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STATUTORY INSTRUMENTS

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**2010 No. 1149**

**The Financial Assistance Scheme  
(Miscellaneous Amendments) Regulations 2010**

**PART 2**

**Amendment of the FAS Regulations**

**Amendment of the FAS Regulations**

3. The FAS Regulations are amended in accordance with this Part.

**Amendment of Part 1**

4. In regulation 2 (interpretation)—
- (a) in the definition of “annual payment”, for “regulation 17 or 17C and Schedule 2” substitute “regulation 17, 17C or 17E and Schedule 2, 3 or 4”;
  - (b) after the definition of “annual payment” insert—
    - ““asset share” in respect of a person means the assets available to discharge the liability of the scheme in respect of that person as determined in accordance with regulation 22(2), or, where it applies, regulation 28(1);”;
  - (c) for the definition of “beneficiary” substitute—
    - ““beneficiary” means—
      - (a) a qualifying member or, after that qualifying member’s death, the survivor and surviving dependants of that qualifying member; and
      - (b) any person entitled to a payment in accordance with regulation 17G(1);”;
  - (d) after the definition of “beneficiary” insert—
    - ““calculation date” means the last day of the month in which the scheme manager instructs the trustees or managers of a qualifying pension scheme to obtain a valuation under regulation 22;”;
  - (e) in the definition of “ill health payment” for “Schedule 2A” substitute “Schedules 2A, 5 and 6”;
  - (f) in the definition of “indexation date”, before “an annual payment” insert “a payment under regulation 17G, a payment under regulation 17H,”
  - (g) after the definition of “multi-employer scheme” insert—
    - ““notional pension” means the annual rate of annuity determined in accordance with regulation 27(1)(a);
    - “the Ombudsman” means the PPF Ombudsman or any person appointed under section 210(1) (deputy PPF Ombudsmen) to act as a deputy to the PPF Ombudsman;”;

- (h) after the definition of “qualifying pension scheme” insert—
- ““relevant accounts” for the purposes of identifying and valuing the assets of a scheme, means the audited accounts for the scheme which—
- (a) show a true and fair view 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;
  - (b) are in such manner and form as the scheme manager may request;
  - (c) include a report by the auditor in writing as to whether or not in the auditor’s opinion the requirements in paragraphs (a) and (b) above are satisfied; and
  - (d) are prepared in respect of the period ending with the calculation date;”;
- (i) after the definition of “scheme manager” insert—
- ““scheme rules” means the rules of the qualifying pension scheme;”;
- (j) after the definition of “survivor” insert—
- ““survivor notional pension” means the annual rate of annuity determined in accordance with regulation 27(1)(c);”;
- (k) after the definition of “tax approved scheme” insert—
- ““transfer notice” means the notice given under regulation 29;”;
- (l) after the definition of “trustees or managers” insert—
- ““valuation actuary” has the meaning given in regulation 22(5).”.

#### **Amendment of regulation 4**

- 5.** In regulation 4 (application of Parts 1 and 2 of the Act)—
- (a) after paragraph (2)(bf) insert—
    - “(bg) sections 135 and 136 (provisions restricting winding up, discharge of liabilities etc and provisions regarding validation of contraventions of section 135);
    - (bh) section 161 (effect of Board assuming responsibility for a scheme);
    - (bi) section 165 (guaranteed minimum pensions);”;
  - (b) in paragraph (2)(d) omit “(except section 202)”;
  - (c) after paragraph (2)(da) insert—
    - “(db) Schedule 6 (transfer of property, rights and liabilities to the Board); and”;
  - (d) in paragraph (5) omit “201 and”.

#### **Amendment of regulation 15**

- 6.** In regulation 15 (qualifying members)—
- (a) for paragraph (1) substitute—
    - “(1) A member or a former member of a qualifying pension scheme is a qualifying member of that scheme for the purposes of—

- (a) section 286A(1) (restriction on purchase of annuities); and
- (b) these Regulations,

where the conditions in paragraphs (2) to (3A) are satisfied in relation to that member or former member or would have been satisfied in relation to that member or former member had that member or former member not died before the coming into force of these Regulations.”; and

- (b) after paragraph (3) insert—

“(3A) The condition in this paragraph is that the scheme’s pension liabilities have not been satisfied in full in respect of that member.”.

### **Omission of regulations 15A and 16**

7. Omit regulations 15A (qualifying members for the purposes of section 286A) and 16 (insufficient assets).

### **Amendment of regulation 17**

8. In regulation 17 (annual payments)—

- (a) in each place it occurs omit “determined in accordance with Schedule 2”;
- (b) in paragraph (1) for “Schedule 2 makes” substitute “Schedules 2, 3 and 4 make”;
- (c) in paragraph (5A) after “a beneficiary” insert “entitled to an annual payment in accordance with Schedule 2”;
- (d) after paragraph (7) add—

“(8) Subject to paragraphs (16) and (17), and until such time, if any, as regulation 17E applies, where a beneficiary is entitled to an annual payment in accordance with this regulation, that annual payment shall be determined in accordance with—

- (a) Schedule 2, where none of sub-paragraphs (b) to (k) nor paragraph (16) or (17) applies;
- (b) Schedule 3, where—
  - (i) a transfer notice has been given in respect of the qualifying pension scheme;
  - (ii) the beneficiary is a qualifying member who was not receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and
  - (iii) the sum of—
    - (aa) the revalued notional pension in relation to the qualifying member; and
    - (bb) the total amount of any annual increases which the scheme manager considers could have been paid from the relevant date until the day on which the transfer notice is given, taking into account the determination under regulation 27(1) (d) and the revaluation amount determined in accordance with paragraph (11),

is higher than the amount of the annual payment to which that qualifying member would be entitled in accordance with Schedule 2 if that Schedule applied and sub-paragraphs (3A) to (3G) of paragraph 2 of that Schedule were omitted;

- (c) Schedule 3, where—
- (i) a transfer notice has been given in respect of the qualifying pension scheme;
  - (ii) the beneficiary is a survivor or surviving dependant; and
  - (iii) the qualifying member in respect of the beneficiary was entitled to an annual payment in accordance with Schedule 3 immediately before the death of the member;
- (d) Schedule 3, where—
- (i) a transfer notice has been given in respect of the qualifying pension scheme;
  - (ii) the beneficiary is a survivor or surviving dependant;
  - (iii) the qualifying member in respect of the beneficiary was not receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010;
  - (iv) the qualifying member died—
    - (aa) before becoming entitled to an annual payment; and
    - (bb) on or after the calculation date; and
  - (v) the sum of—
    - (aa) one half of the revalued notional pension in relation to the qualifying member;
    - (bb) one half of the total amount of any annual increases which the scheme manager considers could have been paid from the relevant date until the date on which the qualifying member died, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with paragraph (11); and
    - (cc) the total amount of any annual increases which the scheme manager considers could have been paid to a survivor from the day after the day on which the qualifying member died until the day on which the transfer notice is given, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with paragraph (11),

is higher than the amount of the annual payment to which a survivor would be entitled in accordance with Schedule 2 if that Schedule applied and paragraphs 2(3A) to (3G) and 5(6A) of that Schedule were omitted;

- (e) Schedule 3, where—
- (i) a transfer notice has been given in respect of the qualifying pension scheme;
  - (ii) the beneficiary is a survivor or surviving dependant;
  - (iii) the qualifying member in respect of the beneficiary was not receiving a present payment from the qualifying pension scheme under scheme

rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010;

(iv) the qualifying member died—

(aa) after becoming entitled to an annual payment; and

(bb) on or after the calculation date,

but before the day on which the transfer notice was given;

(v) the sum of—

(aa) one half of the revalued notional pension in relation to the qualifying member;

(bb) one half of the total amount of any annual increases which the scheme manager considers could have been paid from the relevant date until the date on which the qualifying member died, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with paragraph (11); and

(cc) the total amount of any annual increases which the scheme manager considers could have been paid to a survivor from the day after the day on which the qualifying member died until day on which the transfer notice is given, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with paragraph (11),

is higher than the amount of the annual payment to which a survivor would be entitled in accordance with Schedule 2 if that Schedule applied and paragraphs 2(3A) to (3G) and 5(6A) of that Schedule were omitted;

(f) Schedule 3, where—

(i) a transfer notice has been given in respect of the qualifying pension scheme;

(ii) the beneficiary is a survivor or surviving dependant;

(iii) neither the qualifying member in respect of the beneficiary nor the beneficiary was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010;

(iv) the qualifying member died before the calculation date; and

(v) the sum of—

(aa) the survivor notional pension determined in respect of the beneficiary; and

(bb) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the survivor notional pension from the relevant date until the day on which the transfer notice is given,

is higher than the amount of the annual payment to which the beneficiary would be entitled in accordance with Schedule 2 if that Schedule applied and paragraph 2(3A) to (3G) of that Schedule were omitted;

