

2007 No. 782

PENSIONS

**The Pension Protection Fund (Miscellaneous Amendments)
Regulations 2007**

<i>Made</i> - - - -	<i>9th March 2007</i>
<i>Laid before Parliament</i>	<i>15th March 2007</i>
<i>Coming into force</i> - -	<i>6th April 2007</i>

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 126(1)(b), 143(3) and (4), 151(8) and (9)(b), 163(6)(a), 168(1) and (2)(e), 179(1)(a) and (3), 206(2)(a), 315(2), (4) and (5) and 318(1) of, and paragraph 24(1) of Schedule 7 to, the Pensions Act 2004(a).

In accordance with section 317(1) of that Act he has consulted such persons as he considers appropriate.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Pension Protection Fund (Miscellaneous Amendments) Regulations 2007 and shall come into force on 6th April 2007.

(2) In these Regulations “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) the last one, began.

Amendment of the Pension Protection Fund (Entry Rules) Regulations 2005

2.—(1) Amend the Pension Protection Fund (Entry Rules) Regulations 2005(b) as follows.

(2) In regulation 2(1) (schemes which are not eligible schemes)—

(a) after sub-paragraph (f) insert—

“(fa) a tax registered scheme which, immediately before 6th April 2006, was a former approved superannuation fund within the meaning of paragraph 1(1)(b) of Schedule 36 to the Finance Act 2004 (deemed registration of existing schemes);”;

(b) for head (i) of sub-paragraph (l) substitute—

“(i) the provisions of the scheme provide that any decision made by the trustees is made by the unanimous agreement of the trustees who are members of the scheme; or”; and

(a) 2004 c.35. The Act is modified in its application to partially guaranteed schemes by S.I. 2005/277, in its application to multi-employer schemes by S.I. 2005/441 (as amended by S.I. 2005/993 and 2113) and 2006/566, and in its application to hybrid schemes by S.I. 2005/449. The Act is further modified by S.I. 2005/3377 and 3380. Section 318(1) is cited because of the meaning there given to “prescribed” and “regulations”.

(b) S.I. 2005/590, amended by S.I. 2005/993, 2113, 2153 and 2224 and 2006/580.

(c) for head (i) of sub-paragraph (m) substitute—

“(i) the provisions of the scheme provide that any decision made by the company in its capacity as trustee is made by the unanimous agreement of the directors of that company who are members of the scheme; or”.

(3) In paragraph 5(b)(a) of the Schedule (contents of accounts audited by the auditor of the scheme) for “regulation 12” to the end of that paragraph substitute “regulation 13 of the Occupational Pension Schemes (Investment) Regulations 2005(b) (investments to which restrictions do not apply) applies”.

Amendment of the Pension Protection Fund (Compensation) Regulations 2005

3.—(1) Amend the Pension Protection Fund (Compensation) Regulations 2005(c) as follows.

(2) In regulation 19(3)(d) (commutation of periodic compensation) for “paragraph 20(2)(b)” substitute “regulation 20(2)(b)”.

Amendment of the Pension Protection Fund (Valuation) Regulations 2005

4.—(1) Amend the Pension Protection Fund (Valuation) Regulations 2005(e) as follows.

(2) In regulation 1(2) (interpretation)—

(a) after the definition of “pension credit rights” insert—

““pre-6th April 1997 contract of insurance” means a contract of insurance that—

- (i) falls within the definition of a relevant contract of insurance in section 161(8) of the Act;
- (ii) was taken out before 6th April 1997; and
- (iii) the trustees or managers are, or should reasonably be, aware of;”;

(b) for the definition of “relevant accounts” substitute—

““relevant accounts” for the purposes of identifying and valuing the assets of a scheme, means audited accounts for the scheme which—

- (a) contain the information specified in the Schedule;
- (b) show a true and fair value of —
 - (i) the financial transactions of the scheme during the period to which the accounts relate (“the accounting period”);
 - (ii) the amount and disposition of the assets at the end of the accounting period; and
 - (iii) the liabilities of the scheme, other than the liabilities to pay pensions and benefits, after the end of the accounting period;
- (c) include a report by the auditor in writing as to whether or not in his opinion the requirements of paragraphs (a) and (b) above are satisfied; and
- (d) are prepared in respect of a period ending with the relevant time of the valuation;”.

