

## 2005 No. 2184

### PENSIONS

#### The Occupational Pension Schemes (Fraud Compensation Payments and Miscellaneous Amendments) Regulations 2005

<i>Made</i> - - - -	<i>4th August 2005</i>
<i>Laid before Parliament</i>	<i>11th August 2005</i>
<i>Coming into force</i> -	<i>1st September 2005</i>

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SCHEDULE 1 — Amendment of the Reviewable Matters Regulations

SCHEDULE 2 — Amendment of the Review and Reconsideration Regulations

SCHEDULE 3 — Amendment of the Information Regulations

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 182(1)(a) and (b), (4)(c) and (5), 183(6), 185(4)(a), 186(1)(a)(ii), (2) and (3), 190(1), 203(1), 206(2)(a) and (3), 207(1), 307(1)(a) and (b) and (3), 315(2), (4) and (5) and 318(1) and (4)(a) of the Pensions Act 2004(a) and paragraph 1(6) of Schedule 1 to the Welfare Reform and Pensions Act 1999(b), and of all other powers enabling him in that behalf, by this instrument, which contains regulations made before the end of the period of six months beginning with the coming into force of the provisions of the Pensions Act 2004 by virtue of which they are made(c), makes the following Regulations:

#### **Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Fraud Compensation Payments and Miscellaneous Amendments) Regulations 2005 and shall come into force on 1st September 2005.

(2) Save where the context otherwise requires, any reference in these Regulations to a numbered section or Chapter of Part 2 is to the section or Chapter of Part 2 of the Pensions Act 2004 bearing that number.

(3) In these Regulations—

“the 1988 Act” means the Income and Corporation Taxes Act 1988(d);

“the 1993 Act” means the Pension Schemes Act 1993(e);

“the 1995 Act” means the Pensions Act 1995(f);

“the 1999 Act” means the Welfare Reform and Pensions Act 1999;

“the 2004 Act” means the Finance Act 2004(g);

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(a) 2004 c.35. Section 318(1) is cited because of the meaning there given to “prescribed” and “regulations”.

(b) 1999 c.30. Paragraph 1(6) of Schedule 1 was inserted by paragraph 76(5) of Schedule 12 to the Pensions Act 2004.

(c) See section 317(2)(c) of the Pensions Act 2004 which provides that the obligation under section 317(1) of that Act (which requires the Secretary of State to consult such persons as he considers appropriate before making regulations by virtue of the provisions of that Act (other than Part 8)) does not apply where regulations are made before the end of the period of six months beginning with the coming into force of the provisions of that Act by virtue of which they are made.

(d) 1988 c.1.

(e) 1993 c.48.

(f) 1995 c.26.

(g) 2004 c.12.

“accrued rights” has the meaning given in section 124(2) of the 1995 Act (interpretation);

“application date” means the date on which an application was made in accordance with the requirements of section 182(1)(d) and (e) (requirements for applications);

“approved scheme” means a scheme which is approved or was formerly approved under section 590 or 591 (conditions for approval of retirement benefit schemes and discretionary approval respectively) of the 1988 Act(a), or in respect of which an application for such approval has been duly made and which has not yet been determined;

“assessment date” means the date on which the assessment period in relation to the scheme or section, or (where there has been more than one such assessment period), the last one, began;

“beneficiary” means a person, other than a member of the scheme, who is entitled to the payment of benefits under the scheme;

“ear-marked scheme” means a scheme—

- (a) under which all of the benefits, other than death benefits, are money purchase benefits,
- (b) all of the benefits are secured by one or more policies of insurance, or annuity contracts, and
- (c) such policies, or contracts, are specifically allocated to the provision of benefits for an individual member, or any other person, who has a right to benefits under the scheme;

“the Entry Rules Regulations” means the Pension Protection Fund (Entry Rules) Regulations 2005(b);

“fraud compensation provisions” means sections 182 to 186 (fraud compensation);

“guaranteed minimum pension” has the meaning given in section 8(2) of the 1993 Act (meaning of guaranteed minimum pension);

“the Information Regulations” means the Pension Protection Fund (Provision of Information) Regulations 2005(c);

“the loss” means the reduction falling within section 182(1)(b) (reduction of scheme assets);

“the Multi-Employer Regulations” means the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations 2005(d);

“multi-employer scheme” means a scheme in relation to which there is more than one employer;

“normal pension age” has the meaning given in section 180 of the 1993 Act (normal pension age);

“partially guaranteed scheme” means an eligible scheme in respect of which a relevant public authority has—

- (a) given a guarantee in relation to—
  - (i) any part of the scheme;
  - (ii) any benefits payable under the scheme rules; or

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(a) Section 590 was amended by section 35 of, and paragraph 18 of Part 1 of Schedule 3 to, the Finance Act 1988 (c.39); sections 75 and 187 of, and paragraphs 3 and 18(2) and (3) of Schedule 6, and Part 4 of Schedule 17 to, the Finance Act 1989 (c.26); sections 34(2) to (4), 36(2) and (3) and 123 of, and Part 5 of Schedule 19 to, the Finance Act 1991 (c.31); and section 79 of, and paragraphs 2(1) to (4) and (7) and (8) and 18(1) and (3) of Schedule 10 to, the Finance Act 1999 (c.16). Section 591 was amended by section 146 of, and paragraph 6 of Part 1 of Schedule 13 to, the Finance Act 1988; sections 107(2) to (4) and 258 of, and Part 5 of Schedule 26 to, the Finance Act 1994 (c.9); sections 59(2) and 60(1) of the Finance Act 1995 (c.4); and section 79 of, and paragraphs (3)(a) and (b) and 18(1) and (3) of Schedule 10 to, the Finance Act 1999. Sections 590 and 591 will be repealed by Part 3 of Schedule 42 to the Finance Act 2004 (c.12) with effect from 6th April 2006.

(b) S.I. 2005/590 as amended by S.I. 2005/993, S.I. 2005/2113 and S.I. 2005/2153.

(c) S.I. 2005/674 as amended by S.I. 2005/2113.

(d) S.I. 2005/441 as amended by S.I. 2005/993 and S.I. 2005/2113.

- (iii) any members of the scheme; or
- (b) made any other arrangements for the purposes of securing that the assets of the scheme are sufficient to meet any part of its liabilities;
- “PPF valuation” means a scheme valuation obtained under section 143 (valuation of assets and protected liabilities);
- “public body” means a government department or any non-departmental public body established by an Act of Parliament or by a statutory instrument made under an Act of Parliament to perform functions conferred on it under or by virtue of that Act or instrument or any other Act or instrument;
- “registered pension scheme” has the meaning given in section 150(2) of the 2004 Act (meaning of pension scheme);
- “relevant benefits” has the meaning given in section 612(1) of the 1988 Act(a) (other interpretative provisions);
- “relevant insurer” means, in relation to an annuity contract or policy of insurance under which scheme benefits are or were secured, the person with whom the contract is made;
- “relevant public authority” has the meaning given in section 307(4);
- “relevant statutory scheme” has the meaning given in section 611A of the 1988 Act(b) (definition of relevant statutory scheme);
- “the Reviewable Matters Regulations” means the Pension Protection Fund (Reviewable Matters) Regulations 2005(c);
- “the Review and Reconsideration Regulations” means the Pension Protection Fund (Review and Reconsideration of Reviewable Matters) Regulations 2005(d);
- “scheme” means an occupational pension scheme;
- “segregated part” means, in relation to—
- (a) a non-segregated scheme, a part of the scheme which is created when the rules of the scheme require the trustees or managers, in circumstances where an employer in relation to the scheme ceases to participate in the scheme, to segregate such part of the assets of the scheme as is attributable to the liabilities of the scheme to provide pensions or other benefits to or in respect of the pensionable service of members of the scheme by reference to that employer;
- (b) a multi-employer section of a segregated scheme, a part of the section which is created when the rules of the scheme relating to that section require the trustees or managers of the section, in circumstances where an employer in relation to the section ceases to participate in the scheme, to segregate such part of the assets of the section as is attributable to the liabilities of the section to provide pensions or other benefits to or in respect of the pensionable service of members of the section by reference to that employer;
- “segregated scheme” means a multi-employer scheme which is divided into two or more sections where—
- (a) any contributions payable to the scheme by an employer in relation to the scheme or by a member are allocated to that employer’s or that member’s section, and
- (b) a specified proportion of the assets of the scheme is attributable to each section of the scheme and cannot be used for the purposes of any other section,
- and non-segregated scheme shall be read accordingly;

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(a) Section 612 will be repealed by Part 3 of Schedule 42 to the Finance Act 2004 with effect from 6th April 2006.

