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STATUTORY INSTRUMENTS

2011 No. 839

PENSIONS

The Financial Assistance Scheme (Revaluation and Indexation Amendments) Regulations 2011

Made - - - - 17th March 2011

Coming into force in accordance with regulation 1

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 286 and 318(1) of the Pensions Act 2004(**1**).

In accordance with section 316(2)(n) of the Pensions Act 2004, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

The Secretary of State has consulted such persons as the Secretary of State considers appropriate in accordance with section 317(1) of the Pensions Act 2004.

Citation and commencement

1.—(1) These Regulations may be cited as the Financial Assistance Scheme (Revaluation and Indexation Amendments) Regulations 2011 and, subject to paragraph (2), shall come into force on 31st March 2011.

(2) Regulations 11, 14 and 15 shall come into force on 31st December 2011.

Amendment of the Financial Assistance Scheme Regulations

2. The Financial Assistance Scheme Regulations 2005(**2**) are amended in accordance with regulations 3 to 15.

Amendment of regulation 2

3. In regulation 2(1) (interpretation) after the definition of "employment" insert—

> ""general level of prices" means, except where the revaluation percentage falls to be determined under regulation 17(13A) or 17A(13A) or paragraph 3(3C) or (3ZD) or 4(10) or

(**1**) 2004 c.35. Section 286 was amended by section 18(2) and 18(3) of the Pensions Act 2007 (c.22) and by section 124 of the Pensions Act 2008 (c.30). Section 286 is modified in its application to multi-employer schemes by S.I. 2005/441 (amended by S.I. 2005/993, 2005/2113, 2008/731 and 2010/725). Section 318(1) is cited because of the meanings given to "prescribe" and "regulations".

(**2**) S.I. 2005/1986 as amended by S.I. 2005/3256, 2006/3370, 2007/3581, 2008/1432, 2008/1903, 2008/3069, 2008/3241, 2009/792, 2009/1851, 2010/1145 and 2010/1149.

(13C) of Schedule 2, the general level of prices in Great Britain determined in such manner as the Secretary of State thinks fit,

and the Secretary of State shall publish from time to time the manner in which the general level of prices is to be determined;".

Amendment of regulation 17

4. In regulation 17 (annual payments)—

(a) in paragraph (10)(b)(ii)—

(i) after sub-paragraph (bb) omit "or"; and

(ii) after sub-paragraph (cc) insert—

"or

(dd) 30th March 2011, provided that the calculation date falls before 30th March 2011; and

(c) in any case where the calculation date falls on or before 30th March 2011 and the day determined in accordance with paragraphs (i) to (iii) falls after 30th March 2011, the revaluation amount for the period beginning on 31st March 2011 and ending on—

(i) the day on which the beneficiary became entitled to an annual payment;

(ii) the day on which the beneficiary began to receive a present payment from the scheme; or

(iii) the day on which the qualifying member died,

whichever is the earliest.";

(b) in paragraph (11)—

(i) for "the period referred to in paragraph (10)" substitute "the period referred to in paragraph (10)(b), or, where sub-paragraph (c) applies, the periods referred to in paragraph (10)(b) and (c)"; and

(ii) for sub-paragraph (a)(i) substitute—

"(i) the period—

(aa) referred to in paragraph (10)(b) where sub-paragraph (c) does not apply; or

(bb) covered by both periods referred to in paragraph (10)(b) and (c) where sub-paragraph (c) applies,

is less than one month; or";

(c) in paragraph (12)(a)—

(i) omit "in Great Britain"; and

(ii) after "period" insert "or periods";

(d) for paragraph (13) substitute—

"(13) Subject to paragraph (13A), the method for determining the percentage increase in the general level of prices during the revaluation periods determined in accordance with paragraph (10)(b) and (c) is—

$$(100 \times (A \div B)) \square ?? \ 100$$

where—

(a) A is the general level of prices for the month which falls two months before the month in which the last day of the revaluation period falls; and

(b) B is the general level of prices for the month which falls two months before the month in which the first day of the revaluation period falls.";

(e) after paragraph (13) insert—

"(13A) Where the entire period determined in accordance with paragraph (10)(b) falls before 31st March 2011, the method for determining the percentage increase in the general level of prices during that period is—

$$(100 \times (A \div B))$$ □?? 100

where—

(a) A is the level of the retail prices index for the month which falls two months before the month in which the last day of the revaluation period falls; and

(b) B is the level of the retail prices index for the month which falls two months before the month in which the calculation date falls."; and

(f) in paragraph (14)—

(i) for sub-paragraph (a) substitute—

"(a) if the period covered by the period or periods mentioned in paragraph (12)(a) is a period of 12 months, 5%; or"; and

(ii) in sub-paragraph (b) for "in Great Britain" substitute ",whether determined in accordance with paragraph (13) or (13A),".

