

SCHEDULES

SCHEDULE 8

Section 122

AMENDMENTS OF SCHEDULE 7 TO THE PENSIONS ACT 2004

- 1 Schedule 7 to the Pensions Act 2004 (c. 35) (pension compensation provisions) is amended as follows.
- 2 In paragraph 3(6), at the end, add “to the scheme”.
- 3 In paragraph 5(5), at the end, add “to the scheme”.
- 4 In paragraph 11(8), after “paragraph 24 (commutation),” insert—
“paragraph 25E (terminal illness lump sum),”.
- 5 In paragraph 13, after sub-paragraph (3) insert—
“(3A) For the purposes of this paragraph, a person’s entitlement under paragraph 11 is to be determined disregarding paragraph 25E(1)(b) (successful applicant for terminal illness lump sum loses entitlement to periodic compensation).”
- 6 In paragraph 14(9), after “paragraph 20 (compensation in respect of scheme right to transfer payment or contribution refund),” insert—
“paragraph 25E (terminal illness lump sum),”.
- 7 In paragraph 15(6), after “paragraph 24 (commutation),” insert—
“paragraph 25E (terminal illness lump sum),”.
- 8 In paragraph 18, after sub-paragraph (3) insert—
“(3A) For the purposes of this paragraph, a person’s entitlement under paragraph 15 is to be determined disregarding paragraph 25E(1)(b) (successful applicant for terminal illness lump sum loses entitlement to periodic compensation).”
- 9 In paragraph 19(8), after “This paragraph is subject to—” insert—
“paragraph 25E (terminal illness lump sum),”.
- 10 In paragraph 21(1), for “15, 18 and 19” substitute “15 to 19”.
- 11 For paragraph 21(2)(b) and (c) substitute—
“(c) for paragraph 15(5) substitute—
“(5) Subject to sub-paragraph (5A), for the purposes of this paragraph and paragraphs 16 and 17, “the accrued amount” means the amount equal to the initial annual rate of the pension which, under the admissible rules, the deferred member is entitled to receive at normal benefit age by virtue of his pension credit rights.

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- (5A) For the purposes of calculating the amounts mentioned in sub-paragraph (4)(b) and (c), the accrued amount is to be treated as reduced by such amount as is not attributable to rights of the deferred member that involve the member being credited by the scheme with notional pensionable service.”
- (ca) in paragraph 16(2)(a) before “pensionable service” insert “notional”,
- (cb) in paragraph 17(2)(b) the reference to normal pension age is to be read as a reference to normal benefit age,
- (cc) in paragraph 17(6) omit “, “the accrued amount””.”
- 12 In paragraph 25(3), after “before that person attains normal pension age” insert “(or, in a case to which paragraph 21 applies, normal benefit age)”.
- 13 After paragraph 25 insert—

“Deferral of compensation

- 25A (1) Regulations may prescribe circumstances in which, and conditions subject to which, a person may elect to defer entitlement to any relevant compensation until some time after attaining normal pension age (or, in a case to which paragraph 21 applies, normal benefit age).
- (2) For this purpose “any relevant compensation” means any compensation to which a person is or will be entitled under the pension compensation provisions, except for compensation payable in accordance with paragraph 3 (pensions in payment at assessment date).
- (3) The Board must determine the amount of the actuarial increase to be applied to compensation to which a person is entitled by virtue of this paragraph.
- (4) Where, by virtue of this paragraph, periodic compensation is payable to a person under paragraph 11 or 15 after that person attains normal pension age (or, in a case to which paragraph 21 applies, normal benefit age)—
- (a) paragraph 12(2) applies as if the reference to the date on which the active member attains normal pension age were a reference to the date on which the compensation is payable by virtue of this paragraph, and
- (b) paragraph 17(2)(b) applies as if the reference to the date on which the deferred member attains normal pension age were a reference to the date on which the compensation is payable by virtue of this paragraph.”
- 14 After paragraph 25A (inserted by paragraph 13 above) insert—

“Terminal illness lump sum: eligibility

- 25B (1) This paragraph applies to a person in relation to whom all of the following conditions are met—
- (a) the person is terminally ill;

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- (b) if the person lived to the relevant age, the person would become entitled on attaining that age to relevant compensation in relation to the scheme;
 - (c) the person has not yet become entitled to any compensation under the pension compensation provisions in relation to the scheme;
 - (d) the whole or any part of the person's lifetime allowance is available.
- (2) A person to whom this paragraph applies may make an application to the Board to commute the future entitlement mentioned in sub-paragraph (1) (b) for a lump sum ("a terminal illness lump sum") payable on the granting of the application.
- (3) For the purposes of this Chapter a person is "terminally ill" at any time if at that time the person suffers from a progressive disease and the person's death in consequence of that disease can reasonably be expected within 6 months.
- (4) In this paragraph—
- "lifetime allowance", in relation to a person, has the same meaning as in Part 4 of the Finance Act 2004 (c. 12) (pension schemes etc) (see section 218 of that Act);
 - "relevant age", in relation to a person, means—
 - (a) in relation to compensation entitlement to which has been accelerated or deferred under regulations under paragraph 25 or (as the case may be) 25A, the age at which the person becomes entitled to the compensation in accordance with the regulations;
 - (b) in relation to compensation entitlement to which has not been so accelerated or deferred, normal pension age (or, in a case to which paragraph 21 applies, normal benefit age);
 - "relevant compensation" means—
 - (a) periodic compensation under paragraph 11 or 15, or
 - (b) lump sum compensation under paragraph 14 or 19.