(g) Schedule 4, where—

(i) a transfer notice has been given in respect of the qualifying pension scheme;

- (ii) the beneficiary is a qualifying member who was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and
- (iii) the sum of—
  - (aa) the notional pension in relation to that qualifying member; and
  - (bb) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the relevant date until the day on which the transfer notice is given,is higher than the amount of the annual payment to which the beneficiary would be entitled in accordance with Schedule 2 if that Schedule applied and paragraph 2(3A) to (3E) of that Schedule were omitted;
- (h) Schedule 4, where—
  - (i) a transfer notice has been given in respect of the qualifying pension scheme;
  - (ii) the beneficiary is a survivor or surviving dependant;
  - (iii) the qualifying member in respect of the beneficiary—
    - (aa) was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and
    - (bb) died before the calculation date; and
  - (iv) the sum of—
    - (aa) the survivor notional pension determined in respect of the beneficiary; and
    - (bb) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the survivor notional pension from the relevant date until the day on which the transfer notice is given,is higher than the amount of the annual payment to which the beneficiary would be entitled in accordance with Schedule 2 if that Schedule applied and paragraph 2(3A) to (3E) of that Schedule were omitted;
- (i) Schedule 4, where—
  - (i) a transfer notice has been given in respect of the qualifying pension scheme;
  - (ii) the beneficiary is a survivor or surviving dependant who was receiving a present payment from the qualifying pension scheme under scheme rules as a result of the death of a qualifying member before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and
  - (iii) the sum of—
    - (aa) the survivor notional pension determined in respect of the beneficiary; and
    - (bb) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the

survivor notional pension from the relevant date until the day on which the transfer notice is given,

is higher than the amount of the annual payment to which the beneficiary would be entitled in accordance with Schedule 2 if that Schedule applied and paragraph 2(3A) to (3E) of that Schedule were omitted;

(j) Schedule 4, where—

(i) a transfer notice has been given in respect of the qualifying pension scheme;

(ii) the beneficiary is a survivor or surviving dependant;

(iii) the qualifying member in respect of the beneficiary—

(aa) was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and

(bb) died on or after the calculation date, but before the day on which the transfer notice was given; and

(iv) the sum of—

(aa) the proportion of the notional pension which relates to the beneficiary;

(bb) the relevant proportion of the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the relevant date until the date on which the qualifying member died; and

(cc) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the relevant proportion of the notional pension from the day after the qualifying member died until the day on which the transfer notice is given,

is higher than the amount of the annual payment to which the beneficiary would be entitled in accordance with Schedule 2 if that Schedule applied and paragraph 2(3A) to (3E) of that Schedule were omitted; or

(k) Schedule 4, where—

(i) a transfer notice has been given in respect of the qualifying pension scheme;

(ii) the beneficiary is a survivor or surviving dependant;

(iii) the qualifying member in respect of the beneficiary—

(aa) was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and

(bb) died on or after the day on which the transfer notice was given; and

(iv) the sum of—

(aa) the proportion of the notional pension which relates to the beneficiary;

(bb) the relevant proportion of the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the relevant date until the day on which the transfer notice was given; and

(cc) the relevant proportion of the total amount of any annual increases to which the qualifying member was entitled on the day on which the qualifying member died,

is higher than the amount of the annual payment to which the beneficiary would be entitled in accordance with Schedule 2 if that Schedule applied and paragraph 2(3A) to (3E) of that Schedule were omitted.

(9) For the purposes of paragraphs (8), (16) and (17)—

(a) a qualifying member is treated as receiving a present payment from a pension scheme before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010, notwithstanding that no payment has been received, if, prior to the coming into force of those Regulations—

(i) the qualifying member was entitled to a payment under the scheme rules; and

(ii) the trustees or managers of the scheme received confirmation from the qualifying member that payment should commence; and

(iii) the qualifying member's entitlement became payable, as a result of paragraphs (i) and (ii) being satisfied.

(b) a survivor or surviving dependant is treated as receiving a present payment from a pension scheme before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010, notwithstanding that no payment has been received, if, prior to the coming into force of those Regulations, the beneficiary was entitled to ongoing payments as a result of the death of the qualifying member.

(10) In paragraph (8)(b)(iii), (d)(v) and (e)(v), “the revalued notional pension” means the aggregate of—

(a) the notional pension; and

(b) the revaluation amount for the period—

(i) beginning on the calculation date; and

(ii) ending on the earliest of—

(aa) the day on which the beneficiary becomes entitled to an annual payment;

(bb) the day on which the beneficiary began to receive a present payment from the scheme; or

(cc) the day on which the qualifying member died.

(11) The revaluation amount for the period referred to in paragraph (10) is—

(a) where—

(i) that period is less than one month; or

(ii) the qualifying member became entitled to an annual payment or began to receive present payment from the scheme prior to the calculation date,

nil; and



(b) in any other case, the revaluation percentage of the notional pension.

(12) In paragraph (11), “the revaluation percentage” means the lesser of—

- (a) the percentage increase in the general level of prices in Great Britain during the revaluation period determined in accordance with paragraph (10); and
- (b) the maximum revaluation rate.

(13) The method for determining the percentage increase in the general level of prices in Great Britain during the revaluation period determined in accordance with paragraph (10) is—

$$(100 \times (A \div B)) - 100$$

where—

- (a) A is the level of the retail prices index for the month which falls two months before the month in which the last day of the revaluation period falls; and
- (b) B is the level of the retail prices index for the month which falls two months before the month in which the calculation date falls.

(14) In paragraph (12)(b), “the maximum revaluation rate” is—

- (a) if that period is a period of 12 months, 5%; or
- (b) in any other case, the percentage that would be the percentage mentioned in paragraph (12)(a) had the general level of prices in Great Britain increased at the rate of 5% compound per annum during that period.

(15) In paragraph (8), “relevant date” means—

- (a) where the beneficiary began to receive a payment from the scheme after the calculation date and prior to becoming entitled to an annual payment under these Regulations, the date on which the beneficiary began to receive a present payment from the scheme;
- (b) where the beneficiary is a qualifying member to whom sub-paragraph (a) does not apply, but to whom paragraph (3) or (3C) applies, the date on which the qualifying member became entitled to an annual payment under that paragraph; and
- (c) in all other cases, the date from which the notional pension or survivor notional pension could have been payable as determined in accordance with regulation 27(3) and (4).

(16) Where a qualifying member entitled to an annual payment in accordance with this regulation is a qualifying member to whom regulation 17H applied, the annual payment shall be determined in accordance with—

(a) Schedule 3, where—

- (i) the qualifying member was not receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and
- (ii) the payment which was payable to the qualifying member under Schedule 7, taking into account any reduction made to that payment under paragraph 1(2) or (5) of that Schedule, immediately before the qualifying member became entitled to an annual payment under this regulation is higher than the amount of the annual payment to which the qualifying

member would be entitled in accordance with Schedule 2 if that Schedule applied; and

(b) Schedule 4, where—

(i) the qualifying member was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and

(ii) the payment which was payable to the qualifying member under Schedule 7, taking into account any reduction made to that payment under paragraph 1(2) or (5) of that Schedule, immediately before the qualifying member became entitled to an annual payment under this regulation is higher than the amount of the annual payment to which the member would be entitled in accordance with Schedule 2 if that Schedule applied.

(17) Where a beneficiary is entitled to an annual payment in accordance with this regulation because they are the survivor or surviving dependant of a qualifying member to whom, immediately before the qualifying member's death, regulation 17H applied, the annual payment shall be determined in accordance with—

(a) Schedule 3, where—

(i) the qualifying member was not receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and

(ii) one half of the payment which was payable to the qualifying member under Schedule 7, disregarding any reduction made to that payment under paragraph 1(2) or (5) of that Schedule, on the day on which the qualifying member died is higher than the amount of the annual payment to which a survivor would be entitled in accordance with Schedule 2 if that Schedule applied and paragraph 5(6A) of that Schedule were omitted; and

(b) Schedule 4, where—

(i) the qualifying member was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and

(ii) the relevant proportion of the payment which was payable to the qualifying member in accordance with Schedule 7, disregarding any reduction made to that payment under paragraph 1(2) or (5) of that Schedule, on the day on which the qualifying member died is higher than the amount of the annual payment to which the beneficiary would be entitled in accordance with Schedule 2 if that Schedule applied.

(18) In paragraph (8) and paragraph (17), “relevant proportion” means the proportion of the notional pension which relates to the beneficiary.”.

