

## 2006 No. 580

### PENSIONS

#### The Pension Protection Fund (General and Miscellaneous Amendments) Regulations 2006

*Made* - - - - - *6th March 2006*  
*Laid before Parliament* *10th March 2006*  
*Coming into force in accordance with regulation 1(1)*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 126(1)(b), 151(9)(b), 161(6) and (7), 163(3), (4)(a)(ii) and (b)(ii) and (6)(a), 166(5), 168(1) and (2)(a), (b), (c), (e) and (f), 170(2) and (3), 171(4), 179(3), 181(5) and (8)(a), 315(2), (4) and (5), and 318(1) of, and paragraph 24(1) and (2) of Schedule 7 to, the Pensions Act 2004(a).

In accordance with section 317(1) of that Act the Secretary of State for Work and Pensions has consulted such persons as he considers appropriate.

### PART 1

#### Preliminary

##### Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Pension Protection Fund (General and Miscellaneous Amendments) Regulations 2006, and shall come into force—

- (a) in the case of this regulation and regulations 19, 20 and 23, on 1st April 2006; and
- (b) in all other cases, on 6th April 2006.

(2) In these Regulations—

- “the Act” means the Pensions Act 2004;
- “the 1993 Act” means the Pensions Act 1993(b);
- “the 2004 Act” means the Finance Act 2004(c);



“base rate” means the rate for the time being quoted by the reference banks as applicable to sterling deposits or, where there is for the time being more than one such base rate, the rate which, when the base rate quoted at each bank is ranked in a descending sequence of four, is the first in the sequence;

“beneficiary” means a person entitled to PPF compensation;

“the Compensation Regulations” means the Pension Protection Fund (Compensation) Regulations 2005(d);

<sup>1</sup>Defn. of “appropriate personal pension scheme” omitted by art. 22(2) of S.I. 2011/1246 as from 6.4.12.

(a) 2004 c. 35. Section 318(1) is cited because of the meaning there given to “prescribed” and “regulations”.

(b) 1993 c. 48.

(c) 2004 c. 12.

(d) S.I. 2005/670 the relevant amending instrument is S.I. 2005/2113.

## PENSION PROTECTION FUND (GENERAL AND MISCELLANEOUS AMENDMENTS) REGULATIONS 2006

“dependant” means–

- (a) a child of the family who is financially dependent on the person, and who is aged less than 18; or
- (b) a child of the family who is financially dependent on the person, who is aged less than 23 and who is either–
  - (i) attending a qualifying course; or
  - (ii) incapable of engaging in full time paid employment due to a condition that falls within the definition of a disability under the Disability Discrimination Act 1995(a);

“the Entry Rules Regulations” means the Pension Protection Fund (Entry Rules) Regulations 2005(b);

“family” means a person’s spouse, civil partner or relevant partner and any dependants;

“the FSMA” means the Financial Services and Markets Act 2000(c);

“lump sum compensation” means–

- (a) any lump sum compensation payments made in relation to a person, payable under the pension compensation provisions specified in section 162(2) of the Act (the pension compensation provisions); or
- (b) any lump sum payments made in relation to a person, payable under section 166 of the Act (duty to pay scheme benefits unpaid at assessment date etc.);

“normal minimum pension age” has the meaning given in section 279 of the 2004 Act (other definitions);

“normal pension age” has the meaning given in section 180 of the 1993 Act (normal pension age);

“pension annuity” means an annuity that can–

- (a) only be purchased at, or after, normal minimum pension age;
- (b) be purchased before normal pension age where the scheme rules so provide in accordance with paragraph 22(4) of Schedule 36 to the 2004 Act(d) (rights to take pension before minimum pension age); or
- (c) be purchased after normal pension age where the scheme rules so provide;

“periodic compensation” means–

- (a) any periodic compensation payments made in relation to a person, payable under the pension compensation provisions specified in section 162(2) of the Act; or
- (b) any periodic payments made in relation to a person, payable under section 166 of the Act;

“PPF compensation” means any payments made under the pension compensation provisions as specified in section 162 of the Act;