Terminal illness lump sum: application

- 25C An application for a terminal illness lump sum—
- (a) must be made in writing, either on a form approved by the Board for the purposes of this paragraph or in such other manner as the Board may accept as sufficient in the circumstances of the case;
 - (b) must be accompanied by such information as the Board may require for the purpose of determining the application.

Terminal illness lump sum: determination of application

- 25D (1) The Board must determine an application for a terminal illness lump sum in accordance with this paragraph.
- (2) The Board must—

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- (a) if satisfied that the conditions in paragraph 25B(1) are met in relation to the applicant, grant the application;
 - (b) in any other case (subject to sub-paragraph (3)), reject the application.
- (3) The Board may hold over the application for determination at a later date if it is satisfied that—
- (a) although the condition in paragraph 25B(1)(a) is not met in relation to the applicant, the applicant suffers from a progressive disease and may become terminally ill within six months, and
 - (b) the conditions in paragraph 25B(1)(b) to (d) are met in relation to the applicant.

Terminal illness lump sum: effect of successful application

- 25E (1) If the Board grants an application for a terminal illness lump sum, the applicant—
- (a) becomes entitled to a terminal illness lump sum calculated in accordance with this paragraph, and
 - (b) loses the entitlement the applicant otherwise would have had on attaining the relevant age to relevant compensation in relation to the scheme.
- (2) The amount of the terminal illness lump sum is 2 times the sum of—
- (a) the periodic compensation annual amount, and
 - (b) the lump sum compensation annual amount.
- (3) In sub-paragraph (2) “the periodic compensation annual amount” means the annual amount to which the applicant would have been entitled under paragraph 11 or 15 in relation to the scheme in the year following the granting of the application, if the applicant had attained the relevant age on the granting of the application.
- (4) In sub-paragraph (2) “the lump sum compensation annual amount” means the annualised value of the lump sum to which the applicant would have been entitled under paragraph 14 or 19 in relation to the scheme on the granting of the application, if the applicant had attained the relevant age on the granting of the application.
- (5) In sub-paragraph (4) “the annualised value” of a lump sum means the annualised actuarially equivalent amount of that sum, determined in accordance with actuarial factors published by the Board.
- (6) In this paragraph “relevant compensation” and “the relevant age” have the same meanings as in paragraph 25B.

Terminal illness lump sum: information

- 25F (1) Relevant information held by the Secretary of State about an individual may be disclosed to the Board for use for a purpose relating to—
- (a) the Board’s functions under paragraphs 25B to 25E;

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- (b) the compliance of the trustees or managers of a pension scheme with section 138 (limit on amount of scheme benefits payable during an assessment period).
 - (2) In sub-paragraph (1) “relevant information” means information held for the purposes of any function of the Secretary of State relating to—
 - (a) social security, or
 - (b) any scheme made under section 286 (financial assistance scheme).”
- 15 In paragraph 33, make the existing provision sub-paragraph (1) and at the end add—
- “(2) Where the scheme is a variable-rate scheme, regulations under this paragraph may have the effect that the amount of periodic compensation payable to a person is, from a specified time, to be different from the amount that would otherwise be payable under this Schedule.
 - (3) A “variable-rate scheme” is a scheme under which the annual rate of pension to which a person is entitled would have increased (otherwise than by way of revaluation) or decreased at any time after the assessment date, had the scheme continued in existence until that time (and had the scheme rules remained unchanged).
 - (4) Where the scheme is a fixed-term scheme, regulations under this paragraph may have the effect that no periodic compensation is to be payable to a person from a specified time.
 - (5) A “fixed-term scheme” is a scheme under which a person’s entitlement to benefits would have ceased at any time after the assessment date, had the scheme continued in existence until that time (and had the scheme rules remained unchanged).
 - (6) In this paragraph “a specified time” means a time determined in accordance with regulations under this paragraph.”
- 16 In paragraph 34(1), after “ill health” insert “or otherwise”.
- 17 For paragraph 35(2)(a) substitute—
- “(a) in the case of a scheme to which sub-paragraph (3) applies, any recent rule changes, and”.
- 18 For paragraph 35(3) substitute—
- “(3) This sub-paragraph applies to a scheme if, in calculating the protected liabilities in relation to the scheme at the relevant time, the effect of taking into account—
 - (a) any recent rule changes, and
 - (b) any recent discretionary increases,is that those liabilities are greater than they otherwise would be.”