### **Amendment of regulation 17A**

9. In regulation 17A (ill health payments)—

(a) in paragraph (1) omit “in accordance with paragraph 2 of Schedule 2A”;

(b) in paragraph (5) after “a beneficiary” insert “entitled to an ill health payment in accordance with Schedule 2A”;

- (c) in paragraph (6B) omit “determined in accordance with Schedule 2A”;
- (d) for paragraph (8) substitute—

“(8) Subject to paragraph (16), and until such time, if any, as regulation 17F applies, where a beneficiary is entitled to an ill health payment in accordance with this regulation, that ill health payment shall be determined in accordance with—

- (a) Schedule 2A, where none of sub-paragraphs (b) to (i) nor paragraph (16) applies;
- (b) Schedule 5, where—

- (i) a transfer notice has been given in respect of the qualifying pension scheme;

- (ii) the beneficiary is a qualifying member who was not receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and

- (iii) the sum of—

- (aa) the product of C multiplied by the revalued notional pension in relation to the qualifying member; and

- (bb) the total amount of any annual increases which the scheme manager considers could have been paid from the relevant date until the day on which the transfer notice is given, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with paragraph (11),

is higher than the amount of the ill health payment to which that qualifying member would be entitled in accordance with Schedule 2A if that Schedule applied and sub-paragraphs (3A) to (3G) of paragraph 2 of Schedule 2 were omitted;

- (c) Schedule 5, where—

- (i) a transfer notice has been given in respect of the qualifying pension scheme;

- (ii) the beneficiary is a survivor or surviving dependant; and

- (iii) the qualifying member in respect of the beneficiary was entitled to an ill health payment in accordance with Schedule 5 immediately before the death of the member;

- (d) Schedule 5, where—

- (i) a transfer notice has been given in respect of the qualifying pension scheme;

- (ii) the beneficiary is a survivor or surviving dependant;

- (iii) the qualifying member in respect of the beneficiary—

- (aa) was not receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010;

- (bb) was entitled to an ill health payment immediately before the death of the qualifying member; and

- (cc) died on or after the calculation date and before the day on which the transfer notice was given; and

(iv) the sum of—

- (aa) the product of C multiplied by one half of the revalued notional pension in relation to the qualifying member;
- (bb) one half of the total amount of any annual increases which the scheme manager considers could have been paid from the relevant date until the date on which the qualifying member died, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with paragraph (11); and
- (cc) the total amount of any annual increases which the scheme manager considers could have been paid to a survivor from the day after the day on which the qualifying member died until the day on which the transfer notice is given, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with paragraph (11),

is higher than the amount of the ill health payment to which a survivor would be entitled in accordance with Schedule 2A if that Schedule applied and paragraph 2(2A) of that Schedule and paragraph 2(3A) to (3G) of Schedule 2 were omitted;

(e) Schedule 5, where—

- (i) a transfer notice has been given in respect of the qualifying pension scheme;
- (ii) the beneficiary is a survivor or surviving dependant;
- (iii) neither the beneficiary nor the qualifying member in respect of the beneficiary was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010;
- (iv) the beneficiary was entitled to an ill health payment immediately before the calculation date; and
- (v) the sum of—
  - (aa) the survivor notional pension determined in respect of the beneficiary; and
  - (bb) the total amount of annual increases which the scheme manager has determined under regulation 27 could be paid on the survivor notional pension from the relevant date until the day on which the transfer notice is given,

is higher than the amount of the ill health payment to which the beneficiary would be entitled in accordance with Schedule 2A if that Schedule applied and sub-paragraphs (3A) to (3G) of paragraph 2 of Schedule 2 were omitted;

(f) Schedule 6, where—

- (i) a transfer notice has been given in respect of the qualifying pension scheme;
- (ii) the beneficiary is a qualifying member who was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and

- (iii) the sum of—
  - (aa) the notional pension in relation to that qualifying member; and
  - (bb) the total amount of annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the relevant date until the day on which the transfer notice is given,is higher than the amount of the ill health payment to which the qualifying member would be entitled in accordance with Schedule 2A if that Schedule applied and paragraph 2(3A) to (3E) of Schedule 2 were omitted;
- (g) Schedule 6, where—
  - (i) a transfer notice has been given in respect of the qualifying pension scheme;
  - (ii) the beneficiary is a survivor or surviving dependant;
  - (iii) either—
    - (aa) the beneficiary was receiving a present payment from the qualifying pension scheme under scheme rules as a result of the death of a qualifying member; or
    - (bb) the qualifying member in respect of the beneficiary was receiving a present payment from the qualifying pension scheme under scheme rules,before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010;
  - (iv) the beneficiary was entitled to an ill health payment immediately before the calculation date; and
  - (v) the sum of—
    - (aa) the survivor notional pension determined in respect of the beneficiary; and
    - (bb) the total amount of annual increases which the scheme manager has determined under regulation 27 could be paid on the survivor notional pension from the relevant date until the day on which the transfer notice is given,is higher than the amount of the ill health payment to which the beneficiary would be entitled in accordance with Schedule 2A if that Schedule applied and paragraph 2(3A) to (3E) of Schedule 2 were omitted;
- (h) Schedule 6, where—
  - (i) a transfer notice has been given in respect of the qualifying pension scheme;
  - (ii) the beneficiary is a survivor or surviving dependant;
  - (iii) the qualifying member in respect of the beneficiary—
    - (aa) was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010;
    - (bb) died on or after the calculation date, but before the day on which the transfer notice was given; and

- (cc) was entitled to an ill health payment when the qualifying member died; and
- (iv) the sum of—
  - (aa) the proportion of the notional pension which relates to the beneficiary;
  - (bb) the relevant proportion of the total amount of annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the relevant date until the date on which the qualifying member died; and
  - (cc) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the relevant proportion of the notional pension from the day after the day on which the qualifying member died until the day on which the transfer notice is given,

is higher than the amount of the ill health payment to which the beneficiary would be entitled in accordance with Schedule 2A if that Schedule applied and paragraph 2(3A) to (3E) of Schedule 2 were omitted; and
- (i) Schedule 6, where—
  - (i) a transfer notice has been given in respect of the qualifying pension scheme;
  - (ii) the beneficiary is a survivor or surviving dependant;
  - (iii) the qualifying member in respect of the beneficiary—
    - (aa) was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010;
    - (bb) died on or after the day on which the transfer notice was given; and
    - (cc) was entitled to an ill health payment when the qualifying member died; and
  - (iv) the sum of—
    - (aa) the proportion of the notional pension which relates to the beneficiary;
    - (bb) the relevant proportion of the total amount of annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the relevant date until the day on which the transfer notice was given; and
    - (cc) the relevant proportion of the total amount of any annual increases to which the qualifying member was entitled on the day on which the qualifying member died,

is higher than the amount of the ill health payment to which the beneficiary would be entitled in accordance with Schedule 2A if that Schedule applied and paragraph 2(3A) to (3E) of Schedule 2 were omitted.
- (9) For the purposes of paragraphs (8) and (16)—
  - (a) a qualifying member is treated as receiving a present payment from a pension scheme before the coming into force of the Financial Assistance

Scheme (Miscellaneous Amendments) Regulations 2010, notwithstanding that no payment has been received, if, prior to the coming into force of those Regulations—

- (i) the qualifying member was entitled to a payment under the scheme rules;
  - (ii) the trustees or managers of the scheme received confirmation from the qualifying member that payment should commence; and
  - (iii) the qualifying member's entitlement became payable, as a result of paragraphs (i) and (ii) being satisfied; and
- (b) a survivor or surviving dependant is treated as receiving a present payment from a pension scheme before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010, notwithstanding that no payment has been received, if, prior to the coming into force of those Regulations, the beneficiary was entitled to ongoing payments as a result of the death of the qualifying member.

(10) In paragraph (8)(b)(iii) and (d)(iv)—

“the revalued notional pension” means the aggregate of—

- (a) the notional pension; and
- (b) the revaluation amount for the period—
  - (i) beginning on the calculation date; and
  - (ii) ending on the earlier of—
    - (aa) the day on which the qualifying member became entitled to an ill health payment; and
    - (bb) the day on which the qualifying member began to receive a present payment from the scheme; and

“C” means—

- (a) 1, where the qualifying member was—
  - (i) entitled to an ill health payment on the calculation date; or
  - (ii) receiving a present payment from the scheme on the calculation date; and
- (b) the actuarial factor to be applied in respect of the beneficiary in accordance with Schedule 5, where the qualifying member was not receiving a present payment from the scheme on the calculation date and became entitled to an ill health payment after the calculation date.

(11) The revaluation amount for the period referred to in the definition of “the revalued notional pension” in paragraph (10) is—

- (a) where—
  - (i) that period is less than one month; or
  - (ii) the qualifying member became entitled to an ill health payment or began to receive a present payment from the scheme prior to the calculation date, nil; or
- (b) in any other case, the revaluation percentage of the notional pension.

