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STATUTORY INSTRUMENTS

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**2011 No. 731**

**PENSIONS**

**The Pension Protection Fund (Pension Compensation Sharing and Attachment on Divorce etc) Regulations 2011**

<i>Made</i>	- - - -	<i>10th March 2011</i>
<i>Laid before Parliament</i>		<i>15th March 2011</i>
<i>Coming into force</i>	- -	<i>6th April 2011</i>

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 168A(1) and (3)(1), 206(4)(a), 207, 315(2) to (5) and 318(1) of the Pensions Act 2004(2) and sections 107(2), 108, 109(g)(ii), 110(1)(a), 112, 114(3), 115(1)(b)(ii) and (4), 116(6) and (8)(b), 117(1), (2)(b) and (c), 118, 119 and 144(2) and (4) of, and paragraphs 5(4), 7(5), 8(4)(a), 9(1), (2) and (6), 10(1), 17(6), 18 and 19 of Schedule 5 to, the Pensions Act 2008(3).

In accordance with section 317(1) of the Pensions Act 2004 the Secretary of State has consulted such persons as the Secretary of State considers appropriate.

**PART 1**

**General**

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Pension Protection Fund (Pension Compensation Sharing and Attachment on Divorce etc) Regulations 2011 and shall come into force on 6th April 2011.

(2) In these Regulations—

“the Act” means the Pensions Act 2008;

“the 2004 Act” means the Pensions Act 2004;

“admissible rules” has the same meaning as in paragraph 35 (scheme rules, admissible rules etc) of Schedule 7 to the 2004 Act(4);

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(1) Section 168A is inserted by section 121 of the Pensions Act 2008 (c. 30).

(2) 2004 c. 35. Section 318(1) is cited for the meaning it gives to the words “prescribed” and “regulations”.

(3) 2008 c. 30. Section 108 is cited for the meaning it gives to the word “prescribed”.

(4) Paragraph 35(2) and (3) was amended by paragraphs 17 and 18 of Schedule 8 to the Pensions Act 2008.

“child of the family” means—

- (a) a child of the transferee; or
- (b) any other child who has been treated by the transferee as a child of the family, other than a child placed with the transferee as a foster parent by a local authority or voluntary organisation;

“compensation cap” has the same meaning as in paragraph 26(7) of Schedule 7 to the 2004 Act (compensation cap);

“member” means the party who is entitled to present or future payment of PPF compensation under the pension compensation provisions and includes a pension compensation credit member;

“pension compensation attachment order” means an order made under any of the provisions specified in regulation 17(1)(a) to (e);

“pension compensation credit member” means a person who has rights to PPF compensation which are attributable to a pension compensation credit;

“pension compensation debit” means a debit of the appropriate amount, to be applied to the transferor’s shareable rights to PPF compensation, on the taking effect of a pension compensation sharing order or provision (see section 111 of the Act (creation of pension compensation debits and credits));

“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 includes any gaps between the ending of one course and the commencement of another, where the person is enrolled on and commences the latter course;

“PPF” means the Pension Protection Fund;

“relevant compensation” means the payments to which the member is entitled (or will become entitled on attaining normal pension age) under the pension compensation provisions by virtue of the member’s shareable rights to PPF compensation that derive from rights under a specified scheme;

“relevant partner” means a person of either sex who was not married to, or in a civil partnership with, the transferee and who was living with the transferee—

- (a) as if that person and the transferee were husband and wife; or
- (b) in the case of two adults of the same sex, as if they were civil partners;

“surviving dependant” means—

- (a) a child of the family who was financially dependent on the transferee at the time of the transferee’s death and who is aged less than 18;
- (b) a child of the family who was financially dependent on the transferee at the time of the transferee’s death, who is aged less than 23 and who is—
  - (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 section 6 (disability) of the Equality Act 2010(5); or
- (c) a child of the transferee who is born after the transferee’s death;

“surviving partner” means the surviving widow, widower or civil partner of a deceased transferee;

“valid nomination” means a signed written notice.

(3) “Day”, in regulations 3, 5, 9, 11, 12, 17 and 18, means any day other than—

(a) Christmas Day or Good Friday; or

(b) a day which is, or is to be observed as, a bank holiday under Schedule 1 (bank holidays) to the Banking and Financial Dealings Act 1971<sup>(6)</sup>;

and where the Board receives a request or order to provide information, an order or provision, a notification or other documents on a day which falls on one of the days specified in sub-paragraph (a) or (b), any period of time specified in regulation 3, 5, 9, 11, 12, 17 or 18 is to run from the next day after the day of receipt which is not a day specified in sub-paragraph (a) or (b).

## PART 2

### Shareable rights

#### **Rights to PPF compensation which are not shareable**

2. Any right of a person to PPF compensation is not shareable if—

(a) the compensation is in payment; and

(b) the compensation is derived directly or indirectly from the rights of a deceased person by virtue of being the surviving partner or surviving dependant of that person.

## PART 3

### Supply of information about pension compensation in relation to divorce etc

#### **Basic information about pension compensation and divorce or dissolution of a civil partnership**

3.—(1) The requirements imposed on the Board for the purposes of section 118(1)(a) of the Act (supply of information about pension compensation in relation to divorce etc.) are that the Board must supply—

(a) on request from a member, the information specified in paragraphs (2) and (3)(b) and (c);

(b) on request from the spouse or civil partner of the member, the information specified in paragraph (3); and

(c) pursuant to an order of the court, the information specified in paragraph (2), (3), or (4), to the member, the spouse or civil partner of the member, or, as the case may be, to the court.

(2) The information specified in this paragraph is a valuation of the member’s rights to PPF compensation and (if not the same as the member’s rights to PPF compensation) a valuation of the member’s rights to relevant compensation.

(3) The information specified in this paragraph is—

(a) a statement that on request from the member, or pursuant to an order of the court, a valuation of the member’s rights to PPF compensation and to relevant compensation (if

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<sup>(6)</sup> 1971 c. 80. Paragraph 2 of Schedule 1 was amended by section 1 of the St Andrew’s Day Bank Holiday (Scotland) Act 2007 (asp 2).

not the same as the member's rights to PPF compensation), will be supplied to the member, or, as the case may be, to the court;

- (b) a statement summarising the way in which the valuations referred to in paragraph (2) and sub-paragraph (a) are calculated;
- (c) a schedule of the charges that the Board will impose in accordance with regulation 18 (charges in respect of pension compensation sharing costs etc recoverable by the Board), and the method by which those charges may be recovered;
- (d) a statement that a person entitled to a pension compensation credit against the Board will be entitled to periodic compensation calculated in accordance with Schedule 5 (pension compensation payable on discharge of pension compensation credit) to the Act.

(4) The information specified in this paragraph is any other information about the calculation and payment of PPF compensation relevant to any power exercisable under the provisions specified in section 118(1)(a) of the Act.

(5) Where the member's request or the court order for the provision of information includes a request or an order for provision of a valuation under paragraph (2), the Board must supply all the information in that request or order within—

- (a) 3 months, beginning with the day that the Board receives the request or order for the provision of information;
- (b) 6 weeks, beginning with the day that the Board receives the request or order for the provision of information, where the member or the court has notified the Board on the date of the request or order that the information is needed in connection with proceedings commenced under any of the provisions specified in section 118(1)(a) of the Act; or
- (c) any shorter period, where the court specifies such a period in an order requiring the Board to supply a valuation in accordance with paragraph (2).

(6) Where—

- (a) the member's request or the court order for supply of information does not include a request or an order for provision of a valuation under paragraph (2); or
- (b) the member's spouse or civil partner requests the information specified in paragraph (3),

the Board must supply that information within one month beginning with the day that the Board receives the request or the court order for the provision of the information.