▶<sup>1</sup>“PPF money purchase lump sum” means a payment of a lump sum which is made by the Board in respect of entitlement or accrued rights under the scheme rules to money purchase benefits;◀

“qualifying course” means a full time educational or vocational course at a recognised educational establishment where in pursuit of that course, the time spent receiving instruction or tuition, undertaking supervised study, examination or practical work or taking part in any exercise, experiment or project for which provision is made in the curriculum of the course, exceeds 12 hours per week in normal term time, and shall include any gaps between the ending of one course and the commencement of another, where the person is enrolled on and commences the latter course;

“reference banks” means the four largest persons for the time being (by reference to gross assets)(e) who–

<sup>1</sup>Defn. of “PPF money purchase lump sum” inserted in reg. 1(2) by reg. 5(2) of S.I. 2013/627 as from 30.4.13.

(a) 1995 c. 50.

(b) S.I. 2005/590 the relevant amending instruments are S.I. 2005/993, 2113, 2153 and 2224.

(c) 2000 c. 8.

(d) Paragraph 22(4) is amended by paragraphs 1, 54(1), (4) and (5) of Schedule 10 to, the Finance Act 2005.

(e) Listings of banks and their gross assets are produced and published in publications such as “The Banker”. This information is also available on that publication’s website [www.thebanker.com](http://www.thebanker.com).

- (a) have permission under Part 4 of the FSMA (permission to carry on regulated activities) to accept deposits; and
- (b) are incorporated in the United Kingdom and carrying on there a regulated activity of accepting deposits, and quote a base rate applicable to sterling deposits;

“registered pension scheme” has the meaning given in section 150(2) of the 2004 Act (meaning of pension scheme);

“relevant partner” means a person of either sex who is not married to, or in a civil partnership with, the member—

- (a) who is living with the member as if that person and the member are husband and wife; or
- (b) in the case of two adults of the same sex, as if they are civil partners, and, for the purposes of these Regulations, two adults of the same sex are to be regarded as living together as civil partners if they would be regarded as living together as husband and wife were they instead two adults of opposite sex;

“stakeholder pension scheme” has the meaning given in section 1 of the Welfare Reform and Pensions Act 1999 (meaning of “stakeholder pension scheme”)(a);

“trivial commutation lump sum” has the meaning given in paragraph 7 of Schedule 29 to the 2004 Act (trivial commutation lump sum).

(3) In paragraph (2), sub-paragraph (b) of the definition of “reference banks” must be read with—

- (a) section 22 of the FSMA (the classes of activity and categories of investment);
- (b) any relevant order under that section; and
- (c) Schedule 2 to the FSMA (regulated activities).

## PART 2

### Assumption of responsibility

#### Board’s power to modify relevant contracts

2.—(1) Where section 161(1) of the Act (effect of the Board assuming responsibility for a scheme) applies, and the Board considers that a contract relating to the property, rights or liabilities of the scheme contains terms or conditions that the Board considers to be onerous (whether triggered by the insolvency event in relation to the eligible scheme or otherwise) the Board may—

- (a) disapply any such term or condition; or
- (b) substitute for the term or condition, a term or condition that the Board considers to be reasonable.

(2) Where—

- (a) any rights or liabilities under a relevant contract of insurance are transferred to the Board by virtue of section 161(2)(a) of the Act; and
- (b) as a result of that transfer, the Board is required, by reason of a term of that contract, to pay a specified amount, or specified amounts to a specified person who, immediately before the time mentioned in section 161(2)(a) of the Act, was a member of the scheme or a person entitled to benefits in respect of such a member,

the Board may modify that term of that contract so that benefit under that contract shall be payable to the Board.

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(a) 1999 c. 30. The definition of “stakeholder pension scheme” in section 1 was amended by section 285 of the Pensions Act 2004.

<sup>1</sup>Reg. 3, heading to reg. 4 & words in reg. 4(b) substituted & reg. 4A added by 5(2)-(5) of S.I. 2009/451 as from 1.4.09.

►<sup>1</sup>**Power to treat benefits as having become payable before the assessment date**

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

(2) this regulation applies where—

- (a) a member of an eligible scheme died before the commencement of the assessment period in relation to the scheme; and
- (b) during the period mentioned in section 163(2)(a) of the Act, a person became entitled under the scheme rules to a benefit referred to in paragraph (3) in respect of that member.