(12) In paragraph (11), “the revaluation percentage” means the lesser of—

- (a) the percentage increase in the general level of prices in Great Britain during the revaluation period determined in accordance with paragraph (10); and
- (b) the maximum revaluation rate.

(13) The method for determining the percentage increase in the general level of prices in Great Britain during the revaluation period determined in accordance with paragraph (10) is—

$$(100 \times (A \div B)) - 100$$

where—

- (a) A is the level of the retail prices index for the month which falls two months before the month in which the day from which the qualifying member became entitled to an ill health payment or, as the case may be, began to receive a present payment from the scheme falls; and
- (b) B is the level of the retail prices index for the month which falls two months before the month in which the calculation date falls.

(14) In paragraph (12)(b), “the maximum revaluation rate” is—

- (a) if that period is a period of 12 months, 5%; or
- (b) in any other case, the percentage that would be the percentage mentioned in paragraph (12)(a) had the general level of prices in Great Britain increased at the rate of 5% compound per annum during that period.

(15) In paragraph (8), “relevant date” means—

- (a) where the beneficiary began to receive a payment from the scheme after the calculation date and prior to becoming entitled to an ill health payment under these Regulations, the date on which the beneficiary began to receive a present payment from the scheme;
- (b) where the beneficiary became entitled to an ill health payment after the calculation date and prior to receiving a payment from the scheme, the date on which the beneficiary became so entitled; and
- (c) in all other cases, the date from which the notional pension or survivor notional pension could have been payable as determined in accordance with regulation 27(3) and (4).

(16) Where a qualifying member entitled to an ill health payment in accordance with this regulation is a qualifying member to whom regulation 17H applied, the ill health payment shall be determined in accordance with—

(a) Schedule 5, where—

- (i) the qualifying member was not receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and
- (ii) the payment which was payable to the qualifying member under Schedule 7, taking into account any reduction made to that payment under paragraph 1(2) or (5) of that Schedule, immediately before the qualifying member became entitled to an ill health payment under this regulation is higher than the amount of the ill health payment to which the qualifying member would be entitled in accordance with Schedule 2A if that Schedule applied; and

(b) Schedule 6, where—

- (i) the qualifying member was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into



force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and

- (ii) the payment which was payable to the qualifying member under Schedule 7, taking into account any reduction made to that payment under paragraph 1(2) or (5) of that Schedule, immediately before the qualifying member became entitled to an ill health payment under this regulation is higher than the amount of the ill health payment to which the qualifying member would be entitled in accordance with Schedule 2A if that Schedule applied.”.

### **Amendment of Part 5**

**10.**—(1) After regulation 17C (annual payments for certain applications in cases of severe ill health) insert—

#### **“Lump sum payments**

**17D.**—(1) This regulation applies where the qualifying member—

- (a) is a qualifying member to whom Part 7 applies;
- (b) is a qualifying member of a qualifying pension scheme in respect of which a transfer notice has been given;
- (c) is not regarded as a qualifying member by virtue of regulation 15(5);
- (d) was not receiving a present payment under scheme rules before the day on which the transfer notice was given;
- (e) has made a written request to commute for a lump sum a portion of the annual payment or ill health payment to which that qualifying member is entitled no later than—
  - (i) the day before the day on which the qualifying member becomes entitled to an annual payment or ill health payment; or
  - (ii) such later day by which the scheme manager may determine that it will accept a written request in the case of any particular member; and
- (f) the notional pension determined for the qualifying member is more than nil.

(2) Where this regulation applies a qualifying member shall be entitled to commute for a lump sum a portion of the payments payable or which may become payable to and in respect of that qualifying member under these Regulations—

- (a) subject to sub-paragraph (b), immediately before the day on which that member becomes entitled to an annual payment or ill health payment in accordance with these Regulations; or
- (b) where paragraph (1)(e)(ii) applies, at any point prior to the date determined by the scheme manager under that paragraph.

(3) The portion commuted for a lump sum under paragraph (2) shall not exceed the revalued notional pension as construed in accordance with regulation 17(10) or, where the qualifying member is entitled to an ill health payment, regulation 17A(10).

(4) The lump sum payable under paragraph (2) is the actuarial equivalent of the commuted portion of payments to be made in respect of the qualifying member in accordance with these Regulations and shall not exceed 25% of the sum of—

- (a) the product of 20 multiplied by the amount of the annual payment or ill health payment after commutation; and

(b) the lump sum derived from the portion commuted.

(5) The scheme manager shall only be bound to make a determination in relation to the amount of an annual payment or an ill health payment payable after the time within which the qualifying member may make a written request for a lump sum in accordance with paragraph (1)(e) has expired.

**Redetermination of an annual payment previously determined in accordance with Schedule 4**

**17E.**—(1) This regulation applies where, on an indexation date following the date on which the beneficiary first became entitled to an annual payment determined in accordance with Schedule 4, the aggregate of the amounts referred to in paragraph (2) is lower than the aggregate of the amounts referred to in paragraph (3).

(2) The amounts in this paragraph are—

- (a) the amount of the annual payment determined in accordance with Schedule 4; and
- (b) the amount of any annual increases to which the beneficiary was entitled on the indexation date in accordance with paragraph 7 of Schedule 4.

(3) The amounts in this paragraph are—

- (a) the amount of an annual payment which would be determined in accordance with Schedule 2 in respect of the beneficiary; and
- (b) the amount of any annual increases to which the beneficiary would be entitled in accordance with paragraph 9 of Schedule 2,

if the beneficiary were entitled to an annual payment determined in accordance with Schedule 2.

(4) Where this regulation applies—

- (a) the scheme manager shall redetermine the amount of the annual payment; and
- (b) the beneficiary shall, from the indexation date—
  - (i) be entitled to an annual payment determined in accordance with Schedule 2; and
  - (ii) cease to be entitled to an annual payment determined in accordance with Schedule 4.

**Redetermination of an ill health payment previously determined in accordance with Schedule 6**

**17F.**—(1) This regulation applies where, on an indexation date following the date on which the beneficiary first became entitled to an ill health payment determined in accordance with Schedule 6, the aggregate of the amounts referred to in paragraph (2) is lower than the aggregate of the amounts referred to in paragraph (3).

(2) The amounts in this paragraph are—

- (a) the amount of the ill health payment determined in accordance with Schedule 6; and
- (b) the amount of any annual increases to which the beneficiary was entitled on the indexation date in accordance with paragraph 7 of Schedule 6.

(3) The amounts in this paragraph are—

- (a) the amount of an ill health payment which would be determined in accordance with Schedule 2A in respect of the beneficiary; and

(b) the amount of any annual increases to which the beneficiary would be entitled in accordance with paragraph 9 of Schedule 2A,  
if the beneficiary were entitled to an ill health payment determined in accordance with Schedule 2A.

(4) Where this regulation applies—

- (a) the scheme manager shall redetermine the amount of the ill health payment; and
- (b) the beneficiary shall, from the indexation date—
  - (i) be entitled to an ill health payment determined in accordance with Schedule 2A; and
  - (ii) cease to be entitled to an ill health payment determined in accordance with Schedule 6.

### **Payments to beneficiaries other than qualifying members, survivors and surviving dependants**

**17G.**—(1) This regulation applies where—

- (a) a notional pension has been determined in accordance with regulation 27 in respect of a person who—
    - (i) is not a qualifying member, a survivor or surviving dependant; but
    - (ii) is a person in respect of whom the qualifying pension scheme—
      - (aa) as a result of the death of a qualifying member, had a liability to provide a pension or other benefit at the calculation date; and
      - (bb) would have continued to have a liability to provide that pension or other benefit had the trustees or managers not been discharged from that liability under section 161 (as modified by Schedule 1 to these Regulations); and
  - (b) a transfer notice has been given in respect of the qualifying pension scheme.
- (2) Where this regulation applies, that person shall be entitled to a payment, payable in respect of a year, which is the amount determined in accordance with Schedule 7.
- (3) A person entitled to a payment under paragraph (2) shall be entitled to that payment—
- (a) from the day on which the transfer notice in respect of the qualifying pension scheme is given; and
  - (b) until the day on which entitlement to a payment from the scheme would have ended in accordance with scheme rules.
- (4) The year in respect of which the payment referred to in paragraph (2) is to be made shall be the year starting on the day on which an instalment of the payment is first payable to the person by virtue of regulation 19 and in respect of subsequent years, on each anniversary of that day.
- (5) Where a person ceases to be entitled to a payment under this regulation in accordance with paragraph (3)(b)—
- (a) subject to sub-paragraph (b), any further instalments of such a payment that would have been payable to that person, in respect of that year, cease to be payable; and
  - (b) any instalment of such a payment which is payable in respect of a period which includes the day on which the person has died or otherwise ceased to be entitled to a payment shall be payable.

