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STATUTORY INSTRUMENTS

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**2015 No. 182**

**The Judicial Pensions Regulations 2015**

**PART 12**

**Supplementary**

**CHAPTER 1**

**Dual capacity members**

**Meaning of “dual capacity member”**

- 146.**—(1) A person (P) is a dual capacity member of this scheme if—
- (a) P is a member of this scheme in 2 or more of the following capacities—
    - (i) an active member;
    - (ii) a deferred member;
    - (iii) a pensioner member;
  - (b) P is both a pension credit member of this scheme and a member of this scheme in one or more of the following capacities—
    - (i) an active member;
    - (ii) a deferred member;
    - (iii) a pensioner member;
  - (c) P is a member of this scheme in relation to 2 or more continuous periods of pensionable service; or
  - (d) P is a pension credit member of this scheme entitled to 2 or more pension credits.
- (2) For the purpose of paragraph (1)(a) or (b)—
- (a) in determining whether a person who is an active member is also a pensioner member, the fact that the person is an active member and the person’s rights in that capacity are to be disregarded; and
  - (b) in determining whether a person who is an active member or pensioner member is also a deferred member, the fact that the person is an active member or pensioner member and the person’s rights in that capacity are to be disregarded.

**Payment of benefits to or in respect of a dual capacity member**

- 147.**—(1) If a person is a dual capacity member of this scheme—
- (a) the benefits that are payable to or in respect of the member in each of the member’s capacities are treated separately for the purposes of these Regulations; and
  - (b) the amounts payable to or in respect of the member in each of the member’s capacities are determined accordingly.

(2) In relation to payment of retirement benefits, paragraph (1) does not affect the interpretation of regulation 60 if a member is both an active member and a pensioner member by virtue of that regulation.

(3) In relation to payment of death benefits, paragraph (1) does not prevent—

- (a) the calculation under regulation 121 of a lump sum payable on the death of an active member of this scheme being made by reference to amounts that are relevant to the member in another capacity;
- (b) the calculation under regulation 122 of a lump sum payable on the death of a deferred member or pensioner member of this scheme being made by reference to amounts that are relevant to the member in both of those capacities; or
- (c) the calculation under regulation 122 of a lump sum payable on the death of—
  - (i) a deferred member of this scheme in relation to 2 or more continuous periods of pensionable service; or
  - (ii) a pensioner member of this scheme in relation to 2 or more continuous periods of pensionable service.

## CHAPTER 2

### Payment of benefits: general

#### **Late payment of retirement index adjustment**

**148.** Nothing in these Regulations requires any part of a pension attributable to a retirement index adjustment to be paid before the end of the last active scheme year.

#### **Commutation of small pensions**

**149.**—(1) This regulation applies if—

- (a) the pension entitlement of a single capacity member or the pension entitlement of a single capacity member's beneficiary does not exceed the small pensions commutation maximum; or
- (b) the total pension entitlement of a dual capacity member or the total pension entitlement of a dual capacity member's beneficiary does not exceed the small pensions commutation maximum.

(2) Unless the member has reached state pension age, this regulation does not apply if—

- (a) the pension entitlement of the member or the member's beneficiary under paragraph (1) (a) is equal to or exceeds the member's guaranteed minimum; or
- (b) the total pension entitlement of the member or the member's beneficiary under paragraph (1)(b) is equal to or exceeds the member's guaranteed minimum.

(3) The scheme manager may pay the member or the member's beneficiary a lump sum of an amount advised by the scheme actuary as representing the cash value of the pension if—

- (a) the member or the member's beneficiary consents to receipt of a lump sum in place of the pension; and
- (b) the requirements of the commutation provisions that apply in the circumstances are met.

(4) The payment of a lump sum under this regulation in place of a pension discharges all liabilities under this scheme in respect of that pension.

