STATUTORY INSTRUMENTS

2009 No. 451

PENSIONS

The Pension Protection Fund (Miscellaneous Amendments) Regulations 2009

Made - - - -	*2nd March 2009*
Laid before Parliament	*9th March 2009*
Coming into force - -	*1st April 2009*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 129(1)(b) and (1A)(b), 130(5)(b), 138(12), 143(4) and (5), 151(9)(b), 156(2), 163(3), 166(5) and (6), 179(3), 315(2), (4) and (5) and 318(1) of, and paragraph 33 of Schedule 7 to, the Pensions Act 2004(**a**).

Except for regulation 5(5), the Secretary of State has consulted such persons as the Secretary of State considers appropriate in accordance with section 317(1) of that Act.

Regulation 5(5) is made using the power in section 166(6) of that Act, which came into force on 1st March 2009. In accordance with section 317(2)(c), the Secretary of State is not required to consult on regulation 5(5) because it is made before the end of the period of six months beginning with the coming into force of section 166(6).

Citation and commencement

1. These Regulations may be cited as the Pension Protection Fund (Miscellaneous Amendments) Regulations 2009 and shall come into force on 1st April 2009.

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

2.—(1) The Pension Protection Fund (Entry Rules) Regulations 2005(**b**) are amended in accordance with this regulation.

(2) In regulation 1(3) (interpretation)(**c**)—

(a) after the definition of "the Authority", insert—

> ""EEA credit institution" means a credit institution, authorised under Directive 2006/48/EC of the European Parliament and of the Council dated 14th June 2006 relating to the taking up and pursuit of the business of credit institutions, which has its relevant office in an EEA state other than the United Kingdom;

(**a**) 2004 c.35. Section 129 was modified by S.I. 2005/441 for certain cases to read as if subsection (1A)(b) is inserted. S.I. 2005/441 was amended by S.I. 2005/2113. Section 318(1) is cited for the meaning it gives to "prescribed" and "regulations".
(**b**) S.I. 2005/590.
(**c**) Regulation 1 was amended by S.I.s 2005/2113 and 2153 and 2006/580.

"EEA insurer" means an undertaking, other than a UK insurer, pursuing the activity of direct insurance (within the meaning of Article 2 of the life insurance directive or Article 1 of the first non-life insurance directive) which has received authorisation under Article 4 of the life assurance directive or Article 6 of the first non-life insurance directive from its home state regulator;

"EEA regulator" means a competent authority (within the meaning of Article 1(1) of the life insurance directive or Article 1(k) of the third non-life insurance directive) of an EEA state;

"the first non-life insurance directive" means Council Directive 73/239/EEC of 24th July 1973 on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance;

"home state regulator" means the relevant EEA regulator in the EEA state where its head office is located;";

(b) after the definition of "the Insolvency Rules", insert—

""the life insurance directive" means Directive 2002/83/EC of the European Parliament and of the Council dated 5th November 2002 concerning life assurance;";

(c) after the definition of "public body", insert—

""relevant office" means—

(a) in relation to a body corporate, its registered office or, if it has no registered office, its head office;

(b) in relation to a person other than a body corporate, the person's head office;"; and

(d) after the definition of "tax registered scheme", insert—

""the third non-life insurance directive" means Council Directive 92/49/EEC of 18th June 1992 on the co-ordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC;

"UK insurer" means a person who has permission under Part 4 of the FSMA to effect or carry out contracts of insurance, but does not include a person who, in accordance with that permission, carries on that activity exclusively in relation to reinsurance contracts.".

(3) After regulations 7(c) (applications and notifications to the Board)(**a**) and 7A(2)(c) (applications and notifications to the Board – multi-employer schemes)(**b**), insert—

"(d) an EEA credit institution; or

(e) an EEA insurer.".

(4) In regulation 10 (confirmation of scheme status by Board)—

(a) in paragraph (1), after "regulation 7" insert "or 7A";

(b) in paragraph (3)(a), after "is a company" insert ", an EEA credit institution or an EEA insurer"; and

(c) in paragraph (3)(c), after "is a partnership" insert "but is not an EEA credit institution or an EEA insurer".