**Payments to qualifying members receiving a pension from the qualifying pension scheme before entitlement to an annual payment or ill health payment**

**17H.**—(1) This regulation applies where—

- (a) a transfer notice has been given in respect of a qualifying pension scheme;
- (b) a qualifying member is not entitled to an annual payment or an ill health payment; and
- (c) that qualifying member was receiving present payment of a pension under the scheme rules on the day on which the transfer notice is given.

(2) Where this regulation applies, the qualifying member shall be entitled to a payment, payable in respect of a year, which is the amount determined in accordance with Schedule 7.

(3) A qualifying member entitled to a payment under paragraph (2) shall be entitled to that payment—

- (a) from the day on which the transfer notice in respect of the qualifying pension scheme is given; and
- (b) until the earlier of—
  - (i) the day before the day on which the qualifying member becomes entitled to an annual payment or an ill health payment; and
  - (ii) the day on which the qualifying member dies.

(4) The year in respect of which the payment referred to in paragraph (2) is to be made shall be the year starting on the day on which an instalment of the payment is first payable to the qualifying member by virtue of regulation 19 and in respect of subsequent years, on each anniversary of that day.

(5) Where the qualifying member ceases to be entitled to a payment under this regulation in accordance with paragraph (3)(b)—

- (a) subject to sub-paragraph (b), any further instalments of such a payment that would have been payable to the qualifying member, in respect of that year, cease to be payable; and
- (b) where the member dies before becoming entitled to an annual payment or ill health payment, any instalment of such a payment which is payable in respect of a period which includes the day on which the qualifying member died shall be payable.”.

**Insertion of regulation 18A**

**11.** After regulation 18 insert—

**“Death benefit guarantees**

**18A.**—(1) This regulation applies where—

- (a) a qualifying member was entitled to an annual payment determined in accordance with Schedule 4 or 6;
- (b) under scheme rules, an amount was payable as a result of the qualifying member dying within a period specified in the scheme rules; and
- (c) the qualifying member dies within the period specified.

(2) Where this regulation applies, the scheme manager shall pay the amount payable—

- (a) to such person or persons specified in the scheme rules;

- (b) where no person is specified in the scheme rules, but the qualifying member has made a valid nomination in accordance with those rules, to such person or such persons nominated by the qualifying member; or
  - (c) where neither sub-paragraph (a) nor (b) applies—
    - (i) to any survivor; or
    - (ii) if there is no survivor, to any surviving dependant; or
    - (iii) if there is no survivor or surviving dependant, to the estate of the qualifying member.
- (3) In any case where the scheme manager is required under paragraph (2) to make a payment in respect of the qualifying member to more than one person, the amount payable shall be divided between the beneficiaries—
- (a) where paragraph (2)(a) or (b) applies and the scheme rules make provision for how the amount is to be divided, in accordance with scheme rules; and
  - (b) in all other cases, equally.
- (4) Where a payment to be made under this regulation would, but for this paragraph, include a fraction of a penny, that fraction shall be disregarded if it is less than half a penny and shall otherwise be treated as a penny.
- (5) Payments made under this regulation shall be made by means of direct credit transfer or by such other means as appear to the scheme manager to be appropriate in the circumstances of any particular case.”.

#### **Amendment of regulation 19**

12. In regulation 19 (time and manner of payment: general provisions)—
- (a) in paragraph (1), after “ill health payment” insert “, a payment under regulation 17G or 17H”; and
  - (b) in paragraph (3) after sub-paragraph (d) insert—
    - “(e) the beneficiary becomes entitled to a payment under regulation 17G or 17H;”.

#### **Amendment of regulation 20**

13. In regulation 20(1) before “instalments” insert “payments under regulation 18A and”.

#### **Insertion of Parts 7 to 9**

14. After Part 6 (administration of payments), insert Parts 7 (valuation of assets and liabilities), 8 (scheme manager functions after a valuation) and 9 (miscellaneous payments and residual assets) as set out in Schedule 1 to these Regulations.

#### **Amendment of Schedule 1**

15. In Schedule 1 (modification of certain provisions of Parts 1 and 2 of the Act)—
- (a) in paragraph 3A—
    - (i) after sub-paragraph (b) insert—
      - “(ba) in subsection (2), after paragraph (b) insert—
        - “(ba) the determination of interim pensions,”;”;
    - (ii) after sub-paragraph (c) insert—

“(ca) in subsection (3), before paragraph (a) insert—

“(za) “interim pension” has the meaning given by regulations under section 286(1),”,;”.

(b) after paragraph 3A insert—

**“3B.** In section 135 (restrictions on winding up, discharge of liabilities etc)—

(a) in subsection (1), for “there is an assessment period in relation to an eligible scheme” substitute “an occupational pension scheme is a qualifying pension scheme under section 286(2)”;

(b) omit subsections (2), (3), (5) to (7) and (11);

(c) in subsection (4)—

(i) for the words before paragraph (a) substitute “Except where subsection (4A) applies—

(ii) in paragraph (a), for “member’s” substitute “qualifying member’s”; and

(iii) for paragraph (b) substitute—

“(b) no steps may be taken to discharge any liability of the scheme to or in respect of a qualifying member of the qualifying pension scheme by way of making a payment which would be—

(i) a winding-up lump sum under paragraph 10 of Schedule 29 to the Finance Act 2004 (c.12); or

(ii) a trivial commutation lump sum under paragraph 7 or 7A of that Schedule.”;

(d) after subsection (4) insert—

“(4A) This subsection applies where—

(a) before 26th September 2007 the trustees or managers entered into a binding commitment to purchase an annuity for the qualifying member;

(b) the purchase of an annuity has been approved by the scheme manager under section 286A(2)(b);

(c) the transfer or discharge of liability has been approved by the scheme manager under subsection (4C) on the application of the trustees or managers of the scheme and any condition imposed under subsection (4D) is satisfied;

(d) before the date on which the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010 came into force, the trustees or managers of the scheme offered a trivial commutation lump sum to the qualifying member;

(e) before the date on which those Regulations came into force—

(i) an application under section 93A of the Pension Schemes Act 1993(2) or section 89A of the Pension Schemes (Northern Ireland) Act 1993(3) (salary related schemes: right to statement of entitlement) for a statement of entitlement had been received

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(2) 1993 c.48.

(3) 1993 c.49.

- by the trustees or managers of the scheme for the qualifying member;
- (ii) the trustees or managers of the scheme have provided the qualifying member with such a statement; and
  - (iii) the qualifying member has made, within the relevant period, and not withdrawn, an application under section 95 of the Pension Schemes Act 1993 or section 91 of the Pension Schemes (Northern Ireland) Act 1993 (ways of taking right to cash equivalent);
- (f) the transfer or discharge of liability relates only to money purchase benefits; or
  - (g) the transfer or discharge of liability relates only to benefits derived from the payment of voluntary contributions.
- (4B) For the purposes of subsection (4A)(e), “the relevant period” means—
- (a) where section 94(1)(aa) of the Pension Schemes Act 1993 or section 90(1)(aa) of the Pension Schemes (Northern Ireland) Act 1993 (right to cash equivalent) applies, three months beginning with the guarantee date, as defined in those Acts, in respect of the statement of entitlement; or
  - (b) where regulation 14 of the Occupational Pension Schemes (Transfer Values) Regulations 1996<sup>(4)</sup> or regulation 14 of the Occupational Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1996<sup>(5)</sup> (extension of time within which a member may exercise option to take a guaranteed cash equivalent) applies, the three month period for making a relevant application determined in accordance with that regulation.
- (4C) The scheme manager may approve a transfer referred to in subsection (4)(a) or any steps to discharge any liability of the scheme to or in respect of a qualifying member of the qualifying pension scheme by way of making a payment referred to in subsection (4)(b) if the scheme manager thinks it appropriate to do so.
- (4D) An approval under subsection (4C) may be made subject to such conditions (if any) as the scheme manager thinks appropriate.”; and
- (e) in subsection (9) for “Board” substitute “scheme manager”.
- 3C.** In section 136 (power to validate contraventions of section 135)—
- (a) in each place it occurs, for “Board” substitute “scheme manager”;
  - (b) in subsection (1) for the words “to do so is consistent” to the end, substitute “it is appropriate to do so”;
  - (c) in subsection (2) omit paragraphs (a), (c) and (d);
  - (d) after subsection (2) insert—
    - “(2A) The scheme manager may copy the notice under subsection (2) to any other person to whom, in the opinion of the scheme manager, the determination is relevant.”;
  - (e) in subsection (3) for “Board’s” substitute “scheme manager’s”; and

(4) S.I. 1996/1847.

(5) S.R. 1996 No. 619.