(5) In this regulation—

“the commutation provisions” means the provisions permitting the commutation of pensions set out in—

- (a) regulation 2 (commutation of a pension under an occupational pension scheme) of the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997(1);
- (b) paragraph 7 of Schedule 29 (registered pension schemes: authorised lump sums - supplementary) to FA 2004 (which defines trivial commutation lump sums for the purposes of Part 4 of that Act)(2) and, in relation to a pension payable under Part 8, paragraph 20 of that Schedule (which defines trivial commutation lump sum death benefit for the purposes of Part 4 of that Act)(3); and
- (c) regulation 3 (commutation of the whole of pension credit benefit) of the Pension Sharing (Pension Credit Benefit) Regulations 2000(4);

“single capacity member” means a member of this scheme who is not a dual capacity member; and

“the small pensions commutation maximum” means the amount that is permitted to be commuted having regard to the commutation provisions that apply in the circumstances.

### **Guaranteed minimum pensions**

**150.**—(1) If a member has a guaranteed minimum under section 14 (earner’s guaranteed minimum) of PSA 1993(5) in relation to benefits under this scheme—

- (a) nothing in these Regulations permits or requires anything that would cause requirements under that Act in relation to such a member and their rights under this scheme not to be met in the case of the member;
  - (b) nothing in these Regulations prevents anything from being done which is necessary or expedient for the purposes of meeting such requirements in the case of the member; and
  - (c) the following provisions are without prejudice to the generality of this paragraph.
- (2) If apart from this regulation—
- (a) no pension would be payable to the member under this scheme; or
  - (b) the weekly rate of the pensions payable would be less than the guaranteed minimum,

a pension at a weekly rate equal to the guaranteed minimum is payable to the member for life from the date on which the member reaches state pension age or, as the case may be, pensions the aggregate weekly rate of which is equal to the guaranteed minimum are so payable.

- (3) Subject to paragraph (4), if—
- (a) on reaching state pension age the member is still in service (whether or not it is in a qualifying judicial office); and
  - (b) where the member is not in a qualifying judicial office, the member consents to a postponement of the member’s entitlement under paragraph (2),

paragraph (2) does not apply until the member ceases work.

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(1) [S.I. 1997/785](#). Regulation 2 was amended by [S.I. 2002/681](#), [2005/706](#), [2006/744](#), [2006/778](#) and [2009/2930](#).

(2) Paragraph 7 was amended by Finance Act 2011 (c. 11) Schedule 16 paragraphs 23 and 29 and Schedule 18 paragraphs 1, 3 and 4 and [S.I. 2006/572](#).

(3) Paragraph 20 was amended by Finance Act 2011 (c. 11) Schedule 16 paragraphs 32 and 39 and Schedule 18 paragraphs 1, 3 and 6.

(4) [S.I. 2000/1054](#). Regulation 3 was substituted by [S.I. 2009/2930](#).

(5) Section 14 was amended by the Pensions Act 1995 (c. 26) Schedule 5 paragraph 27, the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2) Schedule 1 paragraph 38 and the Proceeds of Crime Act 2002 (c. 29) Schedule 11 paragraphs 1 and 22.

(4) If the member continues in service for a further 5 years after reaching state pension age and remains in service, the member is entitled from the end of that period to so much of the member's pension under Parts 6 and 7 as equals the member's guaranteed minimum (or, as the case may be, to so much of the member's pensions under Parts 6 and 7 as together have a weekly rate equal to the member's guaranteed minimum), unless the member consents to a further postponement of the entitlement.

(5) In the circumstances provided for in paragraph (3) or (4), the amount of the guaranteed minimum to which the member is entitled under this regulation is increased in accordance with section 15 (increase of guaranteed minimum where commencement of guaranteed minimum pension postponed) of PSA 1993.

(6) If—

- (a) before reaching state pension age the member becomes entitled to the immediate payment of a pension under this scheme; and
- (b) the member has a guaranteed minimum under section 14 (earner's guaranteed minimum) of PSA 1993 in relation to the whole or part of a pension as a result of receipt by this scheme of a transfer value payment from another pension scheme in respect of which the member had such a guaranteed minimum,

the weekly rate of the pension, so far as attributable to that service, must not be less than the guaranteed minimum, multiplied by such factor as is indicated in actuarial tables for a person of the member's age and sex at the date on which the pension becomes payable.

(7) This paragraph applies if a person has ceased to be in service that is contracted-out, within the meaning of Part 3 of PSA 1993 (certification of pension schemes and effects on members' state scheme rights and duties), by reference to this scheme, and either—

- (a) a transfer value payment in respect of all the person's rights to benefits under this scheme, except the person's rights in respect of the person's guaranteed minimum or rights under section 9(2B) (requirements for certification of schemes: general) of PSA 1993<sup>(6)</sup> ("the person's contracting-out rights") has been made; or
- (b) the person has no rights to benefits under this scheme apart from the person's contracting-out rights.

