

2018 No. 988

PENSIONS

**The Pension Protection Fund (Pensionable Service) and
Occupational Pension Schemes (Investment and Disclosure)
(Amendment and Modification) Regulations 2018**

Made - - - - *10th September 2018*

Laid before Parliament *11th September 2018*

Coming into force in accordance with regulation 1

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 113(1), (6) and (7), 181(1), 182(2) and (3) and 183(1) of the Pension Schemes Act 1993(a), sections 35(4), 36(1), (1A)(a) and (9), 124(1) and 174(2) and (3) of the Pensions Act 1995(b), and sections 307(1)(b), 315(2), (4) and (5) and 318(1) of, and paragraph 33(1) of Schedule 7 to, the Pensions Act 2004(c).

In relation to regulations 1 to 3, except as set out below, the Secretary of State for Work and Pensions has consulted such persons as the Secretary of State considers appropriate in accordance with section 317(1) of the Pensions Act 2004.

In accordance with section 317(2)(b) of that Act, the exception at the beginning of regulation 30(5) and the whole of regulation 30(4) of the new Part 13 of the Pension Protection Fund (Compensation) Regulations 2005(d) (as inserted by regulation 2(3) of these Regulations) have not been subject to consultation, because it appears to the Secretary of State that by reason of urgency consultation is inexpedient.

In relation to regulations 1 and 5, in accordance with section 113(9) of the Pension Schemes Act 1993(e), the Secretary of State has consulted with the Financial Conduct Authority and the Treasury. In accordance with section 185(1) of the Pension Schemes Act 1993(f) and section

-
- (a) 1993 c. 48. Section 113(1) was amended by section 52(1) of the Child Support, Pensions and Social Security Act 2000 (c. 19); section 113(6) and (7) was inserted by section 44(1) of the Pensions Act 2014 (c. 19) (“the 2014 Act”); section 181(1) is cited for the meaning given to “prescribe” and “regulations”; section 183(1) was amended by Parts 3 and 4 of Schedule 7 to the Pensions Act 1995 (c. 26) (“the 1995 Act”).
- (b) 1995 c. 26. Section 35 was substituted by section 244 of the Pensions Act 2004 (c. 35) (“the 2004 Act”); section 36(1) and (1A) was substituted by section 245(2) of the 2004 Act and section 36(9) was inserted by section 245(6) of that Act; section 124(1) is cited for the meaning given to “prescribed” and “regulations”.
- (c) 2004 c. 35. Section 307 was amended by section 31(2) of the Pensions Act 2011 (c. 19) and by section 46 of, and paragraphs 23 and 37 of Schedule 2 to, the Pension Schemes Act 2015 (c. 8); section 318(1) is cited for the meaning given to “prescribed” and “regulations”; paragraph 33 of Schedule 7 was amended by paragraph 15 of Schedule 8 to the Pensions Act 2008 (c. 30).
- (d) S.I. 2005/670.
- (e) Section 113(9) was inserted by section 44(1) of the 2014 Act.
- (f) Section 185(1) was amended by sections 122 and 151 of, and paragraph 46 of Schedule 3 to, the 1995 Act and by paragraph 80(a) of Schedule 5 to that Act.

120(1) of the Pensions Act 1995, the Secretary of State has consulted such persons as the Secretary of State considers appropriate.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Pension Protection Fund (Pensionable Service) and Occupational Pension Schemes (Investment and Disclosure) (Amendment and Modification) Regulations 2018 and, except as provided for below, come into force on 1st October 2019.

(2) On 2nd October 2018 the following regulations come into force—

- (a) regulation 1(1) and (2);
- (b) regulation 2; and
- (c) regulation 3.

(3) On 1st October 2020 the following regulations come into force—

- (a) regulation 5(2);
- (b) regulation 5(4)(b), in so far as it inserts paragraph (2A)(b) in regulation 29A of the Disclosure Regulations; and
- (c) regulation 5(5)(c).

(4) In these Regulations, “the Disclosure Regulations” means the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013(a).