(f) omit subsections (4) and (5).

**3D.** In section 161 (effect of Board assuming responsibility for a scheme)—

(a) in subsection (1)—

(i) after “given” insert “under regulation 29 of the Financial Assistance Scheme Regulations 2005 (transfer notice)”;

(ii) for “an eligible scheme” substitute “a qualifying pension scheme under section 286(2)”; and

(iii) for the words from “the Board” to the end substitute—

“(a) the property, rights and liabilities of the scheme are transferred to the Secretary of State, without further assurance, with effect from the time the trustees or managers are given the transfer notice,

(b) the trustees or managers of the scheme are discharged from their pension obligations from that time, and

(c) any liabilities other than those transferred under paragraph (a) or liabilities in respect of money purchase benefits referred to in subsection (4A) are discharged.”;

(b) omit subsection (2);

(c) in subsection (3)—

(i) after “liabilities of the scheme” insert “means any liabilities which are liabilities of the scheme as a direct result of the rights or property referred to in subsection (1)(a) being held by or vested in the trustees or managers of the scheme, but”; and

(ii) omit the words from “, other than” to the end;

(d) in subsection (4)—

(i) after the words in brackets insert “which are not pensions or benefits in respect of money purchase benefits referred to in subsection (4A)”; and

(ii) omit paragraph (b) and the “and” which precedes it;

(e) after subsection (4) insert—

“(4A) Subsection (1)(a) does not transfer any property which is, or rights which are, held by or vested in the trustees or managers of the scheme in respect of money purchase benefits where the scheme manager is satisfied that appropriate arrangements have been made or are being made for the discharge of the scheme’s liabilities relating to money purchase benefits.

(4B) The trustees or managers of the scheme may discharge their liabilities in respect of money purchase benefits irrespective of any rules of the scheme which may provide that such liabilities must be discharged together with benefits which are not money purchase benefits.”;

(f) in subsection (7) for “Board” substitute—

(i) where it first occurs, “scheme manager”; and

(ii) for the subsequent occurrences, “Secretary of State”;

(g) after subsection (7) insert—

“(7A) Neither paragraph (b) nor (c) of subsection (1) affects any rights transferred to the Secretary of State in accordance with paragraph (a) of that subsection.”; and



- (h) in each place it occurs, for “subsection (2)” substitute “subsection (1)”.
- 3E.** In section 165 (guaranteed minimum pensions)—
- (a) in subsection (1)—
- (i) for “Board” substitute “scheme manager”;
- (ii) for “Commissioners of Inland Revenue” substitute “Commissioners for Her Majesty’s Revenue and Customs”; and
- (iii) for “it assuming responsibility for an eligible scheme in accordance with this Chapter” substitute “the scheme manager giving a transfer notice under regulation 29 of the Financial Assistance Scheme Regulations 2005 (transfer notice)”; and
- (b) after subsection (3) insert—
- “(4) In subsection (8) of that section (as inserted by subsection (3) above) for “on the Board of the Pension Protection Fund assuming responsibility for the scheme” substitute “when a transfer notice was given under regulation 29 of the Financial Assistance Scheme Regulations 2005”.”;
- (c) after paragraph 14 insert—
- 14A.** In section 202 (tax information)—
- (a) in each place it occurs, for “the Board” substitute “the scheme manager”;
- (b) in subsection (1) for “tax functions” substitute “a function of the Revenue and Customs”;
- (c) in subsection (2) for “section 182 of the Finance Act 1989 (c.26)” substitute “sections 18 and 19 of the Commissioners for Revenue and Customs Act 2005 (c.11)”;
- (d) in subsection (4) for “Commissioners of Inland Revenue or the Commissioners of Customs and Excise” substitute “Commissioners for Her Majesty’s Revenue and Customs”; and
- (e) for subsection (5) substitute—
- “(5) In subsection (1), “a function of the Revenue and Customs” has the same meaning as in section 18 of the Commissioners for Revenue and Customs Act 2005.”;
- (d) in paragraph 17—
- (i) in sub-paragraph (a)—
- (aa) before inserted sub-paragraph (ga) insert—
- “(zga) Paragraphs 6A, 7(1) and 8 of Schedule 6 (transfer of property, rights and liabilities to the Board) as modified;”;
- (bb) for “Schedules 2 and 2A” substitute “Schedules 2 to 7”; and
- (cc) after “Financial Assistance Scheme (Appeals) Regulations 2005;” insert—
- “(gg) regulation 27 of the 2005 Regulations (scheme manager calculations after a valuation);
- (gh) regulation 28 of the 2005 Regulations (determination of certain asset shares, notional pensions and survivor notional pensions);
- (gi) regulation 31 of the 2005 Regulations (payments where amounts relating to money purchase benefits are transferred to the Secretary of State);”;

- (ii) in sub-paragraph (b) for “(gf)” substitute “(gi)”; and
- (e) after paragraph 18 add—
- “19. In Schedule 6 (transfer of property, rights and liabilities to the Board)—
- (a) after paragraph 3(2) insert—
- “3) Where any liabilities in respect of an existing or future cause of action are not transferred as a result of sub-paragraph (2), the trustees or managers are not discharged from any obligations in respect of such causes of action.”;
- (b) after paragraph 5 insert—
- “5A. Any contract which does not form part of any rights or liabilities transferred to the Secretary of State shall be treated as terminated.”;
- (c) in paragraph 6 for the words from “so far as necessary” to the end substitute—
- “(a) so far as necessary for the purposes of giving effect to the transfer as a reference to the Secretary of State, and
- (b) so far as necessary for the purposes of giving effect to paragraph 6A(1) as a reference to the scheme manager.”;
- (d) after paragraph 6 insert—
- “6A.—(1) The rights, powers and obligations of the Secretary of State in relation to the property, rights and liabilities are exercisable by the scheme manager without limitation.
- (2) Where, by virtue of sub-paragraph (1), any amount becomes payable, or is to be paid, to the scheme manager, that amount must be paid to the Secretary of State.”;
- (e) in paragraph 7(1) in the first place in which it occurs for “Board” substitute “scheme manager”;
- (f) in all other places in which it occurs for “Board” substitute “Secretary of State”; and
- (g) after paragraph 7 add—
- “8.—(1) Where, by virtue of paragraph 3(1), an application to the Pensions Ombudsman under Part 10 of the Pension Schemes Act 1993 (c.48) or Part 10 of the Pension Schemes (Northern Ireland) Act 1993 (c.49) is to be continued by or against the Secretary of State, any reference in section 146 of the Pension Schemes Act 1993 or section 142 of the Pension Schemes (Northern Ireland) Act 1993 to the trustees or managers of an occupational pension scheme shall have effect, so far as necessary, for the purpose of giving effect to paragraph 3(1), as a reference to the Secretary of State.
- (2) Where, as a result of such an application being continued against the Secretary of State, a direction is given by the Ombudsman under section 151 of the Pension Schemes Act 1993 or section 147 of the Pension Schemes (Northern Ireland) Act 1993, the Secretary of State may require the scheme manager to carry out a review under regulation 10 of the Financial Assistance Scheme (Internal Review) Regulations 2005.”.

## **Amendment of Schedule 2**

16. In Schedule 2 (determination of annual and initial payments)—

- (a) in paragraph 1(2)—
  - (i) omit the definition of “scheme rules”; and
  - (ii) at the end, insert—
    - ““revalued notional pension” shall be construed in accordance with regulation 17(10).”;
- (b) in paragraph 2—
  - (i) in sub-paragraph (1) for “sub-paragraphs (3), (3A) and (4)” substitute “sub-paragraphs (3) to (4)”;
  - (ii) after sub-paragraph (1) insert—
    - “(1A) For the purposes of sub-paragraph (1), where a transfer notice has been given in respect of a qualifying pension scheme, no assets which are transferred to the Secretary of State shall be treated as being available to discharge the liability in respect of any qualifying member of that scheme from the day on which the transfer notice is given.”; and
  - (iii) after sub-paragraph (3A) insert—
    - “(3B) Sub-paragraph (3D) applies where the scheme manager is satisfied that the sum of interim pension paid to a beneficiary and any payment made under these Regulations in respect of any year in the period determined in accordance with sub-paragraph (3C) is higher or lower than the sum of—
      - (a) the revalued notional pension or survivor notional pension; and
      - (b) any annual increases or proportion of annual increases, which the scheme manager considers could have been paid in respect of that year, taking into account—
        - (i) the determination under regulation 27(1)(d);
        - (ii) the revaluation amount determined in accordance with regulation 17(11); and
        - (iii) the proportion of that year which falls after the 1st January.
    - (3C) For the purposes of sub-paragraph (3B), the period is the period from—
      - (a) the earlier of—
        - (i) the day on which the beneficiary became entitled to a payment under these Regulations; and
        - (ii) the day on which the beneficiary became entitled under the scheme rules to a pension or other benefit; or
      - (b) the day on which the qualifying pension scheme began to be wound up if that is later than the day determined in accordance with paragraph (a),until the day on which the scheme manager gave a transfer notice to the scheme trustees or managers.
    - (3D) Where this sub-paragraph applies, the scheme manager may—
      - (a) determine how the actual pension is to be calculated, having regard to—
        - (i) the amount of interim pension which was paid to the beneficiary;
        - (ii) the amount of the sum of—
          - (aa) the revalued notional pension or survivor notional pension;
          - and