(b) Section 611A was inserted by section 75 of, and paragraphs 15 and 18(1) of Schedule 6 to, the Finance Act 1989, and amended by section 52(1) of, and paragraph 5 of Schedule 5 to, the Finance Act 1999. Section 611A will be repealed by Part 3 of Schedule 42 to the Finance Act 2004 with effect from 6th April 2006.

(c) S.I. 2005/600.

(d) S.I. 2005/669, as amended by S.I. 2005/993 and S.I. 2005/2113.

“stakeholder pension scheme” means a stakeholder pension scheme within the meaning of section 1 of the 1999 Act<sup>(a)</sup> (meaning of stakeholder pension scheme) which is established under a trust;

▶<sup>1</sup>“transfer notice” is to be construed in accordance with section 160 (transfer notice);

“transfer payment” means a fraud compensation transfer payment made under section 187(2) (Board’s powers to make fraud compensation transfer payments);◀

“unsecured part” means any part of a partially guaranteed scheme—

- (a) in respect of which no guarantee has been given by a relevant public authority; and
- (b) which relates to benefits payable under the scheme in respect of which—
  - (i) no such guarantee has been given; and
  - (ii) no other arrangements as are mentioned in section 307(3)(b) have been made.

(4) In these Regulations, “employer”, in relation to—

- (a) a scheme which is not a multi-employer scheme; or
- (b) a single-employer section of a segregated scheme,

which has no active members, includes the person who was the employer of persons in the description of employment to which the scheme or section relates immediately before the time at which the scheme or section ceased to have any active members in relation to it.

(5) In these Regulations “employer”, in relation to a non-segregated scheme or a multi-employer section of a segregated scheme—

- (a) in an assessment period, includes any person who before the assessment date has ceased to be the employer of persons in the description of employment to which the scheme or section relates unless condition A, B, C or D is satisfied where—
  - (i) condition A is that a debt under section 75 of the 1995 Act<sup>(b)</sup> (deficiencies in the assets) became due from that employer and the full amount of the debt has been paid before the assessment date;
  - (ii) condition B is that—
    - (aa) such a debt became due,
    - (bb) a legally enforceable agreement has been entered into the effect of which is to reduce the amount which may be recovered in respect of the debt, and
    - (cc) the reduced amount has been paid in full before the assessment date;
  - (iii) condition C is that such a debt became due but before the assessment date it is excluded from the value of the assets of the scheme or section because it is unlikely to be recovered without disproportionate costs or within a reasonable time;
  - (iv) condition D is that at the time at which any such person ceased to be the employer of persons in the description of employment to which the scheme or section relates the value of the assets of the scheme or section was such that no such debt was treated as becoming due;
- (b) in any other case, includes any person who has ceased to be the employer of persons in the description of employment to which the scheme or section relates unless condition A, B, C or D is satisfied where—
  - (i) condition A is that a debt under section 75 of the 1995 Act became due from that employer and the full amount of the debt has been paid;
  - (ii) condition B is that—

<sup>1</sup>Defns. of “transfer notice” & “transfer payment” inserted by reg. 2 of S.I. 2010/483 as from 6.4.10.

(a) Section 1 was amended by section 285(1) of the Pensions Act 2004.

(b) Section 75 was amended by section 271 of the Pensions Act 2004.

- (aa) such a debt became due,
- (bb) a legally enforceable agreement has been entered into the effect of which is to reduce the amount which may be recovered in respect of the debt, and
- (cc) the reduced amount has been paid in full;
- (iii) condition C is that such a debt became due but it is excluded from the value of the assets of the scheme or section because it is unlikely to be recovered without disproportionate costs or within a reasonable time;
- (iv) condition D is that at the time at which any such person ceased to be the employer of persons in the description of employment to which the scheme or section relates the value of the assets of the scheme or section was such that no such debt was treated as becoming due.

### Prescribed schemes

2.—(1) For the purposes of section 182(1)(a) the Board shall not make a fraud compensation payment in respect of a scheme if it is—

- (a) a scheme which has less than two members;
- (b) a scheme which is made under section 7 of the Superannuation Act 1972<sup>(a)</sup> (superannuation of persons employed in local government service etc.) which provides pensions to persons employed in local government service;
- (c) a scheme which is made under section 2 of the Parliamentary and Other Pensions Act 1987<sup>(b)</sup> (power to provide for pensions for Members of the House of Commons etc.);
- ▶<sup>1</sup>(ca) a scheme, provision for which is made by virtue of section 81(3) of the Scotland Act 1998 (remuneration of members of the Parliament and Executive);◀
- (d) a scheme—
  - (i) the only benefits provided by which are death benefits, and
  - (ii) under the provisions of which no member has accrued rights;
- (e) a scheme which—
  - (i) before 6th April 2006 provides relevant benefits but is neither an approved scheme nor a relevant statutory scheme; or
  - (ii) on or after 6th April 2006 is not a registered pension scheme;
- (f) a scheme with fewer than 12 members where all of the members are trustees of the scheme and either—
  - (i) the provisions of the scheme provide that ▶<sup>2</sup>any decision made by the trustees is made by the unanimous agreement of◀ the trustees who are members of the scheme; or
  - (ii) the scheme has a trustee who is independent in relation to the scheme for the purposes of section 23 of the 1995 Act<sup>(c)</sup> (power to appoint independent trustees) and is registered in the register maintained by the Authority in accordance with regulations made under subsection (4) of that section;
- (g) a scheme with fewer than 12 members ▶<sup>2</sup>where a company is the sole trustee◀ of the scheme, and all of the members of the scheme are directors of the company and either—
  - (i) the provisions of the scheme provide that any decision made by the company in its capacity as trustee ▶<sup>2</sup>is made by the unanimous agreement of the directors◀ who are members of the scheme; or
  - (ii) ▶<sup>2</sup>one of the directors of the company◀ who is independent in relation to the scheme for the purposes of section 23 of the 1995 Act and is registered in the register maintained by the Authority in accordance with regulations made under subsection (4) of that section;

<sup>1</sup>Reg. 2(1)(ca) inserted by reg. 6 of S.I. 2009/1906 as from 1.9.09.

<sup>2</sup>Words in reg. 2(f)(i), (g), (g)(i) & (ii) substituted by reg. 13(2)(a)(i) & (ii) of S.I. 2007/814 as from 6.4.07.

(a) 1972 c. 11.

(b) 1987 c. 45. Section 2 was amended by section 2(1) of the Ministerial and Other Pensions and Salaries Act 1991 (c. 5).

(c) Section 23 was substituted by section 36(3) of the Pensions Act 2004.

- (h) a scheme with such a superannuation fund as is mentioned in section 615(6) of the 1988 Act<sup>(a)</sup> (exemption from tax in respect of certain pensions);
- (i) a public service pension scheme under the provisions of which there is no requirement for assets related to the intended rate or amount of benefit under the scheme to be set aside in advance (disregarding requirements relating to additional voluntary contributions);
- (j) a scheme in respect of which any relevant public authority has given a guarantee or made any other arrangements for the purpose of securing that the assets of the scheme are sufficient to meet its liabilities; <sup>1</sup>or
- (k) the Chatsworth Settlement Estate Pension Scheme; <sup>2</sup>or
- (ka) a pension scheme established under section 67 of the Pensions Act 2008.<sup>3</sup>
- (l) <sup>4</sup>

<sup>1</sup>Words omitted in reg. 2(j), sub-para. (ka) inserted & words substituted in para. (2) by art. 2(1) & (2) of S.I. 2010/9 as from 5.7.10.

<sup>2</sup>Words in reg. 2(1)(k) & sub-para. (1) omitted and words substituted in para. (2) by reg. 13(2)(a)(iii)-(v) & (b) of S.I. 2007/814 as from 6.4.07.

(2) Where a section of a segregated scheme or a segregated part is treated as if it were a separate scheme which falls within <sup>2</sup>paragraph (1)(a) to <sup>1</sup>(ka)<sup>3</sup>, it is a scheme for the purpose of section 182(1)(a) to which a fraud compensation payment shall not be made.

### Relevant offences

3. For the purpose of section 182(1)(b) (cases where fraud compensation payments can be made: reduction of scheme assets attributable to a prescribed offence), a prescribed offence is any offence involving dishonesty, and for these purposes dishonesty shall include an intent to defraud.

### Employers who are unlikely to continue as a going concern

4.—(1) For the purpose of section 182(4)(c) (prescribed requirements to be met where an employer is unlikely to continue as a going concern) the prescribed requirements are that the employer is—

- (a) a public body—
  - (i) in relation to which it is not possible for an insolvency event to occur, and
  - (ii) which is not the employer in relation to a scheme in respect of which a relevant public authority has either—
    - (aa) given a guarantee in relation to any part of the scheme, any benefits payable under the scheme or any member of the scheme, or
    - (bb) made any other arrangements for the purposes of securing that the assets of the scheme are sufficient to meet any part of its liabilities;
- (b) a charity which is not a company or other body corporate; or
- (c) a trade union within the meaning of section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992<sup>(b)</sup> (meaning of trade union) in relation to which it is not possible for an insolvency event to occur.