Amendments to the Pension Protection Fund (Compensation) Regulations 2005

2.—(1) The Pension Protection Fund (Compensation) Regulations 2005 are amended as follows.

- (2) In regulation 1(2) (interpretation)(b), omit the definition of “pensionable service”.
- (3) After Part 12 (variable-rate schemes)(c) insert—

“Part 13

Schemes which provide fixed pensions in respect of transfer payments

Schemes which provide fixed pensions in respect of transfer payments: modification of Schedule 7 to the Act

30.—(1) Schedule 7 (pension compensation provisions) to the Act has effect with the modifications set out in paragraphs (3) to (5) in relation to a scheme if, immediately before the assessment date, under the admissible rules of the scheme a person is entitled or has rights to a relevant fixed pension.

(2) A pension to which a person is entitled or has rights under a scheme is a “relevant fixed pension” for the purposes of this regulation if—

- (a) that entitlement or those rights (as the case may be) arose by virtue of a transfer payment to the scheme in respect of the person’s rights under another occupational or personal pension scheme;
- (b) the initial annual amount of the pension was specified at the time the transfer payment was received (whether or not that amount was subject to revaluation in respect of the period until the pension was to come into payment); and
- (c) the pension is neither—
 - (i) attributable (directly or indirectly) to a pension credit; nor

(a) S.I. 2013/2734.

(b) There are amendments to regulation 1(2) but none are relevant.

(c) Part 12 was inserted by S.I. 2018/95.

- (ii) payable as a result of a person's death.
- (3) Where compensation is payable under paragraph 15 (deferred members who have not attained normal pension age at assessment date) of Schedule 7 to the Act in respect of a relevant fixed pension—
- (a) paragraph 15 has effect in its application to that pension as if—
 - (i) in sub-paragraph (5), for “when the pensionable service relating to the pension ended”, there were substituted, “immediately after the relevant transfer payment was received”; and
 - (ii) after sub-paragraph (5) there were inserted—

“(5A) In sub-paragraph (5), “relevant transfer payment” means the transfer payment by virtue of which the deferred member's rights to the pension were conferred under the scheme.”; and
 - (b) except in a case to which regulation 15A(4) (modification of Schedule 7 for schemes with no revaluation)(a) applies, paragraph 16 has effect in its application to that pension as if—
 - (i) in sub-paragraph (2)(a) for “deferred member's pensionable service in respect of the pension ended” there were substituted “relevant transfer payment was received”; and
 - (ii) after sub-paragraph (2) there were inserted—

“(2A) In sub-paragraph (2)(a), “relevant transfer payment” means the transfer payment by virtue of which the deferred member's rights to the pension were conferred under the scheme.”.
- (4) Sub-paragraph (14) of paragraph 26A (meaning of the compensation cap) of Schedule 7 to the Act(b) does not apply in so far as it relates to the meaning of “pensionable service”.
- (5) Except for the purposes of sub-paragraphs (1) and (2) of paragraph 26 (compensation cap) of Schedule 7 to the Act(c), paragraph 36 (accrual rate, pensionable service and pensionable earnings) has effect as if—
- (a) in sub-paragraph (4), for “sub-paragraph (5)”, there were substituted, “sub-paragraphs (5) and (6)”; and
 - (b) after sub-paragraph (5) there were inserted—

“(6) For the purposes of this Schedule, where a person is entitled or has rights under a scheme to a pension and—

 - (a) that entitlement or those rights (as the case may be) arose by virtue of a transfer payment to the scheme in respect of the person's rights under another occupational or personal pension scheme;
 - (b) the initial annual amount of the pension was specified at the time the transfer payment was received (whether or not that amount was subject to revaluation in respect of the period until the pension was to come into payment); and
 - (c) the pension is neither—
 - (i) attributable (directly or indirectly) to a pension credit; nor
 - (ii) payable as a result of a person's death,

the person is to be treated as having pensionable service within sub-paragraph (4)(b) to which that pension is attributable.”.

(a) Regulation 15A was inserted by S.I. 2009/451.

