
STATUTORY INSTRUMENTS

2005 No. 670

PENSIONS

The Pension Protection Fund (Compensation) Regulations 2005

Made - - - - *11th March 2005*
Laid before Parliament *16th March 2005*
Coming into force - - *6th April 2005*

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 315(2), (4) and (5), and 318(1) and (4)(a) of, and paragraphs 4(4), 6(4), 9(4), 12(4)(a), 13(4), 16(3)(b), 17(4)(a), 18(4), 20(4) and (7), 23, 24(1), (2) and (6), 25(1), 26(9) and (10), 28(6) and (7), 31(2)(a) and (3) and 33 of Schedule 7 to, the Pensions Act 2004⁽¹⁾, 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 that Act by virtue of which they are made⁽²⁾, hereby makes the following Regulations:

PART 1

Preliminary

Citation commencement and interpretation

1.—(1) These Regulations may be cited as the Pension Protection Fund (Compensation) Regulations 2005 and shall come into force on 6th April 2005.

(2) In these Regulations—

“the Act” means the Pensions Act 2004;

“early retirement age” means the age specified in the scheme rules as being the date on which a member may, subject to actuarial adjustment, become entitled to payment of a pension prior to attaining normal pension age;

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- (1) 2004 c. 35. The Pensions Act 2004 is modified in its application to partially guaranteed schemes by the Pension Protection Fund (Partially Guaranteed Schemes) Regulations 2005 (S.I.2005/277), in its application to hybrid schemes by the Pension Protection Fund (Hybrid Schemes) (Modification) Regulations 2005 (S.I. 2005/449), and in its application to multi-employer schemes by the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations 2005 (S.I. 2005/441). Section 318(1) is cited because of the meaning there given to “modifications”, “prescribed” and “regulations”.
- (2) See section 317 of the Pensions Act 2004 which provides that the Secretary of State must consult such persons as he considers appropriate before making regulations by virtue of the provisions of that Act (other than Part 8). This duty does not apply where regulations are made before the end of six months beginning with the coming into force of the provisions of that Act by virtue of which the regulations are made.

“employer” in relation to an occupational pension scheme which has no active members, except in relation to a multi-employer scheme, or a section of a multi-employer scheme, includes every person who was the employer of persons in the description of employment to which the scheme relates immediately before the time at which the scheme ceased to have any active members in relation to it.

“employer” in relation to a multi-employer scheme, or a section of a multi-employer scheme, includes—

- (a) in the case of a scheme which has no active members, every 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 unless, after that time—
 - (i) a debt under section 75 of the Pensions Act 1995⁽³⁾ (deficiencies in the assets) becomes due from that person, to the scheme or section; and
 - (ii) either—
 - (aa) the full amount of the debt has been paid by that person to the trustees or managers of the scheme or section, or
 - (bb) in circumstances where a legally enforceable agreement has been entered into between that person and the trustees or managers of the scheme, or section, the effect of which is to reduce the amount which is payable in respect of the debt, the reduced amount of the debt has been paid in full by that person to those trustees or managers; and
- (b) in any other case, any person who has ceased to be the employer of persons in the description of employment to which the scheme, or section, relates unless—
 - (i) at the time when he so ceased, the scheme, or section was not being wound up and continued to have active members in relation to it; and
 - (ii) a debt under section 75 of the Pensions Act 1995 became due at that time from that person to the scheme, or section, and either—
 - (aa) the full amount of the debt has been paid by that person to the trustees or managers of the scheme, or section, or
 - (bb) in circumstances where a legally enforceable agreement has been entered into between that person and the trustees or managers of the scheme, or section, the effect of which is to reduce the amount which is payable in respect of the debt, the reduced amount of the debt has been paid in full by that person to those trustees or managers;

“employment” means any trade, business, profession, office or vocation;

“pensionable service” has the meaning given by section 70(2) of the Pension Schemes Act 1993 (interpretation)⁽⁴⁾;

“qualifying course” means a full time educational or vocational course at a recognised educational establishment where in pursuit of that course, the time spent receiving instruction or tuition, undertaking supervised study, examination or practical work or taking part in any exercise, experiment or project for which provision is made in the curriculum of the course, exceeds 12 hours per week in normal term time, and shall include any gaps between the ending of one course and the commencement of another, where the person is enrolled on and commences the latter course;

⁽³⁾ 1995 c. 26. Section 75 is amended by section 271 of the Pensions Act 2004.

⁽⁴⁾ 1993 c 48.

“retail prices index” means the general index (for all items) published by the Office for National Statistics or, if that index is not published for a relevant month, any substituted index or index figures published by that office⁽⁵⁾;

“scheme” in the case of a section or a segregated part of a scheme, which for the purposes of Part 2 of the Act, is an eligible scheme, includes that section or segregated part of a scheme;

“scheme benefit age”, in relation to a scheme, means the earliest age at which a person who has pension credit rights under the scheme is entitled to receive a pension by virtue of those rights (disregarding any scheme rule making special provision as to early payment of pension on grounds of ill-health or otherwise);

“scheme pension age”, in relation to a scheme and a member’s pensionable service under it, means—

- (a) in a case where the scheme provides for the member only a guaranteed minimum pension, the earliest date at which the member is entitled to receive the guaranteed minimum pension on retirement from any employment to which the scheme applies; and
- (b) in any other case, the earliest age at which the member is entitled to receive benefits (other than a guaranteed minimum pension) on his retirement from such employment;

“surviving dependant” means—

- (a) a child of the family who is financially dependent on the member, and who is aged less than 18; or
- (b) a child of the family who is financially dependent on the member, who is aged less than 25 and who is—
 - (i) either attending a qualifying course; or
 - (ii) incapable of engaging in full time paid employment due to a condition that falls within the definition of a disability under the Disability Discrimination Act 1995⁽⁶⁾;

“transferor” has the meaning given by section 29(8) of the Welfare Reform and Pensions Act 1999 (creation of pension credits and debits)⁽⁷⁾;

“relevant partner” means a person of either sex who was not married to the member and who was living with the member as if that person and the member were husband and wife; and for the purposes of these Regulations, two adults of the same sex are to be regarded as living together as husband and wife if, but only if, they would be regarded as living together as husband and wife were they instead two adults of opposite sex.