### Applications for fraud compensation payments

5.—(1) An application, for fraud compensation payments, under section 182(1)(d) (applications) must—

- (a) be made in writing by a person specified in paragraph (2), and
- (b) must contain all of the information specified in paragraph (3), other than any such information which the Board already has and in such a case the application need not contain that information.

(a) Section 615(6) has effect in relation to trust based occupational pension schemes established in respect of persons wholly employed in a trade or undertaking outside of the United Kingdom. Section 615(6) was amended by paragraph 11 of Schedule 10 to the Finance Act 1999.

(b) 1992 c. 52.

- (2) Subject to paragraph (5), an application must be made by—
- (a) the trustees or managers of the scheme, or their representative;
  - (b) a person connected with the administration of, or the provision of benefits under, the scheme, or his representative; or
  - (c) a member of, or beneficiary under, the scheme or his representative.
- (3) An application must contain—
- (a) the name and address of the person making the application and, where relevant, of the person on behalf of whom the application is made;
  - (b) the name, address and pension scheme registration number of the scheme;
  - (c) the name and address, or location of a place of business, of the employer in relation to the scheme;
  - (d) details of the type of benefits provided;
  - (e) the date of the qualifying insolvency event referred to in section 182(2)(a) (qualifying insolvency event) or the date an employer was unlikely to continue as a going concern;
  - (f) the date the loss was discovered; and
  - (g) any additional information the Board may consider appropriate in the circumstances.
- (4) In the case of a stakeholder pension scheme paragraph (3)(c) and (e) shall not apply where there is no employer in relation to the scheme.
- (5) In the case of—
- (a) a section of a segregated scheme, or a segregated part, applications must be made by—
    - (i) the trustees or managers with ultimate responsibility for the section, or the segregated part, or their representative;
    - (ii) a person connected with the administration of, or provision of benefits under the section, or the segregated part, or his representative; or
    - (iii) a member of, or beneficiary under the section or the segregated part or his representative;
  - (b) <sup>1</sup>except where paragraph (6) applies, <sup>◀</sup> an unsecured part of a partially guaranteed scheme, for the purposes of paragraph (2)(c), an application may be made only by a member or beneficiary of the unsecured part or his representative.
- <sup>1</sup>(6) This paragraph applies to a scheme to which regulation 2A of the Pension Protection Fund (Partially Guaranteed Schemes) (Modification) Regulations 2005 (schemes to which paragraph (1) of regulation 2 does not apply) applies. <sup>◀</sup>

<sup>1</sup>Words inserted in reg. 5(5)(b) & para. (6) added by reg. 6(2)(a) & (b) of S.I. 2010/196 as from 8.3.10.

### Confirmation of scheme status

**6.—**(1) This regulation applies where the Board has given a notice (“scheme status notice”) under section 183(2) (scheme rescue not possible or has occurred).

(2) Where a scheme status notice has become binding and the Board gives a notice under section 183(5) (“the Board notice”) to that effect, that notice must be in writing and must contain the following information—

- (a) the name or type of Board notice;
- (b) the date of issue;
- (c) the name, address and pension scheme registration number of the scheme in respect of which the notice is issued;
- (d) the name of the employer in relation to the scheme in respect of which the notice is issued;
- (e) the date on which the scheme status notice was issued;
- (f) a statement that the scheme status notice has become binding; and



- (g) whether the Board notice contains any restricted information and, if so, the nature of the restriction.

**Amount of fraud compensation**

7.—(1) For the purpose of section 185(4) (determination of amount of fraud compensation payment) the amount of any fraud compensation payments shall be calculated in accordance with this regulation and, subject to section 185(3) (maximum payments) and section 186 (interim payments), must not exceed this amount.

(2) Subject to paragraphs (3) and (5), the amount of the fraud compensation payments shall be calculated in accordance with the formula  $P - Q$  where—

- (a) P is—
- (i) the value of the assets—
    - (aa) as stated in the audited scheme accounts, or as the case may be the PPF valuation, which immediately precede the loss, and
    - (bb) adjusted by the relevant person to take account of any alterations in their value between the date which immediately precedes the loss and the application date;
  - (ii) if there are no such audited accounts, or PPF valuation, the value of the assets—
    - (aa) on such date as immediately precedes the loss,
    - (bb) as reported by an accountant, and
    - (cc) adjusted by an accountant so as to take account of any alterations in their value between the date which immediately precedes the loss and the application date; and
- (b) Q is the value of the assets immediately before the application date, as reported by an accountant.

(3) In the case of an ear-marked scheme, the amount of the fraud compensation payments shall be calculated in accordance with the formula  $P + R - Q$  where—

- (a) P is the value of the assets—
  - (i) on such date as immediately precedes the loss,
  - (ii) as certified by the relevant insurer, and
  - (iii) adjusted by the relevant insurer to take account of any alterations in their value between the date which immediately precedes the loss and the application date;
- (b) R is the value of the assets—
  - (i) constituting the loss,
  - (ii) on such date as immediately precedes the loss,
  - (iii) as certified by the relevant insurer, and
  - (iv) adjusted by the relevant insurer to take account of any alterations in their value between the date which immediately precedes the loss and the application date; and
- (c) Q is the value of the assets immediately before the application date, as certified by the relevant insurer.

(4) For the purposes of paragraphs (2) and (3)—

- (a) any adjustments made to take account of alterations in the value of the assets shall—
  - (i) include alterations resulting from—
    - (aa) investment gains and losses;
    - (bb) payments made and received by the scheme, in accordance with the rules of the scheme; and
  - (ii) not include alterations resulting from the loss;

- (b) a relevant person means—
  - (i) an accountant; or
  - (ii) in the case of a PPF valuation, a person prescribed by regulations made under section 143(11)(a)(ii) (valuation of assets and protected liabilities).

(5) In the case of—

- (a) a section of a segregated scheme or a segregated part, paragraphs (2) and (3) shall apply to the assets of the section or part to which the application for fraud compensation related;
- (b) <sup>1</sup>except where paragraph (6) applies, <sup>◀</sup> an unsecured part of a partially guaranteed scheme, paragraphs (2) and (3) shall apply to the assets of the unsecured part to which the application for fraud compensation related.

<sup>1</sup>Words inserted in reg. 7(5)(b) and para. (6) added by reg. 6(3)(a) & (b) of S.I. 2010/196 as from 8.3.10.

<sup>▶</sup>(6) This paragraph applies to a scheme to which regulation 2A of the Pension Protection Fund (Partially Guaranteed Schemes) (Modification) Regulations 2005 (schemes to which paragraph 91) of regulation 2 does not apply) applies. <sup>◀</sup>

### Interim payments

**8.—**(1) The prescribed liabilities referred to in section 186(1)(a)(ii) (liabilities the trustees or managers would not otherwise be able to meet) are—

- (a) any liability for payment of pensions which has arisen at the application date;
- (b) any liability which arises between the application date and the settlement date for payment of—
  - (i) guaranteed minimum pensions;
  - (ii) pensions, other than guaranteed minimum pensions, payable to persons reaching normal pension age;
  - (iii) pensions payable to beneficiaries;
  - (iv) ill-health retirement pensions;
- (c) any liability for payment of any monthly pension that would, but for the loss, have been payable in respect of money purchase benefits prior to the settlement date, and for these purposes the liability is the approximate monthly value of the pension;
- (d) payment of lump sums in connection with terminal illness, and for these purposes a person shall be regarded as suffering from a terminal illness where his life expectancy is less than one year.

(2) Paragraph (1) shall not apply to any liability for payment of a lump sum derived from commutation of a pension.

(3) Interim payments under section 186 shall be determined so as—

- (a) to take into account any—
  - (i) interim payments made previously, where those payments were greater or smaller than the liabilities under paragraph (1) in respect of which those payments were made;
  - (ii) amount received by an eligible scheme from the Board under section 139 (loans to pay scheme benefits);
- (b) not to exceed the amount required to enable the trustees or managers of the scheme, prior to the settlement date, to meet such liabilities as are specified in paragraph (1).

(4) For the purpose of section 186(3) (recovery of interim payments) all or part of an interim payment may not be recovered where such recovery would cause any pensions in payment to be reduced.

►<sup>1</sup>**Amount of fraud compensation transfer payment**

<sup>1</sup>Reg. 8A inserted by  
reg. 3 of S.I. 2010/483  
as from 6.4.10.

**8A.**—(1) For the purpose of section 187(8) (determination of amount of fraud compensation transfer payment) and subject to section 187(7) (maximum payments) the amount of any transfer payment shall be calculated in accordance with this regulation.