(3) In regulation 2 (provision of actuarial valuation to determine scheme underfunding)—

(a) for paragraph (1) substitute—

“(1) The trustees or managers of an eligible scheme shall provide the Board or the Regulator on the Board’s behalf with its first section 179 valuation—

(a) Paragraph 5(b) was amended by S.I. 2006/580.
(b) S.I. 2005/3378. Regulation 13 was amended by S.I. 2006/778.
(c) S.I. 2005/670; the relevant amending instrument is S.I. 2006/580.
(d) Paragraph (3) was inserted by S.I. 2006/580.
(e) S.I. 2005/672, the relevant amending instrument is S.I. 2005/993.

- (a) in the case of an eligible scheme which is a registrable scheme prior to 6th April 2007—
 - (i) within 15 months of the relevant time of that valuation; or
 - (ii) by no later than 31st March 2008,
 whichever is the earlier;
- (b) in the case of an eligible scheme which becomes a registrable scheme on or after 6th April 2007, within 15 months of the effective date of the first actuarial valuation obtained by them under section 224 of the Act (actuarial valuations and reports).”;
- (b) omit paragraphs (2) and (3);
- (c) in paragraph (5) for “12 months” substitute “15 months”.
- (4) In regulation 3 (excluded assets) after paragraph (b) add—
 - “(c) in the case of either a section 143 or section 179 valuation, an amount in respect of the value of any pre-6th April 1997 contract of insurance if—
 - (i) the trustees or managers have taken all reasonable steps to obtain information concerning that contract of insurance (whether by searching the records of the scheme or otherwise); and
 - (ii) the information that they provide concerning that contract of insurance is insufficient, in the opinion of the appropriate person, to conduct a valuation.”.
- (5) In regulation 6 (valuation of protected liabilities)—
 - (a) the provisions of the regulation shall become paragraph (1) of the regulation; and
 - (b) after that paragraph add—
 - “(2) Where regulation 3(c) applies, the amount representing the value of a protected liability in respect of the benefits secured by a pre-6th April 1997 contract of insurance shall be excluded from the valuation of the eligible scheme’s protected liabilities.”.
- (6) After regulation 10 (prescribed qualifications for the purposes of section 143 and section 179 of the Act) add—

“SCHEDULE

Regulation 1(2)

Contents of Accounts Audited by the Auditor of the Scheme

1. An account of the financial additions to, withdrawals from and changes to the value of the fund during the accounting period.

2.—(1) A statement, as at the end of the accounting period, of the assets at market value, or trustees’ or managers’ estimate thereof where the market value is not readily ascertainable, and liabilities of the scheme, other than liabilities to pay pensions and benefits after the end of the accounting period—

- (a) giving, in the case of any assets which are stated as an estimate of their market value, the reason why the valuation is an estimate;
- (b) showing the distribution of the investments and other assets of the scheme between each of the following categories (where none of the investments falls within a particular category, that fact is not required to be stated), namely—
 - (i) insurance policies;
 - (ii) public sector fixed interest investments and separately showing quoted securities and unquoted securities;
 - (iii) other fixed interest investments and separately showing quoted securities and unquoted securities;

- (iv) index-linked securities and separately showing quoted securities and unquoted securities;
 - (v) equities (including convertible shares) and separately showing quoted equities and unquoted equities;
 - (vi) property (which in this paragraph means any right or interest in freehold or leasehold land or buildings);
 - (vii) unit trusts invested in property;
 - (viii) other unit trusts;
 - (ix) managed funds (other than unit trusts) invested in property;
 - (x) other managed funds (not being unit trusts);
 - (xi) loans (whether or not secured by mortgage);
 - (xii) cash deposits and cash in hand;
 - (xiii) investments and other assets not included in heads (i) to (xii) above; and
- (c) showing separately, in the case of investments in each category, investments in the United Kingdom and investments outside the United Kingdom, and in the case of cash investments mentioned in heads (vii) to (x) of sub-paragraph (b) investments where the company operating the unit trust or managed fund is, and where it is not, a company registered in the United Kingdom.