### **Valuation of relevant compensation for the purposes of an application for financial relief or financial provision**

4.—(1) Where the Board is notified that—

- (a) an application for financial relief or financial provision under any of the provisions specified in section 118(1)(a) of the Act has been made or is in contemplation; or
- (b) a qualifying agreement containing provision corresponding to provision which may be made by an order under section 8 (orders for financial provision) of the Family Law (Scotland) Act 1985(7) is to be made or is in contemplation,

the value of the PPF compensation or relevant compensation to which the member is entitled or will become entitled must be calculated and verified for the purposes of section 118(1)(b) of the Act, or of regulation 3(2), in accordance with paragraphs (2) and (3).

(7) 1985 c. 37. Relevant amendments to section 8 were made by paragraph 14 of Schedule 28 to the Civil Partnership Act 2004 (c.33) and paragraphs 1 and 2 of Schedule 7 to the Pensions Act 2008.

(2) The value of the PPF compensation or relevant compensation is the cash equivalent of the amount that would be required to make provision for the member's entitlement to PPF compensation or relevant compensation under the pension compensation provisions.

(3) The cash equivalent of the PPF compensation or relevant compensation must be calculated and verified—

- (a) in accordance with actuarial assumptions approved by the Board; and
- (b) on the assumption that the date on which the valuation is carried out is the date that the Board received the request for the valuation.

### **Provision of information in response to a notification that a pension compensation sharing order etc may be made**

5.—(1) On a direction from the court or a request from the member, the Board must supply the information specified in paragraph (2) to the member or to the court, as the case may be—

- (a) within 21 days beginning with the day that the Board received the notification that a pension compensation sharing order, a pension compensation attachment order, or a qualifying agreement containing provision equivalent to such orders, may be made; or
- (b) if the court has specified a date which is before or after the 21 day period specified in subparagraph (a), by that date.

(2) The information referred to in paragraph (1) is—

- (a) the full name and address of the person to whom any order or provision specified in section 109 of the Act (activation of pension compensation sharing) should be sent;
- (b) whether the Board is aware that the member's rights to PPF compensation are subject to any, and if so, which, of the following—
  - (i) any order or provision specified in section 109 of the Act;
  - (ii) any order or provision specified in section 28(1) (activation of pension sharing) of the Welfare Reform and Pensions Act 1999<sup>(8)</sup>;
  - (iii) an order under section 23 (financial provision orders in connection with divorce proceedings etc.) of the Matrimonial Causes Act 1973<sup>(9)</sup>, which includes provision made by virtue of section 25B (pensions) or 25C (pensions: lump sums) of that Act<sup>(10)</sup>;
  - (iv) an order under Part 1 of Schedule 5 (financial provision orders in connection with dissolution of civil partnerships etc: England and Wales) to the Civil Partnership Act 2004<sup>(11)</sup>, which includes provision made by virtue of Part 6 of that Schedule (powers to include provision about pensions);
  - (v) an order under section 23 of the Matrimonial Causes Act 1973, which includes provision made by virtue of section 25F (attachment of pension compensation) of that Act<sup>(12)</sup>;

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<sup>(8)</sup> 1999 c. 30. Section 28(1) was amended by paragraph 159(1) to (7) of Schedule 27 to the Civil Partnership Act 2004 (c. 33).

<sup>(9)</sup> 1973 c. 18. Section 23 was amended by section 16 of the Administration of Justice Act 1982 (c. 53).

<sup>(10)</sup> Sections 25B and 25C were inserted by section 166(1) of the Pensions Act 1995 (c. 26). Section 25B was amended by paragraph 1 of Schedule 4 to the Welfare Reform and Pensions Act 1999 and is modified, in cases where the Board becomes involved with or assumes responsibility for a scheme, by S.I. 2006/1932. Section 25C was amended by paragraph 2 of Schedule 4 to that Act.

<sup>(11)</sup> 2004 c.33.

<sup>(12)</sup> Section 25F was inserted by paragraph 7 of Schedule 6 to the Pensions Act 2008 (c. 30).

- (vi) an order under Part 1 of Schedule 5 to the Civil Partnership Act 2004, which includes provision made by virtue of paragraph 34A (attachment of PPF compensation) of Part 7 of that Schedule**(13)**;
- (vii) an order under Article 25 (financial provision orders in connection with divorce proceedings, etc.) of the Matrimonial Causes (Northern Ireland) Order 1978**(14)**, which includes provision made by virtue of Article 27B (pensions) or 27C (pensions: lump sums) of that Order**(15)**;
- (viii) an order under Part 1 (financial provision in connection with divorce, nullity or separation) of Schedule 15 to the Civil Partnership Act 2004, which includes provision made by virtue of Part 5 (making of Part 1 orders having regard to pension benefits) of that Schedule**(16)**;
- (ix) an order under Article 25 of the Matrimonial Causes (Northern Ireland) Order 1978, which includes provision made by virtue of Article 27F (attachment of pension compensation) of that Order **(17)**;
- (x) an order under Part 1 of Schedule 15 to the Civil Partnership Act 2004, which includes provision made by virtue of paragraph 29A (attachment of PPF compensation) of Part 6 of that Schedule**(18)**;
- (xi) an order under section 8 (orders for financial provision) of the Family Law (Scotland) Act 1985, which includes provision made by virtue of section 12A(2) (orders for payment of capital sum: pensions lump sums) or (3) or 12B (order for payment of capital sum: pension compensation) of that Act**(19)**;
- (xii) any provision corresponding to provision which may be made by such an order, and which is contained in a qualifying agreement between the parties to a marriage or the partners to a civil partnership;
- (xiii) a forfeiture order;
- (xiv) a bankruptcy order;
- (xv) an award of sequestration on a member's estate or the making of the appointment on the member's estate of a judicial factor under section 41 (appointment of judicial factor) of the Solicitors (Scotland) Act 1980**(20)**;
- (c) whether the member's rights to PPF compensation include rights which are not shareable or cannot be subject to a pension compensation attachment order;
- (d) if such information has not already been supplied, details of any charges that the Board will impose in accordance with regulation 18 (charges in respect of pension compensation

**(13)** Paragraph 34A of Part 7 of Schedule 5 was inserted by paragraph 17(3) of Schedule 6 to the Pensions Act 2008 (c.30).

**(14)** S.I. 1978/1045 (N.I. 15). Article 25 was amended by Article 5 of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 (S.I. 1989/677 (N.I. 4)).

**(15)** Articles 27B and 27C were inserted by Article 162(1) of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)). Article 27B was amended by paragraph 1 of Schedule 4 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)) and is modified, in cases where the Board becomes involved with or assumes responsibility for a scheme, by S.R. 2006 No. 310. Article 27C was amended by paragraph 2 of Schedule 4 to S.I. 1999/3147 (N.I. 11).

**(16)** Part 5 was amended by paragraph 75(1) and (3) of Schedule 18 to S.I. 2010/976.

**(17)** Article 27F was inserted by paragraph 7 of Schedule 5 to the Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13 (N.I.)).

**(18)** Paragraph 29A was inserted by paragraph 17(3) of Schedule 5 to the Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13 (N.I.)).

**(19)** Section 12A was inserted by section 167(3) of the Pensions Act 1995. Section 12A(2) was amended by section 84 of and paragraphs 5, 9(1) and 9(3) of Schedule 12 to the Welfare Reform and Pensions Act 1999 (c. 30), section 261(2) of and paragraph 19(1) and (3) of Schedule 28 to the Civil Partnership Act 2004 (c. 33), and section 45(1) of and paragraph 5(1) and (2) of Schedule 2 to the Family Law (Scotland) Act 2006 (asp 2). Subsection 12A(3) was amended by section 84 of and paragraphs 5, 9(1) and 9(4) of Schedule 12 to the Welfare Reform and Pensions Act 1999, and section 261(2) of and paragraph 19(1) and (4) of Schedule 28 to the Civil Partnership Act 2004. Section 12B was inserted by paragraph 6 of Schedule 7 to the Pensions Act 2008.

**(20)** 1980 c.46. Section 41 was amended by paragraph 19 of Schedule 1 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73) and paragraphs 1 and 13 of Schedule 1 to the Solicitors (Scotland) Act 1988 (c. 42).

sharing costs etc recoverable by the Board) and the method by which they may be recovered; and

- (e) whether the Board requires any information additional to that specified in regulation 9 (information to be supplied in order for the implementation period to begin) in order to implement the pension sharing order or provision.