(2) Subject to paragraph (4), the amount of the transfer payment shall be calculated in accordance with the formula  $P - Q$  where—

- (a)  $P$  is—
  - (i) the value of the assets of the scheme—
    - (aa) as stated in the PPF valuation which immediately precedes the loss; and
    - (bb) adjusted by the relevant person to take account of any alterations in their value between the date which immediately precedes the loss and the date of the transfer notice;
  - (ii) if there is no such PPF valuation, the value of the assets of the scheme—
    - (aa) on such date as immediately precedes the loss;
    - (bb) as reported by an accountant; and
    - (cc) adjusted by an accountant so as to take account of any alterations in their value between the date which immediately precedes the loss and the date of the transfer notice; and
- (b)  $Q$  is the value of the assets of the scheme immediately before the date of the transfer notice, as reported by an accountant.

(3) For the purposes of paragraph (2)—

- (a) any adjustments made to take account of alterations in the value of the assets of the scheme shall—
  - (i) include alterations resulting from—
    - (aa) investment gains and losses;
    - (bb) payments made and received by the scheme, in accordance with the rules of the scheme; and
  - (ii) not include alterations resulting from the loss;
- (b) a relevant person is a person with the qualifications or experience prescribed by regulations made under, or a person approved by the Secretary of State under, section 143(11)(a)(ii) (valuation of assets and protected liabilities).

(4) In the case of—

- (a) a section of a segregated scheme or a segregated part, paragraph (2) shall apply to the assets of the section or part to which the transfer notice related;
- (b) except where paragraph (5) applies, an unsecured part of a partially guaranteed scheme, paragraph (2) shall apply to the assets of the unsecured part to which the transfer notice related.

(5) This paragraph applies to a scheme to which regulation 2A of the Pension Protection Fund (Partially Guaranteed Schemes) (Modification) Regulations 2005(a) (schemes to which paragraph (1) of regulation 2 does not apply) applies. ◀

**Effect of determinations under section 184**

**9.**—(1) Paragraph (2) shall apply where—

- (a) a settlement date is determined by the Board under section 184(2) (settlement date); or
- (b) a determination is made by the Board under section 184(4) (recovery of value).

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(a) S.I. 2005/277, regulation 2A was inserted by S.I. 2010/196.



- (2) A determination referred to in paragraph (1) is not binding until—
- (a) the period within which the determination may be reviewed under regulations made under Chapter 6 of Part 2 (reviews, appeals and maladministration) has expired; and
  - (b) if the determination is so reviewed—
    - (i) the review and any reconsideration,
    - (ii) any reference to the PPF Ombudsman in respect of the determination, and
    - (iii) any appeal against his determination or directions, has been finally disposed of and the determination has not been revoked, varied or substituted.

### Hybrid schemes

**10.—(1)** The fraud compensation provisions shall be modified in their application to a hybrid scheme so that they shall be read as if—

- (a) after section 185(2) (terms and conditions of payments) there were inserted—

“(2A) In the case of a scheme which is a hybrid scheme, the trustees or managers must, where the reduction (or, if there has been more than one reduction, the aggregate amount of the reductions) relates to a part or section of the hybrid scheme, add fraud compensation payments to the assets of that section or part of the scheme.”;
- (b) after section 186(2) (interim payments) there were inserted—

“(2A) In the case of a scheme which is a hybrid scheme, the trustees or managers must, where the reduction (or, if there has been more than one reduction, the aggregate amount of the reductions) relates to a part or section of the hybrid scheme, add any amounts paid under this section to the assets of that section or part of the scheme.”.

### Partially guaranteed schemes

**11.—(1)** <sup>1</sup>Except where a partially guaranteed scheme is a scheme to which regulation 2A of the Pension Protection Fund (Partially Guaranteed Schemes) (Modification) Regulations 2005 (schemes to which paragraph (1) of regulation 2 does not apply) applies, <sup>2</sup>the fraud compensation provisions (except sections 182(4) and 183) shall, in relation to partially guaranteed schemes, be read as if they contained the modifications provided for in paragraph (2).

<sup>1</sup>Words inserted in reg. 11(1) by reg. 6(4) of S.I. 2010/196 as from 8.3.10.

(2) The following provisions shall be modified in their application to partially guaranteed schemes so that they shall be read as if—

- (a) in section 182(1) for “an occupational pension scheme” there were substituted “a partially guaranteed scheme”;
- (b) in section 182(1)(b) for “the scheme” there were substituted “the unsecured part”;
- (c) after section 182(1) there were inserted—

“(1A) For the purposes of section 182 (except subsection (4)) and sections 184 to 186 “unsecured part” means any part of a partially guaranteed scheme—

  - (a) in respect of which no guarantee has been given by a relevant public authority; and
  - (b) which relates to benefits payable under the scheme in respect of which—
    - (i) no such guarantee has been given, and
    - (ii) no other arrangements referred to in section 307(3)(b) have been made.”;
- (d) in section 182(7) for “a scheme” there were substituted “an unsecured part” and for “the scheme” there were substituted “the unsecured part”;

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- (e) in section 184(3) for “the value of the assets of the scheme” there were substituted “the value of the assets of the unsecured part”;
- (f) after section 185(2) there were inserted—
  - “(2A) Fraud compensation payments must be added to the assets of the unsecured part of a partially guaranteed scheme to which the amount of the reduction (or, if there has been more than one reduction, the aggregate amount of the reductions) referred to in section 182(1)(b) relates.”;
- (g) in section 186(1) for “an occupational pension scheme” there were substituted “a partially guaranteed scheme”;
- (h) after section 186(2) there were inserted—
  - “(2A) Amounts payable under this section must be added to the assets of the unsecured part of a partially guaranteed scheme to which the amount of the reduction (or, if there has been more than one reduction, the aggregate amount of the reductions) referred to in section 182(1)(b) relates.”.

**Partially approved schemes**

- 12.—**(1) For the purpose of this regulation, a partially approved scheme means—
- (a) before 6th April 2006, a scheme which is not an approved scheme but contains a section which by virtue of section 611(3) of the 1988 Act<sup>(a)</sup> (definition of retirement benefit scheme) is treated by the Commissioners of Her Majesty’s Revenue and Customs as an approved scheme (“the approved section”);
  - (b) on or after 6th April 2006, a scheme which is not a registered pension scheme but contains a section which by virtue of paragraph 1(2) of Schedule 36 to the 2004 Act (deemed registration of existing schemes) is treated by the Commissioners of Her Majesty’s Revenue and Customs as a registered scheme (“the registered section”).

(2) The approved section, or as the case may be the registered section, of a partially approved scheme shall be treated as if it were a separate scheme for the purposes of these Regulations.

**Stakeholder pension schemes**

- 13.—**(1) In the case of a stakeholder pension scheme which does not have an employer in relation to the scheme, the fraud compensation provisions shall be modified in their application to such a scheme so that the following provisions shall be treated as if they do not apply—
- (a) section 182(1)(c), (2) to (4), (6)(a), (8) and (9) (insolvency of employer);
  - (b) section 182(10), the definition of “relevant event”;
  - (c) section 183 (Board’s duties where employer unlikely to continue as a going concern); and
  - (d) section 185(5)(d) (Board’s duty to give a notice to the insolvency practitioner or the employer).

**Segregated schemes: single employer sections**

- 14.—**(1) This paragraph applies to a section of a segregated scheme with one employer in relation to that section in circumstances where—
- (a) an insolvency event occurs in relation to the employer in relation to that section;
  - (b) the trustees or managers of the scheme become aware that the employer in relation to that section is unlikely to continue as a going concern and meets the requirements prescribed in regulation 7 of the Entry Rules Regulations (applications and notifications); or
  - (c) the employer in relation to that section is unlikely to continue as a going

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<sup>(a)</sup> Section 611(3) was amended by paragraph 9 of Schedule 10 to the Finance Act 1999 and Part 1 of Schedule 13 and Part II(4) of Schedule 40 to the Finance Act 2000 (c.17). Section 611(3) will be repealed by Part 3 of Schedule 42 to the Finance Act 2004 with effect from 6th April 2006.

concern and meets the requirements prescribed in regulation 4 of these Regulations (employers unlikely to continue as a going concern).