Amendment of regulation 17A

5. In regulation 17A (ill health payments)—

(a) in paragraph (10), in the definition of "the revalued notional pension", after sub-paragraph (b)(ii)(bb) insert—

"(cc) 30th March 2011, provided that the calculation date falls before 30th March 2011; and

(c) in any case where the calculation date falls on or before 30th March 2011 and the day on which the beneficiary became entitled to an ill health payment or began to receive a present payment from the scheme falls after 30th March 2011, the revaluation amount for the period beginning on 31st March 2011 and ending on the day on which the beneficiary became entitled to an ill health payment or began to receive a present payment from the scheme; and";

(b) in paragraph (11)—

(i) after "period" insert ", or, where paragraph (10)(c) applies, the periods,"; and

(ii) for sub-paragraph (a)(i) substitute—

"(i) the period—

(aa) referred to in paragraph (10)(b) where sub-paragraph (c) does not apply; or

(bb) covered by both periods referred to in paragraph (10)(b) and (c) where sub-paragraph (c) applies,

is less than one month; or";

(c) in paragraph (12)(a)—

(i) omit "in Great Britain"; and

(ii) after "period" insert "or periods";

(d) for paragraph (13) substitute—

"(13) Subject to paragraph (13A), the method for determining the percentage increase in the general level of prices during the revaluation periods determined in accordance with sub-paragraphs (b) and (c) of the definition of "the revalued notional pension" in paragraph (10) is—

$$(100 \times (A \div B))$$?? 100

where—

(a) A is the general level of prices for the month which falls two months before the month in which the last day of the revaluation period falls; and

(b) B is the general level of prices for the month which falls two months before the month in which the first day of the revaluation period falls.";

(e) after paragraph (13) insert—

"(13A) Where the entire period determined in accordance with sub-paragraph (b) of the definition of "the revalued notional pension" in paragraph (10) falls before 31st March 2011, the method for determining the percentage increase in the general level of prices during that period is—

$$(100 \times (A \div B))$$?? 100

where—

(a) A is the level of the retail prices index for the month which falls two months before the month in which the last day of the revaluation period falls; and

(b) B is the level of the retail prices index for the month which falls two months before the month in which the calculation date falls."; and

(f) in paragraph (14)—

(i) for sub-paragraph (a) substitute—

"(a) if the period covered by the period or periods mentioned in paragraph (12)(a) is a period of 12 months, 5%; or"; and

(ii) in sub-paragraph (b) for "in Great Britain" substitute ",whether determined in accordance with paragraph (13) or (13A),".

Amendment of Schedule 2

6. In paragraph 3 of Schedule 2 (determination of annual and initial payments)—

(a) in each place in which it occurs omit "in Great Britain";

(b) for sub-paragraph (3)(c)(ii) substitute—

"(ii) where the qualifying member attains normal retirement age before 31st March 2011, the revaluation amount for the period beginning on the day on which the qualifying pension scheme began to be wound up and ending on the day on which the qualifying member attains normal retirement age; and

(iii) where the qualifying member attains normal retirement age on or after 31st March 2011, the sum of—

(aa) the revaluation amount for the period beginning on the day on which the qualifying pension scheme began to be wound up and ending on 30th March 2011; and

(bb) the revaluation amount for the period beginning on 31st March 2011 and ending on the day on which the qualifying member attains normal retirement age.";

(c) in sub-paragraph (3A)—

(i) omit "and (c)(ii)"; and

(ii) in paragraph (b) omit "or, as the case may be, sub-paragraph (3)(c)(i)";

(d) after sub-paragraph (3A) insert—

"(3AA) In sub-paragraph (3)(c)(ii) and (iii), the revaluation amount is—

(a) where the period—

(i) determined in accordance with sub-paragraph (3)(c)(ii), where it applies; or

(ii) covered by the periods determined in accordance with paragraphs (aa) and (bb) of sub-paragraph (3)(c)(iii), where that sub-paragraph applies,

is less than one month, nil; or

(b) in any other case, the revaluation percentage of the amount of the annual rate of pension under sub-paragraph (3)(c)(i).";

(e) in sub-paragraph (3B)—

(i) for "sub-paragraph (3A)" substitute "sub-paragraphs (3A) and (3AA)"; and

(ii) for "and (c)(ii)" substitute "or (c)(ii) or (iii)";

(f) in sub-paragraph (3ZD)—

(i) for "period" substitute "periods";

(ii) after "sub-paragraph (3)(c)(ii)" insert "and (iii)(aa)"; and

(iii) for "during which the qualifying member attains normal retirement age" substitute "in which the last day of that revaluation period falls";

