

2005 No. 600

PENSIONS

The Pension Protection Fund (Reviewable Matters) Regulations 2005

<i>Made</i> - - - -	<i>10th March 2005</i>
<i>Laid before Parliament</i>	<i>16th March 2005</i>
<i>Coming into force</i> -	<i>6th April 2005</i>

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 206(2)(a) and (4)(a), 307(3), 315(2) and 318(1) of the Pensions Act 2004(a), and of all other powers enabling him in that behalf, by this instrument, which contains regulations made before the end of the period of six months beginning with the coming into force of the provisions of that Act by virtue of which they are made(b), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Pension Protection Fund (Reviewable Matters) Regulations 2005 and shall come into force on 6th April 2005.

(2) In these Regulations “the Act” means the Pensions Act 2004.

Reviewable matters: failures by the Board

2. Any reference in any paragraph in Schedule 9 to the Act (reviewable matters) specified in column 1 of the Schedule to these Regulations to a failure by the Board to do any act or make any determination is to be construed as a reference to a failure by the Board to do the act or make the determination within the period specified in the corresponding paragraph in the second column of that Schedule.

Modification of Schedule 9 to the Act

3.—¹(1)◀ In relation to a partially guaranteed scheme, Schedule 9 to the Act applies as if—

- (a) in paragraph 8 (failure by the Board to obtain an actuarial valuation), after the word “valuation” there were inserted the words “of the unsecured part”(c);
- (b) in paragraph 9 (approval, or failure to approve, a valuation), after the word “respect” there were inserted the words “of the unsecured part”;

¹Reg. 3 renumbered 3(1) by reg. 4(a) of S.I. 2010/196 as from 8.3.10.

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- (a) 2004 c. 35. Part 2 of the Pensions Act 2004 is modified in its application to partially guaranteed schemes by the Pensions Protection Fund (Partially Guaranteed Schemes) Regulations 2005 (S.I. 2005/277), in its application to hybrid schemes by the Pension Protection Fund (Hybrid Schemes) (Modification) Regulations 2005 (S.I. 2005/449), and in its application to multi-employer schemes by the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations 2005 (S.I. 2005/441). Section 318(1) is cited because of the meaning there given to “modifications”, “prescribed” and “regulations”.
 - (b) See section 317(2)(c) of the Pensions Act 2004 which provides that the Secretary of State must consult such persons as he considers appropriate before making regulations by virtue of the provisions of that Act (other than Part 8). This duty does not apply where regulations are made before the end of six months beginning with the coming into force of the provisions of the Act by virtue of which the regulations are made.
 - (c) See section 318(1) of the Act as modified by regulation 11 of S.I. 2005/277.

- (c) after paragraph 15 (failure by the Board to give a transfer notice), there were inserted the following paragraphs—

“**15A.** The failure by the Board to obtain an actuarial valuation of the assets and protected liabilities of the unsecured part of an eligible scheme under section 160(4A)(a).

15B. The approval of, or failure to approve, a valuation of the assets and protected liabilities of the unsecured part of an eligible scheme under section 144(2) as applied for the purposes of section 160(4A)(b).”.

¹Reg. 3(2) inserted by reg. 4(b) of S.I. 2010/196 as from 8.3.10.

►¹(2) Paragraph (1) shall not apply where regulation 2A of the Pension Protection Fund (Partially Guaranteed Schemes) (Modification) Regulations 2005 (schemes to which paragraph (1) of regulation 2 does not apply) applies to a scheme. ◀

[Regulation 4 makes various amendments to Schedule 9 of the Pensions Act 2004.]

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

10th March 2005

Malcolm Wicks
Minister of State,
Department for Work and Pensions

(a) Section 160(4A) is inserted by S.I. 2005/277.

(b) See regulation 10(1)(b) of S.I. 2005/277.

