These notes refer to the Pensions Act 2008 (c.30)
which received Royal Assent on 26 November 2008

PENSIONS ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 5: Pension compensation payable on discharge of pension compensation credit

297. Schedule 5 makes detailed provision concerning the calculation of compensation payable to the transferee (former spouse or civil partner). The way the compensation is calculated depends upon the status of the transferee at the date the transfer takes place.

298. The Schedule is accordingly divided into four Parts:-

- *Part 1* is introductory, covering interpretation and the determination of a pension compensation age;
- *Part 2* makes provision where transferees attain pension compensation age before or on transfer day;
- *Part 3* makes provision where transferees attain pension compensation age after transfer day; and
- *Part 4* provisions apply irrespective of the age of the transferee on transfer day.

299. The Schedule is intended to operate in a similar way to the corresponding provisions of Schedule 7 to the PA 2004 (Pension Compensation Provisions) as they apply to the calculation of pension compensation generally.

300. *Paragraph 3* makes provision about the age at which the transferee is to start receiving periodic compensation under the Schedule (the transferee's "pension compensation age"). In the usual case this will be when they reach the age at which the transferor starts to receive pension compensation payments.

Part 2: Transferee attains pension compensation age before or on transfer day

301. Where the transferee is, at the point the pension compensation order takes effect, over the pension compensation age they will receive periodic compensation for life (*paragraph 4*). This compensation starts from the transfer day, and comprises the initial annual rate of the compensation plus any annual increases due to inflation under*paragraph 12*. It is subject to any regulations applying the compensation cap made under*paragraph 18*.

302. *Paragraph 5* provides that 50% of the pension compensation in payment, or payable, will be paid to the transferee's surviving partner (widow, widower or surviving civil partner) after the death of the transferee. Regulations may set out when the surviving partner will not be entitled to compensation. This will allow provision to be made for cases where the scheme rules under which the transferor's compensation is calculated did not provide for pensions to a surviving partner.

Part 3: Transferee attains pension compensation after transfer day

303. Where the transferee has not reached the pension compensation age at the point of transfer they will become entitled to receive compensation payments for life starting from when they do reach the pension compensation age (*paragraph 6*). That compensation will comprise the initial annual rate, adjusted by any increases for inflation, up until the point when they reach pension compensation age under *paragraph 8*, plus any annual increases due to inflation under paragraph 17. The compensation will be subject to the provisions for commutation (*paragraph 9*), early payment (*paragraph 10*), deferred payment (*paragraph 11*) and the compensation cap (*paragraph 18*).

304. *Paragraph 7* provides that 50% of the pension compensation in payment or payable, plus increases for inflation under *paragraph 17*, will be paid to the transferee's surviving partner after the death of the transferee. Regulations may set out exceptions. This will allow provision to be made for cases where the scheme rules, under which the transferor’s compensation is calculated, did not provide for pensions to a surviving partner.

305. *Paragraph 8* provides for the initial rate of compensation to be increased to take account of the increases in prices, subject to a cap equal to inflation running at 2.5% every year, between the transfer day and the day before the day the transferee becomes entitled to payment. This is subject to the power in *Paragraph 20* for the Board of the Pension Protection Fund to alter the maximum rate of revaluation from 2.5% (the rate established by the amendments made by section 101 and Schedule 2).

306. *Paragraph 9* provides that the transferee can commute part of their pension compensation as a lump sum in prescribed circumstances, up to a maximum of 25%. The amount paid as a lump sum will be 25% of the pension compensation payable after reductions are made to take account of the compensation cap. The lump sum payable will be the actuarial equivalent of the commuted portion of the pension compensation calculated from tables designated for this purpose by the Board of the Pension Protection Fund. Regulations may set out the manner in which the option to commute may be exercised. The intention is that regulations will prescribe that the transferee can exercise the right to commute where the transferor had such a right and has not already exercised it before the transfer day. This paragraph also allows Secretary of State to change the maximum sum commuted by order.

307. *Paragraph 10* provides that regulations may prescribe when the transferee may receive pension compensation and lump sum compensation before their normal pension age. This applies to transferees under pension compensation age. The Board of the Pension Protection Fund will determine the actuarial reduction to be applied to compensation paid early. The intention is to prescribe that the transferee may take compensation early any time after they reach the age of 50. This provides for the transferee to take compensation early in the same way as the transferor would under Schedule 7 to PA 2004.

308. *Paragraph 11* will enable transferees in prescribed circumstances to delay receipt of the pension compensation until a date after they would reach the pension compensation age. The Board will determine the amount by which the compensation will increase to take account of the delayed payment. This provides for the transferee to defer compensation in the same way as the transferor will be entitled to do once the amendment of Schedule 7 to PA 2004 made by paragraph 13 of Schedule 8 to the Act comes into force.

309. *Paragraph 12* will enable transferees who have a progressive disease in consequence of which death can reasonably be expected in the following six months, and who are not already receiving compensation in respect of a particular pension scheme, to apply for a lump sum equal to twice the annual rate of compensation which they would have been entitled to had they reached normal pension age.

310. *Paragraph 13* sets out the manner in which an application can be made, and provides for the Board of the PPF to require certain information, for example, concerning the transferee's illness.

311. *Paragraph 14* sets out how the Board must respond to an application, and provides for applications to be held over and determined at a later date where the transferee does not satisfy the conditions relating to their terminal illness, but may satisfy the conditions in a the next six months.

312. *Paragraph 15* means that a successful applicant will receive a lump sum calculated in accordance with sub-paragraph (2) in lieu of future rights to compensation.

313. *Paragraph 16* provides for the Board of the PPF to have access to certain information held by the Secretary of State to assist in dealing with applications for terminal illness lump sums.

314. The provisions in paragraphs 12 to 16 make corresponding provision in respect of transferees as the new paragraphs 25B to 25F inserted into Schedule 7 to the PA 2004 by Schedule 8 to this Act make in respect of PPF members more generally.

Part 4: Provisions applicable irrespective of age of transferee on transfer day

315. Paragraph 17 provides for the amount of compensation derived from the transferor's service after 1997 to be increased every year in line with the increase in prices, subject to a maximum increase of 2.5% a year. This provides for the transferee to receive increases due to take account of inflation in the same way as the transferor. This is subject to the power in paragraph 20 for the Board to alter the maximum rate of increase from 2.5% (the rate established by the amendments made by section 101 and Schedule 2).

316. *Paragraph 18* allows the Secretary of State to set out in regulations how the compensation cap under paragraph 26(7) of Schedule 7 to the PA 2004 will apply to the compensation payable to the transferee. The intention is that the cap will apply in a way that ensures that both the transferee and transferor receive the appropriate levels of compensation without creating additional liabilities for the Board of the Pension Protection Fund or opportunities for evasion of the cap.

317. *Paragraph 19* provides that regulations may provide for compensation to be payable to partners and dependants of prescribed descriptions. This allows for the extension of compensation payment to surviving civil partners.

318. *Paragraph 20* provides that the Board of the Pension Protection Fund may determine the maximum indexation rates for the purposes of paragraphs 8 and 17. For the purposes of paragraph 17 this can only apply to future increases and can apply to all cases or those cases where entitlement arose after the determination. The Board of the Pension Protection Fund must consult anyone it considers appropriate and publish details of the proposed determination as it considers appropriate. The Board must consider any representations made. This is an equivalent power to that which applies in respect of the rates of revaluation and indexation in paragraph 29 of Schedule 7 to the PA 2004.