(5) In regulation 17(2) (payment of scheme benefits)—

(a) in sub-paragraph (a), for "an active member" substitute "a member"; and

(b) in sub-paragraph (b), for "death in service benefit" substitute "death benefit or a contribution refund (within the meaning of section 101AB(4) of the 1993 Act(**c**))".

(**a**) Regulation 7 was amended by S.I. 2005/2153.
(**b**) Regulation 7A was inserted by S.I. 2005/2153.
(**c**) 1993 c.48. Section 101AB was inserted by section 264 of the Pensions Act 2004.

(6) In regulation 25(b) (form and content of audited scheme accounts), for "true and fair value" substitute "true and fair view".

Amendment of the Pension Protection Fund (Compensation) Regulations 2005

3.—(1) The Pension Protection Fund (Compensation) Regulations 2005(**a**) are amended in accordance with this regulation.

(2) After regulation 15 (manner of determining the revaluation percentage in the case of deferred members who have not attained normal pension age at assessment date), insert—

"**Modification of Schedule 7 for schemes with no revaluation**

15A.—(1) Where, immediately before the assessment date, the admissible rules of the scheme do not provide for any revaluation of the benefits payable to or in respect of any member, Schedule 7 to the Act is modified in its application to that scheme in accordance with this regulation.

(2) Paragraph 11 (active members who have not attained normal pension age at assessment date: periodic compensation) applies to that scheme as if for sub-paragraph (4), there were substituted—

"(4) In sub-paragraph (3) "the protected notional pension" means the accrued amount.".

(3) Paragraph 14 (active members who have not attained normal pension age at assessment date: lump sum compensation) applies to that scheme as if—

(a) for sub-paragraph (4), there were substituted—

"(4) In sub-paragraph (3) "the protected amount" means the accrued amount."; and

(b) sub-paragraph (8) were omitted.

(4) Paragraph 15 (deferred members who have not attained normal pension age at assessment date: periodic compensation) applies to that scheme as if for sub-paragraph (4), there were substituted—

"(4) In sub-paragraph (3) "the protected pension rate" means the accrued amount.".

(5) Paragraph 19 (deferred members who have not attained normal pension age at assessment date: lump sum compensation) applies to that scheme as if—

(a) for sub-paragraph (4), there were substituted—

"(4) In sub-paragraph (3) "the protected amount" means the accrued amount."; and

(b) sub-paragraph (6) were omitted.

(6) Schedule 7 applies to that scheme as if paragraphs 12, 16, 17 and 21(2)(b) and (f) were omitted.".

Amendment of the Pension Protection Fund (Valuation) Regulations 2005

4.—(1) The Pension Protection Fund (Valuation) Regulations 2005(**b**) are amended in accordance with this regulation.

(2) In regulation 1(2) (interpretation) in paragraph (b) of the definition of "relevant accounts", for "true and fair value" substitute "true and fair view".

(**a**) S.I. 2005/670.
(**b**) S.I. 2005/672. Relevant amending instruments are S.I.s 2005/2113 and 2007/782.

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

5.—(1) The Pension Protection Fund (General and Miscellaneous Amendments) Regulations 2006(**a**) are amended in accordance with this regulation.

(2) For regulation 3 (power to treat death in service lump sum benefits as having become payable before the assessment date), substitute—

"**Power to treat benefits as having become payable before the assessment date**

3.—(1) Where this regulation applies, the benefits referred to in paragraph (3) are treated, for the purposes of section 163(2) of the Act (adjustments to be made where the Board assumes responsibility for a scheme), as having become payable before the assessment date.

(2) This regulation applies where—

(a) a member of an eligible scheme died before the commencement of the assessment period in relation to the scheme; and

(b) during the period mentioned in section 163(2)(a) of the Act, a person became entitled under the scheme rules to a benefit referred to in paragraph (3) in respect of that member.

(3) The benefits referred to in this paragraph are—

(a) a death benefit which is calculated and paid by the trustees or managers of the eligible scheme on or after the assessment date but before the date the trustees or managers receive the transfer notice in respect of that scheme; and

(b) a contribution refund within the meaning of section 101AB(4) of the 1993 Act (right to cash transfer sum and contribution refund).".

(3) For the heading to regulation 4 (power to pay death in service lump sum benefits), substitute—

"**Power to treat benefits as having arisen before the assessment date**".