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

- (a) a death benefit which is calculated and paid by the trustees or managers of the eligible scheme on or after the assessment date but before the date the trustees or managers receive the transfer notice in respect of that scheme; and
- (b) a contribution refund within the meaning of section 101AB(4) of the 1993 Act (right to cash transfer sum and contribution refund).◀

►<sup>1</sup>**Power to treat benefits as having arisen before the assessment date**◀

4. Where—

- (a) a member of an eligible scheme died before the commencement of the assessment period in relation to the scheme; and
- (b) during the period beginning with the assessment date and ending with the receipt by the trustees or managers of the transfer notice, a person became entitled under the scheme rules to a ►<sup>1</sup>death benefit or a contribution refund (within the meaning of section 101AB(4) of the 1993 Act)◀ in respect of that member,

that person's entitlement to that benefit shall, for the purposes of section 166(2) of the Act (duty to pay scheme benefits unpaid at assessment date), be treated as having arisen before the assessment date.

►<sup>1</sup>**Power to pay certain transfer payments and contribution refunds**

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

(2) The rights are—

- (a) any transfer payment; and
- (b) any payment in respect of a refund of contributions,

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

(3) The circumstances are that—

- (a) the Board assumes responsibility for a scheme in accordance with Chapter 3 of Part 2 of the Act;
- (b) the circumstances and conditions prescribed in—
  - (i) regulation 16(1) of the Entry Rules Regulations (restrictions on winding up, discharge of liabilities etc)(a); or
  - (ii) regulation 2 of the Pension Protection Fund (Hybrid Schemes) (Modification) Regulations 2005 (discharge of liabilities in respect of money purchase benefits during the assessment period)(b),

were met in respect of the rights;

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

(b) S.I. 2005/449.

- (c) the rights remained unpaid at the time the transfer notice was received by the trustees or managers of the scheme; and
- (d) the member sends the Board a written request to make a payment in respect of the rights.◀

**Interest on overpayments and underpayments created during the assessment period**

5. The prescribed rate of interest for the purposes of—
- (a) section 163(4)(a) of the Act (adjustments to be made where the Board assumes responsibility for a scheme); and
  - (b) section 163(4)(b) of the Act,

shall be the base rate.

**Circumstances where the Board is not required to recover overpaid scheme benefits**

6.—(1) Where the Board determines that an amount referred to in section 163(4)(a) of the Act has been paid to a member, or to a person in respect of a member, it shall notify that member or person in writing that—

- (a) it has so determined;
- (b) it has a duty to recover that amount; and
- (c) if the person in receipt of that amount believes that recovery of that amount would cause hardship to that member or person with a right to scheme benefits, or his family he should—
  - (i) notify the Board in writing that he believes that hardship would be so caused (“the hardship notification”) within one month of the date the Board notifies him that such an amount has been paid to him; and
  - (ii) provide any supporting evidence to the Board that hardship would be so caused within one month of the date of the hardship notification.

(2) Where the Board receives a hardship notification in accordance with paragraph (1)(c)(i), ▶<sup>1</sup>it shall as soon as reasonably practicable determine◀ whether recovery of the overpayment would cause hardship to—

- (a) the member or the member’s family; or
- (b) in the case of a person who was in receipt of scheme benefits in respect of a member, to that person with a right to scheme benefits, or that person’s family.

<sup>1</sup>Words substituted in reg. 6(2) paras. (2A) & (2B) added by reg. 5(2)(a) & (b) of S.I. 2007/782 as from 6.4.07.

▶<sup>1</sup>(2A) The Board may request such additional information from the person who gave the hardship notification as it reasonably requires for the purpose of making a determination under paragraph (2).

(2B) In making the determination, the Board shall have regard to any evidence provided under paragraph (1)(c)(ii) and any information provided in accordance with paragraph (2A).◀

(3) Where recovery would cause such hardship, the Board shall not recover that amount.

(4) The Board is not required to recover such an amount where recovery would not be conducive to the prudent management of its financial affairs.