#### **Information to be provided by the Board to pension compensation credit members**

6. The information to be provided by the Board to pension compensation credit members and to beneficiaries of pension compensation credit members is to be determined in accordance with the provisions of the Schedule.

## **PART 4**

### **Pension compensation sharing and qualifying agreements (Scotland)**

#### **Prescribed form of provision corresponding to provision which may be made by a pension compensation sharing order**

7. For the purposes of section 109(g)(ii) of the Act, the form of a provision corresponding to provision which may be made by a pension compensation sharing order, and which is contained in a qualifying agreement between the parties to a marriage or the partners in a civil partnership, is that the provision must include—

- (a) in relation to the transferor, the information specified in regulation 9(1)(a);
- (b) in relation to the transferee, the information specified in regulation 9(1)(b);
- (c) details of—
  - (i) the amount to be transferred to the transferee, or
  - (ii) the percentage of the cash equivalent of the relevant compensation which is to be transferred to the transferee;
- (d) details of provision about the apportionment between the transferor and transferee (if any) of charges imposed by the Board in accordance with regulation 18(1);
- (e) confirmation by the transferor that the Board has been sent notification that a qualifying agreement is to be made, and that the Board has acknowledged receipt of that notification.

#### **Circumstances in which an agreement is to be entered into, in order to be considered a “qualifying agreement” for the purposes of section 110(1)(a) of the Act**

8. The circumstances prescribed for the purposes of section 110(1)(a) of the Act are that —
- (a) the transferor has notified the Board that a qualifying agreement which makes provision corresponding to—
    - (i) a pension compensation sharing order under section 8 of the Family Law (Scotland) Act 1985; or
    - (ii) a capital sum order made under section 8 containing provision by virtue of section 12B of that Act,is to be made; and
  - (b) the transferor and transferee have entered into the agreement in order to determine the financial settlement on divorce or dissolution of a civil partnership.

## PART 5

### Implementation and discharge of liability

#### Information to be supplied in order for the implementation period to begin

**9.**—(1) Subject to paragraph (2), the information prescribed for the purposes of section 115(1)(b)(ii) of the Act (“implementation period”) is—

- (a) in relation to the transferor—
  - (i) all names by which the transferor is or has been known;
  - (ii) date of birth;
  - (iii) address;
  - (iv) National Insurance number; and
  - (v) the name of the pension scheme for which the Board has assumed responsibility and to which the pension compensation sharing order or provision relates, or such other information as the Board may require to identify the pension scheme concerned;
- (b) in relation to the transferee—
  - (i) the name of the transferee and, if the transferee is or will be entitled to PPF compensation other than by reason of the pension compensation credit, all other names by which the transferee is or has been known;
  - (ii) date of birth;
  - (iii) address;
  - (iv) National Insurance number; and
  - (v) if the transferee is or will be entitled to PPF compensation other than by reason of the pension compensation credit, the name of the pension scheme or such other information as the Board may require to identify the pension scheme concerned.

(2) Where—

- (a) the Board has not received all the information specified in paragraph (1)(a); but
- (b) considers that it has sufficient information relating to the transferor to enable it to begin implementation of the pension compensation credit,

the prescribed information for the purposes of section 115(1)(b)(ii) of the Act is such information relating to the transferor as the Board considers sufficient.

(3) Where the Board is subject to a liability in respect of a pension compensation credit and the transferee dies before the implementation period has begun, the start of the implementation period is to be postponed until the Board has received notification of—

- (a) the date of the transferee’s death; and
- (b) the name and address of the executor or personal representative of the deceased transferee.

#### Extension of implementation period

**10.** The circumstances in which the implementation period for a pension compensation credit is extended for the purposes of section 114 of the Act (time for discharge of liability) are that—

- (a) the transferor or the transferee has not taken such steps as the Board can reasonably expect in order to satisfy it of any matter which falls to be established before it can discharge its liability for the pension compensation credit within the implementation period;



- (b) the Board has not been supplied with such information as it reasonably requires to discharge its liability for the pension compensation credit within the implementation period; or
- (c) the transferor or the transferee has disputed the amount of the cash equivalent calculated and verified for the purposes of section 111 of the Act (creation of pension compensation debits and credits).

**Postponement or cessation of implementation period when an application for leave to appeal out of time is made**

**11.**—(1) Where a pension compensation credit depends on a pension compensation sharing order which is the subject of an application for leave to appeal out of time, the modifications to the effect of section 115 of the Act are—

- (a) where the implementation period has not commenced, its commencement is postponed; or
- (b) where the implementation period has commenced, its operation ceases.

(2) The postponement or cessation referred to in paragraph (1)(a) or (b) is to continue until the Board receives—

- (a) confirmation from the court that the order which was the subject of the application for leave to appeal out of time has not been varied, discharged or recalled; or
- (b) a copy of the varied pension compensation sharing order.

(3) If the Board—

- (a) has already discharged its liability in respect of the pension compensation credit which depends on a pension compensation sharing order; and
- (b) subsequently receives notification of an application for leave to appeal out of time in respect of that order,

it must inform the court, within 21 days from the date on which the notification was received, that the Board's liability in respect of that pension compensation credit has been discharged.

**Notification about the implementation period by the Board**

**12.**—(1) Within a period of 21 days beginning on the day on which the implementation period begins in accordance with section 115(1) of the Act ("implementation period"), the Board must notify the transferor and transferee of the date that the implementation period began.

(2) Where the implementation period cannot begin because the Board has not received all of the documents or information specified in section 115(1)(b)(i) and regulation 9(1) or (3) (information to be supplied in order for the implementation period to begin), the Board must, as soon as practicable after becoming aware that it has not received all such documents and information—

- (a) notify the transferor and the transferee, or (in cases where the transferee has died before the implementation period has begun) the executor or personal representative of the transferee, that the start of the implementation period is delayed because the Board has not been supplied with relevant information; and
- (b) specify the information required and (if applicable) the date on which it was requested.

(3) Where the implementation period—

- (a) is extended in accordance with regulation 10; or
- (b) is postponed or ceases to operate in accordance with regulation 11,

the Board must, within 21 days of the date of the extension, postponement or cessation of the implementation period, notify the transferor and transferee of the reasons for that extension,

postponement or cessation, including details of any information which the Board requires in order to complete implementation.

(4) If any charges imposed by the Board in accordance with regulation 18 (charges in respect of pension compensation sharing costs etc recoverable by the Board) are due or will become due to be paid, the Board must notify the transferor and transferee of—

- (a) the amount of the charges;
- (b) the party who, in accordance with section 117(3) of the Act (charges in respect of pension compensation sharing costs), is responsible for paying the charges;
- (c) the date on which the charges were due or will become due to be paid;
- (d) the method, in accordance with regulation 18(4), by which the charges may be recovered if not paid by the date specified in sub-paragraph (c); and
- (e) the date, calculated in accordance with regulation 18(6)(e), on or after which the Board may recover the charges if not paid by the date specified in sub-paragraph (c).

#### **Calculation and verification of cash equivalent**

**13.**—(1) For the purposes of calculating the appropriate amount in accordance with section 111 of the Act, the cash equivalent of the relevant compensation is the amount that immediately before the transfer day would be required to make provision for the member's entitlement to relevant compensation under the pension compensation provisions.

(2) The cash equivalent must be calculated and verified in accordance with actuarial assumptions approved by the Board.

#### **Determination of cash equivalent value of pension compensation credit**

**14.** The Board must calculate the cash equivalent value of the compensation to which the transferee becomes entitled on the sending of a notice under section 116(3) (discharge of liability) using actuarial assumptions which are consistent with the actuarial assumptions used to calculate and verify the cash equivalent of the member's entitlement to relevant compensation under the pension compensation provisions.

#### **Discharge of liability where the transferee dies before the Board has discharged liability for a pension compensation credit**

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

- (a) the Board is subject to a liability in respect of a pension compensation credit; and
- (b) the transferee dies before liability in respect of that pension compensation credit has been discharged.