(b) Paragraph 26A(14) of Schedule 7 to the 2004 Act was inserted by paragraphs 1 and 3 of Schedule 20 to the 2014 Act.

(c) Paragraph 26(1) and (2) of Schedule 7 to the 2004 Act was amended by section 51(1) to (5) of the 2014 Act.

Amendment to the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations 2005

3. In regulation 1(2) (interpretation) of the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations 2005(a), for the definition of “pensionable service” substitute—

““pensionable service” has the meaning given by paragraph 36(4) of Schedule 7 to the Act (accrual rate, pensionable service and pensionable earnings);”.

Amendments to the Occupational Pension Schemes (Investment) Regulations 2005

4.—(1) The Occupational Pension Schemes (Investment) Regulations 2005(b) are amended as follows.

(2) In regulation 2 (statement of investment principles)—

(a) in paragraph (3)—

(i) at the end of sub-paragraph (b)(v) omit “and”;

(ii) for sub-paragraph (b)(vi) substitute—

“(vi) financially material considerations over the appropriate time horizon of the investments, including how those considerations are taken into account in the selection, retention and realisation of investments; and”;

(iii) after sub-paragraph (b)(vi) insert—

“(vii) the extent (if at all) to which non-financial matters are taken into account in the selection, retention and realisation of investments; and”;

(iv) for sub-paragraph (c) substitute—

“(c) their policy in relation to—

(i) the exercise of the rights (including voting rights) attaching to the investments; and

(ii) undertaking engagement activities in respect of the investments (including the methods by which, and the circumstances under which, trustees would monitor and engage with relevant persons about relevant matters).”;

(b) after paragraph (3) insert—

“(4) For the purposes of this regulation—

“appropriate time horizon” means the length of time that the trustees of a trust scheme consider is needed for the funding of future benefits by the investments of the scheme;

“beneficiaries” means a person, other than a member of the trust scheme, who is entitled to the payment of benefits under the scheme;

“financially material considerations” includes (but is not limited to) environmental, social and governance considerations (including but not limited to climate change), which the trustees of the trust scheme consider financially material;

“non-financial matters” means the views of the members and beneficiaries including (but not limited to) their ethical views and their views in relation to social and environmental impact and present and future quality of life of the members and beneficiaries of the trust scheme;

“relevant matters” includes (but is not limited to) matters concerning an issuer of debt or equity, including their performance, strategy, risks, social and environmental impact and corporate governance; and

“relevant persons” includes (but is not limited to) an issuer of debt or equity, an investment manager or another holder of debt or equity.”.

(a) S.I. 2005/441; there are amendments to regulation 1(2) but none are relevant.

(b) S.I. 2005/3378.

(3) In regulation 2A(1)(b) (additional requirements in relation to default arrangement)(a), after “regulation 2(3)(b)”, insert “and, if that scheme has 100 or more members, regulation 2(3)(c)”.

Amendments to the Disclosure Regulations

5.—(1) The Disclosure Regulations are amended as follows.

(2) In regulation 12 (annual report)—

(a) in paragraph (1), before “given in accordance”, insert “(subject to paragraph (5))”; and

(b) after paragraph (4) insert—

“(5) Where the scheme is a relevant scheme within the meaning of the Occupational Pension Schemes (Scheme Administration) Regulations 1996(b) that falls within section 35 (investment principles) of the 1995 Act, the information listed in paragraph 30(f) of Schedule 3(c) must be made publicly available free of charge in accordance with regulation 29A(d).”.

(3) In the heading to regulation 29A (publishing charges and transaction costs), at the end, insert “and other relevant information”.

(4) In regulation 29A—

(a) in paragraph (1), after “paragraph (2)”, insert “and, where that scheme falls within section 35 of the 1995 Act, paragraph (2A)”;

(b) after paragraph (2) insert—

“(2A) The specified information is—

(a) the latest statement of investment principles governing decisions about investments prepared for the scheme under section 35 of the 1995 Act; and

(b) the information which must be included in the most recent document prepared under regulation 12 in accordance with paragraph 30(f) of Schedule 3.”; and

(c) in paragraph (4), after “paragraph (2)”, insert “or (2A)”.