(2) Where the assets include insurance policies which are specifically allocated to the provision of benefits for, and which provide all the benefits payable under the scheme to, particular members or other persons in respect of particular members or both, those policies must be included in the statement and there must be a note of the existence of such policies but that entry need not include their market value or an estimate.

(3) Where the assets—

- (a) are invested only for the purposes of securing additional money purchase benefits derived from voluntary contributions; and
- (b) are specifically allocated to the provision of additional benefits for particular members or other persons in respect of particular members (or both),

a note that paragraphs (a) and (b) apply must be included in the statement, but that entry need not include the market value or an estimate of value of those assets.

3. Where any assets or liabilities are denominated in currencies other than sterling, a translation of those assets into sterling and an explanation of the basis on which they have been translated.

4. Particulars of any investment (other than in UK Government securities) in which more than 5 per cent. of the total value of the net assets of the scheme is invested, and if any such investment is an insurance policy, a statement of its main characteristics.

5. Where the scheme has employer-related investments, within the meaning of section 40(2) of the Pensions Act 1995(a) (restriction on employer-related investments), a statement—

- (a) as to the percentage of the scheme's resources invested in such investments at the end of the accounting period; and
- (b) if that percentage exceeds 5 per cent., as the percentage of the scheme's resources which are investments to which regulation 13 of the Occupational Pension Schemes (Investment) Regulations 2005 (restrictions on employer-related investments) applies.

(a) 1995 c.26. Section 40 was amended by section 319(1) of, and paragraph 51 of Schedule 12 to, the Pensions Act 2004 and by S.I. 2001/3649 and 2004/355.

6. In respect of every other amount shown in the accounts other than the amounts referred to in paragraph 7, a statement of the corresponding amount for the scheme year previous to the accounting period, except in a case where regulation 2 of the Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) Regulations 1996(a) (requirement for trustees or managers to obtain documents) is complied with by the trustees or managers of a scheme for the first time.

7. The total amount of the purchases and the total amount of the sales of investments during the accounting period.

8. A statement whether the accounts have been prepared in accordance with the Statement of Recommended Practice, the guidelines (“Financial Reports of Pension Schemes”) published by the Pensions Research Accountants Group(b) or another organisation approved for this purpose by the Accounting Standards Board(c), current at the end of the accounting period and, if not, an indication of where there are any material departures from those guidelines.”.

Amendment of the Pension Protection Fund (General and Miscellaneous Amendments) Regulations 2006

5.—(1) Amend the Pension Protection Fund (General and Miscellaneous Amendments) Regulations 2006(d) as follows.

(2) In regulation 6 (circumstances where the Board is not required to recover overpaid scheme benefits)—

(a) in paragraph (2) for the words “it shall determine, having regard to any evidence provided under paragraph (1)(c)(ii),” substitute “it shall as soon as reasonably practicable determine”; and

(b) after paragraph (2) insert—

“(2A) The Board may request such additional information from the person who gave the hardship notification as it reasonably requires for the purpose of making a determination under paragraph (2).

(2B) In making the determination, the Board shall have regard to any evidence provided under paragraph (1)(c)(ii) and any information provided in accordance with paragraph (2A).”.

(3) In regulation 16 (recovery of PPF compensation overpayments)—

(a) in paragraph (2) for the words “it shall determine, having regard to any evidence provided under paragraph (1)(c)(ii),” substitute “it shall as soon as reasonably practicable determine”; and

(b) after paragraph (2) insert—

“(2A) The Board may request such additional information from the person who gave the hardship notification as it reasonably requires for the purpose of making a determination under paragraph (2).

(2B) In making the determination, the Board shall have regard to any evidence provided under paragraph (1)(c)(ii) and any information provided under paragraph (2A).”.

Transitional provision for schemes with an assessment date before 1st April 2007

6. In the case of a scheme with an assessment date before 1st April 2007, the definition of “relevant accounts” in regulation 1(2) of the Pension Protection Fund (Valuation) Regulations

(a) S.I. 1996/1975; relevant amending instruments are S.I. 2000/833, 3198, 2005/2426 and 2006/467.

