

Draft Regulations laid before Parliament under paragraph 5(1) of Schedule 5 to the Retained EU Law (Revocation and Reform) Act 2023, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2023 No.

**RETAINED EU LAW REFORM
PENSIONS**

**The Pensions Act 2004 (Amendment) (Pension
Protection Fund Compensation) Regulations 2023**

*Made - - - - - ***
Coming into force in accordance with regulation 1(b)*

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 11(1), 13(2), (3) and (7) and 20(1)(b) of the Retained EU Law (Revocation and Reform) Act 2023⁽¹⁾ (“the 2023 Act”).

The Secretary of State is a relevant national authority⁽²⁾ for the purposes of section 11(1) of the 2023 Act.

A draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament in accordance with paragraph 5(1) of Schedule 5 to the 2023 Act.

Citation, commencement and extent

1. These Regulations—
 - (a) may be cited as the Pensions Act 2004 (Amendment) (Pension Protection Fund Compensation) Regulations 2023;
 - (b) come into force immediately before the end of 2023;
 - (c) extend to England and Wales and Scotland.

Amendment of sections 162 and 316 of the Pensions Act 2004

2. In the Pensions Act 2004⁽³⁾—
 - (a) in section 162(1) (the pension compensation provisions), omit paragraph (c) (but not the “and” at the end);

⁽¹⁾ 2023 c. 28.

⁽²⁾ “Relevant national authority” is defined in section 21(1) of the 2023 Act.

⁽³⁾ 2004 c. 35.

- (b) in section 316(2)(4) (parliamentary control of subordinate legislation) omit paragraph (s) (but not the “or” at the end).

Amendment of Schedule 7 to the Pensions Act 2004

3.—(1) Schedule 7 (pension compensation provisions) to the Pensions Act 2004 is amended as follows.

(2) In each of paragraphs 3(10), 5(8), 15(6) and 19(8)(5) insert the following entry immediately after the opening words—

“paragraph 22A (calculation of compensation on and after 1 January 2024),”.

(3) In each of paragraphs 3(10), 11(8), 14(9)(6), 15(6) and 19(8) omit the entry for paragraph 26 (but not the “and” at the end).

(4) For paragraph 7(6) substitute—

“(6) This paragraph is subject to—

paragraph 22A (calculation of compensation on and after 1 January 2024), and
paragraph 30 (power of Secretary of State to change percentage rates by order).”.

(5) In each of paragraphs 8(8), 11(8) and 14(9) insert the following entry immediately after the entry for paragraph 20—

“paragraph 22A (calculation of compensation on and after 1 January 2024),”.

(6) In paragraph 10(8)—

(a) at the end of the entry for paragraph 20, omit the “and”;

(b) immediately after that entry insert—

“paragraph 22A (calculation of compensation on and after 1 January 2024), and”.

(7) For paragraph 20(6) substitute—

“(6) This paragraph is subject to—

paragraph 22A (calculation of compensation on and after 1 January 2024), and
paragraph 30 (power of Secretary of State to change percentage rates by order).”.

(8) For paragraph 22(4) substitute—

“(4) This paragraph is subject to—

paragraph 22A (calculation of compensation on and after 1 January 2024), and
paragraph 30 (power of Secretary of State to change percentage rates by order).”.

(9) After paragraph 22 insert—

“Calculation of compensation on and after 1 January 2024

22A.—(1) This paragraph applies where—

(a) the assessment date falls on or after 1 January 2024, and

(b) there is a person (“P”) who, at the beginning of the assessment period in question, is or may become entitled to payment of compensation in accordance with paragraph 3, 5, 7, 8, 10, 11, 14, 15, 19, 20 or 22 in respect of the scheme.

(2) Sub-paragraph (3) applies where, but for that sub-paragraph, the value as at the beginning of the assessment period of the compensation which is or may become payable to

(4) There have been amendments to section 316(2), but none are relevant.

(5) Paragraphs 15(6) and 19(8) were amended by, respectively, paragraphs 7 and 9 of Schedule 8 to the Pensions Act 2008 (c. 30).

(6) Paragraphs 11(8) and 14(9) were amended by, respectively, paragraphs 4 and 6 of Schedule 8 to the Pensions Act 2008.

or in respect of P in accordance with any of paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 18, 19, 20, 22 and 23 (“the relevant compensation provisions”) in respect of the scheme would be less than 50% of the value of the benefits which have accrued to or in respect of P under the admissible rules of the scheme immediately before the assessment date (“the benefits value”).