PART 2

Early payment of compensation

Circumstances where a person shall be entitled to early payment of compensation

- 2.—(1) The conditions subject to which a person may become entitled to—
- (a) periodic compensation under paragraphs 11 or 15; or
 - (b) lump sum compensation under paragraphs 14 or 19,

⁽⁵⁾ The retail prices index is available from www.statistics.gov.uk.

⁽⁶⁾ 1995 c. 50.

⁽⁷⁾ 1999 c. 30.

of Schedule 7 to the Act before he attains normal pension age are those prescribed in the following paragraphs of this regulation.

- (2) Those conditions are—
 - (a) that the person has given notice to the Board, in accordance with paragraph (3), that he wishes to receive that compensation before he attains normal pension age; and
 - (b) he has attained the age of 50 on the date on which the compensation is to become payable early.
- (3) The notice referred to in paragraph (2)(a)—
 - (a) must include—
 - (i) the person’s name, address, date of birth and national insurance number;
 - (ii) the name and address of the employer to which the scheme for which the Board has assumed responsibility relates (“the relevant scheme”); and
 - (iii) the date on which the person would like the compensation to become payable early (“the requested early payment date”);
 - (b) must not be given before the date on which the Board assumes responsibility for the relevant scheme; and
 - (c) subject to paragraph (4), must be given at least six months before the requested early payment date.
- (4) The Board may waive the requirement in paragraph (3)(c) if, in its opinion, compliance with that requirement would cause hardship to the person who would like to receive the payment of compensation early.
- (5) This regulation does not apply to any case where the compensation is payable under paragraphs 15 or 19 of Schedule 7 to the Act by virtue of paragraph 21 (pension credit members who have not attained normal benefit age at assessment date) of that Schedule.

PART 3

Benefits for Survivors

Circumstances where a widow or widower is not entitled to periodic compensation

3. A widow or widower shall not be entitled to periodic compensation under paragraph 4 (pensions in payment at assessment date), 6 (pension benefits postponed at assessment date), 9 (active members over normal pension age at assessment date), 13 (active members who have not attained normal pension age at assessment date) or 18 (deferred members who have not attained normal pension age at assessment date) of Schedule 7 to the Act where there is no provision to pay a survivor’s pension under the admissible rules of the scheme.

Compensation for surviving dependants

4.—(1) A person shall be entitled to periodic compensation under paragraph 23 of Schedule 7 to the Act (compensation in form of dependants' benefits) in the circumstances prescribed in this regulation.

(2) In the case of a relevant partner, the circumstances are where there is provision to pay a survivor’s pension to an unmarried partner of the member under the admissible rules of the scheme (whether discretionary or otherwise); and

- (a) the member—

- (i) has provided the Board with a signed written notice informing the Board that the person is a relevant partner; and
 - (ii) the relevant partner has demonstrated to the satisfaction of the Board that he was co-habiting with the member at the date of the member's death; or
- (b) where the member has not provided the Board with a signed notice in accordance with paragraph (2)(a)(i), the relevant partner provides evidence to the satisfaction of the Board that—
 - (i) he was financially dependent on, or interdependent on the member; and
 - (ii) he was co-habiting with the member;at the date of the member's death.
- (3) In the case of a surviving dependant the circumstances are where the surviving dependant provides—
 - (a) in the case of a natural child or unborn child of the member, a birth certificate demonstrating that he was the natural child of the member;
 - (b) in the case of an adopted child of the member, the adoption certificate demonstrating that he was the adopted child of the member; or
 - (c) in the case of any other child who is a dependant of the member at the date of the member's death, evidence demonstrating to the satisfaction of the Board that he was a dependant child of the member at the date of the member's death,to the Board or, where evidence is provided during the assessment period, to the trustees or managers of the eligible scheme.

Amount and duration of periodic compensation in the case of relevant partners

5. Subject to regulation 8, where periodic compensation is payable to a relevant partner the amount and duration of periodic compensation shall be—
- (a) where a pension was in payment to the member on the assessment date, an amount calculated in accordance with paragraph 4(2) and (3) of Schedule 7 to the Act (pensions in payment at assessment date);
 - (b) where a pension was not in payment to the member at the assessment date because the member had postponed payment of the pension, an amount calculated in accordance with paragraph 6(3) and (4) of Schedule 7 to the Act (pension benefits postponed at assessment date);
 - (c) where a pension was not in payment to the member at the assessment date because the member was an active member and over the normal pension age, an amount calculated in accordance with paragraph 9(2) and (3) of Schedule 7 to the Act (active members over normal pension age at assessment date);
 - (d) where a pension was not in payment to the member at the assessment date because the member was an active member and under the normal pension age, an amount calculated in accordance with paragraph 13(2) and (3)(a) or (b) of Schedule 7 to the Act (active members who have not attained normal pension age at assessment date);
 - (e) where a pension was not in payment to the member at the assessment date because the member was a deferred member and under the normal pension age, an amount calculated in accordance with paragraph 18(2) and (3) of Schedule 7 to the Act (deferred members who have not attained normal pension age at assessment date).