**Manner of discharge of liabilities in respect of money purchase benefits**

7.—(1) Subject to regulation 8, in respect of a case to which section 170(1) of the Act (discharge of liabilities in respect of money purchase benefits) applies, the Board must secure that liabilities in respect of money purchase benefits transferred to the Board under section 161 are discharged ▶<sup>2</sup>◀ by way of—

- ▶<sup>2</sup>(a) a transfer payment to a personal pension scheme or an occupational pension scheme;◀
- (b) the purchase of a pension annuity;

<sup>2</sup>Words omitted in reg. 7(1) and sub-para. (1)(a) substituted by art. 22(2) & (3)(a) of S.I. 2011/1246 as from 6.4.12.

<sup>1</sup>Word omitted in reg. 7(1)(d), added to sub-para. (e) & sub-para. (f) inserted by reg. 5(3)(a)-(c) of S.I. 2013/627 as from 30.4.13.

<sup>2</sup>Regs. 7(2) & (3) omitted and reg. 8(5) substituted by art. 22(3)(b) & (4) of S.I. 2011/1246 as from 6.4.12.

<sup>3</sup>Words inserted in reg. 8(3) by reg. 5(4) of S.I. 2013/627 as from 30.4.13.

- (c) the taking out of a policy of insurance or a number of such policies;
  - (d) assuring the benefits of a policy of insurance or a number of such policies; ▶<sup>1</sup>◀
  - (e) in the circumstances described in regulation 9, a trivial commutation lump sum payment▶<sup>1</sup>; or◀
  - ▶<sup>1</sup>(f) in the circumstances described in regulation 9A, a PPF money purchase lump sum.◀
- (2)-(3) ▶<sup>2</sup>◀

#### Further provision for discharge of liabilities in respect of money purchase benefits

**8.—**(1) In respect of a case to which section 170(1) of the Act applies, before the expiry of a period of three months beginning on the date that the Board assumes responsibility for the scheme in accordance with section 161 of the Act, the Board shall give notice in writing to any person who is entitled under the scheme rules to money purchase benefits (“the money purchase beneficiary”)–

- (a) of the existence of those liabilities in relation to such benefits;
- (b) of the manner in which those liabilities, may be discharged by the Board in accordance with regulation 7;
- (c) that the money purchase beneficiary may wish to seek independent financial advice;
- (d) that the money purchase beneficiary may, before the expiry of a period of three months beginning on the date of the notice, inform the Board in writing of the manner in which he wishes those liabilities to be discharged (being a manner consistent with regulation 7); and
- (e) that should the money purchase beneficiary not inform the Board in accordance with sub-paragraph (d) of the manner in which he wishes those liabilities to be discharged, the Board will discharge those liabilities as it sees fit, in accordance with these Regulations.

(2) Where the money purchase beneficiary informs the Board in accordance with paragraph (1)(d) that he wishes the liabilities relating to his money purchase benefits to be discharged in a specified manner, the Board shall request in writing any further information it may require in order for it to discharge those liabilities in the manner so specified.

(3) Subject to the requirements of regulation 9 in relation to trivial commutation ▶<sup>3</sup>and regulation 9A in relation to PPF money purchase lump sums◀, where the money purchase beneficiary has provided sufficient information for the Board to discharge the liabilities in relation to that beneficiary in respect of money purchase benefits, the Board shall, within a reasonable period, discharge those liabilities in the manner so requested.

(4) Where it is not possible to discharge money purchase liabilities in relation to a money purchase beneficiary in accordance with paragraph (3), the Board shall discharge those liabilities in accordance with regulation 7(1).

▶<sup>2</sup>(5) Where the money purchase beneficiary dies before the Board discharges those liabilities in relation to that beneficiary, the Board shall discharge those liabilities–

- (a) where there is a widow, widower or surviving civil partner, under the rules of the scheme within the limits specified in regulation 7(1); or
- (ii) where there is no widow, widower or surviving civil partner, in accordance with paragraph 15 of Schedule 29 to the 2004 Act (uncrystallised funds lump sum death benefit).◀

#### Trivial commutation

**9.** The Board may discharge its liabilities in respect of money purchase benefits by way of a trivial commutation lump sum payment where this lump sum is paid in accordance with the requirements of paragraph 7 of Schedule 29 to the 2004 Act (registered pension schemes: authorised lump sums - trivial commutation lump sum).