(b) Copies of this guidance can be obtained from Croner CCH Group Limited, 145 London Road, Kingston-upon-Thames, Surrey, KT2 6SR.

(c) The Accounting Standards Board is at 5th floor, Aldwych House, 71-91 Aldwych, London, WC2B 4HN.

(d) S.I. 2006/580.

2005 shall continue to have effect until 31st December 2007 as if regulation 4(2)(b) of these Regulations had not come into force.

Revocation

7. The following provisions are revoked—

- (a) paragraph 13A of the Schedule to the Pension Protection Fund (Reviewable Matters) Regulations 2005(a) (prescribed period for failure to make a determination under regulation 6(2) of the Pension Protection Fund (General and Miscellaneous Amendments) Regulations 2006);
- (b) regulation 21(5)(b) of the Pension Protection Fund (General and Miscellaneous Amendments) Regulations 2006 (amendment of the Entry Rules Regulations);
- (c) regulation 3 of the Pension Protection Fund (Reviewable Matters and Review and Reconsideration of Reviewable Matters) (Amendment) Regulations 2006(b) (which inserts the provision revoked by sub-paragraph (a)).

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

James Purnell
Minister of State,
Department for Work and Pensions

9th March 2007

(a) S.I. 2005/600. Paragraph 13A was inserted by S.I. 2006/685.
(b) S.I. 2006/685.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Pension Protection Fund (Entry Rules) Regulations 2005 (S.I. 2005/590) (“the Entry Rules Regulations”), the Pension Protection Fund (Compensation) Regulations 2005 (S.I. 2005/670) (“the Compensation Regulations”), Pension Protection Fund (Valuation) Regulations 2005 (S.I. 2005/672) (“the Valuation Regulations”) and the Pension Protection Fund (General and Miscellaneous Amendments) Regulations 2006 (S.I. 2006/580) (“the Miscellaneous Regulations”).

Regulation 2 amends the Entry Rules Regulations so that former approved superannuation funds will cease to be eligible schemes for the purposes of the Pension Protection Fund. It also amends regulation 2(1)(l) and (m) to provide for all decisions which fall to be made by the trustees or company in its capacity as trustee to be made by unanimous agreement of the trustees, or directors of that company, who are members of the scheme. A cross reference in paragraph 5(b) of the Schedule is also corrected.

Regulation 3 amends regulation 19(3) of the Compensation Regulations to correct a cross reference.

Regulation 4 amends the Valuation Regulations to add a new definition of “pre-6th April 1997 contract of insurance” and substitute a new definition of “relevant accounts”. It amends the prescribed date by which an eligible scheme, which becomes a registrable scheme before the commencement date, submits its initial actuarial valuation in accordance with section 179 of the Pensions Act 2004 (c.35) to within 15 months of the relevant time of the valuation or by no later than 31st March 2008, whichever is the earlier. It also amends the prescribed date by which the trustees or managers of an eligible scheme provide any subsequent actuarial valuation to the Board of the Pension Protection Fund, or the Pensions Regulator, to within 15 months of the relevant time of that valuation. It further provides for the amount representing the value of a pre-6th April 1997 contract of insurance to be excluded from the actuarial valuation of the assets and protected liabilities of an eligible scheme if, in the opinion of the appropriate person as defined in regulation 1(2) of the Valuation Regulations, there is insufficient information about that contract of insurance with which to conduct a valuation.

Regulation 5 amends provisions of the Miscellaneous Regulations which specify circumstances in which the Board is not required to recover overpayments of scheme benefits or compensation. Non-recovery of an amount is permitted in cases where its recovery would cause hardship and, in determining whether such grounds exist, the amendments made by this regulation provide that the Board may seek additional information and, having regard to the information before it, must make its determination as soon as is reasonably practicable.

Regulation 6 makes transitional provision in relation to the coming into force of the new definition of “relevant accounts” in the Valuation Regulations.

Regulation 7 makes revocations that are consequential on amendments made by regulations 2(3) and 5 of these Regulations.

These Regulations have only a negligible impact on the cost of business, charities or the voluntary sector. Publication of a full regulatory impact assessment is not necessary for such legislation.

STATUTORY INSTRUMENTS

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**The Pension Protection Fund (Miscellaneous Amendments)
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