(8) If paragraph (7) applies—

- (a) from the date on which the person reaches state pension age the person is entitled to a pension payable for life at a weekly rate equal to the person's guaranteed minimum, if any; and
- (b) from the date on which the person reaches normal pension age under this scheme the person is entitled to a lump sum and pension in respect of the person's rights under section 9(2B) (requirements for certification of schemes: general) of PSA 1993,

but a person falling within paragraph (7) is not to be regarded as a pensioner for the purposes of Part 8 (death benefits).

(9) Paragraphs (2) to (8) do not apply to—

- (a) a pension that is forfeited—
  - (i) as a result of a conviction for treason; or
  - (ii) under regulation 151, in a case where the relevant offence within the meaning of regulation 151 is an offence under the Official Secrets Acts 1911 to 1989<sup>(7)</sup>;
- (b) a pension that is commuted under regulation 77 or 90; or

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<sup>(6)</sup> Section 9(2B) was inserted by the Pensions Act 1995 (c. 26) section 136(3) and amended by the Social Security Contributions (Transfer of Functions, etc.) Act 1999 Schedule 1 paragraph 35.

<sup>(7)</sup> 1989 c. 6; see section 16(2) for the meaning of "Official Secrets Act s 1911 to 1989".

- (c) a pension that is commuted under regulation 149 where the conditions in regulation 60 (payment of a guaranteed minimum pension as a lump sum) of the Occupational Pension Schemes (Contracting-out) Regulations 1996<sup>(8)</sup> are met,

(10) In this regulation, references to the amount of a pension are to its amount after the subtraction of the commutation amount, if any, (but before the subtraction of the allocation amount, if any (see regulation 78(5)).

## CHAPTER 3

### Forfeiture and set-off

#### **Forfeiture: offences committed by members**

**151.**—(1) If a member is convicted of a relevant offence, the appropriate Minister may, in agreement with the relevant head of jurisdiction and to the extent that they both consider appropriate, withhold benefits payable under this scheme to or in respect of the member.

(2) Paragraph (3) applies if benefits are to be withheld as a result of an offence falling within paragraph (b) of the definition of “relevant offence”.

(3) The appropriate Minister may only withhold that part of a person’s pension that exceeds any guaranteed minimum to which the person is entitled under—

- (a) section 14 (earner’s guaranteed minimum) of PSA 1993; or
- (b) section 17<sup>(9)</sup>(minimum pension for surviving spouses and civil partners) of that Act.

(4) In this regulation—

“forfeiture certificate” means a certificate stating that the appropriate Minister and relevant head of jurisdiction issuing the certificate consider that the offence—

- (a) has been gravely injurious to the administration of justice; or
- (b) is liable to lead to serious loss of confidence in the judiciary; and

“relevant offence” means—

- (a) one or more offences under the Official Secrets Acts 1911 to 1989 for which the member has been sentenced on the same occasion to—
  - (i) a term of imprisonment of at least 10 years; or
  - (ii) 2 or more consecutive terms of imprisonment which add up to at least 10 years;
- (b) offences committed in connection with service in qualifying judicial office and in respect of which the appropriate Minister and relevant head of jurisdiction have issued a forfeiture certificate.

#### **Forfeiture: offences committed by a member’s beneficiary**

**152.**—(1) If the beneficiary of a deceased member of this scheme (D) is convicted of a relevant criminal offence, the appropriate Minister may, in agreement with the relevant head of jurisdiction and to the extent that they both consider appropriate, withhold benefits payable to the beneficiary in respect of D.

(2) The appropriate Minister may, in agreement with the relevant head of jurisdiction and to the extent that they both consider it appropriate, withhold benefits, but may only withhold that part of a

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<sup>(8)</sup> S.I. 1996/1172. Regulation 60 was substituted by S.I. 2006/744 and amended by S.I. 2006/1337, 2009/2930 and 2010/499.