(2) The fraud compensation provisions shall be modified in their application to a section of a segregated scheme to which paragraph (1) applies so that they shall be read as if—

- (a) references to “an occupational pension scheme” were references to a section of a segregated scheme in circumstances where that section, if it were a scheme, would be a scheme in respect of which the Board shall make a fraud compensation payment in accordance with section 182(1);
- (b) references to “an eligible scheme” were references to a section of a segregated scheme, in circumstances where that section, if it were a scheme, would be an eligible scheme;
- (c) except as otherwise provided in this regulation, references to—
  - (i) “the scheme” were to “the section”;
  - (ii) “the trustees or managers of the scheme” or “the trustees or managers” were to “the trustees or managers with ultimate responsibility for the administration of the section”;
- (d) in section 182(2)(b) for “in relation to the scheme” there were substituted “in relation to the relevant section”;
- (e) in section 182(2)(c)(ii) after “the scheme failure notice” there were inserted “in relation to the relevant section”;
- (f) in section 182(3)(b) after “the scheme failure notice” there were inserted “in relation to the relevant section”;
- (g) in section 182(7) for “a scheme” there were substituted “a section”;
- (h) in section 182(8) for “the employer” there were substituted “the employer in relation to the relevant section”;
- (i) in section 182(9)(a) and (c) for “a scheme” in each place where it occurs there were substituted “a section”;
- (j) in section 183(1) after “of section 182 apply” there were inserted “to a section of the segregated scheme”;
- (k) in section 183(2)(a) and (b) after “scheme rescue” in both places where it occurs there were inserted “in relation to the relevant section”;
- (l) after section 183(3) there were inserted—

“(3A) Where the trustees or managers with ultimate responsibility for the administration of the section receive a notice from the Board under subsection (3) they must send a copy of the notice, as soon as practicable, to all other trustees or managers of the segregated scheme (if different) and all of the employers in relation to the segregated scheme.”;
- (m) after section 185(5) there were added—

“(6) Where the trustees or managers with ultimate responsibility for the administration of the section receive a notice from the Board under subsection (5) they must send a copy of the notice, as soon as practicable, to all other trustees or managers of the segregated scheme (if different) and all of the employers in relation to the segregated scheme.”.

**Segregated schemes: multi-employer sections without requirement for partial wind up on withdrawal of participating employer**

**15.**—(1) This paragraph applies to a multi-employer section of a segregated scheme (“multi-employer section”) the rules of which do not provide for the partial winding up of the section when an employer in relation to the section ceases to participate in the scheme.

(2) The fraud compensation provisions shall be modified in their application to a multi-employer section to which paragraph (1) applies so that they shall be read as if—

- (a) references to “an occupational pension scheme” were references to a multi-employer section of a segregated scheme in circumstances where that section, if it were a scheme, would be a scheme in respect of which the Board shall make a fraud compensation payment in accordance with section 182(1);
- (b) references to “an eligible scheme” were references to a multi-employer section of a segregated scheme in circumstances where that section, if it were a scheme, would be an eligible scheme;
- (c) except as otherwise provided in this regulation, references to—
  - (i) “the scheme” were to “the section”;
  - (ii) “the employer” were to “an employer in relation to the section”;
  - (iii) “the trustees or managers of the scheme” or “the trustees or managers” were to “the trustees or managers with ultimate responsibility for the administration of the section”;
- (d) for paragraph (a) of section 182(2) there were substituted—
  - “(a) a qualifying insolvency event has occurred in relation to an employer in relation to a multi-employer section of the segregated scheme,”;
- (e) in section 182(2)(b) for “the scheme” there were substituted “the relevant section of the scheme”;
- (f) in section 182(2)(c)(i) for “the insolvency event” there were substituted “the first insolvency event in relation to the section”;
- (g) for sub-paragraph (ii) of section 182(2)(c) there were substituted—
  - “(ii) ending immediately before the issuing of the scheme failure notice in relation to the relevant section of the scheme under section 122(2)(a) and that notice has become binding,”;
- (h) in section 182(3)(b) for “in relation to the scheme” there were substituted “in relation to a multi-employer section of the segregated scheme”;
- (i) for paragraph (b) of section 182(4) there were substituted—
  - “(b) in relation to a multi-employer section of the segregated scheme—
    - (i) an employer is unlikely to continue as a going concern at a time when all other employers in relation to that section—
      - (aa) have had an insolvency event occur in relation to them and an insolvency practitioner is still required by law to be appointed to act in relation to them; or
      - (bb) are unlikely to continue as a going concern; or
    - (ii) a person, or persons, are no longer an employer in relation to that section at a time when all other employers in relation to that section—
      - (aa) have had an insolvency event occur in relation to them and an insolvency practitioner is still required by law to be appointed to act in relation to them; or
      - (bb) are unlikely to continue as a going concern, and at least one insolvency event occurred on or after 6th April 2005 or at least one employer was unlikely to continue as a going concern, on or after that date,”;
- (j) in section 182(4)(c) for “the employer” there were substituted “those employers who are unlikely to continue as a going concern”;
- (k) in section 182(7) for “a scheme” there were substituted “a section”;
- (l) in section 182(8) for “the employer” there were substituted “an employer in relation to the relevant section”;
- (m) after paragraph (a) of section 182(8) there were inserted—
  - “(aa) it occurs—



- (i) simultaneously in relation to more than one of the employers in relation to the section at a time when those employers are the only employers in relation to the section; or
- (ii) in relation to an employer in relation to the section at a time when all other employers in relation to the section have either had—
  - (aa) an insolvency event occur in relation to them and an insolvency practitioner is still required by law to be appointed to act in relation to them, or
  - (bb) a notice given in respect of them by the trustees or managers of the section under section 129(1A), as modified by Part 3 of the Multi-Employer Regulations, or a notice given by the Board in respect of them under section 129(5) by virtue of a notice given by the Regulator under section 129(4)(a), and”;
- (n) in section 182(9)(a) and (c) for “a scheme” in each place where it occurs there were substituted “a section”;
- (o) in section 183(1) after “of section 182 apply” there were inserted “to a multi-employer section of a segregated scheme”;
- (p) in section 183(2)(a) and (b) after “scheme rescue” in both places where it occurs there were inserted “in relation to the relevant section”;
- (q) in section 183(3)(d) for “the employer” in both places where it occurs there were substituted “each employer”;
- (r) after section 183(3) there were inserted—

“(3A) Where the trustees or managers with ultimate responsibility for the administration of the section receive a notice from the Board under subsection (3) they must send a copy of the notice as soon as practicable to all other trustees or managers of the segregated scheme (if different) and all of the employers in relation to the scheme.”;
- (s) in section 185(5)(d) for “the employer” in both places where it occurs there were substituted “each employer”;
- (t) after section 185(5) there were added—

“(6) Where the trustees or managers with ultimate responsibility for the administration of the section receive a notice from the Board under subsection (5) they must send a copy of the notice as soon as practicable to all other trustees or managers of the segregated scheme (if different) and all of the employers in relation to the scheme.”.

**Segregated schemes: non-segregated multi-employer sections of segregated schemes with requirement for partial wind up on withdrawal of participating employer**

**16.—(1)** This paragraph applies to a non-segregated multi-employer section of a segregated scheme in circumstances where—

- (a) an insolvency event occurs in relation to an employer in relation to that section;
  - (b) the trustees or managers of the scheme become aware that an employer in relation to that section is unlikely to continue as a going concern and meets the requirements prescribed in regulation 7 of the Entry Rules Regulations; or
  - (c) an employer in relation to that section is unlikely to continue as a going concern and meets the requirements prescribed in regulation 4 of these Regulations.
- (2) Where paragraph (3) applies to that section of a segregated scheme—
- (a) the segregation requirements shall be deemed to have been triggered in relation to an employer immediately after the occurrence of an event described in paragraph (1)(a), (b) or (c); and

- (b) a segregated part of the section shall be deemed to have been created for and in respect of any period after the occurrence of an event described in paragraph (1)(a), (b) or (c) where—
  - (i) a withdrawal event within the meaning of section 149(2) (withdrawal events), or
  - (ii) a cessation event in relation to a notice referred to in section 182(9)(b)(iv), has not occurred in relation to the segregated part.

(3) This paragraph applies where the segregation requirement in the scheme rules would be triggered in relation to the section when an employer in relation to the section ceases to participate in the scheme.

(4) In this regulation—

“non-segregated multi-employer section” means a multi-employer section of a segregated scheme where the rules contain a segregation requirement;

“the segregation requirement” means the requirement on the trustees or managers under the scheme rules of a non-segregated multi-employer section to segregate such part of the assets of the section as is attributable to the section’s liabilities to provide pensions or other benefits to or in respect of the pensionable service of some or all of the members by reference to an employer, in relation to the section, where that employer ceases to participate in the scheme;

“segregated part” means a part of a non-segregated multi-employer section which is created when a segregation requirement in the scheme rules relating to that multi-employer section of the scheme has been triggered.