Amount of periodic compensation that can be paid in the case of surviving dependants

6.—(1) Subject to Regulation 8, and to paragraphs (2) and (3), where periodic compensation is payable to a surviving dependant the amount of periodic compensation shall be—

- (a) where a pension was in payment to the member on the assessment date, an amount calculated in accordance with paragraph 3 of Schedule 7 to the Act (pensions in payment at assessment date);
- (b) where a pension was not in payment to the member at the assessment date because the member had postponed payment of the pension, an amount calculated in accordance with paragraph 5 of Schedule 7 to the Act (pension benefits postponed at assessment date);
- (c) where a pension was not in payment to the member at the assessment date because the member was an active member, and over the normal pension age, an amount calculated in accordance with paragraph 8 of Schedule 7 to the Act (active members over normal pension age at assessment date);
- (d) where a pension was not in payment to the member at the assessment date because the member was an active member and under the normal pension age, but died after attaining normal pension age, an amount calculated in accordance with paragraphs 11 and 13(3)(a) of Schedule 7 to the Act (active members who have not attained normal pension age at assessment date);
- (e) where a pension was not in payment to the member at the assessment date because the member was an active member and under the normal pension age, but died before attaining normal pension age, an amount calculated in accordance with paragraphs 11 and 13(3)(b) of Schedule 7 to the Act (active members who have not attained normal pension age at assessment date);
- (f) where a pension was not in payment to the member at the assessment date because the member was a deferred member, and under the normal pension age, an amount calculated in accordance with paragraph 15 of Schedule 7 to the Act (deferred members who have not attained normal pension age at assessment date).

and references in those paragraphs to the member (whether deferred or otherwise), relating to entitlement to periodic compensation shall be treated as if they were references to a surviving dependant for the purposes of this calculation.

(2) Where periodic compensation is also payable to a surviving spouse or relevant partner and—

- (a) there is only one surviving dependant, the amount of periodic compensation shall be 25% of the amount calculated under paragraph (1);
- (b) there are two or more surviving dependants, the amount of periodic compensation shall be half of the amount calculated under paragraph (1), divided equally between the surviving dependants.

(3) Where periodic compensation is not payable to a surviving spouse or relevant partner, or where such a claim has not been made, and—

- (a) there is only one surviving dependant, the amount of periodic compensation shall be half of the amount calculated under paragraph (1); or
- (b) there are two or more surviving dependants, the amount of periodic compensation shall be the amount calculated under paragraph (1), divided equally between the surviving dependants.

Period of payment

7.—(1) Subject to paragraph (2), where periodic compensation is payable under regulation 6 it shall be payable from the day after the member's death.

- (2) Where a surviving dependant
 - (a) is an unborn child, periodic compensation shall be payable from the date of the child's birth;
 - (b) has left a qualifying course, and payment of periodic compensation has ceased under regulation 7(4)(a), but he begins another qualifying course before attaining the age of 25 and within one year of leaving the previous course, it shall be payable from the date the later qualifying course begins;
 - (c) becomes disabled after he has attained the age of 18, periodic compensation shall be payable from the date that the surviving dependant became disabled.
- (3) Except where paragraph (4) applies, periodic compensation shall be paid until the surviving dependant attains the age of 18.
- (4) Where the surviving dependant—
 - (a) is attending a qualifying course—
 - (i) until the surviving dependant leaves the qualifying course; or
 - (ii) attains the age of 25;whichever is the later; or
 - (b) is incapable of engaging in full time paid employment due to a condition that falls within the definition of a disability under the Disability Discrimination Act 1995, until the surviving dependant attains the age of 25.

Change of circumstances and backdating

- 8.—(1) The amount of periodic compensation payable under these Regulations may be varied where—
- (a) there is a change in the circumstances of the person or persons to whom periodic compensation is payable; and
 - (b) that change would have resulted in—
 - (i) a different rate of periodic compensation being payable (including where a rate of nil may apply); or
 - (ii) periodic compensation being payable from a different start date,and such a variation shall take effect from the date that the change in circumstances occurred.
- (2) The amount of periodic compensation calculated under paragraph (1) shall be subject to paragraphs 28 (annual increase in periodic compensation) and 29 (Board's powers to alter rates of revaluation and indexation) of Schedule 7 to the Act, and any regulations made under those paragraphs.
- (3) Where a person makes a claim for periodic compensation, his claim for periodic compensation shall be backdated to the date he became eligible to claim periodic compensation, or where that date is more than five years prior to the date of the claim, for five years from the date of the claim.

PART 4

Admissible Rules

Special provision in relation to pensions in payment to survivors

9. Where immediately before the assessment date—
- (a) a person is entitled to present payment of a pension under the scheme rules;
 - (b) that pension is attributable to the pensionable service of a member of the scheme who has died; and
 - (c) the effect of disregarding rules within paragraphs (a) and (b) of paragraph 35(2) of Schedule 7 to the Act, is that the person is not entitled to compensation under paragraph 3(2) (pensions in payment at assessment date) by reason of the pension or a part of the pension,

that person shall be treated, for the purposes of the pension compensation provisions, as entitled, immediately before the assessment date, to present payment of a pension under the admissible rules.

Special provision in relation to pensions in payment following early retirement

- 10.—(1) Where immediately before the assessment date—
- (a) a person is entitled to present payment of a pension under the scheme rules;
 - (b) the scheme rules provide that the award of that pension is dependent on—
 - (i) that person having attained early retirement age; and
 - (ii) the consent of—
 - (aa) the trustees or managers; or
 - (bb) the employer;
 - (c) the effect of disregarding rules within paragraphs (a) and (b) of paragraph 35(2) of Schedule 7 to the Act (scheme rules, admissible rules etc) is that the person is not entitled to compensation under paragraph 3(2) by reason of the pension or a part of the pension,

paragraphs (2) and (3) shall apply.

- (2) Where in the opinion of the trustees or managers—
- (a) the trustees or managers; or
 - (b) the employer,

would have consented to the award of a pension to that person under the admissible rules of the scheme prior to the assessment date, they must notify the Board in that respect.