(5) In paragraph 30 of Schedule 3 (information to be given on request)—

(a) for sub-paragraph (d) substitute—

“(d) the policies specified in the following paragraph of regulation 2 of the Occupational Pension Schemes (Investment) Regulations 2005 (statement of investment principles) (“the Investment Regulations”)—

(i) paragraph (3)(b)(vi)(e),

(ii) paragraph (3)(b)(vii)(f), and

(iii) paragraph (3)(c)(g), and”;

(b) omit sub-paragraph (e); and

(c) after sub-paragraph (e) insert—

“(f) where the scheme is a relevant scheme within the meaning of the Occupational Pension Schemes (Scheme Administration) Regulations 1996, a statement which must—

(i) set out how, and the extent to which, in the opinion of the trustees, the statement of investment principles required under section 35 of the 1995 Act has been followed during the year,

(a) Regulation 2A was inserted by S.I. 2015/879.

(b) S.I. 1996/1715. The definition of “relevant scheme” was inserted by S.I. 2015/879.

(c) Paragraph 30(f) of Schedule 3 is inserted by regulation 5(5)(c) of these Regulations.

(d) Regulation 29A was inserted by S.I. 2018/233.

(e) Paragraph (3)(b)(vi) is substituted by regulation 4(2)(a)(ii) of these Regulations.

(f) Paragraph (3)(b)(vii) is inserted by regulation 4(2)(a)(iii) of these Regulations.

(g) Paragraph (3)(c) is substituted by regulation 4(2)(a)(iv) of these Regulations.

- (ii) describe any review of the statement of investment principles undertaken during the year in accordance with regulation 2(1) of the Investment Regulations and any other review of how the statement of investment principles has been met,
- (iii) explain any change made to the statement of investment principles during the year and the reason for the change, and
- (iv) where no such review was undertaken during the year in accordance with regulation 2(1) of the Investment Regulations, give the date of the last review.”.

(6) In paragraph 5B of Schedule 6 (statement of benefits: money purchase benefits and cash balance benefits)(a), for “(publishing charges and transaction costs)”, substitute “and (2A) (publishing charges and transaction costs and other relevant information)”(b).

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

Guy Opperman
Parliamentary Under-Secretary of State
Department for Work and Pensions

10th September 2018

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Board of the Pension Protection Fund (“the Board”) is established by section 107 of the Pensions Act 2004 (c. 35) (“the 2004 Act”) to provide compensation for members of certain occupational pension schemes in the event of the insolvency of the scheme’s sponsoring employer, where the pension scheme is underfunded below a certain level. The compensation payable to individual members is determined in accordance with Schedule 7 to the 2004 Act and regulations made under it, including the Pension Protection Fund (Compensation) Regulations 2005 (S.I. 2005/670) (“the Compensation Regulations”). These Regulations make amendments to the Compensation Regulations to insert provisions modifying the effect of Schedule 7 to the 2004 Act in relation to certain schemes.

These Regulations also amend the definition of “pensionable service” in the Compensation Regulations and in the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations 2005 (S.I. 2005/441) (“the Multi-employer Regulations”) so that the definition of that term in paragraph 36 of Schedule 7 to the 2004 Act applies in both Regulations.

These Regulations additionally impose requirements on occupational pension schemes in relation to the statement of investment principles required under section 35 of the Pensions Act 1995 (c. 26) and the disclosure of information in relation to the statement of investment principles.

Regulation 2(3) inserts a new regulation 30 into the Compensation Regulations. Paragraph (1) of new regulation 30 provides that Schedule 7 to the 2004 Act has effect with the modifications set out in new regulation 30(3) to (5) in relation to a scheme if, immediately before the assessment date, under the admissible rules of the scheme a person is entitled or has rights to a “relevant fixed pension” as defined in paragraph (2) of new regulation 30. A relevant fixed pension is defined as a pension which arose by virtue of a transfer payment to the scheme, where the initial amount of the pension was determined at the time the transfer payment was received. In addition, the pension must not be attributable to a pension credit, or payable as a result of a person’s death.