(2) The Board must discharge the liability by sending a notice to the personal representative or executor of the deceased.

(3) On the sending of the notice—

- (a) either—
  - (i) where regulation 20 does not apply, a surviving partner is entitled to compensation calculated in accordance with regulation 21; or
  - (ii) a relevant partner is entitled to compensation in the circumstances prescribed in regulation 22(2); and
- (b) a surviving dependant is entitled to compensation in the circumstances prescribed in regulation 22(5).

### **Notification of discharge of liability**

**16.—(1)** Where the Board discharges liability in respect of a pension compensation credit in accordance with section 116 of the Act, it must also supply—

- (a) to the transferor—
  - (i) in a case where the transferor has not attained pension compensation age before or on the transfer day, the information specified in paragraphs (2) and (3); or
  - (ii) in a case where the transferor has attained pension compensation age before or on the transfer day, the information specified in paragraphs (2) and (4);
- (b) to the transferee—
  - (i) in a case where the transferee has not attained pension compensation age before or on the transfer day, the information specified in paragraphs (5) and (6); or
  - (ii) in a case where the transferee has attained pension compensation age before or on the transfer day, the information specified in paragraphs (5) and (7); or
- (c) in a case where the transferee has died prior to discharge of liability by the Board, to the personal representative or executor of the transferee, the information specified in paragraphs (5) (with the exception of the information specified in paragraph (5)(e)) and (8).

(2) The information specified in this paragraph is—

- (a) the cash equivalent value as at the valuation day of the transferor's entitlement to relevant compensation;
- (b) the cash equivalent value of the pension compensation debit;
- (c) the transfer day;
- (d) any charges which may be deducted in accordance with regulation 18 from the transferor's remaining rights to relevant compensation (if any); and
- (e) the cash equivalent value of the transferor's rights to relevant compensation (if any) immediately after the relevant compensation is reduced in accordance with section 113 of the Act (reduction of compensation) and after any deduction in respect of charges owed.

(3) The information specified in this paragraph is the annual rate of PPF compensation which would be payable if the transferor had reached pension compensation age immediately after the relevant compensation is reduced in accordance with section 113 of the Act and after the deduction of any charges owed.

(4) The information specified in this paragraph is the annual rate of the PPF compensation which is payable to the transferor—

- (a) immediately before; and
- (b) immediately after,

the relevant compensation is reduced in accordance with section 113 and any charges owed are deducted.

(5) The information specified in this paragraph is—

- (a) the cash equivalent value of the pension compensation credit;
- (b) the transfer day;
- (c) any charges which may be deducted in accordance with regulation 18 from the transferee's entitlement to compensation;
- (d) the cash equivalent value of the pension compensation credit following the deduction of any charges owed; and

- (e) the date at which payment of PPF compensation will commence.
- (6) The information specified in this paragraph is an estimate of the annual rate of PPF compensation which is likely to be payable to the transferee on reaching pension compensation age.
- (7) The information specified in this paragraph is the annual rate of compensation which is payable to the transferee from the transfer day.
- (8) The information specified in this paragraph is the fact that compensation may be payable to a surviving partner, relevant partner or surviving dependant in accordance with Part 7.

### **Provision of information after receipt of a pension compensation attachment order or provision**

17.—(1) The Board must, within 21 days beginning with the day it receives—

- (a) an order under section 23 of the Matrimonial Causes Act 1973<sup>(21)</sup>, which includes provision made by virtue of section 25F (attachment of pension compensation) of that Act<sup>(22)</sup>;
- (b) an order under Part 1 of Schedule 5 to the Civil Partnership Act 2004<sup>(23)</sup>, which includes provision made by virtue of paragraph 34A (attachment of PPF compensation) of Part 7 of that Schedule<sup>(24)</sup>;
- (c) an order under Article 25 of the Matrimonial Causes (Northern Ireland) Order 1978, which includes provision made by virtue of Article 27F (attachment of pension compensation) of that Order<sup>(25)</sup>;
- (d) an order under Part 1 of Schedule 15 to the Civil Partnership Act 2004, which includes provision made by virtue of paragraph 29A (attachment of PPF compensation) of Part 6 of that Schedule<sup>(26)</sup>;
- (e) an order under section 8 (orders for financial provision) of the Family Law (Scotland) Act 1985 containing provision made by virtue of section 12B(2) of that Act<sup>(27)</sup>; or
- (f) a qualifying agreement containing provision equivalent to such an order,

issue to the member and to the person entitled to payments by virtue of the pension compensation attachment order or provision (“the other party”) a notice which includes the information specified in paragraphs (2) and (4), or (2), (3) and (4), as the case may be.

(2) Where an order or provision specified in paragraph (1) is made in relation to relevant compensation that is not in payment, the notice issued by the Board to the member and to the other party must include—

- (a) the cash equivalent value of the relevant compensation;
- (b) the first date when a payment pursuant to the order or provision is to be made; and
- (c) a list of any changes in circumstances which, under the terms of the order or provision, the member or the other party must notify to the Board.

(3) Where an order or provision specified in paragraph (1) is made in relation to relevant compensation that is in payment, the notice issued by the Board to the member must, in addition to the items specified in paragraph (2), include—

(21) 1973 c. 18. Section 23 was amended by section 16 of the Administration of Justice Act 1982 (c. 53).

(22) Section 25F was inserted by paragraph 7 of Part 1 of Schedule 6 to the Pensions Act 2008 (c. 30).

(23) 2004 c. 33.

(24) Paragraph 34A of Part 7 of Schedule 5 was inserted by paragraph 17(3) of Part 3 of Schedule 6 to the Pensions Act 2008 (c. 30).

(25) Article 27F was inserted by paragraph 7 of Part 1 of Schedule 5 to the Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13 (N.I.)).

(26) Paragraph 29A of Part 6 of Schedule 15 was inserted by paragraph 17(3) of Part 3 of Schedule 5 to the Pensions (No. 2) Act (Northern Ireland) 2008.

(27) 1985 c. 37. Section 12B was inserted by paragraph 6 of Schedule 7 to the Pensions Act 2008 (c. 30).

- (a) the annual rate of the relevant compensation payable to the member immediately before implementation of the order or provision; and
  - (b) the annual rate of the relevant compensation which will be payable to the member and to the other party immediately after implementation of the order or provision.
- (4) Where an order or provision specified in paragraph (1) is made (whether or not in relation to relevant compensation that is in payment), the notice issued by the Board to the member and to the other party must include—
- (a) the amount of any charges made in accordance with regulation 18(2)(d) which remain unpaid;
  - (b) the date by which payment in whole or in part is required;
  - (c) the amount of the charges which are attributable to the member and to the other party; and
  - (d) whether the charges may be set off, in accordance with regulation 18(4)(c), against payments made to the member or the other party.

## PART 6

### Charges in respect of pension compensation sharing costs etc

#### **Charges in respect of pension compensation sharing costs etc recoverable by the Board**

**18.**—(1) Subject to paragraph (3), the Board may recover from a party to proceedings under any of the provisions specified in section 118(1)(a)(i) to (iv), or to a qualifying agreement specified in section 118(1)(a)(v) of the Act ('a party'), charges of the description specified in paragraph (2).

(2) The charges that the Board may recover are those in respect of—

- (a) provision of information or a valuation in accordance with regulation 3, 4 or 5;
- (b) the reasonable costs of implementing and discharging liability for a pension compensation credit;
- (c) any other reasonable costs associated with pension compensation sharing activity in relation to the parties; and
- (d) those charges which represent the reasonable administrative expenses which the Board incurs by reason of a pension compensation attachment order or provision.

(3) The Board must not recover charges in relation to the costs specified in paragraph (2) if it is required to supply the same information to a member by regulations made under section 203 of the 2004 Act (provision of information to members of schemes etc) or to a pension compensation credit member by regulation 6 (information to be provided by the Board to pension compensation credit members).