(5) The fraud compensation provisions shall be modified in their application to a non-segregated multi-employer section to which paragraphs (1) and (2) apply so that they shall be read as if—

- (a) references to “an occupational pension scheme” were references to a segregated part of a non-segregated multi-employer section in circumstances where that part, if it were a scheme, would be a scheme in respect of which the Board shall make a fraud compensation payment in accordance with section 182(1);
- (b) references to “an eligible scheme” were references to a segregated part of a non-segregated multi-employer section of a segregated scheme in circumstances where that part, if it were a scheme, would be an eligible scheme;
- (c) except as otherwise provided in this regulation, references to—
  - (i) “the scheme” were to “the segregated part”;
  - (ii) “the employer” were to “the employer in relation to the segregated part”;
  - (iii) “the trustees or managers of the scheme” or “the trustees or managers” were to “the trustees or managers with ultimate responsibility for the administration of the section”;
- (d) for paragraph (a) of section 182(2) there were substituted—
  - “(a) a qualifying insolvency event has occurred in relation to an employer in relation to a multi-employer section of the segregated scheme and a segregated part of the section is created.”;
- (e) in section 182(2)(b) for “in relation to the scheme” there were substituted “in relation to the relevant segregated part of a multi-employer section of the segregated scheme”;
- (f) in section 182(2)(c)(ii) after “the scheme failure notice” there were inserted “in relation to the relevant segregated part of a multi-employer section of the segregated scheme”;
- (g) in section 182(3)(b) after “scheme failure notice” there were inserted “in relation to the relevant segregated part of a multi-employer section of the segregated scheme”;

- (h) for paragraph (b) of section 182(4) there were substituted—
  - “(b) an employer in relation to a multi-employer section of the segregated scheme is unlikely to continue as a going concern and a segregated part of the section is created.”;
- (i) in section 182(4)(c) for “the employer” there were substituted “that employer”;
- (j) in section 182(7) for “a scheme” there were substituted “a segregated part”;
- (k) in section 182(9)(a) and (c) for “a scheme” in each place where it occurs there were substituted “a segregated part”;
- (l) in section 183(1) after “section 182 apply” there were inserted “to a relevant segregated part of a multi-employer section of the segregated scheme”;
- (m) in section 183(2)(a) and (b) after “scheme rescue” in both places where it occurs there were inserted “in relation to the relevant segregated part of a multi-employer section of the segregated scheme”;
- (n) after section 183(3) there were inserted—
  - “(3A) Where the trustees or managers with ultimate responsibility for the administration of the section receive a notice from the Board under subsection (3) they must send a copy of the notice as soon as practicable to all other trustees or managers of the segregated scheme (if different) and all of the employers in relation to the scheme.”;
- (o) after section 185(5) there were added—
  - “(6) Where the trustees or managers with ultimate responsibility for the administration of the section receive a notice from the Board under subsection (5) they must send a copy of the notice as soon as practicable to all other trustees or managers of the segregated scheme (if different) and all of the employers in relation to the scheme.”.

**Non-segregated schemes: schemes with requirement for partial wind up on withdrawal of participating employer**

17.—(1) This paragraph applies to a non-segregated scheme in circumstances where—

- (a) an insolvency event occurs in relation to an employer in relation to the scheme;
  - (b) the trustees or managers of the scheme become aware that an employer in relation to the scheme is unlikely to continue as a going concern, and meets the requirements prescribed in regulation 7 of the Entry Rules Regulations; or
  - (c) an employer in relation to the scheme is unlikely to continue as a going concern and meets the requirements prescribed in regulation 4 of these Regulations.
- (2) Where paragraph (3) applies to the non-segregated scheme—
- (a) the segregation requirement shall be deemed to have been triggered in relation to an employer immediately after the occurrence of an event described in paragraph (1)(a), (b) or (c); and
  - (b) a segregated part of the scheme shall be deemed to have been created for and in respect of any period after the occurrence of the event described in paragraph (1)(a), (b) or (c) where—
    - (i) a withdrawal event within the meaning of section 149(2), or
    - (ii) a cessation event in relation to a notice referred to in section 182(9)(b)(iv), has not occurred in relation to the segregated part.

(3) This paragraph applies where the segregation requirement in the scheme rules would be triggered when an employer in relation to the non-segregated scheme ceases to participate in the scheme.

- (4) In this regulation—

“non-segregated scheme” means a multi-employer scheme which is not divided into two or more sections where the rules contain a segregation requirement;

“the segregation requirement” means the requirement on the trustees or managers under the scheme rules of a non-segregated scheme to segregate such part of the assets of the scheme as is attributable to the scheme’s liabilities to provide pensions or other benefits to or in respect of the pensionable service of some or all of the members by reference to an employer, in relation to the scheme, where that employer ceases to participate in the scheme;

“segregated part” means a part of a non-segregated scheme which is created when a segregation requirement in the scheme rules has been triggered.

(5) The fraud compensation provisions shall be modified in their application to a non-segregated scheme to which paragraphs (1) and (2) apply so that they shall be read as if—

- (a) references to “an occupational pension scheme” were to a segregated part of a non-segregated scheme where that part, if it were a scheme, would be a scheme in respect of which the Board shall make a fraud compensation payment in accordance with section 182(1);
- (b) references to “an eligible scheme” were to a segregated part of a non-segregated scheme in circumstances where that part, if it were a scheme, would be an eligible scheme;
- (c) except as otherwise provided in this regulation, references to—
  - (i) “the scheme” were to “the segregated part”;
  - (ii) “the employer” were to “the employer in relation to the segregated part”;
  - (iii) “the trustees or managers of the scheme” or “the trustees or managers” were to “the trustees or managers with ultimate responsibility for the administration of the segregated part”;
- (d) for paragraph (a) of section 182(2) there were substituted—
  - “(a) a qualifying insolvency event has occurred in relation to an employer in relation to a non-segregated scheme and a segregated part of the scheme is created.”;
- (e) in section 182(2)(b) for “in relation to the scheme” there were substituted “in relation to the segregated part of the non-segregated scheme”;
- (f) in section 182(2)(c)(ii) after “the scheme failure notice” there were inserted “in relation to the segregated part”;
- (g) in section 182(3)(b) after “scheme failure notice” there were inserted “in relation to the segregated part of the non-segregated scheme”;
- (h) for paragraph (b) of section 182(4) there were substituted—
  - “(b) an employer in relation to a non-segregated scheme is unlikely to continue as a going concern and a segregated part of the scheme is created.”;
- (i) in section 182(4)(c) for “the employer” there were substituted “that employer”;
- (j) in section 182(7) for “a scheme” there were substituted “a segregated part”;
- (k) in section 182(9)(a) and (c) for “a scheme” in each place where it occurs there were substituted “a segregated part”;
- (l) in section 183(1) after “section 182 apply” there were inserted “to a segregated part”;
- (m) in section 183(2)(a) and (b) after “scheme rescue” in both places where it occurs there were inserted “in relation to a segregated part”;
- (n) after section 183(3) there were inserted—
  - “(3A) Where the trustees or managers with ultimate responsibility for the administration of the segregated part receive a notice from the Board under subsection (3) they must send a copy of the notice as soon as practicable to all other trustees or managers of the scheme (if different) and all of the employers in relation to the scheme.”;

(o) after section 185(5) there were added—

“(6) Where the trustees or managers with ultimate responsibility for the administration of the segregated part receive a notice from the Board under subsection (5) they must send a copy of the notice as soon as practicable to all other trustees or managers of the scheme (if different) and all of the employers in relation to the scheme.”.

**Non-segregated schemes: schemes without provision for partial wind up on withdrawal of participating employer**

**18.—(1)** This paragraph applies to a multi-employer scheme which is not divided into two or more sections (“a non-segregated scheme”) the rules of which do not provide for the partial winding up of the scheme when an employer in relation to the scheme ceases to participate in the scheme.

(2) The fraud compensation provisions shall be modified in their application to a non-segregated scheme to which paragraph (1) applies so that they shall be read as if—

- (a) references to “an occupational pension scheme” were to “a non-segregated scheme”;
- (b) for paragraph (a) of section 182(2) there were substituted—
  - “(a) a qualifying insolvency event has occurred in relation to an employer in relation to the non-segregated scheme,”;
- (c) in section 182(2)(b) for “in relation to the scheme” there were substituted “in relation to the non-segregated scheme”;
- (d) in section 182(2)(c)(i) for “the insolvency event” there were substituted “the first insolvency event in relation to the scheme”;
- (e) in section 182(2)(c)(ii) after “under section 122(2)(a)” there were inserted “and that notice has become binding”;
- (f) in section 182(3)(b) for “in relation to the scheme” there were substituted “in relation to the non-segregated scheme”;
- (g) for paragraph (b) of section 182(4) there were substituted—
  - “(b) in relation to the non-segregated scheme—
    - (i) an employer is unlikely to continue as a going concern at a time when all other employers in relation to the scheme—
      - (aa) have had an insolvency event occur in relation to them and an insolvency practitioner is still required by law to be appointed to act in relation to them; or
      - (bb) are unlikely to continue as a going concern; or
    - (ii) a person, or persons, are no longer an employer in relation to the scheme at a time when all other employers in relation to the scheme—
      - (aa) have had an insolvency event occur in relation to them and an insolvency practitioner is still required by law to be appointed to act in relation to them; or
      - (bb) are unlikely to continue as a going concern, and at least one insolvency event occurred on or after 6th April 2005 or at least one employer was unlikely to continue as a going concern, on or after that date,”;
- (h) in section 182(4)(c) for “the employer” there were substituted “those employers who are unlikely to continue as a going concern”;
- (i) after paragraph (a) of section 182(8) there were inserted—
  - “(aa) it occurs—
    - (i) simultaneously in relation to more than one of the employers in relation to the scheme at a time when those employers are the only employers in relation to the scheme; or

