

**2010 No. 560**

**PENSIONS**

**The Pension Protection Fund (Miscellaneous Amendments)  
Regulations 2010**

*Made* - - - - - *2nd March 2010*

*Laid before Parliament* *8th March 2010*

*Coming into force in accordance with regulation 1(2)*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 181A(1) and (5), 206(4)(a), 207(2), 315(2), (4) and (5) and 318(1) of, and paragraphs 25(1) and 33 of Schedule 7 to, the Pensions Act 2004(a).

The Secretary of State has consulted such persons as the Secretary of State considers appropriate in accordance with section 317(1) of that Act.

**Citation and commencement**

**1.**—(1) These Regulations may be cited as the Pension Protection Fund (Miscellaneous Amendments) Regulations 2010.

(2) These Regulations come into force—

- (a) for the purposes of this regulation and regulations 2, 3 and 5 on 1st April 2010, and
- (b) for the purposes of regulation 4, on 6th April 2010.

**Amendment of the Pensions Act 2004**

**2.** In Schedule 9 to the Pensions Act 2004 (reviewable matters)(b), after paragraph 19A(c) insert—

“**19B.** Any determination by the Board under regulation 19A(7) or (8) of the Pension Protection Fund (General and Miscellaneous Amendments) Regulations 2006 (S.I. 2006/580) (interest for late payment of the pension protection levy)(d) to waive interest or the failure to make any such determination.”.

---

(a) 2004 c.35. Section 181A was inserted by paragraph 5 of Schedule 10 to the Pensions Act 2008 (c.30). Section 318(1) is cited for the meaning it gives to “prescribed” and “regulations”.  
(b) Schedule 9 was amended by S.I.s 2005/441, 600 and 2113, 2006/685 and 2007/771.  
(c) Paragraph 19A was inserted by S.I. 2007/771.  
(d) S.I. 2006/580. Regulation 19A is inserted by regulation 5 of these Regulations.

### **Amendment of the Pension Protection Fund (Review and Reconsideration of Reviewable Matters) Regulations 2005**

3. In the Schedule to the Pension Protection Fund (Review and Reconsideration of Reviewable Matters) Regulations 2005 (interested persons who may apply for review of specified matters)(a), after paragraph 19A(b)—

(a) in the first column insert—

“19B. Paragraph 19B”, and

(b) in the second column insert—

“19B. The trustees or managers of the scheme in respect of which the Board has made, or failed to make, a determination to waive interest under regulation 19A(7) or (8) of the Pension Protection Fund (General and Miscellaneous Amendments) Regulations 2006 (interest for late payment of the pension protection levy).”.

### **Amendment of the Pension Protection Fund (Compensation) Regulations 2005**

4.—(1) The Pension Protection Fund (Compensation) Regulations 2005(c) are amended as follows.

(2) In regulation 2 (circumstances where a person shall be entitled to early payment of compensation)—

(a) for paragraph (2)(b), substitute—

“(b) that on the date on which the compensation is to become payable early—

(i) the person has attained the age of 55; or

(ii) paragraph 22 of Schedule 36 to the 2004 Act (rights to take benefit before normal minimum benefit age)(d) applies to the person and that person has attained—

(aa) the age of 50; and

(bb) the age referred to in paragraph 22(8) of that Schedule.”.

(b) for paragraph (3)(a)(ii), substitute—

“(ii) the name of the scheme for which the Board has assumed responsibility (“the relevant scheme”); and”.

(c) in paragraph (3)(a)(iii), for “(“the requested early payment date”);” substitute “; and”, and

(d) omit—

(i) paragraph (3)(c) and the word “and” immediately preceding it, and

(ii) paragraph (4).

(3) In regulation 25 (cash balance schemes: modification of paragraphs 5, 15 and 19 of Schedule 7 to the Act)—

(a) in paragraph (1) at the beginning, insert “Subject to paragraph (1A),”, and

(b) after paragraph (1), insert—

“(1A) This regulation does not apply to a cash balance scheme which is also a career average revalued earnings scheme within the meaning of regulation 26(1).”.

(4) After Part 10, insert—

---

(a) S.I. 2005/669. The Schedule was amended by S.I.s 2005/993, 2113 and 2184, 2006/685 and 2007/771.

(b) Paragraph 19A was inserted by S.I. 2007/771.

(c) S.I. 2005/670.

(d) 2004 c.12. Paragraph 22 was amended by paragraphs 54 and 55 of Schedule 10 to the Finance Act 2005 (c.7) and paragraph 43 of Schedule 23 to the Finance Act 2006 (c.25).