► **PPF money purchase lump sums**

<sup>1</sup>Reg. 9A added by reg. 5(5) of S.I. 2013/627 as from 30.4.13.

**9A.**—(1) The Board may discharge its liabilities in respect of money purchase benefits transferred to it under section 161 of the Act by way of a PPF money purchase lump sum where the conditions in the following paragraphs are met.

(2) The first condition is that the member is aged 60 or over.

(3) The second condition is that the value of the member's entitlements to money purchase benefits under the pension scheme does not exceed £2,000.

(4) The third condition is that the payment extinguishes the member's entitlement to money purchase benefits under the pension scheme.

(5) The fourth condition is that the payment is made within a reasonable time from the date the Board notifies the member under regulation 8(1). ◀

## PART 3

### Equal treatment

#### **Exemption from requirement to modify payment function**

**10.** For the purposes of section 171(4) of the Act (equal treatment), the prescribed circumstances are where the difference in treatment as between a woman and a man in the operation of any of the payment functions is attributable to—

- (a) the application of actuarial factors in respect of the difference in the life expectancy of men and women; or
- (b) any difference in the amount payable by way of a pension which is permitted by regulations made under section 64(2) of the Pensions Act 1995 (equal treatment rule exceptions).

## PART 4

### PPF compensation administration

#### **Manner in which and time when PPF compensation is to be paid**

**11.** As soon as is reasonably practicable after the Board makes a determination of entitlement to PPF compensation in respect of a beneficiary, PPF compensation shall be paid—

- (a) in the case of PPF compensation that is lump sum compensation—
  - (i) in accordance with the method of payment specified in regulation 12; and
  - (ii) in full; or
- (b) in the case of PPF compensation that is periodic compensation—
  - (i) in accordance with the method of payment specified in regulation 12; and
  - (ii) by instalments paid in accordance with regulation 13.

#### **Method of payment**

**12.**—(1) Subject to paragraphs (2) and (3), PPF compensation shall be paid by way of automated credit transfer into a bank or other account held in the name of the beneficiary.

(2) Where it is not possible for the Board to pay PPF compensation into an account specified in paragraph (1), the Board may pay PPF compensation by way of automated credit transfer into a bank or other account held in the joint names of the beneficiary and his spouse or civil partner.

(3) Where it appears to the Board that—

- (a) there has been a failure in the automated credit transfer system in relation to a payment of PPF compensation; or
- (b) the beneficiary does not have a bank or other account held in his own name or in the joint names of him and his spouse or civil partner into which an automated credit transfer could be made,

PPF compensation may be paid by such other method of payment as appears to the Board to be appropriate to the beneficiary.

#### **Payment of periodic compensation by instalments**

13. Periodic compensation shall be paid in instalments of no more than 52 in a year.

#### **Fractional amounts in the calculation of periodic compensation payments**

14. Where periodic compensation paid by the Board in accordance with regulation 13 would, but for this regulation, include a fraction of a penny, that fraction shall be rounded—

- (a) up to the nearest penny if the fractional amount is 0.5 or more; or
- (b) down to the nearest penny if the fractional amount is less than 0.5.

#### **Payments of PPF compensation to a third party**

15.—(1) Subject to paragraph (2), where required to do so by any—

- (a) court order; or
- (b) enactment (including an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament,

the Board shall make payments of PPF compensation on behalf of a beneficiary, to a third party, in accordance with the terms of that court order or enactment.

(2) Payments made under paragraph (1) shall be limited to the maximum of the PPF compensation entitlement of the beneficiary to whom the order or enactment relates.