(a) Paragraph 5B of Schedule 6 was inserted by S.I. 2018/233.
(b) Paragraph (2A) is inserted by regulation 5(4)(b) of these Regulations.

Paragraph (4) of new regulation 30 provides that paragraph 26A(14) of Schedule 7 to the 2004 Act, which provides for expressions used in paragraph 26A to have the same meaning as in paragraph 26 of that Schedule, does not apply in so far as it relates to the meaning of “pensionable service”.

Paragraph (5) of new regulation 30 provides that, in cases to which the modifications apply, paragraph 36 of Schedule 7 to the 2004 Act has effect as if it included a new sub-paragraph (6) (except for the purposes of paragraph 26(1) and (2) of Schedule 7 to the 2004 Act, which relate to the application of the compensation cap). New sub-paragraph (6) provides that a person with a right or entitlement to a relevant fixed pension (defined in the same terms as in new regulation 30(2) of the Compensation Regulations) is to be treated, for the purposes of Schedule 7, as having pensionable service within paragraph 36(4)(b) (notional pensionable service), to which the relevant fixed pension is attributable.

In addition, paragraph (3) of new regulation 30 provides that, in relevant cases, paragraphs 15 and 16 of Schedule 7 to the 2004 Act have effect as if references to the time at which the member’s pensionable service in respect of the pension ended, were instead to the time at which the transfer payment which gave rise to the relevant fixed pension was received by the scheme.

Regulation 2(2) omits the definition of “pensionable service” from regulation 1(2) of the Compensation Regulations, so that the definition of that term in paragraph 36 of Schedule 7 to the 2004 Act applies for the purposes of the Compensation Regulations.

Regulation 3 also amends the definition of “pensionable service” in regulation 1(2) of the Multi-employer Regulations, so that the definition of that term in paragraph 36 of Schedule 7 to the 2004 Act applies for the purposes of the Multi-employer Regulations.

Regulation 4 amends regulations 2 and 2A of the Occupational Pension Schemes (Investment) Regulations 2005 (S.I. 2005/3378) (“the Investment Regulations”), which relate to the statement of investment principles (“the SIP”) required under section 35 of the Pensions Act 1995 and, amongst other things, the default SIP required under regulation 2A of the Investment Regulations. The amendment provides for trustees to include a policy on how they will take account of financially material considerations in relation to investments in the SIP and default SIP. It also requires trustees of schemes (except schemes with fewer than 100 members) to include a policy on when they will undertake engagement activities in relation to investments (including monitoring and engaging with relevant persons such as an investment manager) in the SIP and default SIP.

Regulation 5 amends the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (S.I. 2013/2734) (“the Disclosure Regulations”) to require the trustees of a relevant scheme to include in the annual report under regulation 12 of the Disclosure Regulations a statement on the extent to which the SIP has been followed during the scheme year and an explanation of any changes made to the SIP during that year (“the implementation statement”). It obliges trustees to make available free of charge the SIP and the implementation statement on a website, or where appropriate, in hard copy form to the public as a whole to enable people to compare costs and charges of different occupational pension schemes. In addition, the trustees must include details about the availability of these publications in the annual benefit statement issued to members with money purchase benefits.

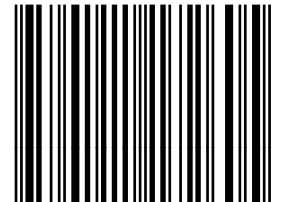
A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen. The Department for Work and Pensions has nonetheless undertaken an assessment of the impact of regulations 4 and 5 of this instrument, a copy of which is available from the Better Regulation Unit of the Department for Work and Pensions, Caxton House, Tothill Street, London SW1H 9NA and is published with the Explanatory Memorandum alongside this instrument at www.legislation.gov.uk.

£6.90

UK201809101002 09/2018 19585

<http://www.legislation.gov.uk/id/uksi/2018/988>

ISBN 978-0-11-117260-5



9 780111 172605