(g) after sub-paragraph (3ZD) insert—

"(3ZDA) The method for determining the percentage increase in the general level of prices during the revaluation period determined in accordance with sub-paragraph (3)(c)(iii)(bb) is—

$$(100 \times (A \div B))$$ □?? 100

where—

A is the general level of prices for the month which falls two months before the month during which the qualifying member attains normal retirement age; and

B is the general level of prices for January 2011."; and

(h) in sub-paragraph (3D)—

(i) after "revaluation period" insert "or periods";

(ii) for paragraph (a) substitute—

"(a) if the period or periods mentioned in sub-paragraph (3)(c) together form a period of 12 months, 5%; or"; and

(iii) in paragraph (b) for "that period" substitute "those periods".

7. In paragraph 4 of Schedule 2—

(a) in each place in which it occurs omit "in Great Britain";

(b) in sub-paragraph (3)(c) for "sub-paragraphs (7) to (11)" substitute "sub-paragraphs (7) to (10) and (11)";

(c) after sub-paragraph (3)(c) insert—

"(ca) in any case where the day—

(i) on which the qualifying member attains normal retirement age; or

(ii) from which the qualifying member becomes entitled to an annual payment in accordance with regulation 17(2), (3) or (3C) or 17C,

is on or after 31st March 2011, the revaluation amount for the third revaluation period (see sub-paragraphs (10A) and (11)); and";

(d) in sub-paragraph (3)(d) for "third" substitute "fourth";

(e) in sub-paragraph (7)—

(i) at the end of paragraph (b)(ii) insert—

"; or

(iii) 30th March 2011,"; and

(ii) for "earlier" substitute "earliest";

(f) after sub-paragraph (7) insert—

"(7A) The third revaluation period is the period beginning on 31st March 2011 and ending on—

(a) the day on which the qualifying member attains normal retirement age; or

(b) the day from which the qualifying member is entitled to an annual payment in accordance with regulation 17(2), (3) or (3C) or 17C,

whichever is the earlier.";

(g) in sub-paragraph (8)—

(i) for "second revaluation period" substitute "second and third revaluation periods"; and

(ii) for paragraph (a) substitute—

"(a) where the period—

(i) determined in accordance with sub-paragraph (7) where sub-paragraph (3)(ca) does not apply; or

(ii) covered by the second and third revaluation periods where sub-paragraph (3)(ca) applies,

is a period of less than one month, nil; or";

(h) in sub-paragraph (9) for paragraph (a) substitute—

"(a) the percentage increase in the general level of prices during the second revaluation period or, where sub-paragraph (3)(ca) applies, the second and third revaluation periods determined in accordance with sub-paragraphs (7) and (7A) respectively; and";

(i) in sub-paragraph (10) for "day from which the qualifying member is entitled to an annual payment" substitute "last day of the revaluation period";

(j) after sub-paragraph (10) insert—

"(10A) The method for determining the percentage increase in the general level of prices during the third revaluation period is—

$(100 \times (A \div B))$ □?? 100

where—

(a) A is the general level of prices for the month which falls two months before the month in which the day on which the qualifying member is entitled to an annual payment falls; and

(b) B is the general level of prices for January 2011.";

(k) for sub-paragraph (11) substitute—

"(11) In sub-paragraph (9)(b), "the maximum revaluation rate" in relation to the second and third revaluation periods is—

(a) 5% if either—

(i) sub-paragraph (3)(ca) does not apply and the period referred to in sub-paragraph (c) is a period of 12 months; or

(ii) sub-paragraph (3)(ca) applies and the periods referred to in sub-paragraph (3)(c) and (ca) together form a period of 12 months; or

(b) in any other case, the percentage that would be the percentage mentioned in sub-paragraph (9)(a) had the general level of prices, whether determined in accordance with sub-paragraph (10) or (10A), increased at the rate of 5% compound per annum during those periods.";

(l) in sub-paragraph (12) after "second" insert "or third";

(m) in sub-paragraph (13) for "third" substitute "fourth"; and

(n) in sub-paragraph (13A) for "third" substitute "fourth".