#### **Recovery of PPF compensation overpayments**

16.—(1) Where the Board determines that an amount referred to in section 168(2)(e) of the Act (administration of compensation) has been paid to a person, it shall notify that person in writing that—



- (a) it has so determined;
- (b) it is considering whether to recover that amount; and
- (c) if the person in receipt of that amount believes that recovery of the overpayment would cause hardship to him or his family then he should—
  - (i) notify the Board in writing within one month of the date the Board informs him that such an overpayment has been made; and
  - (ii) provide any supporting evidence to the Board within one month of the notification specified in sub-paragraph (c)(i).

(2) Where the Board receives a hardship notification in accordance with paragraph (1)(c)(i), <sup>1</sup>it shall as soon as reasonably practicable determine whether recovery of that amount would cause hardship to the person to whom the overpayment has been made, or his family.

<sup>1</sup>Words substituted in reg. 16(2) and paras. (2A) & (2B) inserted by reg. 5(3)(a) & (b) of S.I. 2007/782 as from 6.4.07.

<sup>1</sup>(2A) The Board may request such additional information from the person who gave the hardship notification as it reasonably requires for the purpose of making a determination under paragraph (2).

(2B) In making the determination, the Board shall have regard to any evidence provided under paragraph (1)(c)(ii) and any information provided under paragraph (2A).

(3) Where recovery would cause such hardship, the Board shall not recover that amount.

(4) The Board is not required to recover an amount overpaid where recovery would not be conducive to the prudent management of its financial affairs.

(5) The Board may determine that such an amount paid in excess of entitlement shall be recovered—

- (a) as a lump sum from a person to whom the that amount has been made; or
- (b) where the person to whom that amount is paid is a beneficiary—
  - (i) as a lump sum from any payment of PPF compensation to which that beneficiary is entitled; or
  - (ii) from that beneficiary by adjusting the amount of the instalments of future periodic compensation.

(6) Interest may be charged on an amount determined to be recoverable at the base rate for the period which begins when the amount paid in excess of entitlement was first made and ends with the recovery of the whole of the amount.

### Underpayments

17. Where it has been determined by the Board that a beneficiary has been paid less than his entitlement to PPF compensation, the Board shall pay an amount to that beneficiary equal to—

- (a) the amount of the shortfall; and
- (b) interest on that amount, calculated at the base rate from the date on which the underpayment should have been paid by the Board, to the date on which the Board pays the total amount of the shortfall.

### Suspension of payment of periodic compensation

18.—(1) The Board may suspend payment of periodic compensation to a person—

- (a) where—
  - (i) correspondence is returned to the Board from the last known address of that person; and
  - (ii) the Board is unable to contact that person following reasonable enquiries;
- (b) where the Board determines that a person is obtaining, attempting to obtain, or may be attempting to obtain PPF compensation to which he is not entitled; or

- (c) an automated credit transfer payment in respect of a beneficiary's entitlement to periodic compensation cannot be completed.
- (2) The Board shall resume payments of periodic compensation to a person where in the opinion of the Board—
  - (a) the matter that led to the suspension has been resolved to the satisfaction of the Board; and
  - (b) it is reasonable for the Board to resume making those payments.

## PART 5

### Pension protection levy

#### Collection of the pension protection levy by instalments

19. The Board may collect amounts payable by way of a pension protection levy in instalments where—

- (a) the trustees or managers who are liable to pay the levy in respect of an eligible scheme make an application to the Board to pay the amount in respect of the levy by instalments; and
- (b) the Board considers that it is appropriate to do so, having taken into consideration any exceptional circumstances that may exist in relation to that scheme.

<sup>1</sup>Reg. 19A inserted by reg. 5 of S.I. 2010/560 as from 1.4.10.

#### ►<sup>1</sup>Interest for late payment of the pension protection levy

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

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

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

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

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

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

(5) Interest is to be calculated—

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

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

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

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

- (a) any of the circumstances specified in regulation 4 of the Pension Protection Fund (Waiver of Pension Protection Levy and Consequential Amendments) Regulations 2007 (circumstances in which pension protection levy may be waived)(a) apply;
- (b) charging interest would not be conducive to the prudent management of the Board's financial affairs; or
- (c) it is reasonable not to charge interest.

(8) The circumstances in which any part of interest may be waived are where the Board is satisfied that—

- (a) the circumstances mentioned in paragraph (7)(a) apply; or
- (b) it is reasonable not to charge any part of interest.