(4) Subject to paragraph (3), the Board may recover charges in relation to the costs specified in paragraph (2)(a) to (c) by—

- (a) requiring payment of charges to be made by any specified date on or after the date that the costs giving rise to the charges were incurred;
- (b) where compensation is not in payment, making a deduction from a member's future entitlement to relevant compensation, or from a transferee's future entitlement to compensation (calculated in accordance with paragraph 6 of Schedule 5 to the Act (compensation payable to transferee)); or
- (c) where—
  - (i) relevant compensation is in payment to a member; or

(ii) compensation is in payment to a transferee in accordance with paragraph 4 (compensation payable to transferee) of Schedule 5 to the Act, setting off the charges owed against such payments.

(5) Subject to paragraph (3), the Board may recover charges in relation to the costs specified in paragraph (2)(d) by either of the methods specified in paragraph (4)(a) and (c).

(6) The Board must not recover charges in relation to the costs specified in paragraph (2) by either of the methods specified in paragraph (4)(b) and (c) unless—

- (a) there are charges which are unpaid;
- (b) the party from whose entitlement the Board intends to make the deduction is liable to pay those charges;
- (c) the Board has notified the parties of the charges which the Board will impose in accordance with regulation 3(3)(c), 5(2)(d), 12(4) or 17(4), as the case may be;
- (d) the Board has notified the party liable to pay the charges of the method by and the date on which the charges may be recovered; and
- (e) a period of 21 days from the date that the charges were due to be paid has elapsed.

### **Reimbursement between parties to pension compensation sharing**

**19.** A payment in respect of charges in accordance with regulation 18 made by one of the parties to pension compensation sharing on behalf of the other party is recoverable as a debt by the party who made the payment from that other party.

## **PART 7**

### **Compensation for survivors**

#### **Circumstances where a surviving partner is not entitled to periodic compensation**

**20.** A surviving partner is not entitled to periodic compensation under paragraph 5 or 7 of Schedule 5 to the Act (compensation payable to widow, widower or surviving civil partner) or under regulation 15(3)(a) (i) where there is—

- (a) a valid nomination in favour of a relevant partner made by the transferee in accordance with either—
  - (i) the admissible rules of the scheme; or
  - (ii) regulation 22(3)(a); or
- (b) no provision to pay a survivor's pension under the admissible rules of the scheme.

#### **Compensation payable on discharge of liability under regulation 15 in the case of surviving partners**

**21.** Where a surviving partner is entitled to compensation under regulation 15(3)(a)(i), the annual rate and duration of the periodic compensation payable to the surviving partner is to be calculated—

- (a) where the transferee, had they not died, would have become entitled to periodic compensation under paragraph 4 of Schedule 5 to the Act commencing on the transfer day, in accordance with paragraph 5(2) and (3) of Schedule 5 to the Act (compensation payable to widow, widower or surviving civil partner);

- (b) where the transferee, had they not died, would have become entitled to periodic compensation under paragraph 6 of Schedule 5 to the Act commencing at pension compensation age, in accordance with paragraph 7(2) and (3) of Schedule 5 to the Act (compensation payable to widow, widower or surviving civil partner).

### **Compensation payable in the case of relevant partners and surviving dependants**

**22.**—(1) This regulation applies where the transferee—

- (a) was before death entitled to present or future payment of periodic compensation calculated in accordance with paragraph 4 or 6 of Schedule 5 to the Act; or
- (b) would have become so entitled had they not died before the Board discharged liability for a pension compensation credit.

(2) Subject to paragraph (4), a relevant partner is entitled to periodic compensation in the circumstances prescribed in paragraph (3).

(3) The circumstances are where there is provision to pay a survivor's pension to a relevant partner under the admissible rules of the scheme (whether discretionary or otherwise); and—

- (a) the transferee—
  - (i) has supplied the Board with a valid nomination in favour of the relevant partner; and
  - (ii) the relevant partner has demonstrated to the satisfaction of the Board that they were living with the transferee at the date of the transferee's death; or
- (b) where the transferee has not supplied the Board with a valid nomination in accordance with sub-paragraph (a)(i), the relevant partner supplies evidence to the satisfaction of the Board that, at the date of the transferee's death, they were—
  - (i) financially dependent, or interdependent, on the transferee; and
  - (ii) living with the transferee.

(4) No compensation may be paid under paragraph (2) where the transferee had a civil partner or a spouse at the date of the transferee's death and there is no valid nomination in favour of the relevant partner.

(5) A surviving dependant is entitled to periodic compensation in the circumstances prescribed in paragraph (6).

(6) In the case of a surviving dependant, the circumstances are where there is supplied to the Board—

- (a) in the case of a natural child of the transferee, a birth certificate or other evidence demonstrating to the satisfaction of the Board that they are the natural child of the transferee;
- (b) in the case of an adopted child of the transferee, the adoption certificate demonstrating that they are the adopted child of the transferee; or
- (c) in the case of any other surviving dependant, evidence demonstrating to the satisfaction of the Board that they are a dependant of the transferee.

### **Amount and duration of periodic compensation that can be paid in the case of a relevant partner**

**23.**—(1) Where a relevant partner is entitled to payment of periodic compensation under regulation 22, compensation is to commence on the day following the transferee's death and is payable for life.

(2) The amount of periodic compensation payable is to be calculated—

- (a) where the transferee was entitled to payment of periodic compensation commencing on the transfer day, or would have become so entitled had they not died, in accordance with paragraph 5(3) of Schedule 5 to the Act; or
- (b) where the transferee was entitled to payment of periodic compensation commencing at pension compensation age, or would have become so entitled had they not died, in accordance with paragraph 7(3) of Schedule 5 to the Act.

#### **Amount of periodic compensation that can be paid in the case of a surviving dependant**

**24.**—(1) Subject to paragraphs (2) and (3) and regulation 26, where a surviving dependant is entitled to periodic compensation under regulation 22(5) the amount is to be calculated—

- (a) where the transferee was entitled to payment of periodic compensation commencing on the transfer day, or would have become so entitled had they not died, in accordance with paragraph 4 of Schedule 5 to the Act (including any increases under paragraph 17 of Schedule 5 to the Act (annual increase in periodic compensation) to which the transferee would have been entitled); or
  - (b) where the transferee was entitled to payment of periodic compensation commencing at pension compensation age, or would have become so entitled had they not died, in accordance with paragraph 6 of Schedule 5 to the Act (including any revaluation amount under paragraph 8 (revaluation) and any increases under paragraph 17 of Schedule 5 to the Act to which the transferee would have been entitled).
- (2) Where periodic compensation is also payable to a surviving partner or relevant partner and—
- (a) there is only one surviving dependant, the amount of periodic compensation is 25% of the amount calculated under paragraph (1); or
  - (b) there are two or more surviving dependants, the amount of periodic compensation is half of the amount calculated under paragraph (1), divided equally between the surviving dependants.
- (3) Where periodic compensation is not payable to a surviving partner or relevant partner and—
- (a) there is only one surviving dependant, the amount of periodic compensation is half of the amount calculated under paragraph (1); or
  - (b) there are two or more surviving dependants, the amount of periodic compensation is the amount calculated under paragraph (1), divided equally between the surviving dependants.

#### **Period of payment**

**25.**—(1) Except in the circumstances prescribed in paragraph (2), where periodic compensation is payable to a surviving dependant under regulation 22(5), it is payable from the day following the transferee's death.

- (2) Where a surviving dependant—
- (a) is a child born after the transferee's death, periodic compensation is payable from the date of the child's birth;
  - (b) has left a qualifying course, as a consequence of which payment of periodic compensation has ceased in accordance with paragraph (4)(a), but within one year begins another qualifying course before attaining the age of 23, periodic compensation is payable from the date that the later qualifying course begins; or
  - (c) becomes disabled and is incapable of engaging in full time paid employment due to a condition that falls within the definition of a disability under section 6 of the Equality



Act 2010(28), after attaining the age of 18 but before attaining the age of 23, periodic compensation is payable from the date that the surviving dependant became disabled.