- (ii) in relation to an employer in relation to the scheme at a time when all other employers in relation to the scheme have either had—
  - (aa) an insolvency event occur in relation to them and an insolvency practitioner is still required by law to be appointed to act in relation to them, or
  - (bb) a notice given in respect of them by the trustees or managers of the scheme under section 129(1A), as modified by Part 6 of the Multi-Employer Regulations, or a notice given by the Board in respect of them under section 129(5) by virtue of a notice given by the Regulator under section 129(4)(a), and”;
- (j) in section 183(1) after “of section 182 apply” there were inserted “to the non-segregated scheme”;
- (k) in sections 183(3)(d) and 185(5)(d) for “the employer” in each place where it occurs there were substituted “each employer”.

**Non-segregated schemes with an option to segregate on withdrawal of participating employer**

**19.—(1)** This paragraph applies to a non-segregated scheme in circumstances—

- (a) where—
  - (i) an insolvency event occurs in relation to an employer in relation to the scheme;
  - (ii) the trustees or managers of the scheme become aware that an employer in relation to the scheme is unlikely to continue as a going concern and meets the requirements prescribed in regulation 7 of the Entry Rules Regulations; or
  - (iii) an employer in relation to the scheme is unlikely to continue as a going concern and meets the requirements prescribed in regulation 4 of these Regulations; and
- (b) where, under the rules of the scheme, the trustees or managers have an option, in circumstances where an employer in relation to the scheme ceases to participate in the scheme, to segregate such part of the assets of the scheme as is attributable to the scheme’s liabilities to provide pensions or other benefits to or in respect of the pensionable service of some or all of the members by reference to that employer (“segregated part”).

(2) Subject to paragraph (3), in the case of a scheme to which paragraph (1) applies, the trustees or managers of the scheme shall be deemed to have exercised the option to create a segregated part of the scheme immediately after the occurrence of an event in paragraph (1)(a)(i), (ii) or (iii) where—

- (a) a withdrawal event within the meaning of section 149(2), or
- (b) a cessation event in relation to a notice referred to in section 182(9)(b)(iv),

has not occurred in relation to the segregated part.

(3) Paragraph (2) shall not apply where the trustees or managers of the scheme—

- (a) decide not to exercise the option to create a segregated part of the scheme; and
- (b) in such a case give the Board a notice to this effect as required by—
  - (i) section 120(3A) or 129(1B) (non-segregation notice), as modified by Part 7 of the Multi-Employer Regulations; or
  - (ii) section 183(1A) (non-segregation notice), as modified by paragraph (4).

(4) Section 183 shall be modified in its application to a non-segregated scheme to which paragraphs (1) and (3) apply as if after subsection (1) there were inserted—

“(1A) If, where this section applies to the non-segregated multi-employer scheme, the trustees or managers of the scheme decide not to exercise the option to segregate under the scheme rules so as to create a segregated part of the scheme they must, as soon as practicable—

- (a) give a notice to the Board to that effect (a “non-segregation notice”); and
- (b) send a copy of that notice to—
  - (i) an insolvency practitioner acting in relation to the employer, and
  - (ii) the Regulator.”.

(5) Where paragraph (2) applies, the fraud compensation provisions shall be modified in their application to the non-segregated scheme so that they shall be read as if—

- (a) references to “an occupational pension scheme” were to a segregated part of a non-segregated scheme where that part, if it were a scheme, would be a scheme in respect of which the Board shall make a fraud compensation payment in accordance with section 182(1);
- (b) references to “an eligible scheme” were to a segregated part of a non-segregated scheme in circumstances where that part, if it were a scheme, would be an eligible scheme;
- (c) except as otherwise provided in this regulation, references to—
  - (i) “the scheme” were to “the segregated part”;
  - (ii) “the employer” were to “the employer in relation to the segregated part”;
  - (iii) “the trustees or managers of the scheme” or “the trustees or managers” were to “the trustees or managers with ultimate responsibility for the administration of the segregated part”;
- (d) for paragraph (a) of section 182(2) there were substituted—
  - “(a) in relation to a multi-employer scheme which is not divided into two or more sections (“a non-segregated scheme”)—
    - (i) a qualifying insolvency event has occurred in relation to an employer,
    - (ii) the trustees or managers have an option under the rules of the scheme, where an employer in relation to the scheme ceases to participate in the scheme, to segregate such part of the assets of the scheme as is attributable to the scheme’s liabilities to provide pensions or other benefits to or in respect of the pensionable service of some or all of the members of the scheme by reference to that employer (“the segregated part”), and
    - (iii) a segregated part in relation to the scheme is deemed to have been created.”;
- (e) in section 182(2)(b) for “in relation to the scheme” there were substituted “in relation to the segregated part of the non-segregated scheme”;
- (f) in section 182(2)(c)(ii) after “the scheme failure notice” there were inserted “in relation to the segregated part”;
- (g) in section 182(3)(b) after “scheme failure notice” there were inserted “in relation to the segregated part of the non-segregated scheme”;
- (h) for paragraph (b) of section 182(4) there were substituted—
  - “(b) an employer in relation to the multi-employer scheme which is not divided into two or more sections (“a non-segregated scheme”) is unlikely to continue as a going concern and—
    - (i) the trustees or managers of the scheme have an option under the rules of the scheme, where an employer in relation to the scheme ceases to participate in the scheme, to segregate such

part of the assets of the scheme as is attributable to the scheme's liabilities to provide pensions or other benefits to or in respect of the pensionable service of some or all of the members of the scheme by reference to that employer ("the segregated part"), and

- (ii) a segregated part in relation to the scheme is deemed to have been created,";
- (i) in section 182(4)(c) for "the employer" there were substituted "that employer";
- (j) in section 182(7) for "a scheme" there were substituted "a segregated part";
- (k) in section 182(9)(a) and (c) for "a scheme" in each place where it occurs there were substituted "a segregated part";
- (l) in section 183(1) after "section 182 apply" there were inserted "to a segregated part";
- (m) in section 183(2)(a) and (b) after "scheme rescue" in both places where it occurs there were inserted "in relation to a segregated part";
- (n) after section 183(3) there were inserted—

"(3A) Where the trustees or managers with ultimate responsibility for the administration of the segregated part receive a notice from the Board under subsection (3) they must send a copy of the notice as soon as practicable to all other trustees or managers of the scheme (if different) and all of the employers in relation to the scheme.";

- (o) after section 185(5) there were added—

"(6) Where the trustees or managers with ultimate responsibility for the administration of the segregated part receive a notice from the Board under subsection (5) they must send a copy of the notice as soon as practicable to all other trustees or managers of the scheme (if different) and all of the employers in relation to the scheme.".

- (6) In this regulation—

"non-segregated scheme" means a multi-employer scheme which is not divided into two or more sections where the rules contain a segregation requirement;

"the segregation requirement" means the requirement on the trustees or managers under the scheme rules of a non-segregated scheme to segregate such part of the assets of the scheme as is attributable to the scheme's liabilities to provide pensions or other benefits to or in respect of the pensionable service of some or all of the members by reference to an employer, in relation to the scheme, where that employer ceases to participate in the scheme.

**Segregated schemes: multi-employer sections of segregated schemes with an option to segregate on withdrawal of participating employer**

**20.—**(1) This paragraph applies to a non-segregated multi-employer section of a segregated scheme in circumstances—

- (a) where—
  - (i) an insolvency event occurs in relation to an employer in relation to that section;
  - (ii) the trustees or managers of the scheme become aware that an employer in relation to that section is unlikely to continue as a going concern and meets the requirements prescribed in regulation 7 of the Entry Rules Regulations; or
  - (iii) the employer in relation to that section is unlikely to continue as a going concern and meets the requirements prescribed in regulation 4 of these Regulations; and
- (b) where, under the rules of the scheme, the trustees or managers have an option, in circumstances where an employer in relation to the section ceases to participate in the scheme, to segregate such part of the assets of the scheme



as is attributable to the liabilities of the section to provide pensions or other benefits to or in respect of the pensionable service of some or all of the members by reference to that employer (“segregated part”).