## “PART 11

### Career average revalued earnings schemes

#### **Career average revalued earnings schemes: modification of paragraphs 8, 10, 11 and 14 of Schedule 7 to the Act**

**26.**—(1) This regulation applies to a career average revalued earnings scheme, that is to say an occupational pension scheme where the whole of the pension entitlement is determined by reference to the member’s earnings in each year of pensionable service, and where those earnings, or a proportion of those earnings accrued as a pension, may be revalued each year until the member attains normal pension age or the pension is put into payment.

(2) In their application to a career average revalued earnings scheme, paragraphs 8 and 11 of Schedule 7 to the Act shall have effect with the following modifications—

(a) for sub-paragraph (5) substitute—

“(5) Subject to sub-paragraph (5A), the accrued amount means an amount equal to such initial annual rate of pension to which the member would have been entitled under the admissible rules had the member attained normal pension age when the pensionable service relating to the pension ended.

(5A) In any case where the Board is satisfied that it is not possible to identify the initial annual rate of pension in sub-paragraph (5), the Board may, having regard to the admissible rules, determine the accrued amount.”, and

(b) omit sub-paragraphs (6) and (7).

(3) In their application to a career average revalued earnings scheme, the provisions of paragraph 10 of Schedule 7 to the Act shall have effect with the following modifications—

(a) for sub-paragraph (4) substitute—

“(4) Subject to sub-paragraph (4A), the accrued amount means an amount equal to such amount of scheme lump sum to which the member would have been entitled under the admissible rules had the member attained normal pension age when the pensionable service relating to the scheme lump sum ended.

(4A) In any case where the Board is satisfied that it is not possible to identify the amount of scheme lump sum in sub-paragraph (4), the Board may, having regard to the admissible rules, determine the accrued amount.”, and

(b) omit sub-paragraphs (5) and (6).

(4) In their application to a career average revalued earnings scheme, the provisions of paragraph 14 of Schedule 7 to the Act shall have effect with the following modifications—

(a) for sub-paragraph (5) substitute—

“(5) Subject to paragraph (5A), the accrued amount means an amount equal to such amount of scheme lump sum to which the member would have been entitled under the admissible rules had the member attained normal pension age when the pensionable service relating to the scheme lump sum ended.

(5A) In any case where the Board is satisfied that it is not possible to identify the amount of scheme lump sum in sub-paragraph (5), the Board may, having regard to the admissible rules, determine the accrued amount.”, and

(b) omit sub-paragraphs (6) and (7).

**Schemes where part of pension entitlement is determined on a career average revalued earnings basis: modification of paragraphs 8, 10, 11 and 14 of Schedule 7 to the Act**

27.—(1) This regulation applies to an occupational pension scheme where part of the pension entitlement is determined on a career average revalued earnings basis, that is to say by reference to the member's earnings in each year of pensionable service applicable to that part, and where those earnings, or a proportion of those earnings accrued as a pension, may be revalued each year until the member attains normal pension age or the pension is put into payment.

(2) In their application to a scheme where part of the pension entitlement is determined on a career average revalued earnings basis, paragraphs 8 and 11 of Schedule 7 to the Act shall have effect with the following modifications—

(a) for sub-paragraph (5) substitute—

“(5) Subject to sub-paragraphs (6) and (7), the accrued amount is—

$$X + Y,$$

where—

X is an amount equal to such initial annual rate of that part of the pension which is determined on a career average revalued earnings basis to which the member would have been entitled under the admissible rules had the member attained normal pension age when the pensionable service relating to that part of the pension ended, or in any case where the Board is satisfied that it is not possible to identify the initial annual rate of pension, such amount as the Board may determine, having regard to the admissible rules, and

Y is  $AR \times PE \times PS$ .

(5A) In sub-paragraph (5)—

“AR” is the active member's annual accrual rate, under the admissible rules, in respect of that part of the pension which is not determined on a career average revalued earnings basis,

“PE” is the active member's annual pensionable earnings, under the admissible rules, in respect of that part of the pension which is not determined on a career average revalued earnings basis, and

“PS” is the active member's pensionable service, under the admissible rules, in years (including any fraction of a year) in respect of that part of the pension which is not determined on a career average revalued earnings basis.”,

(b) in sub-paragraph (6)—

(i) for “the pension” substitute “that part of the pension which is not determined on a career average revalued earnings basis”,

(ii) after “formula” insert “ $Y$  is  $AR \times PE \times PS$ ”, and

(iii) for “the accrued amount” substitute “ $Y$ ”, and

(c) in sub-paragraph (7)—

(i) after “formula” insert “ $Y$  is  $AR \times PE \times PS$ ”, and

(ii) for “the accrued amount” substitute “ $Y$ ”.