(3) Except where paragraph (4) or (5) applies, periodic compensation is payable until the surviving dependant attains the age of 18.

(4) Where the surviving dependant is attending a qualifying course, periodic compensation is payable either—

- (a) until they leave the course; or
- (b) until they attain the age of 23,

whichever is the earlier.

(5) Where the surviving dependant is incapable of engaging in full time paid employment due to a condition that falls within the definition of a disability under section 6 of the Equality Act 2010, periodic compensation is payable until the surviving dependant attains the age of 23.

### **Change of circumstances and backdating**

**26.**—(1) The amount of periodic compensation payable to a surviving dependant under these Regulations may be varied where—

- (a) there is a change in the circumstances of a person to whom periodic compensation is payable; and
- (b) that change would have resulted in—
  - (i) a different rate of periodic compensation being payable (including where a rate of nil may apply); or
  - (ii) periodic compensation being payable from a different date,and such a variation must take effect from the date that the change in circumstances occurred.

(2) The amount of periodic compensation calculated under paragraph (1) must include any increases under paragraphs 17 (annual increase in periodic compensation) and 20 (Board's power to alter rates of revaluation and indexation) of Schedule 5 to the Act.

(3) Where a person makes a claim for periodic compensation, the claim must be backdated to the date that the person became eligible to claim periodic compensation, or where that date is more than five years before the date of the claim, to a date five years before the date of the claim.

## **PART 8**

### **Revaluation**

#### **Manner in which percentage increase in general level of prices is to be determined**

**27.**—(1) For the purposes of paragraph 8(4)(a) of Schedule 5 to the Act (revaluation), the manner in which the percentage increase in the general level of prices in Great Britain is to be determined is—

$$100 \times \left( \frac{A}{B} \right) - 100$$

where—

- (a) A is the general level of prices in Great Britain determined in such manner as the Secretary of State may from time to time decide for the month which falls two complete months before the first day of the month in which the transferee—
  - (i) attains pension compensation age; or
  - (ii) becomes entitled to early payment of periodic compensation or lump sum compensation under paragraph 6 or paragraph 9 (commutation of periodic compensation) of Schedule 5 to the Act, calculated in accordance with paragraph 10 of Schedule 5 to the Act (early payment of compensation); and
- (b) B is the general level of prices in Great Britain determined in such manner as the Secretary of State may from time to time decide for the month which falls two complete months before the first day of the month during which the transfer day falls.

(2) In this regulation, where the Secretary of State makes a decision about the manner in which the general level of prices in Great Britain is to be determined, the Secretary of State must publish that decision.

## PART 9

### Commutation of periodic compensation

#### **Circumstances in which periodic compensation may be commuted**

**28.**—(1) The circumstances prescribed for the purposes of paragraph 9(1) (commutation) of Schedule 5 to the Act are specified in paragraph (2).

(2) The circumstances are that—

- (a) the transferor must not have previously exercised an option to commute for a lump sum either—
  - (i) a portion of the pension from which the pension compensation credit was derived; or
  - (ii) a portion of the relevant pension compensation from which the pension compensation credit was derived;
- (b) the transferee must not have previously exercised an option to commute for a lump sum a portion of the pension compensation credit in respect of which they are entitled to periodic compensation; and
- (c) the transferee exercises the option to commute within the period of six months beginning with the day on which payment of periodic compensation commences.

#### **Circumstances in which the portion of compensation to be commuted may exceed 25 %**

**29.**—(1) The prescribed circumstances for the purposes of paragraph 9(2) of Schedule 5 to the Act are that—

- (a) the transferee must have attained the age of 60 but not have attained the age of 75 on the date specified in paragraph (4) (the nominated date); and
  - (b) the portion to be commuted is a PPF trivial commutation lump sum.
- (2) A payment is a PPF trivial commutation lump sum if—
- (a) either—
    - (i) no trivial commutation lump sum or PPF trivial commutation lump sum has previously been paid to the transferee by either a registered pension scheme; or the Board; or

- (ii) if such a lump sum has previously been paid, the PPF trivial commutation lump sum is paid before the end of the commutation period;
  - (b) on the nominated date the value of the transferee's pension rights and entitlement to PPF compensation does not exceed the commutation limit;
  - (c) it is paid when all or part of the transferee's standard lifetime allowance is available; and
  - (d) it extinguishes the transferee's entitlement to PPF compensation.
- (3) "The commutation period" is the period beginning with the day on which a trivial commutation lump sum or PPF trivial commutation lump sum was first paid to the transferee and ending 12 months after that day.
- (4) The nominated date is—
- (a) a date nominated by the transferee which is within the period of three months ending with the day on which the transferee proposes to exercise the option to commute; or
  - (b) if no date is nominated by the transferee, a date within that period nominated by the Board.
- (5) The commutation limit is 1% of the standard lifetime allowance on the nominated date.
- (6) For the purposes of paragraph (2)(b)—
- (a) the value of the transferee's pension rights is the aggregate of—
    - (i) the value of the transferee's relevant crystallised pension rights (calculated in accordance with paragraph 8 (trivial commutation lump sum) of Schedule 29 to the Finance Act 2004<sup>(29)</sup> ("the Finance Act")); and
    - (ii) the value of the transferee's uncrystallised rights (calculated in accordance with paragraph 9 (trivial commutation lump sum) of Schedule 29 to the Finance Act); and
  - (b) the value of the transferee's entitlement to PPF compensation is the aggregate of—
    - (i) any entitlement to lump sum compensation under the pension compensation provisions; and
    - (ii) any entitlement to periodic compensation under the pension compensation provisions.
- (7) For the purposes of paragraph (6)(b)—
- (a) the value of any entitlement to lump sum compensation is the full amount of lump sum compensation to which the transferee is entitled on the nominated date; and
  - (b) the value of periodic compensation is to be calculated by multiplying the annual periodic compensation to which the transferee is entitled on the nominated date by 20.
- (8) In this regulation—
- (a) "registered pension scheme" has the same meaning as in section 150(2) of the Finance Act (meaning of "pension scheme");
  - (b) "standard lifetime allowance" means the amount specified in the relevant order for that tax year, made under section 218(3) of the Finance Act (individual's lifetime allowance and standard lifetime allowance);
  - (c) "tax year" has the same meaning as section 4(2), (3) and (4) of the Income Tax Act 2007 (income tax an annual tax); and
  - (d) "trivial commutation lump sum" has the same meaning as in paragraph 7 of Schedule 29 to the Finance Act (trivial commutation lump sum).

**Manner in which an option to commute may be exercised**

**30.**—(1) The manner in which an option to commute periodic compensation under paragraph 9 of Schedule 5 to the Act may be exercised is specified in paragraphs (2) to (4).

(2) A transferee may only exercise an option to commute a portion of the periodic compensation to which they are entitled by giving notice to the Board in writing.

(3) A notice given under paragraph (2) must include—

- (a) the name, address, date of birth and national insurance number of the transferee; and
- (b) the percentage of the periodic compensation which the transferee opts to commute.

(4) The Board may require a transferee exercising an option to commute to produce any document or provide any other information relevant to the Board's functions in relation to the transferee's request for commutation.

**PART 10****Early payment of periodic compensation****Circumstances where a transferee is entitled to early payment of periodic compensation**

**31.**—(1) The conditions under which, by virtue of paragraph 10 of Schedule 5 to the Act (early payment of compensation), a transferee may become entitled to early payment of lump sum compensation (by virtue of paragraph 9 of Schedule 5 to the Act (commutation of periodic compensation) and regulation 28 or 29) and periodic compensation under paragraph 6 of Schedule 5 to the Act (compensation payable to transferee) are specified in paragraph (2).

(2) Those conditions are that —

- (a) the transferee has given notice to the Board, in accordance with paragraph (3), that they wish to receive periodic compensation or lump sum compensation before attaining pension compensation age; and
- (b) the transferee has attained the age of 55 on the date on which they would like the periodic compensation or lump sum compensation to be paid.