(2) Subject to paragraph (3), in the case of a non-segregated multi-employer section to which paragraph (1) applies, the trustees or managers of that section shall be deemed to have exercised the option to create a segregated part of that section immediately after the occurrence of an event in paragraph (1)(a)(i), (ii) or (iii) where—

- (a) a withdrawal event within the meaning of section 149(2), or
- (b) a cessation event in relation to a notice referred to in section 182(9)(b)(iv),

has not occurred in relation to the segregated part.

(3) Paragraph (2) shall not apply where the trustees or managers of the scheme—

- (a) decide not to exercise the option to create a segregated part of the section; and
- (b) in such a case give the Board a notice to this effect as required by—
  - (i) section 120(3A) or 129(1B), as modified by Part 8 of the Multi-Employer Regulations; or
  - (ii) section 183(1A), as modified by paragraph (4).

(4) Section 183 shall be modified in its application to a non-segregated multi-employer section to which paragraphs (1) and (3) apply as if after subsection (1) there were inserted—

“(1A) If, where this section applies to a non-segregated multi-employer section of the segregated scheme, the trustees or managers of the section decide not to exercise the option to segregate under the scheme rules so as to create a segregated part of that section they must, as soon as practicable—

- (a) give a notice to the Board to that effect (a “non-segregation notice”); and
- (b) send a copy of that notice to—
  - (i) an insolvency practitioner acting in relation to the employer; and
  - (ii) the Regulator.”.

(5) Where paragraph (2) applies, the fraud compensation provisions shall be modified in their application to the non-segregated multi-employer section so that they shall be read as if—

- (a) references to “an occupational pension scheme” were references to a segregated part of a non-segregated multi-employer section in circumstances where that part, if it were a scheme, would be a scheme in respect of which the Board shall make a fraud compensation payment in accordance with section 182(1);
- (b) references to “an eligible scheme” were references to a segregated part of a non-segregated multi-employer section of a segregated scheme in circumstances where that part, if it were a scheme, would be an eligible scheme;
- (c) except as otherwise provided in this regulation, references to—
  - (i) “the scheme” were to “the segregated part”;
  - (ii) “the employer” were to “the employer in relation to the segregated part”;
  - (iii) “the trustees or managers of the scheme” or “the trustees or managers” were to “the trustees or managers with ultimate responsibility for the administration of the section”;
- (d) for paragraph (a) of section 182(2) there were substituted—

“(a) in relation to a section of a multi-employer scheme which is divided into two or more sections (“a segregated scheme”) with at least two employers in relation to that section of the scheme (“a multi-employer section”)—

- (i) a qualifying insolvency event has occurred in relation to an employer,

- (ii) the trustees or managers in relation to the multi-employer section have an option under the rules of the section, where an employer in relation to the section ceases to participate in the scheme, to segregate such part of the assets of the section as is attributable to the liabilities of the section to provide pensions or other benefits to or in respect of the pensionable service of some or all of the members of that section by reference to that employer (“the segregated part”), and
- (iii) a segregated part in relation to the multi-employer section is deemed to have been created,”;
- (e) in section 182(2)(b) for “in relation to the scheme” there were substituted “in relation to the relevant segregated part of a multi-employer section of the segregated scheme”;
- (f) in section 182(2)(c)(ii) after “the scheme failure notice” there were inserted “in relation to the relevant segregated part of a multi-employer section of the segregated scheme”;
- (g) in section 182(3)(b) after “scheme failure notice” there were inserted “in relation to the relevant segregated part of a multi-employer section of the segregated scheme”;
- (h) for paragraph (b) of section 182(4) there were substituted–
  - “(b) an employer in relation to a section of a multi-employer scheme which is divided into two or more sections (“a segregated scheme”) with at least two employers in relation to that section of the scheme (“a multi-employer section”) is unlikely to continue as a going concern and–
    - (i) the trustees or managers of that section have an option under the rules of the multi-employer section, where an employer in relation to the section ceases to participate in the scheme, to segregate such part of the assets of the section as is attributable to the liabilities of the section to provide pensions or other benefits to or in respect of the pensionable service of some or all of the members of that section by reference to that employer (“the segregated part”), and
    - (ii) a segregated part in relation to the multi-employer section is deemed to have been created,”;
  - (i) in section 182(4)(c) for “the employer” there were substituted “that employer”;
  - (j) in section 182(7) for “a scheme” there were substituted “a segregated part”;
  - (k) in section 182(9)(a) and (c) for “a scheme” in each place where it occurs there were substituted “a segregated part”;
  - (l) in section 183(1) after “section 182 apply” there were inserted “to a relevant segregated part of a multi-employer section of the segregated scheme”;
  - (m) in section 183(2)(a) and (b) after “scheme rescue” in both places where it occurs there were inserted “in relation to the relevant segregated part of a multi-employer section of the segregated scheme”;
  - (n) after section 183(3) there were inserted–
    - “(3A) Where the trustees or managers with ultimate responsibility for the administration of the section receive a notice from the Board under subsection (3) they must send a copy of the notice as soon as practicable to all other trustees or managers of the segregated scheme (if different) and all of the employers in relation to the scheme.”;
  - (o) after section 185(5) there were added–
    - “(6) Where the trustees or managers with ultimate responsibility for the administration of the section receive a notice from the Board under subsection (5) they must send a copy of the notice as soon as practicable to all other trustees or managers of the segregated scheme (if different) and all of the employers in relation to the scheme.”.
- (6) In this regulation–

“non-segregated multi-employer section” means a multi-employer section of a segregated scheme where the rules contain a segregation requirement;

“the segregation requirement” means the requirement on the trustees or managers under the scheme rules of a non-segregated multi-employer section to segregate such part of the assets of the section as is attributable to the section’s liabilities to provide pensions or other benefits to or in respect of the pensionable service of some or all of the members by reference to an employer, in relation to the section, where that employer ceases to participate in the scheme.

[Regulation 21 inserts paragraphs 17 to 22 into the Schedule to S.I. 2005/600.]

[Regulation 22 inserts paragraphs 20 to 29 into the Schedule to S.I. 2005/669.]

[Regulation 23 makes various amendments to S.I. 2005/674.]

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

*Stephen C. Timms*  
Minister of State,

4 August 2005

Department for Work and Pensions

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### EXPLANATORY NOTE

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

These Regulations make provision in relation to the payment by the Board of the Pension Protection Fund of fraud compensation under Chapter 4 of Part 2 of the Pensions Act 2004 (c. 35) (“the Act”). Fraud compensation is payable from 1st September 2005 where an employer in relation to an occupational pension scheme is insolvent, or unlikely to continue as a going concern, and the scheme has suffered a loss as a result of an act or omission which qualifies as an offence prescribed under regulation 3 of these Regulations.

Regulation 2 specifies the schemes and types of schemes which cannot apply for fraud compensation payments.

Regulation 3 provides that the prescribed offence for the purpose of section 182 of the Act is any offence involving dishonesty.

Regulation 4 provides for the conditions which must be satisfied by an employer, who is an employer in relation to a scheme which is not an eligible scheme, and is unlikely to continue as a going concern.

Regulation 5 specifies who may make an application for fraud compensation and what information an application must contain.

Regulation 6 specifies what must be contained in a notice confirming that a scheme status notice has become binding.

Regulation 7 sets out how the Board will calculate amounts paid as fraud compensation.

Regulation 8 sets out the liabilities in respect of which interim fraud compensation payments can be made. It also makes other provision with regard to the making of interim payments.

Regulation 9 provides for the effect of determinations under section 184 of the Act (settlement date and recoveries of value) for the purpose of any reviews under Chapter 6 of Part 2 of the Act (reviews, appeals and maladministration).

Regulation 10 provides that where the loss is attributable to a section or part of a hybrid scheme, fraud compensation payments should be added to the assets of that section or part.

Regulation 11 provides for where an unsecured part of a partially guaranteed scheme suffers a loss and an application is made for fraud compensation payments.

Regulation 12 provides that, for the purposes of these Regulations, the approved part of a partially approved scheme is to be treated as if it were a scheme in its own right.

Regulation 13 modifies the application of sections 182, 183 and 185 of the Act where a stakeholder pension scheme, established under trust, does not have an employer.

Regulations 14 to 20 provide for where multi-employer schemes suffer a loss and an application is made for fraud compensation payments.

Regulations 21, 22 and 23 make consequential amendments to the Pension Protection Fund (Reviewable Matters) Regulations 2005 (S.I. 2005/600), the Pension Protection Fund (Review and Reconsideration of Reviewable Matters) Regulations 2005 (S.I. 2005/669) and the Pension Protection Fund (Provision of Information) Regulations 2005 (S.I. 2005/674).

As these Regulations are made before the expiry of the period of six months beginning with the coming into force of the provisions of the Act by virtue of which they are made, the requirement for the Secretary of State to consult such persons as he considers appropriate does not apply.

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.