<sup>(9)</sup> Section 17 was amended by the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2) Schedule 1 paragraph 39, the Child Support, Pensions and Social Security Act 2000 (c. 19) Schedule 5 paragraph 1, the Pensions Act 2004 (c. 35) section 284(2), the Pensions Act 2007 (c. 22) section 14(2), the Marriage (Same Sex Couples) Act 2013 (c.30) Schedule 4 paragraphs 18 and 20 and S.I. 2005/2050 and 2014/560.

pension that exceeds any guaranteed minimum to which the beneficiary is entitled under section 17 (minimum pensions for widows and widowers) of PSA 1993.

(3) If the appropriate Minister withholds all of the benefits payable to a beneficiary, Part 8 applies as if the beneficiary had died before D.

(4) In this regulation, “relevant criminal offence” means—

- (a) the murder of D;
- (b) the manslaughter of D; or
- (c) any other offence of which the unlawful killing of D is an element.

#### **Forfeiture: relevant monetary obligations and relevant monetary losses**

**153.**—(1) If a member (P) owes a relevant monetary obligation or has caused a relevant monetary loss, the appropriate Minister, subject to paragraph (2) may, in agreement with the relevant head of jurisdiction and to the extent that they both consider appropriate, withhold benefits payable to P under this scheme.

(2) The appropriate Minister may only withhold that part of P’s pension that exceeds any guaranteed minimum to which P is entitled under section 14 of PSA 1993.

(3) The appropriate Minister may not withhold more than the lesser of—

- (a) the amount of the relevant monetary obligation or relevant monetary loss; and
- (b) the value of P’s entitlement to benefits.

(4) The appropriate Minister may only withhold benefits if—

- (a) there is no dispute as to the amount of the relevant monetary obligation or relevant monetary loss; or
- (b) the relevant monetary obligation or relevant monetary loss is enforceable as follows—
  - (i) under an order of a competent court;
  - (ii) in consequence of an award of an arbitrator;
  - (iii) in Scotland, in consequence of an award of an arbiter appointed (failing agreement between the parties) by the sheriff.

(5) In this regulation—

“relevant monetary obligation” means a monetary obligation which—

- (a) was incurred to the Crown or P’s employer (if different);
- (b) was incurred after P became an active member of this scheme;
- (c) arose out of P’s criminal, fraudulent or negligent act or omission; and
- (d) arose out of or was connected with service in a qualifying judicial office in respect of which P is a member of this scheme.

“relevant monetary loss” means a monetary loss which—

- (a) was caused to this scheme; and
- (b) arose as a result of P’s criminal, fraudulent or negligent act or omission.

#### **Set-off**

**154.**—(1) The appropriate Minister may, in agreement with the relevant head of jurisdiction, set off a relevant monetary obligation against a member’s entitlement to benefits under this scheme.

(2) In this regulation, a “relevant monetary obligation” is a monetary obligation owed by a member (P), which satisfies the conditions in paragraph (3), (4) or (5).

- (3) The conditions are that the monetary obligation—
  - (a) was incurred to the Crown or P’s employer (if different);
  - (b) was incurred after P became an active member of this scheme; and
  - (c) arose out of or was connected with service in a qualifying judicial office in respect of which P is a member of this scheme.
- (4) The conditions are that the monetary obligation—
  - (a) was incurred to this scheme; and
  - (b) arose out of P’s criminal, fraudulent or negligent act or omission.
- (5) The conditions are that the monetary obligation—
  - (a) was incurred to this scheme; and
  - (b) arose out of a payment made to P in error by the scheme manager.
- (6) Paragraph (7) applies if a set-off is to be applied as a result of P owing a relevant monetary obligation which satisfies the conditions in paragraph (3).
- (7) Where this paragraph applies, the appropriate Minister may not apply a set-off against that part of P’s entitlement to benefits that represents transfer credits within the meaning of section 124(1) (interpretation of Part 1) of PA 1995(10) (other than prescribed transfer credits for the purposes of section 91(5)(d)(11) (exceptions from the inalienability of occupational pensions) of that Act).
- (8) The appropriate Minister may only apply a set-off against that part of a member’s pension that exceeds any guaranteed minimum to which the member is entitled under section 14 of PSA 1993.
- (9) The value of the set-off applied must not exceed the lesser of—
  - (a) the amount of the relevant monetary obligation;
  - (b) the value of P’s entitlement to benefits.
- (10) The appropriate Minister may only set off a relevant monetary obligation against P’s entitlement to benefits if—
  - (a) there is no dispute as to the amount of the relevant monetary obligation; or
  - (b) the relevant monetary obligation is enforceable—
    - (i) under an order of a competent court;
    - (ii) in consequence of an award of an arbitrator;
    - (iii) in Scotland, in consequence of an award of an arbiter appointed (failing agreement between the parties) by the sheriff.