SCHEDULE

Regulation 2

<i>Column 1</i> <i>Paragraph of Schedule 9 to the Act</i> <i>which specifies the failure</i>	<i>Column 2</i> <i>Prescribed period</i>
1. Paragraph 2	1. The period beginning with the 15th day after the date on which the Board receives a copy of a notice under section 122(6) to the date on which the Board issues a determination notice under section 123(4).
2. Paragraph 3	2. Where— (a) section 124(1)(a) applies, the period beginning with the 22nd day after the date on which the Board issues a determination notice under section 123(4) not to approve the section 122 notice to the date on which— (i) the Board issues a notice under section 122 by virtue of section 124(2); or (ii) a notice issued under section 122 is binding under section 125; (b) section 124(1)(b) applies, the period beginning with the 29th day after the date on the which Board has sufficient information for it to be satisfied that an insolvency practitioner or former insolvency practitioner ought to have issued a notice under section 122 to the date on which— (i) the Board issues a notice under section 122 by virtue of section 124(2); or (ii) a notice issued under section 122 is binding under section 125.

(a) See regulation 4 of these Regulations.

<i>Column 1</i> <i>Paragraph of Schedule 9 to the Act</i> <i>which specifies the failure</i>	<i>Column 2</i> <i>Prescribed period</i>
<p>3. Paragraph 3A(a)</p>	<p>3. The period beginning with—</p> <ul style="list-style-type: none">(a) the 29th day after the date on which the Board receives the written estimate of the value of assets and liabilities from the actuary under regulation 2(3)(a)(iii) of the Pension Protection Fund (Entry Rules) Regulations 2005; or(b) the 15th day after the date on which the Board receives any document requested or information required by a notice given under section 191(2) of the Act, <p>whichever is the later, to the date on which the Board issues a validation notice under regulation 2(5) of those regulations.</p>
<p>4. Paragraph 4</p>	<p>4. In respect of—</p> <ul style="list-style-type: none">(a) a scheme failure notice under section 130(2), the period beginning with the 15th day after the date on which the Board is able to confirm, in accordance with section 130(5)(b), that a scheme rescue is not possible to the date on which—<ul style="list-style-type: none">(i) the Board issues a scheme failure notice under section 130(2); or(ii) a withdrawal notice issued under section 130(3) is binding;(b) a withdrawal notice under section 130(3), the period beginning with the 15th day after the date on which the Board is able to confirm, in accordance with section 130(5)(a), that a scheme rescue has occurred to the date on which—

<i>Column 1</i> <i>Paragraph of Schedule 9 to the Act</i> <i>which specifies the failure</i>	<i>Column 2</i> <i>Prescribed period</i>
5. Paragraph 7	(i) the Board issues a withdrawal notice under section 130(3); or (ii) a scheme failure notice issued under section 130(2) is binding.
6. Paragraph 9	5. The period beginning with the 15th day after the date on which the terms of the loan have been agreed to the date on which the Board makes a loan under section 139(2). 6. Unless section 144(3) applies, the period beginning two months after the date on which the Board obtains a valuation in accordance with section 143 to the date on which the Board gives a copy of the approved valuation to the persons specified in section 144(2)(b).
7. Paragraph 10	7. In the case of a withdrawal notice under— (a) section 146(2)(a), the period beginning with the 15th day after the date on which the Board has sufficient information to be satisfied that an eligible scheme was not such a scheme throughout the period prescribed in regulations made under section 146(1) to the date on which— (i) a notice is issued by the Board in accordance with sections 146(2)(a); or (ii) a withdrawal notice issued under section 122(2)(b), 130(3), 147 or 148 is binding; (b) section 147(2)(a), the period beginning with the 15th day after the date on which the Board has sufficient information to be satisfied of the matters specified in section 147(1)(a) to (d) to the date on which—

<i>Column 1</i> <i>Paragraph of Schedule 9 to the Act</i> <i>which specifies the failure</i>	<i>Column 2</i> <i>Prescribed period</i>
	(i) a notice is issued by the Board in accordance with section 147(2)(a); or (ii) a withdrawal notice issued under section 122(2)(b), 130(3), 146 or 148 is binding.
8. Paragraph 11	8. In the case of a withdrawal notice under— (a) section 148(3), the period beginning with the 15th day after the date on which the Board has sufficient information to reach a determination under section 148(2) to the date on which— (i) a withdrawal notice is issued by the Board under section 148(3); or (ii) a withdrawal notice issued under section 122(2)(b), 130(3), 146, 147 or 148(4) is binding; (b) section 148(4), the period beginning with the 15th day after the end of the period mentioned in section 148(2)(b) to the date on which— (i) a withdrawal notice is issued by the Board under section 148(4); or (ii) a withdrawal notice issued under section 122(2)(b), 130(3), 146, 147 or 148(3) is binding.
9. Paragraph 12	9. The period beginning two months after the date on which the Board— (a) receives an application under section 151(1); or (b) where section 152(9) applies, obtains its own valuation of the assets or liabilities of the scheme,