(3) The notice referred to in paragraph (2)(a) must include—

- (a) the transferee's name, address, date of birth and national insurance number; and
- (b) the date on which the transferee would like the periodic compensation or lump sum compensation to become payable.

**PART 11****Annual increase in periodic compensation****Determination of indexed proportion**

**32.** In any case where it is unclear whether the pension compensation credit or any part of it is derived from rights of the transferor relating to pensionable service (whether actual or notional) occurring—

- (a) before 6th April 1997; or
- (b) on or after 6th April 1997,

the Board may determine as best as it is able, having regard to the admissible rules of the scheme and all the circumstances of the case, how much of the service or notional service of the transferor should be treated for the purposes of paragraph 17 of Schedule 5 to the Act as having occurred before 6th April 1997 and how much should be treated as having occurred on or after that date.

## PART 12

### Compensation cap

#### **Restriction of amount of compensation payable**

**33.**—(1) This regulation applies where, in respect of a pension compensation credit—

- (a) the transferee becomes entitled to payment of compensation under paragraph 4 or 6 of Schedule 5 to the Act; and
- (b) on the transfer day the transferor was not entitled to present payment of relevant compensation.

(2) Except where regulation 34 applies, where the annual value of the periodic compensation payable to the transferee under paragraph 4 or 6 of Schedule 5 to the Act in respect of that pension compensation credit exceeds the compensation cap, the amount of compensation payable to the transferee is restricted in accordance with paragraph (3).

(3) Where compensation payable to the transferee is required to be restricted in accordance with this paragraph, the compensation payable is the cap fraction of the amount which would otherwise be payable to the transferee, in respect of that pension compensation credit, under paragraph 4 or 6 of Schedule 5 to the Act.

(4) The annual value of the periodic compensation payable to the transferee under paragraph 4 or 6 of Schedule 5 to the Act in respect of a pension compensation credit is to be determined in accordance with this paragraph—

- (a) where no portion of the compensation to which the transferee is entitled under the pension compensation credit has been commuted, the annual value of the periodic compensation is the annual value of the compensation to which the transferee is entitled in respect of that credit; or
- (b) where a portion of the compensation to which the transferee is entitled under the pension compensation credit has been commuted, the annual value of the periodic compensation is the amount which would have been the annual value of the periodic compensation in respect of that credit, had a portion not been commuted.

(5) In this regulation—

“the cap fraction” means—

$C/V$

where C is the compensation cap, and V is the annual value of the periodic compensation payable under the pension compensation credit.

#### **Application of compensation cap where compensation becomes payable on different dates**

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

- (a) the transferee becomes entitled to payment of compensation in accordance with paragraph 4 or 6 of Schedule 5 to the Act; and

- (b) the transferee has previously become entitled to payment of compensation, in accordance with either of those paragraphs, which is derived from the rights of the same transferor under the same or a connected scheme.
- (2) For the purposes of paragraph (1), a scheme is a connected scheme if the same person is or was the employer in relation to both schemes.
- (3) Where this regulation applies, the amount of compensation payable to the transferee in accordance with paragraph 4 or 6 of Schedule 5 of the Act is to be restricted in accordance with paragraph (4) or (5).
- (4) If the previous cap percentage is or exceeds 100, the compensation payable in respect of a subsequent tranche of compensation is nil.
- (5) If the previous cap percentage is less than 100, the amount of compensation payable in respect of the previous and subsequent tranches of compensation is restricted in accordance with paragraph (8).
- (6) “The previous cap percentage” is the cap percentage for the previous tranche of compensation.
- (7) “The cap percentage” means  $(AAV \times 100) / ACC$ , where AAV is the appropriate annual value of the previous or, as the case may be, a subsequent tranche of compensation at the time when each tranche first becomes payable and ACC is the appropriate compensation cap at that time.
- (8) Where paragraph (5) applies—
- (a) the amount of a subsequent tranche of compensation is restricted in accordance with regulation 33(3), but taking the reference to the cap fraction in that paragraph as a reference to the revised cap fraction; and
  - (b) the amount of the previous tranche of compensation is restricted to the revised cap fraction of the amount that would be payable apart from this sub-paragraph.
- (9) “The revised cap fraction” means  $100 /$  the aggregate cap percentage.
- (10) “The aggregate cap percentage” means the aggregate of the cap percentages for the previous and subsequent tranches of compensation.

## PART 13

### Amendment of Schedule 9 to the 2004 Act

#### Amendment of Schedule 9 to the 2004 Act

**35.** In Schedule 9 to the 2004 Act(**30**) (reviewable matters), after paragraph 16B(**31**), insert—

“**16C** Any determination by the Board of a person’s entitlement to compensation under or by virtue of Chapter 1 of Part 3 of the Pensions Act 2008 (pension compensation sharing on divorce etc) or the failure in any case to make such a determination.

**16D** A determination by the Board that any right of a person to PPF compensation is or is not “shareable” for the purposes of Chapter 1 of Part 3 of the Pensions Act 2008 (pension compensation sharing on divorce).

**16E** A determination by the Board that the implementation period for a pension compensation credit (within the meaning of that Chapter) is or is not extended for the purposes of section 114 of that Act.

**(30)** Schedule 9 was amended by [S.I.2005/600](#) and [2113](#), [S.I.2006/685](#), [S.I.2007/771](#) and [S.I.2010/560](#). It was also modified in relation to partially guaranteed schemes by [S.I.2005/600](#) and for transitional purposes by [S.I.2005/1720](#).

**(31)** Paragraph 16B was inserted by [S.I.2006/685](#).

**16F** The recovery of a charge from a person under regulation 18 of the Pension Protection Fund (Pension Compensation Sharing and Attachment on Divorce etc) Regulations 2011, the amount of the charge or the method of recovery.”.

**Amendment of the Pension Protection Fund (Review and Reconsideration of Reviewable Matters) Regulations 2005**

**36.**—(1) In the Schedule to the Pension Protection Fund (Review and Reconsideration of Reviewable Matters) Regulations 2005(**32**), in the first column, below the reference to paragraph 16B, insert—

“**16C.** Paragraphs 16C, 16D, 16E and 16F.”.

(2) In the second column (interested person), below paragraph 16B and corresponding to paragraph 16C, insert—

“Any person directly affected by the decision.”.

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

10th March 2011

*Steve Webb*  
Minister of State,  
Department for Work and Pensions

*Status: This is the original version (as it was originally made).*

SCHEDULE

Regulation 6

Information to be provided by the Board

1. In this Schedule—

“beneficiary” means any person who is entitled to compensation as a surviving partner, relevant partner or other surviving dependant of a pension compensation credit member;

“interested person” has the same meaning as in section 207(2) of the 2004 Act (review and reconsideration of reviewable matters);

“reviewable matter” has the same meaning as in section 206(1) of the 2004 Act (meaning of “reviewable matters”).

2. Information to be provided by the Board to pension compensation credit members and beneficiaries shall be determined in accordance with the provisions of the table of information to be provided by the Board set out below—

**Table of information to be provided by the Board**

Description of person to whom information is to be provided	Description of information to be provided	Period during which the Board must provide information
Any pension compensation credit member who makes a request in writing to the Board for it to provide a forecast of the pension compensation credit member’s entitlement to compensation.	A forecast, determined in accordance with the provisions of Schedule 5 to the Act, of the compensation to be paid to the pension compensation credit member.	The period of 28 days beginning on the day on which the Board receives the request.
Any pension compensation credit member who will attain pension compensation age on their next birthday.	<ol style="list-style-type: none"> <li>1. A forecast, determined in accordance with the provisions of Schedule 5 to the Act, of the compensation to be paid to the pension compensation credit member.</li> <li>2. Details of any options to commute which may be exercised by the pension compensation credit member in accordance with paragraph 9 of Schedule 5 to the Act (commutation of periodic compensation) and regulations 28 and 29; and forecasts of—                             <ol style="list-style-type: none"> <li>(a) the lump sum to be paid under any such option; and</li> <li>(b) the reduced level of annual compensation</li> </ol> </li> </ol>	The period of 6 months beginning 12 months before the day on which the pension compensation credit member will attain pension compensation age.