(9) For the purposes of considering whether it is reasonable not to charge interest or any part of interest under paragraphs (7)(c) and (8)(b), the Board must have regard to such matters as the Board considers relevant including (where relevant) the following matters—

- (a) the dates on which any payments of the pension protection levy are made;
- (b) the dates on which any payments of the pension protection levy were made in previous years;
- (c) any failure by the person or persons by or on behalf of whom the pension protection levy is payable to—
  - (i) reply to correspondence from the Board about interest or the pension protection levy; or
  - (ii) provide the Board with information it requests about interest or the pension protection levy; and
- (d) any—
  - (i) review, reconsideration or reference to the PPF Ombudsman under Chapter 6 of Part 2 of the Act; or
  - (ii) appeal against any determination or direction of the PPF Ombudsman;

which has been brought by the person or persons by or on behalf of whom the pension protection levy is payable.◀

#### Schemes that are eligible schemes for part of a financial year

20. ▶<sup>1</sup>(1)—◀ Where a scheme—

- (a) is an eligible scheme on the first day of a financial year; and
- (b) ceases to be an eligible scheme during that financial year,

<sup>1</sup>Reg. 20 renumbered 20(1) and para. (2) inserted by reg. 8(a) & (b) of S.I. 2010/196 as from 8.3.10.

section 181(5) of the Act (amount of the levy payable in respect of a scheme which is an eligible scheme for only part of the period for which the levy is imposed) does not apply to that scheme and the full amount of the levy is payable.

▶<sup>1</sup>(2) Where a scheme—

- (a) is not an eligible scheme on the first day of a financial year; and
- (b) becomes an eligible scheme during that financial year by virtue of—
  - (i) regulation 2(1A) of the Pension Protection Fund (Entry Rules) Regulations 2005 (schemes which are not eligible schemes), or
  - (ii) regulation 2A of the Pension Protection Fund (Partially Guaranteed Schemes) (Modification) Regulations 2005 (schemes to which paragraph (1) of regulation 2 does not apply),

section 181(5) of the Act does not apply to the scheme and the full amount of the levy is payable.◀

[Regulation 21 amends regulations 1-3 of S.I. 2005/590].

[Regulation 21(5)(b) revoked by S.I. 2007/782].

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(a) S.I. 2007/771.

[Regulation 22 amends regulations 1(2), 19(1), 20, 21(4) and 23(1)(a) of S.I. 2005/670].

[Regulation 23 amends regulation 5 of S.I. 2005/672].

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

6th March 2006

*Stephen C. Timms*  
Minister of State,  
Department for Work and Pensions

### EXPLANATORY NOTE

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

These Regulations make provision in relation to the administration of the Pension Protection Fund (“the PPF”), the assumption of responsibility for an eligible pension scheme by the Board of the Pension Protection Fund (“the Board”), the pension protection levy, which the Board must impose for each financial year by virtue of section 175(1) of the Pensions Act 2004 (c. 35) (“the Act”) (pension protection levies).

These Regulations also amend the Pension Protection Fund (Entry Rules) Regulations 2005 (S.I. 2005/590), the Pension Protection Fund (Compensation) Regulations 2005 (S.I. 2005/670) (“the Compensation Regulations”) and the Pension Protection Fund (Valuation) Regulations 2005 (S.I. 2005/672) (“the Valuation Regulations”).

Regulation 2 provides that where the property, rights and liabilities of a scheme are transferred to the Board and a contract in respect of those property, rights or liabilities contains terms or conditions that the Board considers to be onerous, the Board may disapply any such term or condition or modify it. It also provides that where the benefit of an insurance contract entered into by the trustees or managers of an eligible scheme to cover the pension benefit liability of a specific person contains a term or condition that provides for the benefit of that contract to be paid to the specific individual, the Board may substitute for this a term or condition stating that the benefit is to be paid directly to the Board.

Regulation 3 enables the Board to treat death in service lump sum benefits that are paid by the trustees or managers of an eligible scheme to a person who is entitled to such benefits (where the deceased was a member of that scheme and who died before the commencement of the assessment period) as if they had been paid before the commencement of the assessment period, for the purposes of calculating any compensation entitlement.