<i>Column 1</i> <i>Paragraph of Schedule 9 to the Act</i> <i>which specifies the failure</i>	<i>Column 2</i> <i>Prescribed period</i>
10. Paragraph 13	<p>to the date on which the Board issues a determination under section 152(3).</p> <p>10. The period beginning with the 29th day after the date on which the Board receives an application in the form and containing the information prescribed in regulations made under section 153(4) to the date on which the Board issues a determination notice under section 153(6).</p>
11. Paragraph 15	<p>11. In a case to which—</p> <ul style="list-style-type: none">(a) section 127 or 128 applies, the period beginning—<ul style="list-style-type: none">(i) two months after the date on which the Board must assume liability for a scheme in accordance with section 127(2) or 128(2); or(ii) two months after the date on which the first 12 months of the assessment period expires. <p>whichever is the later, to the date on which the Board gives a transfer notice under section 160(2);</p> <ul style="list-style-type: none">(b) section 152 applies, the period beginning—<ul style="list-style-type: none">(i) two months after the date on which the Board is satisfied of the matters set out in section 152(2) and issues a determination notice under section 152(3) which becomes binding under section 152(6); or(ii) two months after the date on which the first 12 months of the assessment period expires. <p>whichever is the later, to the date on which the Board gives a transfer notice under section 160(2);</p>

<i>Column 1</i> <i>Paragraph of Schedule 9 to the Act</i> <i>which specifies the failure</i>	<i>Column 2</i> <i>Prescribed period</i>
	(c) section 158 applies, the period beginning—
	(i) two months after the date on which the Board must assume responsibility for the scheme in accordance with section 158(1); or
	(ii) two months after the date on which the first 12 months of the assessment period expires.
	whichever is the later, to the date on which the Board gives a transfer notice under section 160(2).
12. Paragraph 15B(a)	12. Unless section 144(3) applies, the period beginning two months after the date on which the Board obtains a valuation in accordance with section 160(4A) to the date on which the Board gives a copy of the approved valuation to the persons specified in section 144(2)(b).
13. Paragraph 16	13. The period beginning with—
	(a) the 29th day after a transfer notice has been given under section 160(2); or
	(b) the 29th day after the date on which entitlement to compensation arises.
	whichever is the later, to the date on which the Board issues a notice of entitlement to compensation.

Para. 13A revoked by
reg. 7(a) of S.I. 2007/
782 as from 6.4.07.



(a) See regulation 3 of these Regulations.

(b) Paragraph 16B is inserted by regulation 2(b) of these Regulations.

<i>Column 1</i> <i>Paragraph of Schedule 9 to the Act</i> <i>which specifies the failure</i>	<i>Column 2</i> <i>Prescribed period</i>
14. Paragraph 17	14. The period beginning with the 29th day after the date on which a transfer notice has been given under section 160(2) to the date on which the Board makes payment under section 163(4)(b).
15. Paragraph 17A(a)	15. The period beginning with the 29th day after the date on which a transfer notice has been given under section 160(2) to the date on which the Board makes payment under section 166(2).
16. Paragraph 18	16. In respect of— <ul style="list-style-type: none"><li data-bbox="748 920 979 952">(a) the initial levy—<ul style="list-style-type: none"><li data-bbox="798 981 1136 1563">(i) in a case where the eligible scheme is registered as an occupational pension scheme in accordance with regulations made under section 6 of the Pension Schemes Act 1993(b) (registration of occupational and personal pension schemes), the period beginning with the day after the end of the initial period to the date on which the Board determines the eligibility of the scheme under section 181(3)(a) of the Act;<li data-bbox="798 1592 1136 1968">(ii) in a case where, during the initial period, the trustees or managers of the eligible scheme notify the Regulator in accordance with section 62(2) that the scheme is a registrable scheme, the period beginning with the day after the end of the first financial year following the initial period to the date on

(a) See regulation 4 of these Regulations.

(b) 1993 c. 48.