(3) Where the Board receives a notice under paragraph (2) that person shall be treated, for the purposes of the pension compensation provisions, as entitled, immediately before the assessment date, to present payment of a pension under the admissible rules.

Special provision in relation to pensions in payment on grounds of ill-health

- 11.—(1) Where immediately before the assessment date—
- (a) a person is entitled to present payment of a pension under the scheme rules;
 - (b) that pension was awarded by the trustees or managers on grounds of ill health; and

(c) the effect of disregarding rules within paragraphs (a) and (b) of paragraph 35(2) of Schedule 7 to the Act is that the person is not entitled to compensation under paragraph 3(2) by reason of the pension or a part of the pension, paragraphs (2) and (3) shall apply.

(2) Where in the opinion of the trustees or managers of the scheme a person to whom paragraph (1) applies would have been awarded an ill health pension under the admissible rules of the scheme prior to the assessment date, they must notify the Board in that respect.

(3) Where the Board receives a notice under paragraph (2) that person shall be treated, for the purposes of the pension compensation provisions, as entitled, immediately before the assessment date, to present payment of a pension under the admissible rules.

Modification of Schedule 7 in relation to certain pensions in payment before the assessment date

12.—(1) Where immediately before the assessment date—

- (a) a person is entitled to present payment of a pension under the scheme rules;
- (b) the effect of disregarding rules within paragraphs (a) and (b) of paragraph 35(2) of Schedule 7 to the Act is that the person is not entitled to compensation under paragraph 3(2) by reason of the pension or a part of the pension; and
- (c) regulations 9, 10 or 11 of these Regulations do not apply to that person,

Schedule 7 to the Act shall be modified in its application to that person as specified in paragraphs (2) and (3).

(2) Where a person to whom paragraph (1) applies has received a lump sum under the scheme rules, Schedule 7 shall apply to that person as if paragraph 19 (compensation payable as a lump sum) were omitted.

(3) Where a person to whom paragraph (1) applies has exercised an option to commute a portion of his pension for a lump sum under the scheme rules, Schedule 7 shall apply to that person as if—

- (a) after paragraph 15(4) of Schedule 7 there were inserted—

“**15.(4A)** Where the deferred member has exercised an option to commute a portion of a pension for a lump sum under the scheme rules, the protected pension rate shall be reduced by the percentage of the pension commuted for a lump sum under the scheme rules.

15.(4B) Paragraph (4A) shall not apply where the admissible rules provide, in whatever form, that the initial annual rate of the pension shall be reduced by reference to the amount of the pension commuted for a lump sum under the scheme rules.”; and

- (b) paragraph 24 (commutation of periodic compensation) were omitted.

PART 5

Revaluation

Manner of determining the revaluation percentage in the case of active members who have not attained normal pension age at assessment date

13. For the purposes of paragraph 12(4)(a) of Schedule 7 to the Act (determination of revaluation percentage in the case of active members who have not attained normal pension age at assessment

date) the manner prescribed for the determination of the percentage increase in the general level of prices in Great Britain during the revaluation period is—

$$100 \times (A / B) - 100$$

where—

- a A is the level of the retail prices index for the month which falls two months before the month in which the active member—
 - (i) attains normal pension age in respect of the payment of the periodic compensation or, as the case may be, the lump sum compensation; or
 - (ii) becomes entitled to—
 - [a] periodic compensation under paragraph 11; or
 - [b] lump sum compensation under paragraph 14, under Schedule 7 to the Act calculated in accordance with paragraph 25 of Schedule 7 to the Act (early payment of compensation) and regulations made under that paragraph; and
- b B is the level of the retail prices index for the month two months before the month during which the assessment date falls.

Manner of determining the revaluation amount

14.—(1) Subject to paragraph (2), for the purposes of paragraph 16(3)(b) of Schedule 7 to the Act (determination of revaluation amount for the first revaluation period in the case of deferred members who have not attained normal pension age at assessment date), the manner prescribed for the determination of the revaluation amount for the first revaluation period is the manner in which that revaluation amount would have been determined under the admissible rules of the scheme.

(2) For the purposes of paragraph (1) references under the admissible rules of the scheme to normal pension age shall be applied as if they were references to the assessment date.

Manner of determining the revaluation percentage in the case of deferred members who have not attained normal pension age at assessment date

15. For the purposes of paragraph 17(4)(a) of Schedule 7 to the Act (determination of revaluation percentage in the case of deferred members who have not attained normal pension age at assessment date) the manner prescribed for the determination of the percentage increase in the general level of prices in Great Britain during the revaluation period is—

$$100 \times (A / B) - 100$$

where—

- a A is the level of the retail prices index for the month which falls two months before the month during which the deferred member—
 - (i) attains normal pension age in respect of the payment of the periodic compensation or, as the case may be, the lump sum compensation; or
 - (ii) becomes entitled to—
 - [a] periodic compensation under paragraph 15; or
 - [b] lump sum compensation under paragraph 19, of Schedule 7 to the Act calculated in accordance with paragraph 25 of Schedule 7 to the Act and regulations made under that paragraph; and
- b B is the level of the retail prices index for the month two months before the month during which the assessment date falls.

PART 6

Compensation in respect of protected transfer payment or protected contribution repayment

Modification of admissible rules

16.—(1) For the purposes of paragraph 20(4) of Schedule 7 to the Act (calculation of amount of compensation in accordance with admissible rules in respect of scheme right to transfer payment or contribution refund) where the Board is satisfied that it is not possible to apply the admissible rules in order to calculate the amount of the protected transfer payment or protected contribution repayment the Board shall apply the admissible rules as if they included—

- (a) the formula in paragraph (2) in order to calculate the amount of the protected transfer payment; or
- (b) the provision specified in paragraph (4) in order to calculate the amount of the protected contribution repayment.