- (bb) any annual increases, or proportion of annual increases, which the scheme manager considers could have been paid;
  - (iii) the amount of any payments made under these Regulations prior to the day on which the transfer notice is given; and
  - (iv) such other matters as the scheme manager considers relevant; and
- (b) where the sum of the interim pension paid and any payments made under these Regulations in respect of any year is lower than the sum of the amounts referred to in sub-paragraph (3B)(a) and (b), make a payment to the beneficiary or, where the beneficiary has died prior to the scheme manager making this determination, to the beneficiary's estate, having regard to—
- (i) the amount of interim pension which was paid to the beneficiary;
  - (ii) the amount of the sum of—
    - (aa) the revalued notional pension or survivor notional pension; and
    - (bb) any annual increases, or proportion of annual increases, which the scheme manager considers could have been paid;
  - (iii) the amount of any payments made under these Regulations prior to the scheme manager giving the transfer notice; and
  - (iv) such other matters as the scheme manager considers relevant.

(3E) Where the scheme manager is satisfied that an amount is owed by the beneficiary to the Secretary of State as a result of the beneficiary owing, before the day on which a transfer notice is given, an amount to a qualifying pension scheme to which Part 7 applies, the scheme manager may determine how the actual pension is to be calculated, having regard to the amount owed by the beneficiary and to such other matters as the scheme manager considers relevant.

(3F) Where the beneficiary is a qualifying member who has received a payment in accordance with regulation 17H (payments to qualifying members receiving a pension from the qualifying pension scheme before entitlement to an annual payment or ill health payment), or the survivor or surviving dependant of such a qualifying member, the scheme manager may determine how the actual pension is to be calculated, having regard to—

- (a) the amount paid under regulation 17H;
- (b) any interim pension paid by the scheme from the day on which the scheme began to be wound up until the day on which a transfer notice was given; and
- (c) such other matters as the scheme manager considers relevant.

(3G) Where the beneficiary is a qualifying member to whom regulation 17D applies or a survivor or surviving dependant of such a qualifying member, the scheme manager may determine how the actual pension is to be calculated, having regard to any lump sum paid and determined in accordance with that regulation.

(3H) Where the beneficiary is—

- (a) a qualifying member to whom regulation 17H applied whose payment under Schedule 7 had been reduced under paragraph 1(2) or (5) of that Schedule; or

- (b) a beneficiary who was entitled to an annual payment determined in accordance with Schedule 4 whose payment under that Schedule has been reduced under paragraph 1(2) or (5),

the scheme manager shall include the amount by which the payment has been reduced when determining the actual pension.

(3I) Sub-paragraph (3J) applies where—

- (a) a qualifying member to whom Part 7 applies has received a payment from the scheme before becoming entitled to an annual payment;
- (b) a transfer notice has been given in respect of the qualifying pension scheme; and
- (c) the qualifying member became entitled to an annual payment prior to the day on which the transfer notice was given.

(3J) Where this sub-paragraph applies, the scheme manager may determine how the actual pension is to be calculated, having regard to—

- (a) any interim pension paid by the scheme from the day on which the scheme began to be wound up until the day on which the transfer notice was given; and
- (b) such other matters as the scheme manager considers relevant.

(3K) Where—

- (a) the beneficiary is a qualifying member or the survivor or surviving dependant of a qualifying member to whom part 7 applies;
- (b) the qualifying member has commuted for a lump sum a portion of the benefits deriving from the scheme after the day on which the scheme began to be wound up; and
- (c) a transfer notice has been given in respect of the scheme,

the scheme manager may determine how the actual pension is to be calculated having regard to any lump sum paid as a result of the commutation.”;

(c) in paragraph 3—

(i) at the beginning of sub-paragraph (3)(b) insert “except where paragraph (c) applies,”;

(ii) after sub-paragraph (3)(b) insert—  
“; or

(c) where the qualifying member attains normal retirement age after 14th May 2004, the aggregate of—

- (i) the annual rate of pension which was or should have been in payment to the qualifying member in accordance with scheme rules in respect of rights accrued in a qualifying pension scheme as at the day on which the qualifying pension scheme began to be wound up; and
- (ii) the revaluation amount for the period beginning on the day on which the qualifying pension scheme began to be wound up and ending on the day on which the qualifying member attains normal retirement age.”;

(iii) in sub-paragraph (3A)—

(aa) after “sub-paragraph (3)(b)(ii)” insert “and (c)(ii)”;

- (bb) after “sub-paragraph (3)(b)(i)” insert “or, as the case may be, sub-paragraph (3)(c)(i)”;
- (iv) in sub-paragraph (3B) after “sub-paragraph (3)(b)(ii)” insert “and (c)(ii)”;
- (v) after sub-paragraph (3C) insert—
- “3ZD) The method for determining the percentage increase in the general level of prices in Great Britain during the revaluation period determined in accordance with sub-paragraph (3)(c)(ii) is—
- $$(100 \times (A \div B)) - 100$$
- where—
- A is the level of the retail prices index for the month which falls two months before the month during which the qualifying member attains normal retirement age; and
- B is the level of the retail prices index for the month which falls two months before the month during which the relevant qualifying pension scheme began to be wound up.”;
- (d) in paragraph 4—
- (i) in sub-paragraph (3), after “sub-paragraphs (3A) and (4)” insert “and paragraphs 4A and 4B;” and
- (ii) in sub-paragraph (6)(b), after “Chapter 2 of Part 4 of the 1993 Act” insert “or, where scheme rules are more favourable, in accordance with scheme rules”;
- (e) in paragraph 4A—
- (i) for sub-paragraph (1)(b) substitute—
- “ (b) either—
- (i) an annuity has been purchased for the beneficiary which provides for payment of a pension to the beneficiary at a lower annual rate from the date on which the amount referred to in sub-paragraph (1) (a) would have ceased to be payable under the scheme rules; or
- (ii) a notional pension has been determined in respect of the beneficiary which includes an amount in respect of an amount which under scheme rules would be payable for a period which is shorter than the period in respect of which the remainder of the pension would be payable.”; and
- (ii) in sub-paragraph (3)(a) after “paragraph 3(3)(a)” insert “and (c)”;
- (f) in paragraph 5—
- (i) in sub-paragraph (1)(c)(i) omit “determined in accordance with this Schedule”;
- (ii) for the formula in sub-paragraph (3) substitute—
- $$\frac{\text{expected pension} \times 0.9}{2} + H - A;$$
- (iii) in sub-paragraph (6B) for the definition of H substitute—
- ““H” means the aggregate of—
- (a) one half of the amount of any annual increases determined in accordance with paragraph 9 to which the qualifying member was entitled on the day on which the qualifying member died; and

- (b) where sub-paragraph (6C) applies, the total amount of annual increases determined in accordance with paragraph 9 to which any survivor was entitled on the day on which the survivor died.”;
- (iv) for sub-paragraph (7)(d) substitute—
  - “(d) in any case where—
    - (i) 14th May 2004 is later than—
      - (aa) the day on which the qualifying member died; and
      - (bb) the day on which the qualifying pension scheme began to be wound up; or
    - (ii) the qualifying member attained normal retirement age before 14th May 2004 but died on or after 14th May 2004, the revaluation amount for the third survivor period (see sub-paragraphs (12) and (13)).”;
- (v) in sub-paragraph (12)(a) for “the day after the day on which the qualifying member died” substitute “the day after the day determined in accordance with sub-paragraph (10)(b)”;
- (g) for paragraph 5B substitute—

“**5B.**—(1) The annual payment payable to a surviving dependant of a qualifying member shall be determined in accordance with sub-paragraphs (2) to (5).