(4) In regulation 4(b), for "death in service lump sum benefit" substitute "death benefit or a contribution refund (within the meaning of section 101AB(4) of the 1993 Act)".

(5) After regulation 4, insert—

"**Power to pay certain transfer payments and contribution refunds**

4A.—(1) The Board must pay 90% of the rights described in paragraph (2) in the circumstances prescribed in paragraph (3).

(2) The rights are—

(a) any transfer payment; and

(b) any payment in respect of a refund of contributions,

to which a member of the scheme was entitled immediately before the commencement of the assessment period.

(3) The circumstances are that—

(a) the Board assumes responsibility for a scheme in accordance with Chapter 3 of Part 2 of the Act;

(b) the circumstances and conditions prescribed in—

(i) regulation 16(1) of the Entry Rules Regulations (restrictions on winding up, discharge of liabilities etc)(**b**); or

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(**a**) S.I. 2006/580.
(**b**) Regulation 16(1) was amended by S.I.s 2005/993 and 2224.

(ii) regulation 2 of the Pension Protection Fund (Hybrid Schemes) (Modification) Regulations 2005 (discharge of liabilities in respect of money purchase benefits during the assessment period)(**a**),

were met in respect of the rights;

(c) the rights remained unpaid at the time the transfer notice was received by the trustees or managers of the scheme; and

(d) the member sends the Board a written request to make a payment in respect of the rights.".

Amendment of the Pension Protection Fund (Closed Schemes) Regulations 2007

6.—(1) The Pension Protection Fund (Closed Schemes) Regulations 2007(**b**) are amended in accordance with this regulation.

(2) In paragraph 1 of Part 1 of the Schedule (valuation of the assets, the full scheme liabilities and the protected liabilities in relation to a closed scheme) in paragraph (b) of the definition of "relevant accounts", for "true and fair value" substitute "true and fair view".

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

William D.McKenzie
Parliamentary Under-Secretary of State,
Department for Work and Pensions

2nd March 2009

(**a**) S.I. 2005/449.
(**b**) S.I. 2007/865.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make miscellaneous amendments to Regulations relating to the Pension Protection Fund.

Regulation 2 amends the Pension Protection Fund (Entry Rules) Regulations 2005 (S.I. 2005/590) to—

- prescribe European Economic Area credit institutions and insurers as further categories of employer that can make an application to the Board of the Pension Protection Fund ("the Board") (regulation 2(2), (3) and (4)(b) and (c));
- correct a missing cross reference (regulation 2(4)(a));
- extend the circumstances in which the Board can make payments in respect of certain scheme members who have died (regulation 2(5)(a));
- provide that the Board can pay contributions refunds and death benefits in respect of certain scheme members, despite them having died before an assessment period starts (regulation 2(5)(b)); and
- adopt the recognised auditing concept of a 'true and fair view' rather than a 'true and fair value' in audited scheme accounts (regulation 2(6)).

Regulation 3 inserts new provisions into the Pension Protection Fund (Compensation) Regulations 2005 (S.I. 2005/670). Those new provisions modify the way in which Schedule 7 to the Pensions Act 2004 (c.35) applies to schemes that do not contain any rules on revaluation of benefits. Those modifications ensure that the Board does not revalue members' benefits when the scheme it becomes responsible for does not revalue the benefits of both active and deferred members.

Regulations 4 and 6 make the same change as regulation 2(6). They amend respectively the Pension Protection Fund (Valuation) Regulations 2005 (S.I. 2005/672) and the Pension Protection Fund (Closed Schemes) Regulations 2007 (S.I. 2007/865) to adopt the recognised auditing concept of a 'true and fair view'.

Regulation 5(2), (3) and (4) makes the same change as regulation 2(5)(b).

Regulation 5(5) amends the Pension Protection Fund (General and Miscellaneous Amendments) Regulations 2006 (S.I. 2006/580). It inserts a new regulation 4A into those Regulations. That new regulation 4A requires the Board to pay 90% of certain transfer payments and contribution refunds to members of a pension scheme that has entered the Pension Protection Fund ("the Fund"). The transfer payments and contribution refunds are those which the member became entitled to before the assessment date, but which had not been paid by the date the pension scheme entered the Fund.

A full Impact Assessment has not been published for this instrument as it has only a negligible impact on the private and voluntary sectors.

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