Regulation 4 enables the Board to treat death in service lump sum benefits that are payable by the Board to a person who is entitled to such benefits (where the deceased was a member of the eligible scheme who died prior to the assessment period) as if they had been paid before the commencement of the assessment period, for the purposes of calculating any compensation entitlement.

Regulation 5 provides that the rate of interest on overpayments and underpayments of scheme benefits made during the assessment period shall be the base rate.

Regulation 6 sets out the exceptions from the general rule, contained in section 163(4)(a) of the Act (adjustments to be made where the Board assumes responsibility for a scheme), that the Board must recover overpayments of amounts paid by the trustees or managers of the relevant scheme made during the assessment period.

Regulation 7 sets out the manner in which the Board shall discharge any money purchase benefit liabilities that transfer to it from an eligible scheme.

Regulation 8 provides the procedure by which the Board shall determine the manner in which money purchase benefits shall be discharged.

Regulation 9 provides for the manner in which the Board may discharge a liability in relation to money purchase benefits by way of a trivial commutation payment.

Regulation 10 prescribes the circumstances in which the equal treatment provisions relating to payment functions in section 171(2) of the Act (equal treatment) do not apply.

Regulation 11 makes provision for when, and how, a first payment of PPF compensation may be made.

Regulation 12 makes provision for the method of payment of PPF compensation.

Regulation 13 makes provision for periodic compensation payments to be made in no more than 52 instalments in a year.

Regulation 14 makes provision for the rounding of payments of PPF compensation that include a fraction of a penny.

Regulation 15 provides that where required to do so by a court order, or an enactment the Board shall make payments of PPF compensation to a third party in accordance with that order or enactment.

Regulation 16 provides for recovery of overpayments of PPF compensation. Where an overpayment has occurred, the Board may recover such an overpayment where it determines that such a recovery would not cause hardship to that person or his family, and may do so by making deductions from that person's ongoing entitlement to periodic compensation payments or recovery from the person in the form of a lump sum.

Regulation 17 provides for a refund of underpayments of PPF compensation. Where an underpayment has occurred the Board must pay the amount underpaid to the person entitled to the compensation.

Regulation 18 provides that where the Board cannot contact a person entitled to compensation, or has reason to believe that a person is, or may be attempting to receive PPF compensation to which he is not entitled then it may suspend payment of PPF compensation.

Regulation 19 provides for the circumstances in which the Board may collect payment of the pension protection levy by instalments.

Regulation 20 provides that section 181(5) of the Act (amount of the levy payable in respect of a scheme which is an eligible scheme for only part of the period for which the levy is imposed), does not apply where the scheme is eligible to pay the levy at the start of the financial year.

Regulation 21 amends the Entry Rules Regulations to substitute references to "tax registered scheme" for "tax approved scheme", omit a reference to section 111 of the Pension Schemes Act 1993 (c. 48) and insert a reference to the Occupational Pension Schemes (Investment) Regulations 2005 (S.I. 2005/3378).

Regulation 22 amends regulation 19 (commutation of periodic compensation) and substitutes regulation 20 (circumstances in which the portion of compensation to be commuted may exceed 25 per cent ) of the Compensation Regulations to provide that a person may opt to commute more than 25 per cent of his periodic compensation where he is aged 60 or over and has not attained the age of 75, and the amount so commuted will not exceed 1 per cent of his standard lifetime allowance at the time when the application to commute is made.

The standard lifetime allowance is provided for in section 218 of the Finance Act (individual's lifetime allowance and standard lifetime allowance) and annually updated by order.

References in the Compensation Regulations to connected occupational pension schemes are removed as the standard lifetime allowance is calculated in relation to all of a person's occupational pension schemes and not on an individual scheme basis.

Regulation 23 amends regulation 5 of the Valuation Regulations (valuation of assets) so that regulation provides that the amount of external liabilities should be taken into account in determining the value of the assets.

These Regulations have only a negligible impact on the cost of business, charities or the voluntary sector. Publication of a full Regulatory Impact Assessment is not necessary for such legislation.