Description of person to whom information is to be provided	Description of information to be provided	Period during which the Board must provide information
	<p>payment which the pension compensation credit member would receive if they exercised any such option.</p>	
<p>Any pension compensation credit member who makes a request in writing to the Board for it to provide—</p> <ul style="list-style-type: none"> <li>(i) information about any options to commute which may be exercised by the pension compensation credit member in accordance with paragraph 9 of Schedule 5 to the Act and regulations 28 and 29; or</li> <li>(ii) a forecast of the lump sum payable to the pension compensation credit member on the exercise of any such option.</li> </ul>	<p>Details of any options to commute available to the pension compensation credit member, and forecasts of—</p> <ul style="list-style-type: none"> <li>(a) the lump sum to be paid to the pension compensation credit member under any such option; and</li> <li>(b) the reduced level of annual compensation payments which the pension compensation credit member would receive if they exercised such an option.</li> </ul>	<p>The period of 28 days beginning on the day on which the Board receives the request.</p>
<p>Any pension compensation credit member who makes a request in writing to the Board for it to provide information about any entitlement the pension compensation credit member may have to early payment of compensation under paragraph 10 of Schedule 5 to the Act (early payment of compensation) and regulation 31.</p>	<p>Details of any entitlement the pension compensation credit member may have to early payment of compensation and a forecast of the periodic compensation and of any lump sum payment payable to the pension compensation credit member.</p>	<p>The period of 28 days beginning on the day on which the Board receives the request.</p>
<p>All pension compensation credit members, surviving or relevant partners or dependants of such members.</p>	<p>Details of any variation in the amount of compensation payable where the variation will result from the operation of paragraph 27 (increasing the compensation cap in line with earnings) of Schedule 7 to the 2004 Act, paragraph 17 (annual increase in periodic compensation) or 20 (Board's power to alter rate of revaluation and indexation) of Schedule 5 to the Act, and the date when the</p>	<p>Not less than 28 days before the operative date.</p>

**Status:** This is the original version (as it was originally made).

Description of person to whom information is to be provided	Description of information to be provided	Period during which the Board must provide information
	variation will become effective ('the operative date').	
Any pension compensation credit member who is an interested person in relation to a particular reviewable matter.	A statement describing how an application may be made to the Board for the review of the reviewable matter, how the application will be considered, and the Board's powers on making a review decision.	The period of 28 days beginning on the day on which the Board knew or ought to have known that the reviewable matter had occurred.
Any pension compensation credit member who is either a party to matrimonial or civil partnership proceedings, or may be a party to such proceedings, who makes a request in writing to the Board for information about their compensation entitlement.	A statement, determined in accordance with Schedule 5 to the Act, of the compensation to be paid to the pension compensation credit member.	The period of three months beginning on the day on which the Board receives the request, or by the date that the Board must comply with a court order to provide such information, whichever is the sooner.

## EXPLANATORY NOTE

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

These Regulations implement the provisions of Chapter 1 and (in part) Chapter 2 of Part 3 of the Pensions Act 2008 (c. 30) ('the Act'), which permit the courts to make pension compensation sharing orders and attachment orders in relation to Pension Protection Fund compensation in proceedings related to divorce, dissolution of a civil partnership, or in cases of annulment. In Scotland, it will also be possible for pension compensation to be shared by means of a provision in a qualifying agreement. Pension compensation sharing and attachment orders may be made in relation to the shareable rights to pension compensation of a Pension Protection Fund member ('member') by the Board of the Pension Protection Fund ('the Board') in accordance with Chapter 1 of Part 3 of the Act (pension compensation on divorce etc.), Chapter 3 of Part 2 of the Pensions Act 2004 (c. 35) (pension protection) ('the 2004 Act') and, in Northern Ireland, any corresponding provision.

Part 1 of these Regulations provides for citation, commencement and interpretation, and Part 2 specifies rights to pension compensation which may not be shared.

Part 3 specifies the information which the Board must supply, on request or pursuant to an order of the court, before the court makes a pension compensation sharing or attachment order (or, in Scotland, before a qualifying agreement containing provision about pension compensation sharing or attachment) is made. Regulation 6 and the Schedule set out information which must be supplied to a person entitled to pension compensation by virtue of a pension credit ('a pension compensation credit member').

Part 4 applies only to Scotland, and prescribes the form of a provision in a qualifying agreement corresponding to provision which may be made by a pension compensation sharing order, and the circumstances in which an agreement containing such a provision may be made.

Part 5 prescribes the information which must be supplied to the Board before the implementation period can begin, and the circumstances in which the implementation period (see section 115 of the Act) is extended, postponed or ceases to operate. Regulations 13 and 14 make provision, respectively, for calculation of the cash equivalent of the member's entitlement to pension compensation and the pension compensation credit member's entitlement by virtue of a pension compensation credit. Regulation 15 provides for discharge of the Board's liability for a pension compensation credit where the transferee has died before the Board has discharged its liability.

Part 6 specifies the costs in respect of which the Board may charge the parties to proceedings in relation to divorce or dissolution of a civil partnership, and specifies the circumstances in which, and the methods by which, the Board may recover the charges from the parties. This Part also allows a party to pension compensation sharing who has paid charges which were owed by the other party to recover the money from the party who owed the charges.

Part 7 deals with pension compensation for survivors of a deceased transferee. Regulation 20 provides that a widow, widower or civil partner of a deceased transferee ('a surviving partner') is not entitled to pension compensation when the deceased transferee has nominated a relevant partner (see regulation 2(1)) as beneficiary in the event of their death, or where the rules of the scheme from which the pension compensation credit was derived did not make provision for a survivor's pension. Regulation 21 sets out the annual rate and duration of pension compensation payable to a surviving partner. Regulations 22 to 25 specify the circumstances in which a relevant partner and a surviving dependant of a deceased transferee may be entitled to pension compensation, the duration of payment and the method by which the amount payable to a surviving dependant is to be calculated. Regulation 26 deals with payment of pension compensation where there are changes in the circumstances of a surviving dependant.

Part 8 sets out the mechanism by which the percentage increase in the general level of prices is to be determined, for the purposes of determining the revaluation percentage to be applied to the pension compensation payable to the transferee in a case where the transferee attains pension compensation age on or after the transfer day.

Part 9 sets out the circumstances in which periodic compensation may be commuted for a lump sum, the circumstances in which the portion commuted may exceed 25% of the value of the pension compensation and the manner in which an option to commute may be exercised.

Part 10 specifies the conditions under which a transferee may become entitled to early payment of pension compensation.

Part 11 provides that, for the purpose of determining the annual increase in periodic compensation, the Board may determine (in cases where this is unclear) how much of the service or notional service of the transferor should be treated as having occurred before 6th April 1997 and how much on or after that date.

Part 12 sets out the circumstances in which the compensation payable to the transferee may be subject to the compensation cap (see regulation 1(2)) and the method by which the amount payable is to be determined.

Part 13 inserts new paragraphs 16C to 16F into Schedule 9 to the 2004 Act (reviewable matters) so as to enable review and reconsideration of determinations about entitlement to pension compensation under Chapter 1 of Part 3 of the Act (pension compensation on divorce etc) and certain other determinations made by the Board in relation to pension compensation sharing. This Part also amends the Pension Protection Fund (Review and Reconsideration of Reviewable Matters) Regulations 2005 so as to provide that a person who is directly affected by a reviewable decision of the Board is an "interested person" for the purposes of an application for a review of a decision made by the Board.

**Status:** This is the original version (as it was originally made).

Before making these Regulations the Secretary of State consulted such persons as the Secretary of State considered appropriate.

A full impact assessment has not been produced for this instrument as it has no impact on the private sector and civil society organisations. An assessment of the impact of the legislative changes made by Part 3 of the Act was included as part of the Impact Assessment that accompanied the Pensions Act 2008, published on 5 December 2007. This is available from the DWP website:<http://www.dwp.gov.uk/resourcescentre/ria.asp>.