## CHAPTER 4

### Payment and deduction of tax

#### **Scheme manager to be scheme administrator for the purposes of Part 4 of Finance Act 2004**

**155.** The scheme manager is appointed to be responsible for all functions that are functions conferred or imposed on the scheme administrator under Part 4 (pension schemes etc.) of FA 2004.

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(10) The definition of “transfer credits” in section 124(1) was amended by the Pensions Act 2004 (c. 35) section 319(1) and Schedule 12 paragraphs 34 and 69.

(11) Section 91(5)(d) was amended by the Welfare Reform and Pensions Act 1999 (c. 30) Schedule 12 paragraphs 43 and 57.

### **Payment on behalf of members of lifetime allowance charge**

**156.**—(1) A member of this scheme may request the scheme manager to pay on the member's behalf any amount that is payable by way of the lifetime allowance charge under section 214 (lifetime allowance charge) of FA 2004 ("the amount") if—

- (a) an event that is a benefit crystallisation event listed in the table in section 216(1)(12) (benefit crystallisation events and amounts crystallised) of FA 2004 ("the event") occurs in relation to the member; and
- (b) the member and the scheme manager are jointly and severally liable in relation to the event.

(2) A request may only be made by notice given to the scheme manager before the event occurs.

(3) The scheme manager may only comply with a request if the member pays the amount to the scheme manager on or before the date on which the event occurs.

### **Reduction of benefits where lifetime allowance charge payable**

**157.**—(1) This regulation applies if—

- (a) an event that is a benefit crystallisation event ("the event") listed in the table in section 216(1) of FA 2004 ("the table") occurs in relation to a member;
- (b) the member and the scheme manager are jointly and severally liable in relation to the event; and
- (c) no request has been duly made under regulation 156 in relation to the event or, if such a request has been made, the scheme manager is prevented from complying with it by paragraph (3) of that regulation.

(2) If this regulation applies—

- (a) the scheme manager must pay the tax payable on the event;
- (b) if the event is benefit crystallisation event 8 in the table (transfer to qualifying recognised overseas pension scheme), the amount or value of the sums or assets transferred must be reduced; and
- (c) in the case of any other event in the table, the amount or value of the benefits payable to or in respect of the member must be reduced.

(3) The amount or value of the reduction—

- (a) must fully reflect the amount of the tax so paid;
- (b) must be determined in accordance with guidance provided by the scheme manager; and
- (c) in the case of any reduction to pension benefits, must be consistent with normal actuarial practice.

### **Information about payment of annual allowance charge**

**158.**—(1) If a member's pension scheme input amount for this scheme for a tax year exceeds the amount of the annual allowance for that tax year, paragraph (2) applies in respect of the member for that tax year.

(2) The scheme manager must, no later than 31st July after the end of the tax year, provide the member with any information the scheme manager considers appropriate to assist the member to arrange payment of the annual allowance charge for that tax year.

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(12) Section 216(1) was amended by the Finance Act 2005 (c. 7) Schedule 10 paragraphs 1, 31 and 42, the Finance Act 2006 (c. 25) Schedule 23 paragraphs 1 and 30, the Finance Act 2008 (c. 9) Schedule 29 paragraphs 1, 4 and 5 and the Finance Act 2011 (c. 11) Schedule 16 paragraphs 43, 62 and 73.



(3) In this regulation, “pension scheme input amount” has the same meaning as in section 237B(2) (liability of scheme administrator) of FA 2004(13).

### **Reduction of benefits where annual allowance charge paid by scheme manager**

**159.**—(1) This regulation applies where—

(a) a member gives valid notice to the scheme manager of joint and several liability for an annual allowance charge under section 237B(3) (liability of scheme administrator) of FA 2004; and

(b) the scheme manager satisfies the liability specified in the notice.