(2) Subject to paragraph (3), the formula referred to in paragraph (1)(a) is—

$$AR \times PE \times PS$$

where—

- a AR is the person's annual accrual rate in respect of the value of benefits accrued to him under the scheme rules;
- b PE is the person's annual pensionable earnings in respect of the value of benefits accrued to him under the scheme rules; and
- c PS is the person's pensionable service in respect of the value of benefits accrued to him under the scheme rules in years (including any fraction of a year).

(3) In any case where the Board is satisfied that it is not possible to identify one or more of the elements of the formula in paragraph (2), the Board may, having regard to the admissible rules, determine how the protected transfer payment is to be calculated.

(4) The provision specified in this paragraph is that the protected contribution repayment shall be calculated by reference to the amount of contributions actually made by the person or on his behalf to the scheme.

Disapplication of paragraphs 8, 10, 11 and 14 of Schedule 7

17.—(1) In the case of a person who, in respect of the same pensionable service under the scheme would be entitled to compensation under paragraph 20 of Schedule 7 to the Act (compensation for persons who were active members immediately before assessment date), paragraphs 8, 10, and 11 of that Schedule are modified in their effect, as if after sub-paragraph (8) of those paragraphs there were inserted the following sub-paragraph—

“(9) Compensation shall not be payable in accordance with the provisions of this paragraph, where a person is entitled to compensation in accordance with the provisions of paragraph 20.”.

(2) In the case of a person who, in respect of the same pensionable service under the scheme would be entitled to compensation under paragraph 20 of Schedule 7 to the Act (compensation for persons who were active members immediately before assessment date), paragraph 14 of that Schedule is modified in its effect, as if after sub-paragraph (9) of that paragraph, there were inserted the following sub-paragraph—

“(10) Compensation shall not be payable in accordance with the provisions of this paragraph, where a person is entitled to compensation in accordance with the provisions of paragraph 20.”.

Transitional provisions

18. Where compensation would be payable under paragraph 20 of Schedule 7 to the Act if Chapter 5 of Part 4 of the Pension Schemes Act 1993⁽⁸⁾ were in force, paragraph 20(1)(c) and (d) shall have effect, as if Chapter 5 were in force.

PART 7

Commutation

Commutation of periodic compensation

19.—(1) The prescribed circumstances for the purposes of paragraph 24(1) of Schedule 7 to the Act (commutation of periodic compensation) are the circumstances specified in paragraph (2).

(2) The circumstances are that a person entitled to periodic compensation under paragraph 5, 8, 11 or 15 of Schedule 7 (pension compensation provisions)—

- (a) must not have exercised an option to commute for a lump sum a portion of the pension in respect of which that person is entitled to periodic compensation; and
- (b) must exercise the option to commute under paragraph 24(1) of Schedule 7 within six months beginning with the date on which—
 - (i) the Board gives the trustees or managers of the scheme a transfer notice under section 160(2) of the Act (transfer notice); or
 - (ii) entitlement to periodic compensation arises,
 whichever is the later.

Circumstances in which the portion of compensation to be commuted may exceed 25 per cent

20.—(1) The prescribed circumstances for the purposes of paragraph 24(2) of Schedule 7 to the Act are that the aggregate value of—

- (a) any periodic compensation payable to the person in respect of a pension to which he is entitled under—
 - (i) the admissible rules of the scheme; or
 - (ii) the admissible rules of a connected occupational pension scheme;
- (b) any compensation payable to that person as a lump sum in respect of a pension to which he is entitled under—
 - (i) the admissible rules of the scheme; or
 - (ii) the admissible rules of a connected occupational pension scheme; and
- (c) any other benefits, including money purchase benefits, payable to that person under—
 - (i) the scheme rules; or
 - (ii) the rules of a connected occupational pension scheme,

⁽⁸⁾ Chapter 5 is substituted by section 264 of the Pensions Act 2004.

is less than £260 per annum.

(2) For the purposes of this regulation—

(a) the value of any—

(i) periodic compensation;

(ii) compensation; and

(iii) other benefits,

is the value at the time at which periodic compensation becomes payable in respect of the pension under paragraph 5, 8, 11 or 15 of Schedule 7;

(b) the value of any compensation or benefit payable as a lump sum means the annualised actuarially equivalent amount of that sum determined in accordance with actuarial factors published by the Board;

(c) the scheme is connected with another occupational pension scheme if the same person is or was an employer in relation to both schemes.

Manner in which an option to commute may be exercised

21.—(1) The manner in which an option to commute periodic compensation under paragraph 24(1) of Schedule 7 may be exercised is specified in paragraphs (2) to (5).

(2) A person must exercise an option to commute a portion of his periodic compensation under paragraph 24(1) by giving notice to the Board in writing.

(3) A notice given under paragraph (2) must include—

(a) the name, address, date of birth and national insurance number of the person exercising the option;

(b) the name and address of the employer in respect of the scheme; and

(c) the percentage of the periodic compensation that the person opts to commute.

(4) Where a person exercises an option to commute more than 25% of the periodic compensation that person must also provide the Board with the name and address of any connected occupational pension scheme of which he is a member.

(5) The Board may require a person exercising an option under paragraph 24(1) to produce any document or provide any other information relevant to the exercise of the Board's functions in respect of the notice given under paragraph (2).

PART 8

Compensation cap modifications

Application of compensation cap where compensation becomes payable on different dates

22.—(1) Paragraph 26 of Schedule 7 to the Act (compensation cap) applies with the modification specified in paragraph (4) where a person becomes entitled to relevant compensation in respect of a benefit ("benefit A") and he has previously—

(a) become entitled to relevant compensation in respect of a benefit or benefits under the scheme or a connected occupational pension scheme; or

(b) become entitled to one or more lump sums under the scheme or a relevant connected occupational pension scheme.