(3) Where this sub-paragraph applies, the amounts of the compensation which is or may become payable to or in respect of P in accordance with any of the relevant compensation provisions in respect of the scheme are to be adjusted in accordance with guidance issued by the Board so as to secure that the value as at the beginning of the assessment period of that compensation is increased to an amount equal to 50% of the benefits value.

(4) The following are to be determined in accordance with guidance issued by the Board—

- (a) the value of the compensation which is or may become payable to or in respect of P in accordance with any of the relevant compensation provisions in respect of the scheme;
- (b) the value of the benefits which have accrued to or in respect of P under the admissible rules of the scheme.

(5) In this paragraph—

- (a) a reference to benefits which have accrued to or in respect of a person under the admissible rules of the scheme does not include a reference to such of those benefits as are attributable (directly or indirectly) to a pension credit;
- (b) a reference to compensation which is or may become payable to or in respect of a person in accordance with a provision of this Schedule does not include a reference to so much of that compensation as is attributable (directly or indirectly) to a pension credit.”

(10) In paragraph 24, omit sub-paragraph (3).

(11) Omit paragraphs 26, 26A and 27(7).

(12) In paragraph 28, omit sub-paragraph (4).

Amendment of Schedule 5 to the Pensions Act 2008

4. In paragraph 18 (compensation cap) of Schedule 5 (pension compensation payable on discharge of pension compensation credit) to the Pensions Act 2008(8), omit sub-paragraph (2).

Amendment of Schedule 4 to the Pensions Act 2011

5. In Schedule 4 (Pension Protection Fund) to the Pensions Act 2011(9)—

- (a) omit paragraph 18(4);
- (b) omit paragraph 23(9).

Amendment of the Pensions Act 2014

6. In the Pensions Act 2014(10)—

- (a) omit section 51 (Pension Protection Fund: compensation cap to apply separately to certain benefits);

(7) There have been amendments to paragraphs 26 and 27, but none are relevant; paragraph 26A was inserted by paragraph 3 of Schedule 20 to the Pensions Act 2014 (c. 19).

(8) 2008 c. 30. There have been amendments to paragraph 18, but none are relevant.

(9) 2011 c. 19.

(10) 2014 c. 19.

- (b) in Schedule 20 (Pension Protection Fund: increased compensation cap for long service), omit—
- (i) paragraphs 1 to 3;
 - (ii) paragraph 5;
 - (iii) paragraph 6(3) and (4);
 - (iv) paragraphs 7 to 22.

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

Date

Name
Parliamentary Under Secretary of State
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend Schedule 7 to the Pensions Act 2004 (c. 35) which relates to the payment of compensation by the Board of the Pension Protection Fund (“the Board”) in certain circumstances where an occupational pension scheme is unable to meet its obligations to provide benefits to its members.

These Regulations codify, to a limited extent, the effects of Article 8 of Council Directive 2008/94/EC of the European Parliament and of the Council on the protection of employees in the event of the insolvency of their employer (OJ L 283, 28.10.2008 p. 36-42). Those effects form part of domestic law by virtue of section 4 of the European Union (Withdrawal) Act 2018 (c. 16), and they were the subject of the decisions in *C-17/17 Hampshire v Board of the Pension Protection Fund* [2019] ICR 327 and *Hughes and others v The Board of the Pension Protection Fund* [2020] EWHC 1598 (Admin).

These Regulations amend Schedule 7 to ensure that the compensation payable to a person in certain cases where the Board has assumed responsibility for an occupational pension scheme (“the original scheme”) does not fall below the level of compensation that would be payable if the value of compensation payable under Schedule 7 was 50% of the value of benefits that the person would have been entitled to under the rules of the original scheme.

This amendment affects sections 131, 138, 143, 156, 162 and 179 of the Pensions Act 2004 to the extent they operate by reference to the value of compensation payable under Schedule 7.

These Regulations also amend Schedule 7 by omitting paragraphs 26, 26A and 27, which impose a cap on the level of compensation payable under certain provisions of the Schedule.

These Regulations make consequential amendments to the Pensions Act 2004, the Pensions Act 2008 (c. 30), the Pensions Act 2011 (c. 19) and the Pensions Act 2014 (c. 19).

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.