8. In paragraph 4A(5)(a) of Schedule 2 after "3(3)(b)(ii)" insert "and (c)(ii) and (iii)".

9. In paragraph 5 of Schedule 2—

(a) in sub-paragraph (7)—

(i) after sub-paragraph (c) omit "and";

(ii) after paragraph (c) insert—

"(ca) in any case where—

(i) the day from which the qualifying member became entitled to an annual payment; or

(ii) the day from which the survivor of the qualifying member became entitled to an annual payment,

is on or after 31st March 2011, the revaluation amount for the third survivor revaluation period (see sub-paragraphs (10A) and (11)); and"; and

(iii) in paragraph (d)—

(aa) for "third" substitute "fourth"; and

(bb) after "survivor" insert "revaluation";

(b) for sub-paragraph (10)(b)(i) substitute—

"(i) the earliest of—

(aa) the day from which the qualifying member became entitled to an annual payment;

(bb) the day from which the survivor of the qualifying member became entitled to an annual payment; or

(cc) 31st March 2011; or";

(c) after sub-paragraph (10) insert—

"(10A) The third survivor revaluation period is the period beginning on 31st March 2011 and ending on the earlier of—

(a) the day from which the qualifying member became entitled to an annual payment; and

(b) the day from which the survivor of the qualifying member became entitled to an annual payment.";

(d) for sub-paragraph (11) substitute—

"(11) The revaluation amounts for the second and third survivor revaluation periods are the revaluation amounts determined in accordance with paragraph 4(8) to (12).";

(e) in sub-paragraph (12) for "third" substitute "fourth"; and

(f) in sub-paragraph (13) for "third" substitute "fourth".

10. In paragraph 7 of Schedule 2—

(a) in sub-paragraph (3)—

(i) after paragraph (d) omit "and";

(ii) for paragraph (e) substitute—

"(e) where the beneficiary becomes entitled to an annual payment in the period beginning on 1st April 2010 and ending on 31st March 2011, £29,386; and

(f) where the beneficiary becomes entitled to an annual payment after 31st March 2011, the amount determined in accordance with sub-paragraph (4)."; and

(b) in sub-paragraph (4)—

(i) for "1st April 2010" substitute "1st April 2011"; and

(ii) for "of the retail prices index" substitute "in the general level of prices".

11. In paragraph 9 of Schedule 2, in sub-paragraph (1) and the definition of "appropriate percentage" in sub-paragraph (2), for "retail prices index" substitute "general level of prices".

Amendment of Schedule 2A

12. In paragraph 6 of Schedule 2A (determination of ill health and interim ill health payments)—

(a) after sub-paragraph (b) insert—

"(bza) for paragraph 4(7A)(a) substitute—

"(a) the day from which the qualifying member is entitled to an ill health payment in accordance with regulation 17A(1);";"

(b) for sub-paragraph (ba) substitute—

"(ba) in paragraph 4(10A) for "annual payment" substitute "ill health payment";";

(c) for sub-paragraph (c) substitute—

"(c) for paragraph 5(10)(b) substitute—

"(b) ending on the earlier of—

(i) the day on which the qualifying member became entitled to an ill health payment in accordance with regulation 17A(1); and

(ii) 31st March 2011.";"; and

(d) after sub-paragraph (c) insert—

"(ca) in paragraph 5(10A) for the words from "the earlier of" to the end substitute "the day from which the qualifying member became entitled to an ill health payment.";".

13. In paragraph 7 of Schedule 2A—

(a) in sub-paragraph (3)—

(i) after paragraph (b) omit "and"; and

(ii) for paragraph (c) substitute—

"(c) where the qualifying member becomes entitled to an ill health payment in the period beginning on 1st April 2010 and ending on 31st March 2011, £29,386; and

(d) where the beneficiary becomes entitled to an ill health payment after 31st March 2011, the amount determined in accordance with sub-paragraph (4).."; and

(b) in sub-paragraph (4)—

(i) for "1st April 2010" substitute "1st April 2011"; and

(ii) for "of the retail prices index" substitute "in the general level of prices".

14. In paragraph 9 of Schedule 2A, in sub-paragraph (1) and the definition of "appropriate percentage" in sub-paragraph (2), for "retail prices index" substitute "general level of prices".

Amendment of Schedules 3 to 7

15. In Schedules 3 to 7 in each place in which it occurs for "retail prices index" substitute "general level of prices".

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

C Grayling
Minister of State
Department for Work and Pensions

17th March 2011

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Financial Assistance Scheme Regulations 2005 to provide for:

(a) revaluation in respect of periods which run from 31st March 2011 to be determined in accordance with any rise in the general level of prices in Great Britain;

(b) indexation on assistance payments from 1st January 2012 to be calculated in accordance with any rise in the general level of prices in Great Britain; and

(c) the cap on the amount which a beneficiary can receive in total from the Financial Assistance Scheme and any annuity to be increased annually in accordance with any rise in the general level of prices in Great Britain.

The general level of prices in Great Britain is to be estimated in such manner as the Secretary of State thinks fit and the Secretary of State is to publish the manner of estimating the general level of prices periodically.

Prior to these amendments, revaluation, indexation and the cap were calculated in accordance with the retail prices index. The retail prices index remains the means by which revaluation in respect of periods falling before 31st March 2011 will be calculated.