(2) For the purposes of paragraph (1)(b), a scheme is a relevant connected occupational pension scheme if it is an eligible scheme for the purposes of Part 2 of the Act when the person becomes entitled to the relevant compensation in respect of benefit A.

(3) After paragraph 26(6) insert—

“(6A) Where sub-paragraph (6B) applies, sub-paragraphs (6C) and (6D) apply instead of sub-paragraph (1).

(6B) This sub-paragraph applies if, before the person becomes entitled to relevant compensation in respect of benefit A, he has—

- (a) become entitled to relevant compensation in respect of one or more other benefits under the scheme or a connected occupational pension scheme (“benefit or benefits C”), or
- (b) become entitled to one or more lump sums under the scheme or a relevant connected occupational pension scheme (“sum or sums L”);

and for the purposes of paragraph (b) a scheme is a relevant connected occupational pension scheme if it is an eligible scheme when the person becomes entitled to the relevant compensation in respect of benefit A.

(6C) If the previous aggregate cap percentage is or exceeds 100, no relevant compensation is payable in respect of benefit A.

(6D) If the previous aggregate cap percentage is less than 100—

- (a) the amount of the compensation in respect of benefit A, and
- (b) the amount of any payments by way of periodic compensation for benefit or benefits C that are payable on or after the assessment date for the relevant compensation in respect of benefit A,

must be restricted in accordance with sub-paragraph (6H).

(6E) For the purposes of this paragraph, “the previous aggregate cap percentage” means the aggregate of—

- (a) the cap percentage for the relevant compensation in the case of each of benefit or benefits C, and
- (b) the cap percentage in the case of each of sum or sums L.

(6F) For the purposes of this paragraph, “the cap percentage”, in the case of any relevant compensation or lump sum, means—

$$(AAV \times 100) / ACC$$

where—

AAV is the appropriate annual value, and

ACC is the appropriate compensation cap.

(6G) In sub-paragraph (6F)—

“the appropriate annual value” means—

- (a) in the case of each of benefit A, benefit or benefits B and benefit or benefits C, the annual value of that benefit at the time when the relevant compensation becomes or, in the case of periodic compensation, first becomes payable, and
- (b) in the case of each of sum or sums L—
 - (i) if the person became entitled to that sum on or after 6th April 2005, the annualised value of that sum at the time that sum became payable, and

- (ii) otherwise, the annualised value of that sum on 6th April 2005, (calculated on the assumption that on that date the person was the same age as when he became entitled to that sum);
- “the appropriate compensation cap” means—
- (a) in the case of each of benefit A, benefit or benefits B and benefit or benefits C, the compensation cap at the time when the person becomes entitled to relevant compensation in respect of the benefit, and
 - (b) in the case of each of sum or sums L—
 - (i) if the person became entitled to that sum on or after 6th April 2005, the compensation cap at the time when he became so entitled, and
 - (ii) otherwise, the compensation cap on 6th April 2005.
- (6H) Where sub-paragraph (6D) applies—
- (a) the relevant compensation in respect of benefit A is required to be restricted in accordance with sub-paragraph (3), but taking references in that sub-paragraph to the cap fraction as references to the revised cap fraction, and
 - (b) the amount of any payments by way of periodic compensation for benefit or benefits C payable on or after the assessment date for the relevant compensation in respect of benefit A is required to be restricted to the revised cap fraction of the amount that would be payable apart from this sub-paragraph.
- (6I) For the purposes of this paragraph, “the revised cap fraction” means—
- $100 / \text{the aggregate cap percentage}$
- (6J) For the purposes of this paragraph, “the aggregate cap percentage” means the aggregate of—
- (a) the previous aggregate cap percentage,
 - (b) the cap percentage for the relevant compensation in the case of benefit A, and
 - (c) in a case within sub-paragraph (2)(b)(i), the cap percentage for the relevant compensation in the case of each of benefit or benefits B.”.

Disregard of certain small payments in determining PPF compensation cap

23.—(1) For the purposes of paragraph 26 of Schedule 7 to the Act (compensation cap), in determining the restriction under that paragraph on the compensation to which a person is entitled in respect of a benefit under a scheme, a lump sum within sub-paragraph (6B)(b) of that paragraph (lump sums to which the person has previously become entitled) is to be disregarded if—

- (a) it is a trivial commutation lump sum or a winding up lump sum for the purposes of Part 1 of Schedule 29 to the Finance Act 2004⁽⁹⁾ (see paragraphs 7 and 10 of that Schedule); and
 - (b) its payment does not contravene any trivial commutation restriction that applies in the circumstances in question.
- (2) In this regulation “trivial commutation restriction” means a restriction imposed by—
- (a) regulation 19, 20 or 60 of the Occupational Pension Schemes (Contracting-out) Regulations 1996⁽¹⁰⁾;

⁽⁹⁾ 2004 c. 12.

⁽¹⁰⁾ S.I. 1996/1172. Regulation 20 was amended by regulation 2(3) of S.I. 2000/2975. Regulation 60 was amended by regulation 4(12) of S.I. 1997/786.

- (b) regulation 2 of the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997⁽¹¹⁾; or
- (c) regulation 3(2)(b) of the Pension Sharing (Pension Credit Benefit) Regulations 2000⁽¹²⁾.
- (3) Before 6th April 2006 this regulation applies with the modifications in paragraphs (4) and (5).
- (4) For paragraph (1)(a) substitute—
 - “(a) it extinguishes the person’s entitlement to benefits under the scheme;
 - (aa) its payment does not contravene Revenue restrictions; and;”.
- (5) After paragraph (2) insert—
 - “(3) For the purposes of this regulation a payment does not contravene Revenue restrictions if—
 - (a) in the case of a scheme that is an approved scheme for the purposes of Chapter 1 of Part 14 of the Income and Corporation Taxes Act 1988⁽¹³⁾ (see section 612(1) of that Act), it is permitted under the scheme rules in accordance with its approval for those purposes; and
 - (b) in the case of scheme that is a relevant statutory scheme for those purposes (see section 611A of that Act⁽¹⁴⁾), it is permitted under the regulations or rules governing the scheme as such a scheme.”.