(3) In their application to a scheme where part of the pension entitlement is determined on a career average revalued earnings basis, paragraph 10 of Schedule 7 to the Act shall have effect with the following modifications—

(a) for sub-paragraph (4) substitute—

“(4) Subject to sub-paragraphs (5) and (6), the accrued amount is—

$$X + Y,$$

where—

X is an amount equal to such amount of the scheme lump sum that relates to that part of the pension which is determined on a career average revalued earnings basis, to which the member would have been entitled under the admissible rules had the member attained normal pension age when the pensionable service relating to that scheme lump sum ended, or in any case where the Board is satisfied that it is not possible to identify the amount of scheme lump sum, such amount as the Board may determine, having regard to the admissible rules, and

Y is  $AR \times PE \times PS$ .

(4A) In sub-paragraph (4)—

“AR” is the active member’s annual accrual rate, under the admissible rules, in respect of the scheme lump sum that relates to that part of the pension which is not determined on a career average revalued earnings basis,

“PE” is the active member’s annual pensionable earnings, under the admissible rules, in respect of the scheme lump sum that relates to that part of the pension which is not determined on a career average revalued earnings basis, and

“PS” is the active member’s pensionable service, under the admissible rules, in years (including any fraction of a year) in respect of the scheme lump sum that relates to that part of the pension which is not determined on a career average revalued earnings basis.”,

(b) in sub-paragraph (5)—

(i) after “the scheme lump sum” insert “that relates to that part of the pension which is not determined on a career average revalued earnings basis”,

(ii) after “formula” insert “ $Y$  is  $AR \times PE \times PS$ ”, and

(iii) for “the accrued amount” substitute “Y”, and

(c) in sub-paragraph (6)—

(i) after “formula” insert “ $Y$  is  $AR \times PE \times PS$ ”, and

(ii) for “the accrued amount” substitute “Y”.

(4) In their application to a scheme where part of the pension entitlement is determined on a career average revalued earnings basis, paragraph 14 of Schedule 7 to the Act shall have effect with the following modifications—

(a) for sub-paragraph (5) substitute—

“(5) Subject to sub-paragraphs (6) and (7), the accrued amount is—

$$X + Y,$$

where—

X is an amount equal to such amount of scheme lump sum that relates to that part of the pension which is determined on a career average revalued earnings basis, to which the member would have been entitled under the admissible rules had the member attained normal pension age when the pensionable service relating to that scheme lump sum ended, or in any case where the Board is satisfied that it is not possible to identify the amount of scheme lump sum, such amount as the Board may determine, having regard to the admissible rules, and

Y is  $AR \times PE \times PS$ .

(5A) In sub-paragraph (5)—

“AR” is the active member’s annual accrual rate, under the admissible rules, in respect of the scheme lump sum that relates to that part of the pension which is not determined on a career average revalued earnings basis,

“PE” is the active member’s annual pensionable earnings, under the admissible rules, in respect of the scheme lump sum that relates to that part of the pension which is not determined on a career average revalued earnings basis, and

“PS” is the active member’s pensionable service under the admissible rules, in years (including any fraction of a year) in respect of the scheme lump sum that relates to that part of the pension which is not determined on a career average revalued earnings basis.”,

- (b) in sub-paragraph (6)—
  - (i) after “the scheme lump sum” insert “that relates to that part of the pension which is not determined on a career average revalued earnings basis”,
  - (ii) after “formula” insert “Y is AR x PE x PS”, and
  - (iii) for “the accrued amount” substitute “Y”, and
- (c) in sub-paragraph (7)—
  - (i) after “formula” insert “Y is AR x PE x PS”, and
  - (ii) for “the accrued amount” substitute “Y”.”.

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

**5.** After regulation 19 of the Pension Protection Fund (General and Miscellaneous Amendments) Regulations 2006 (collection of the pension protection levy by instalments)(a), insert—

#### **“Interest for late payment of the pension protection levy**

**19A.**—(1) Subject to paragraph (2), interest is to be charged in the case of late payment of a pension protection levy.

(2) Interest, or any part of interest, is not to be charged where there is a waiver under—

- (a) paragraph (7) in respect of that interest; or
- (b) paragraph (8) in respect of that part of interest.

(3) There is late payment of a pension protection levy where that levy has not been paid within 28 days of the date on which the Board sends the notification under section 181(3)(c) of the Act (calculation, collection and recovery of levies).

(4) The annual rate of interest to be charged is 5% higher than—

- (a) the rate announced from time to time by the Monetary Policy Committee(b) of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the money markets; or
- (b) where an order under section 19 of the Bank of England Act 1998 (reserve powers)(c) is in force, any equivalent rate determined by the Treasury under that section.