(2) The amount or value of the benefits payable to or in respect of the member for the tax year to which the notice relates must be reduced by the scheme manager in accordance with paragraph (3).

(3) Subject to paragraph (4), the reduction in the amount or value of benefits—

(a) must fully reflect the amount paid by the scheme manager; and

(b) must be consistent with normal actuarial practice.

(4) Benefits may only be reduced under this regulation to the extent that the reduction would not result in the loss of any part of a guaranteed minimum pension to which a person is entitled under sections 14 (earner’s guaranteed minimum) or 17 (minimum pension for surviving spouses and civil partners) of PSA 1993.

## **CHAPTER 5**

### **General**

#### **General prohibition on unauthorised payments**

**160.** Nothing in these Regulations requires or authorises the making of any payment, which, if made, would be an unauthorised payment for the purposes of Part 4 (pension schemes etc.) of FA 2004 (see section 160(5) (payments by registered pension schemes) of that Act).

#### **Calculation of periods of membership and service**

**161.**—(1) For the purposes of this scheme, periods of membership and service are to be expressed in the first instance in whole years, and days and fractions of a day, and the initial aggregation of periods that require to be aggregated is done in the first instance by reference to periods so expressed.

This is subject to paragraph (3).

(2) If, when all periods of membership or service that require to be aggregated have been aggregated, there is any excess part day over the number of whole days, that excess is rounded up to a full day.

This is subject to paragraph (3).

(3) If membership or service is referred to in these Regulations as membership or service in years—

(a) the days referred to in paragraph (1); and

(b) the full days referred to in paragraph (2),

are converted into years by dividing the number of days in excess of the period of whole years by 365, and using the result to 4 decimal places.

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(13) 2004 c. 12; section 237B was inserted by the Finance Act 2011 (c. 11) Schedule 17 paragraphs 1 and 15 and was amended by the Finance Act 2013 (c. 29) Schedule 46 paragraphs 119 and 129.

(4) If a period of membership or service is less than one year, this regulation applies as if the words “whole years, and” were omitted from paragraph (1) and the words “in excess of the period of whole years” were omitted from paragraph (3).

### **Determination of questions**

**162.**—(1) Except as otherwise provided by these Regulations, any question arising under this scheme is to be determined by the scheme manager, whose decision on it is final.

(2) The scheme manager must, in consultation with the Judicial Pension Board, establish a procedure for the determination of disputes relating to members or other persons with an interest in the scheme.

(3) A procedure established under paragraph (2) must meet the requirements of section 50 (requirement for dispute resolution arrangements) of the PA 1995(14).

### **Evidence of entitlement**

**163.**—(1) The scheme manager may require any person who is receiving a pension under this scheme to provide evidence to establish—

- (a) the person’s identity; and
- (b) the person’s continuing entitlement to payment of any amount.

(2) If the person does not provide the required evidence, the scheme manager may withhold the whole or any part of any benefits payable under this scheme in respect of the person.

### **Provision of benefit information statements to members**

**164.**—(1) The scheme manager must provide benefit information statements to each active member of this scheme in accordance with—

- (a) section 14 of the Act (information about benefits); and
- (b) directions given under that section (“Treasury directions”).

(2) The statement must contain the following information about the member’s benefits as at the date of the statement—

- (a) the amount of each description of accrued pension specified in the active member’s account as at that date;
- (b) the opening balance of each description of pension for that year and the index adjustment for that opening balance;
- (c) the amount of each description of pension for that year as at that date; and
- (d) any other information required by Treasury directions.

### **Information to be provided by employers**

**165.**—(1) An employer of a member of this scheme must, by such date as the scheme manager may specify, provide the scheme manager with such information as the scheme manager may request—

- (a) in connection with the scheme manager’s or scheme administrator’s functions in relation to this scheme; or

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(14) 1995 (c.26); section 50 was substituted by the Pensions Act 2004 (c. 35) section 273 and amended by the Pensions Act 2007 (c. 22) section 16.

- (b) to enable the scheme manager or Lord Chancellor to fulfil any obligations on the scheme manager or Lord Chancellor set out in or under legislation.

**Transitional provisions**

- 166.** Schedule 2 has effect.

**Modifying provisions and amendments**

- 167.** Schedule 3 has effect.