PART 9

Annual increase in periodic compensation

Annual increase in periodic compensation: post-1997 and pre-1997 service

24.—(1) This regulation applies for the purpose of the definitions of “post-1997 service” and “pre-1997 service” in paragraph 28(6) and (7) of Schedule 7 to the Act (annual increase in periodic compensation).

(2) Pensionable service within paragraph 36(4)(b) is “post-1997 service” where it is treated for the purposes of the scheme as occurring on or after 6th April 1997.

(3) Pensionable service within paragraph 36(4)(b) of that Schedule is “pre-1997 service” where it is treated for the purposes of the scheme as having occurred before 6th April 1997.

(4) In relation to any relevant pension credit amount, “post-1997 service” means pension credit rights deriving from rights attributable to—

- (a) actual service of the transferor in any description of employment to which the scheme applies which—
 - (i) qualifies the transferor for benefits under the scheme, and
 - (ii) occurs on or after 6th April 1997; or
- (b) any notional service allowed in respect of the transferor under the admissible rules which—
 - (i) qualifies the transferor for benefits under the scheme, and
 - (ii) relates to service treated for the purposes of the scheme as occurring on or after 6th April 1997.

⁽¹¹⁾ S.I. 1997/785.

⁽¹²⁾ S.I. 2000/1054.

⁽¹³⁾ 1988 c. 1.

⁽¹⁴⁾ Section 611A was inserted by section 75 of, and paragraphs 15 and 18(1) of Schedule 6 to, the Finance Act 1989 (c. 26).

(5) In relation to any relevant pension credit amount, “pre 1997 service” means pension credit rights deriving from rights attributable to—

(a) actual service of the transferor in any description of employment to which the scheme applies which—

- (i) qualifies the transferor for benefits under the scheme, and
- (ii) occurred before 6th April 1997; or

(b) any notional service allowed in respect of the transferor under the admissible rules which—

- (i) qualifies the transferor for benefits under the scheme; and
- (ii) relates to service treated for the purposes of the scheme as having occurred before 6th April 1997.

(6) In any case where it is unclear whether—

(a) pensionable service is treated for the purposes of the scheme as service (whether actual or notional) occurring before 6th April 1997, or, on or after that date, or

(b) pension credit rights are derived from rights attributable to service (whether actual or notional) of the transferor occurring before 6th April 1997, or on, or after, that date,

the Board may determine as best as it is able, having regard to the admissible rules and all the circumstances of the case, how much of the service or notional service concerned should be treated for the purposes of this regulation as having occurred before 6th April 1997 and on or after that date.

PART 10

Cash balance schemes

Cash balance schemes: modification of paragraphs 5, 15 and 19 of Schedule 7 to the Act

25.—(1) This regulation applies to a cash balance scheme, that is to say an occupational pension scheme the rules of which entitle a member of the scheme, upon attaining normal pension age, to a guaranteed sum which the trustees or managers of the scheme use to purchase for the member either a pension within the scheme or an annuity.

(2) In their application to a pension attributable to a cash balance scheme, the provisions of Schedule 7 to the Act shall have effect with the following modifications—

(a) paragraph 5 has effect as if—

(i) after sub-paragraph (4), there were inserted—

“(4A) In any case where the Board is satisfied that it is not possible to determine on the basis referred to in sub-paragraph (4) what would have been the annual rate of the pension, the “protected pension rate” shall mean what the Board may, having regard to the admissible rules, determine would have been the annual rate of pension, if the postponement of the pension had ceased immediately before the assessment date.”; and

(ii) in sub-paragraph (5), after “(4)” there were inserted “or (4A)”;

(b) paragraph 15 has effect as if, after sub-paragraph (5), there were inserted—

“(5A) In any case where the Board is satisfied that it is not possible to determine on the basis referred to in sub-paragraph (5) what would have been the initial annual rate of the pension, the “accrued amount” shall mean an amount equal to such initial annual rate as the Board may, having regard to the admissible rules, determine the deferred member

would have been entitled to had he attained the normal pension age when the pensionable service relating the pension ended.”; and

(c) paragraph 19 has effect as if, after sub-paragraph (5), there were inserted—

“(5A) In any case where the Board is satisfied that it is not possible to determine on the basis referred to in sub-paragraph (5) what would have been the amount of the scheme lump sum, the “accrued amount” shall mean an amount equal to such scheme lump sum amount as the Board may, having regard to the admissible rules, determine the deferred member would have been entitled to had normal pension age been the actual age attained by the deferred member when the pensionable service relating to the lump sum ended.”.

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

11th March 2005

Malcolm Wicks
Minister of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Board of the Pension Protection Fund (“the Board”) is established by section 107 of the Pensions Act 2004 (c. 35) (“the Act”) to provide compensation for members of certain occupational pension schemes in the event of the insolvency of the scheme’s sponsoring employer and where the pension scheme is under-funded at a certain level.

Regulation 2 sets out the conditions under which a person can receive early payment of compensation from the Board, pursuant to paragraphs 11 or 15 (periodic compensation) or 14 or 19 (lump sum compensation) of Schedule 7 to the Act, before he attains normal pension age.

Regulation 3 prescribes the circumstances in which a widow or widower will not be entitled to receive periodic compensation following the death of his spouse.

Regulation 4 prescribes the circumstances in which a relevant partner or a surviving dependant will be entitled to receive periodic compensation following the death of his partner (in the case of a relevant partner) or his parent (in the case of a surviving dependant) as appropriate under paragraph 23 of Schedule 7 to the Act.

