reference to the value of its assets is to be disregarded.

(6) In this section references to "assets" do not include assets representing the value of any rights in respect of money purchase benefits under the scheme rules.

180 Pension protection levies during the transitional period

(1) Regulations may provide that in respect of any financial year during the transitional period—

(a) sections 175 and 177(3) are to apply with such modifications as may be prescribed;

(b) section 177(2) is to apply as if the reference to the levy ceiling for the financial year were a reference to such lower amount as is specified in the regulations.

(2) Regulations which contain provision made by virtue of subsection (1)(b) may only be made with the approval of the Treasury.

(3) For the purposes of this section "the transitional period" means the prescribed period beginning immediately after the initial period (within the meaning of section 174).

(4) If the transitional period begins with a date other than 1st April, regulations may provide that any provision of this section or of sections 175 to 179 applies, with such modifications as may be prescribed, in relation to—

(a) the period beginning at the same time as the transitional period and ending with the following 31st March, and

(b) the financial year which begins immediately after that period.

181 Calculation, collection and recovery of levies

(1) This section applies in relation to—

(a) the initial levy imposed under section 174 in respect of a scheme, and

(b) any pension protection levy imposed under section 175 in respect of a scheme.

(2) The levy is payable to the Board by or on behalf of—

(a) the trustees or managers of the scheme, or

(b) any other prescribed person.

(3) The Board must in respect of the levy—

(a) determine the schemes in respect of which it is imposed,

(b) calculate the amount of the levy in respect of each of those schemes, and

(c) notify any person liable to pay the levy in respect of the scheme of the amount of the levy in respect of the scheme and the date or dates on which it becomes payable.

(4) The Board may require the Regulator to discharge, on the Board's behalf, its functions under subsection (3) in respect of the levy.

(5) Where a scheme is an eligible scheme for only part of the period for which the levy is imposed, except in prescribed circumstances, the amount of the levy payable in respect of the scheme for that period is such proportion of the full amount as that part bears to that period.

(6) An amount payable by a person on account of the levy is a debt due from him to the Board.

(7) An amount so payable may be recovered—

(a) by the Board, or

(b) if the Board so determines, by the Regulator on its behalf.

(8) Regulations may make provision relating to—

(a) the collection and recovery of amounts payable by way of any levy in relation to which this section applies;

(b) the circumstances in which any such amount may be waived.