(5) Interest is to be calculated—

- (a) on a daily basis;
- (b) on the amount of the pension protection levy which has not been paid; and
- (c) from the first day on which there is a late payment of the pension protection levy until the day on which that levy is paid.

(6) Where the interest to be charged includes a fraction of a penny, that fraction is to be ignored.

(7) The circumstances in which interest may be waived are where the Board is satisfied that—

---

(a) S.I. 2006/580.

(b) The Monetary Policy Committee was established in accordance with section 13 of the Bank of England Act 1998 (c.11).

(c) 1998 c.11.

- (a) any of the circumstances specified in regulation 4 of the Pension Protection Fund (Waiver of Pension Protection Levy and Consequential Amendments) Regulations 2007 (circumstances in which pension protection levy may be waived)(a) apply;
  - (b) charging interest would not be conducive to the prudent management of the Board's financial affairs; or
  - (c) it is reasonable not to charge interest.
- (8) The circumstances in which any part of interest may be waived are where the Board is satisfied that—
- (a) the circumstances mentioned in paragraph (7)(a) apply; or
  - (b) it is reasonable not to charge any part of interest.
- (9) For the purposes of considering whether it is reasonable not to charge interest or any part of interest under paragraphs (7)(c) and (8)(b), the Board must have regard to such matters as the Board considers relevant including (where relevant) the following matters—
- (a) the dates on which any payments of the pension protection levy are made;
  - (b) the dates on which any payments of the pension protection levy were made in previous years;
  - (c) any failure by the person or persons by or on behalf of whom the pension protection levy is payable to—
    - (i) reply to correspondence from the Board about interest or the pension protection levy; or
    - (ii) provide the Board with information it requests about interest or the pension protection levy; and
  - (d) any—
    - (i) review, reconsideration or reference to the PPF Ombudsman under Chapter 6 of Part 2 of the Act; or
    - (ii) appeal against any determination or direction of the PPF Ombudsman; which has been brought by the person or persons by or on behalf of whom the pension protection levy is payable.”.

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

2nd March 2010

*Angela Eagle*  
Minister of State,  
Department for Work and Pensions

---

(a) S.I. 2007/771.

## EXPLANATORY NOTE

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

These Regulations amend:

- the Pensions Act 2004 (c.35) (“the 2004 Act”),
- the Pension Protection Fund (Review and Reconsideration of Reviewable Matters) Regulations 2005 (S.I. 2005/669) (“the Review Regulations”),
- the Pension Protection Fund (Compensation) Regulations 2005 (S.I. 2005/670) (“the Compensation Regulations”), and
- the Pension Protection Fund (General and Miscellaneous Amendments) Regulations 2006 (S.I. 2006/580) (“the General Regulations”).

Regulation 2 amends the 2004 Act. Where interest is charged on the late payment of a pension protection levy, the Board of the Pension Protection Fund (“the Board”) may waive the interest. The amendment made by this regulation provides that decisions on waiving interest may be challenged by way of review, reconsideration and appeal to the Pension Protection Fund Ombudsman.

Regulation 3 amends the Review Regulations to specify the persons who may bring such a challenge to the Board’s decisions on waiving interest.

Regulation 4 amends the Compensation Regulations. The amendments made by paragraph (2) change the circumstances in which Pension Protection Fund compensation can be paid early. They raise the minimum age a person can become entitled to early payments, reduce the information a person has to provide to the Board and enable the Board to make early payments more quickly.

Regulation 4(4) inserts regulations 26 and 27 into the Compensation Regulations which provide for modifications to provisions in Schedule 7 to the 2004 Act in relation to career average revalued earnings schemes, or schemes where part of pension entitlement is determined on a career average revalued earnings basis. (Paragraph (3) makes a consequential amendment.)

Regulation 5 amends the General Regulations. The amendments make provision for interest to be charged where there is late payment of a pension protection levy. In particular, they set out when interest arises, the rate of interest, how interest is calculated and the circumstances in which the Board can waive interest.

A full impact assessment has not been produced for the provisions in regulation 4 as they have no impact on the private or voluntary sectors. An assessment of the impact on private and voluntary sector pension schemes of the provisions in regulations 2, 3 and 5 is included in the impact assessment that accompanied the Pensions Act 2008 (c.30). Copies of that assessment are available from the libraries of both Houses of Parliament and may also be obtained from the Better Regulation Unit of the Department for Work and Pensions, 6B Caxton House, Tothill Street, London SW1H 9NA or from the DWP website: <http://www.dwp.gov.uk/resourcecentre/ria.asp>.

£5.50