<i>Column 1</i> <i>Paragraph of Schedule 9 to the Act</i> <i>which specifies the failure</i>	<i>Column 2</i> <i>Prescribed period</i>
	<p>which the Board determines the eligibility of the scheme under section 181(3)(a);</p> <p>(b) the pension protection levy—</p> <p>(i) in a case where, prior to the financial year in respect of which the levy is imposed, the trustees or managers of the eligible scheme notify the Regulator in accordance with section 62(2) that the scheme is a registrable scheme, the period beginning with the day after the end of that financial year to the date on which the Board determines the eligibility of that scheme under section 181(3)(a);</p> <p>(ii) in a case where, during the financial year in respect of which the levy is imposed, the trustees or managers of the eligible scheme notify the Regulator in accordance with section 62(2) that the scheme is a registrable scheme, the period beginning with the day after the end of the next financial year to the date on which the Board determines the eligibility of that scheme under section 181(3)(a).</p>

Paras. 17-22 inserted in the Sch. by reg. 21 of S.I. 2005/2184 as from 1.9.05.

►17. Paragraph 20

17. The period beginning with the 22nd day after the settlement date as determined by the Board under section 184(c) until the Board makes fraud compensation payments under section 182(1).

<i>Column 1</i> <i>Paragraph of Schedule 9 to the Act</i> <i>which specifies the failure</i>	<i>Column 2</i> <i>Prescribed period</i>
18. Paragraph 21	18. In respect of a notice under— (a) section 183(2)(a) scheme rescue is not possible) the period beginning with the 15th day after the Board is able to confirm, in accordance with section 183(2)(a), that a scheme rescue is not possible until the Board issues a notice under section 183(2); (b) section 183(2)(b) (scheme rescue has occurred) the period beginning with the 15th day after the Board is able to confirm, in accordance with section 183(2)(a), that a scheme rescue has occurred until the Board issues a notice under section 183(2).
19. Paragraph 22	19. The period beginning with the 15th day after the day when the conditions set out in section 182(1) have been satisfied and further recoveries of value, within the meaning of section 184(3), are unlikely, until the Board determines the settlement date under section 184(2).
20. Paragraph 23	20. The period beginning with the 22nd day after the trustees or managers of the scheme have notified the Board that a payment has been received until the Board reaches a determination under section 184(4) that the payment may be treated as a recovery of value.
21. Paragraph 24	21. The period beginning with the 15th day after the Board has sufficient information for it to be satisfied that the case is one to which section 186(1) applies, or may apply, and the trustees or managers of the scheme are not able to pay prescribed benefits under the scheme rules until the Board makes an interim payment under section 186(1) in respect of the application under section 182(1).

<i>Column 1</i> <i>Paragraph of Schedule 9 to the Act</i> <i>which specifies the failure</i>	<i>Column 2</i> <i>Prescribed period</i>
22. Paragraph 31(a)	22. The period beginning with the 22nd day after the Board has sufficient information to make a determination of any question which was within the functions of the Pensions Compensation Board under section 81 to 84 of the Pensions Act 1995 until the Board makes the determination. ◀

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in respect of certain reviewable matters specified in Schedule 9 to the Pensions Act 2004 (“the Act”).

The Board of the Pension Protection Fund is established by section 107 of the Act to provide compensation for members of certain occupational pension schemes in the event of the insolvency of the scheme’s sponsoring employer and where the pension scheme is underfunded at a certain level.

Regulation 1 provides for citation, commencement and interpretation.

Regulation 2 and the Schedule to these Regulations provide that the references to specified failures by the Board in Schedule 9 to the Act are to be construed as references to failures by the Board to do the act or make a determination within the periods prescribed in the Schedule to these Regulations.

Regulation 3 modifies Schedule 9 and inserts two further reviewable matters in respect of partially guaranteed schemes.

Regulation 4 amends Schedule 9 and inserts two further reviewable matters in respect of—

- (a) the issue of, or failure to issue, a validation notice under regulation 2(5) of the Pension Protection Fund (Entry Rules) Regulations; and
- (b) payments due under section 166(2) of the Act.

As these Regulations are made before the expiry of the period of six months beginning with the coming into force of the provisions of the Act by virtue of which they are made, the requirement for the Secretary of State to consult such persons as he considers appropriate does not apply.

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.

(a) Paragraph 31 was inserted, for the purposes of transitional arrangements, by article 4 of S.I. 2005/1720 (c. 73).