Regulation 5 prescribes the amount and duration of periodic compensation that can be paid to relevant partners who qualify for periodic compensation under regulation 4 by reference to the compensation payable to a surviving spouse in Schedule 7 to the Act.

Regulation 6 prescribes the amount of periodic compensation that can be paid to surviving dependants who qualify for periodic compensation under regulation 4.

Regulation 7 prescribes the period during which periodic compensation can be paid to surviving dependants who qualify for periodic compensation under regulation 4.

Regulation 8 prescribes the effect of a change of circumstances in a case where periodic compensation is paid, and also provides for backdating of payments of periodic compensation in specific circumstances.

Regulation 9 provides that where immediately prior to the assessment date a survivor is entitled to a present payment of a pension he shall be treated as entitled to compensation under paragraph 3 of Schedule 7 if he would not otherwise be entitled to compensation under that paragraph.

Regulation 10 provides that where immediately prior to the assessment date a person is entitled to a pension on grounds of early retirement but is not entitled to compensation under paragraph 3 of Schedule 7 he shall be treated as entitled to compensation under that paragraph in certain circumstances

Regulation 11 provides that where immediately prior to the assessment date a person is entitled to present payment of an ill health pension but is not entitled to compensation under paragraph 3 of Schedule 7 he shall be treated as entitled to compensation under that paragraph in certain circumstances.

Regulation 12 modifies Schedule 7 in relation to certain pensions in payment before the assessment date.

Regulation 13 prescribes the method of calculating the revaluation percentage in relation to pension credit members for the purposes of paragraph 12(4)(a) of Schedule 7 to the Act.

Regulation 14 prescribes the method of calculating the revaluation amount in relation to deferred members who have not attained normal pension age at the assessment date, for the purposes of paragraph 16(3)(b) of Schedule 7 to the Act.

Regulation 15 prescribes the manner of determining the revaluation percentage in relation to deferred members who have not attained normal pension age at the assessment date for the purposes of paragraph 17(4)(a) of Schedule 7 to the Act.

Regulation 16 prescribes the method of calculating the protected transfer payment or protected contribution repayment, where the Board is satisfied that it is not possible to use the admissible rules to make this calculation for the purposes of paragraph 20(4) of Schedule 7 to the Act.

Regulation 17 provides that a person shall not be entitled to two sets of compensation for the same service. The regulation disapplies paragraphs 8, 10, 11 or 14 in relation to a person to whom paragraph 20 of Schedule 7 to the Act applies.

Regulation 18 provides that for the purposes of paragraph 20(1)(c) and (d) of Schedule 7 to the Act, the new Chapter 5 of the Pension Schemes Act 1993 (c. 48) shall be treated as if it were in force. Section 264 of the Act inserts a new Chapter 5 into the Pension Schemes Act 1993 (c. 48).

Regulation 19 provides that a person may opt to commute for a lump sum, a portion of his periodic compensation in certain circumstances.

Regulation 20 provides that a person may opt to commute more than 25 percent of his periodic compensation where the aggregate value of compensation or benefits payable to him in respect of the scheme or a connected scheme is less than £260 per annum.

Regulation 21 sets out the procedure for exercising an option to commute and in particular requires notice to be given to the Board in writing, Paragraph 3 and 4 require that the notice to include specified information. Paragraph 5 provides that the Board may require a person to provide specified documents or information.

Regulations 22 and 23 modify paragraph 26 of Schedule 7 to the Act (which makes provision about the compensation cap) and provide that certain sums are to be disregarded for the purposes of that paragraph.

The compensation cap is the maximum amount of pension compensation payable by the Board in certain cases. They are where a person who is under normal pension age at the time immediately before the assessment date (“the relevant time”) is then entitled to present payment of a pension, other than an ill health or a survivor’s pension; where a person who is an active member of the scheme and under normal pension age at the relevant time survives to attain normal pension age and so would have become entitled to a pension or a lump sum under the scheme; and where a deferred member of the scheme who is under pension age at the relevant time and not then entitled to a pension, survives to normal pension age and so would have become entitled to a pension or a lump sum under the scheme.

Paragraph 26 of Schedule 7 provides that the compensation in these cases is restricted if the annual value of the benefit in respect of which the compensation is payable exceeds the amount of compensation cap, or if it does so when aggregated with the annual value of other benefits from the scheme or schemes in respect of which compensation is payable at the same time.

Regulation 22 amends paragraph 26 so that where compensation is paid by the Board in successive tranches, or the person entitled to the compensation has on a previous occasion become entitled to one or more lump sums from the scheme in question or from connected schemes, the restriction applies by aggregating the annual values of the former benefits or lump sums with the benefits payable in the latest tranche.

Regulation 23 makes provision about trivial commutation lump sums and winding up lump sums. These are lump sums that schemes pay to people who are entitled to benefits of a relatively small value in order to discharge liability to them in one payment. Under paragraph 3 these sums are to be disregarded for the purposes of paragraph 26, as it applies as amended by regulation 22, if they

were paid on a previous occasion and their payment is not in contravention of certain statutory rules. So these lump sums will not be aggregated with other benefits in determining if the cap applies to a second or subsequent tranche of compensation and, if so, what the amount of the cap is.

Trivial commutation lump sums and winding up lump sums are defined by reference to provisions in the Finance Act 2004 (c. 12) about the requirements for registered pension schemes that come into force on 6th April 2006. Until that date regulation 23 is modified to refer instead to sums extinguishing the member's rights and permitted to be paid under the rules applied by the Inland Revenue in determining whether tax advantages apply to schemes and their benefits.

Regulation 24 defines "pre 1997 service" and "post 1997 service" for the purposes of paragraph 28 of Schedule 7 to the Act.

Regulation 25 provides for modifications to Schedule 7 to the Act in relation to cash balance schemes.

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.