(2) Where an annual payment is also payable to a survivor of the qualifying member and—

- (a) there is only one surviving dependant, the amount of the annual payment shall be—

$$\frac{0.5 \times Q}{2} + D - B;$$

- (b) there are two or more surviving dependants, the amount of the annual payment shall be—

$$\frac{(0.5 \times Q) + D - B}{N}.$$

(3) Where the qualifying member does not have a survivor and—

- (a) there is only one surviving dependant, the amount of annual payment shall be—

$$\frac{Q}{2} + D + S - B;$$

- (b) there are two or more surviving dependants, the amount of the annual payment shall be—

$$\frac{Q + S + D - B}{N}.$$

(4) Where—

- (a) a survivor of a qualifying member, who is not a person who is treated as a survivor by virtue of regulation 37 of the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009(6), dies;
- (b) a person ceases to be a surviving dependant of a qualifying member; or
- (c) another person becomes entitled to an annual payment as a surviving dependant of a qualifying member,

the annual payment payable to a surviving dependant of that qualifying member shall be redetermined with effect from the day after the day on which the event referred to in paragraphs (a) to (c) occurred.

(5) In this paragraph—

“B” means—

- (a) where there is only one surviving dependant, the surviving dependant’s actual pension; or
- (b) where there are two or more surviving dependants, the sum of the actual pensions of all the surviving dependants of that qualifying member;

“D” means—

- (a) subject to paragraph (b), where sub-paragraph (4) applies, the total amount of annual increases to which any surviving dependant was entitled under this Schedule on the day on which the event referred to in paragraphs (a) to (c) of that sub-paragraph occurred;
- (b) where sub-paragraph (4)(a) applies and, as a result, the annual payment payable to a surviving dependant is redetermined under sub-paragraph (3)(a), nil; and
- (c) in all other cases, nil;

“N” means the number of surviving dependants of the qualifying member;

“Q” means the sum of—

- (a) the product of 0.9 multiplied by the expected pension which has been or could have been determined in accordance with paragraph 5(4); and
- (b) the total amount of any annual increases determined in accordance with paragraph 9 to which the qualifying member was entitled on the day on which the qualifying member died;

“S” means—

- (a) where sub-paragraph (4)(a) applies and, as a result the annual payment payable to a surviving dependant is redetermined under sub-paragraph (3), the total amount of annual increases to which the survivor was entitled on the day on which the survivor died; and
- (b) in all other cases, nil.”;

(h) in paragraph 9(2), in the definition of “W”, omit the words “the day before”; and

(i) in paragraph 10(e)(ii), in the substituted sub-paragraph (4)—

- “(i) in paragraph (a)(ii), for “paragraph 4(3)”, substitute “sub-paragraph (7)”; and
- (ii) in paragraph (b), omit the words “the day before”.



## Amendment of Schedule 2A

### 17. In Schedule 2A (determination of ill health and interim ill health payments)—

#### (a) in paragraph 2—

##### (i) for the formula in sub-paragraph (2), substitute—

$$\frac{Q}{2} + S - B;$$

##### (ii) for the formula in sub-paragraph (2A), substitute—

$$\frac{(0.5 \times Q) + S - B}{N};$$

and

#### (iii) in sub-paragraph (3)—

##### (aa) omit the definitions of “D”, “E” and “H”; and

##### (bb) after the definition of “N” insert—

““Q” means the sum of—

- (a) the product of C multiplied by A multiplied by 0.9; and
- (b) the total amount of any annual increases determined in accordance with paragraph 9 to which the qualifying member was entitled on the day on which the qualifying member died;

“S” means—

- (a) where sub-paragraph (2B) applies, the total amount of any annual increases to which any survivor was entitled on the day on which the survivor died; and
- (b) in all other cases, nil.”;

#### (b) for paragraph 2A, substitute—

“2A.—(1) The amount of an ill health payment payable to a surviving dependant of a qualifying member shall be determined in accordance with sub-paragraphs (2) to (5).

(2) Where an ill health payment is also payable to a survivor of the qualifying member and—

##### (a) there is only one surviving dependant, the amount of the ill health payment shall be—

$$\frac{0.5 \times Q}{2} + D - B;$$

##### (b) there are two or more surviving dependants, the amount of the ill health payment shall be—

$$\frac{(0.5 \times Q) + D - B}{N}.$$

#### (3) Where the qualifying member does not have a survivor and—

##### (a) there is only one surviving dependant, the amount of the ill health payment shall be—

$$(0.5 \times Q) + D + S - B;$$

- (b) there are two or more surviving dependants, the amount of the ill health payment shall be—

$$\frac{Q + S + D - B}{N}$$

- (4) Where—

- (a) a survivor of a qualifying member, who is not a person who is treated as a survivor by virtue of regulation 37 of the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009, dies;
- (b) a person ceases to be a surviving dependant of a qualifying member; or
- (c) another person becomes entitled to an ill health payment as a surviving dependant of a qualifying member,

the ill health payment payable to a surviving dependant of that qualifying member shall be redetermined with effect from the day after the day on which the event referred to in paragraphs (a) to (c) occurred.

- (5) In this paragraph—

“A” means the amount of expected pension which would be determined in accordance with Schedule 2 if—

- (a) the qualifying member were entitled to an annual payment; and
- (b) the modifications in paragraph 6 applied;

“B” means—

- (a) where there is only one surviving dependant, the actual pension of that surviving dependant which would be determined in accordance with Schedule 2 if—

- (i) the surviving dependant were entitled to an annual payment; and
- (ii) the modifications in paragraph 6 applied;

- (b) where there are two or more surviving dependants, the sum of the actual pensions of all the surviving dependants of the qualifying member which would be determined in accordance with Schedule 2 if—

- (i) the surviving dependants were entitled to annual payments; and
- (ii) the modifications in paragraph 6 applied;

“C” means the actuarial factor, determined in accordance with paragraph 5, to be applied;

“D” means—

- (a) subject to paragraph (b), where sub-paragraph (4) applies, the total amount of annual increases to which any surviving dependant was entitled under this Schedule on the day on which the event referred to in paragraphs (a) to (c) of that sub-paragraph occurred;
- (b) where sub-paragraph (4)(a) applies and, as a result, the annual payment payable to a surviving dependant is redetermined under sub-paragraph (3)(a), nil; and
- (c) in all other cases, nil;

“N” means the number of surviving dependants of the qualifying member;

“Q” means the sum of—

- (a) the product of C multiplied by A multiplied by 0.9; and

- (b) the total amount of any annual increases determined in accordance with paragraph 9 to which the qualifying member was entitled on the day on which the qualifying member died; and
- “S” means—
- (a) where sub-paragraph (4)(a) applies and, as a result the annual payment payable to a surviving dependant is redetermined under sub-paragraph (3), the total amount of annual increases to which the survivor was entitled on the day on which the survivor died; and
  - (b) in all other cases, nil.”;
- (c) in paragraph 3(3), in the definition of “H” for “before” substitute “on”;
  - (d) in paragraph 3A(4)—
    - (i) after paragraph (a), omit “or”;
    - (ii) after paragraph (b), insert—
      - “; or
      - (c) another person becomes entitled to an ill health payment as a surviving dependant of a qualifying member.”; and
      - (iii) for “the survivor died or the person ceased to be a surviving dependant” substitute “the event referred to in paragraphs (a) to (c) occurred”;
  - (e) in paragraph 3A(5), in the definition of “H” for “before” substitute “on”;
  - (f) in paragraph 5, for “paragraphs 2 and 3” substitute “paragraphs 2 to 3A”;
  - (g) in paragraph 6—
    - (i) before sub-paragraph (za) insert—
      - “(zza) in paragraph 1(2), in the definition of “revalued notional pension” for “regulation 17(10)” substitute “regulation 17A(10);” and
    - (ii) after sub-paragraph (za) insert—
      - “(zab) in paragraph 2(3H)(b), for “Schedule 4”, substitute “Schedule 6”;
      - (zac) in paragraph 3(3) and (3ZD), for “attains normal retirement age” substitute “becomes entitled to an ill health payment.”;
  - (h) in paragraph 9(2), in the definition of “W” omit the words “the day before”; and
  - (i) in paragraph 11, for sub-paragraph (1)(b) substitute—
    - “(b) either—
      - (i) an annuity has been purchased for the beneficiary which provides for payment of a pension to the beneficiary at a lower annual rate from the date on which the amount referred to in sub-paragraph (1)(a) would have ceased to be payable under the rules of the pension scheme; or
      - (ii) a notional pension has been determined in respect of the beneficiary which includes an amount in respect of an amount which under scheme rules would be payable for a period which is shorter than the period in respect of which the remainder of the pension would be payable.”.

### **Insertion of Schedules 3 to 7**

- 18.** After Schedule 2A (determination of ill health and interim ill health payments) add—
  - (a) Schedule 3 (determination of certain annual payments);

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- (b) Schedule 4 (determination of annual payments where a present payment was being received on the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010);
  - (c) Schedule 5 (determination of certain ill health payments);
  - (d) Schedule 6 (determination of ill health payments where a present payment was being received on the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010); and
  - (e) Schedule 7 (determination of payments to early retirees and other beneficiaries),
- as set out in Schedule 2 to these Regulations.