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FAMILY LAW, ENGLAND AND WALES

PENSIONS, ENGLAND AND WALES

The Divorce etc. (Pension Protection Fund) Regulations 2006

<i>Made</i> - - - -	<i>17th July 2006</i>
<i>Laid before Parliament</i>	<i>18th July 2006</i>
<i>Coming into force</i> - -	<i>8th August 2006</i>

The Lord Chancellor makes the following Regulations in exercise of the powers conferred by section 25E(5), (8) and (9) of the Matrimonial Causes Act 1973(a):

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Divorce etc. (Pension Protection Fund) Regulations 2006 and shall come into force on 8th August 2006.

(2) In these Regulations—

- (a) a reference to “the Act” is a reference to the Matrimonial Causes Act 1973;
- (b) a reference to a section by number alone is a reference to the section so numbered in the Act; and
- (c) “a modified pension attachment order” means an order—
 - (i) to which section 25E(2) applies which has effect in accordance with section 25E(3); or
 - (ii) which includes provision made by virtue of section 25B(4), as modified by regulation 4 of these Regulations, in relation to entitlement to PPF compensation.

Modification of section 25B(6)

2. Section 25B(6)(b) is modified so that, in relation to a modified pension attachment order, it applies as if—

- (a) the reference to payment by the person responsible for the arrangement is a reference to payment by the Board; and
- (b) a reference to the party with pension rights is a reference to the party entitled to PPF compensation.

(a) 1973 c.18; section 25E was inserted by the Pensions Act 2004 (c.35), section 319(1), Schedule 12, paragraph 3.
(b) Section 25B was inserted by section 166(1) of the Pensions Act 1995 (c.26) and amended by Schedule 4 to the Welfare Reform and Pensions Act 1999 (c.30).

Modification of orders made in pursuance of section 25B(7)

- 3.—(1) This regulation applies in relation to an order under section 23 if—
- (a) it includes provision made by virtue of section 25B(7) which requires the party with pension rights to exercise his right of commutation under an occupational pension scheme to any extent; and
 - (b) before the requirement is complied with the Board has assumed responsibility for the scheme as mentioned in section 25E(2)(a).
- (2) The order is to have effect from the time when the trustees or managers of the scheme receive the transfer notice as if—
- (a) references in the order to the trustees or managers of the scheme were references to the Board; and
 - (b) references in the order to any pension or lump sum to which the party with pension rights is or may become entitled under the scheme were references to any PPF compensation to which that person is or may become entitled in respect of the pension or lump sum.

Variation and appeal of pension sharing or pension attachment orders

- 4.—(1) This regulation applies where—
- (a) the court makes—
 - (i) a pension sharing order in respect of a person's shareable rights under an occupational pension scheme; or
 - (ii) an order which includes provision made by virtue of section 25B(4) or (7) in relation to such a scheme;
 - (b) the Board subsequently assumes responsibility for the scheme as mentioned in section 25E(2)(a); and
 - (c) the court intends to exercise any of the powers referred to in section 25E(7).
- (2) Where this regulation applies, the following provisions of Part II of the Act are modified so that they apply as if—
- (a) after section 21A(1) there were inserted—

“(1A) Where section 25E(7) applies, the reference in subsection (1)—

 - (a) to shareable rights under a specified pension arrangement shall include a reference to entitlement to PPF compensation (as defined in section 25E(9)); and
 - (b) to pension sharing shall include a reference to sharing of that compensation.”; and
 - (b) in section 25B(3) to (7A)—
 - (i) a reference to benefits under a pension arrangement includes a reference to entitlement to PPF compensation;
 - (ii) a reference to the person responsible for the pension arrangement includes a reference to the Board; and
 - (iii) a reference to the party with pension rights includes a reference to the party entitled to PPF compensation.

Modification of the Divorce etc. (Pensions) Regulations 2000

5. The Divorce etc. (Pensions) Regulations 2000(a) are modified so that, in relation to a modified pension attachment order, they apply as if—
- (a) after regulation 7 there were inserted—

(a) S.I. 2000/1123 as amended by S.I. 2005/2114.

“Pension attachment: discharge of liability of the Board

7A.—(1) This regulation applies where—

- (a) the Board has assumed responsibility for a pension arrangement as mentioned in section 25E(2)(a); and
- (b) the Board has given notice that it has so assumed responsibility to members and beneficiaries of the pension arrangement in compliance with regulation 3(6) of the Pension Protection Fund (Provision of Information) Regulations 2005(a).

(2) Where—

- (a) any of the events set out in regulation 6(2) have occurred; and
- (b) the other party has not, before receiving the notice referred to in (1)(b) above, given notice of that event to the person responsible for the pension arrangement in accordance with regulation 6(3),

the other party shall, within 14 days of the event, give notice of it to the Board.

(3) Paragraph (4) applies where it is not reasonably practicable for the Board to make a payment to the other party as required by the order because—

- (a) of the inaccuracy of the particulars supplied by the other party under rule 2.70 for any purpose mentioned in regulation 4(3)(c); or
- (b) the other party has failed to give notice that the particulars have ceased to be accurate.

(4) Where this paragraph applies, the Board—

- (a) may instead make the payment due to the other party to the party entitled to PPF compensation; and
- (b) shall then be discharged of liability to the other party to the extent of that payment.

(5) Where an event set out in regulation 6(2)(b) has occurred and, because the other party has failed to give notice in accordance with paragraph (2), the Board makes a payment to the other party as required by the order—

- (a) its liability to the party entitled to PPF compensation shall be discharged to the extent of that payment; and
- (b) the other party shall, within 14 days of the payment being made, make a payment to the party entitled to PPF compensation to the extent of that payment.

(6) In this regulation “the Board” and “PPF compensation” have the meanings given in section 25E(9).”; and

- (b) in regulation 8, for “or 7” there were substituted “, 7 or 7A”.

17th July 2006

Falconer of Thoroton, C

(a) S.I. 2005/674.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the following modifications.

Modification of Part II of the Matrimonial Causes Act 1973 (“the Act”) to allow for cases where a pension attachment order has been made and the Board of the Pension Protection Fund becomes involved with the pension arrangement in question.

Modification of orders including a provision made by virtue of section 25B(7) of the Act (order requiring a party to exercise a right of commutation) to enable the order to be enforced in respect of compensation paid by the Pension Protection Fund.

Modification of Part II of the Act in order to allow the court to exercise certain of its powers on an application to vary or an appeal in relation to a pension attachment or a pension sharing order notwithstanding the fact that the Board has assumed responsibility for the pension arrangement in question.

Modification of the Divorce etc. (Pensions) Regulations 2000 to provide for notices of change of circumstances in relation to pension attachment orders to be given to the Board where appropriate and for the Board to be discharged from liability in circumstances where payments cannot be made to the correct party or are made in error due to lack of or incorrect information.

The Pension Protection Fund was established by the Pensions Act 2004 (c.35) (‘the Pensions Act’). It pays compensation to members of certain pension schemes when a qualifying insolvency event in relation to the employer occurs and where there are insufficient assets in the pension scheme to cover the levels of compensation which would be payable by the Pension Protection Fund under the Pensions Act 2004.

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