

2010 No.

PENSIONS

**The Pension Protection Fund (Pensions on Divorce etc:
Charges) Regulations 2010**

Made - - - - ***
Laid before Parliament ***
Coming into force - - ***

The Secretary of State for Work and Pensions, in exercise of the powers conferred by sections 168A(2) and (3), 203(1) and 315 of the Pensions Act 2004(a) makes the following Regulations.

In accordance with section 317(2)(c) of the Pensions Act 2004, the Secretary of State is not required to consult on these Regulations because they are made before the end of the period of six months beginning with the coming into force of section 168A (charges in respect of pension sharing etc.) of the Pensions Act 2004(b).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Pension Protection Fund (Pensions on Divorce etc: Charges) Regulations 2010 and shall come into force on [].

(2) In these Regulations—

“party” means a party to a relevant order or provision;

“PPF compensation” means compensation payable under Chapter 3 of Part 2 of the Pensions Act 2004 (pension protection) and any regulations or order made under it.

Information to be provided where the Board is under a duty to comply with a relevant order or provision

2.—(1) This regulation applies where—

- (a) the Board has assumed responsibility for a scheme; and
- (b) the Board is required to implement a pension sharing order or provision by virtue of the Pension Protection Fund (Pension Sharing) Regulations 2006(c); or
- (c) the Board is required to make payments in accordance with an order made under section 23 of the Matrimonial Causes Act 1973(d) including provision made by virtue of section 25B or 25C of that Act(e).

(a) 2004 (c. 35).

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

(c) S.I. 2006/1690

(d) 1973 (c.18).

(e) Sections 25B and 25C were inserted by section 166(1) of the Pensions Act 1995 (c. 26) and amended by section 21 of and paragraphs 1 and 2 of Schedule 4 to the Welfare Reform and Pensions Act 1999 (c. 30).

(2) The Board must inform the parties of—

- (a) the date that the Board assumed responsibility for the scheme; and
- (b) the fact that the Board will implement or continue the implementation of the order or, as the case may be, will comply with the attachment order.

(3) The Board must provide the information specified in paragraph (2) within the period of 14 days beginning with the date on which the Board assumed responsibility for the scheme.

(4) Where the Board has previously provided the information specified in paragraph (2)(a), nothing in this regulation requires that information to be provided again to the same party.

Charges in respect of pension sharing

3.—(1) Subject to paragraph (2), the charges which the Board may recover from the parties are costs which are reasonably incurred by the Board in respect of—

- (a) implementation of a relevant pension sharing order or provision; or
- (b) provision of information associated with implementation of a relevant pension sharing order or provision.

(2) The Board may not recover any charges specified in paragraph (1) unless—

- (a) there are charges which are unpaid; and
- (b) before the pension sharing order or provision was made, the trustees or managers of the scheme—
 - (i) informed the member and the member's spouse or civil partner, as the case may be, in writing, of their intention to recover costs incurred in connection with pension sharing activity; and
 - (ii) provided the member or the member's spouse or civil partner, as the case may be, with a written schedule of the charges which they intended to impose.

Charges in respect of pension sharing – method of recovery

4.—(1) The Board may recover the charges specified in regulation 3(1) by using either of the methods described in paragraph (2) of this regulation.

(2) The methods of recovery described in this paragraph are—

- (a) requiring payment from a party liable for payment of the charges; or
- (b) in the circumstances described in paragraph (3), deducting the charges from PPF compensation which would otherwise be payable to a party liable for payment of the charges.

(3) The circumstances prescribed for the purposes of paragraph 2(b) are that—

- (a) the implementation period for the relevant order or provision has commenced;
- (b) the Board is not aware of an appeal against the order having begun on or after the day on which the order takes effect;
- (c) either—
 - (i) the trustees or managers of the scheme provided the party from whom the Board intends to recover the charges with a schedule of charges owed by that party, together with details of any method which may be used to recover those charges; or
 - (ii) the Board has, within the period of 14 days beginning with the day that the Board assumed responsibility for the scheme, provided the party from whom the Board intends to recover the charges with a schedule of charges owed by that party; and

- (d) the Board has informed the party from whom the Board intends to recover the charges of the date on or after which the charges may be recovered in accordance with paragraph (2)(b), together with details of the method which may be used to recover the charges.

(4) If a pension sharing order or provision includes provision about the apportionment between the parties to pension sharing of any charge under section 41 of the Welfare Reform and Pensions Act 1999 (charges in respect of pension sharing costs)(a), by virtue of section 24D of the Matrimonial Causes Act 1973 (pension sharing orders: apportionment of charges)(b) or section 8A of the Family Law (Scotland) Act 1985(c) (pension sharing orders: apportionment of charges), or under Article 38 of the Welfare Reform and Pensions (Northern Ireland) Order 1999(d), the recovery of charges by any of the methods described in paragraph (2) must comply with the terms of the order or provision.

(5) The Board may not recover any of the charges referred to in paragraph (1) from a party to pension sharing by using either of the methods prescribed in paragraph (2) if that party has paid in full all the charges for which they are liable.

Charges in relation to attachment orders

5.—(1) The prescribed charges which the Board may recover in respect of complying with an attachment order are those charges which represent the reasonable administrative expenses which the Board has incurred by reason of the order.

(2) The Board may not recover any charges specified in paragraph (1) unless—

- (a) there are charges which are unpaid and for which a party from whom the Board is requiring payment is liable; and
- (b) the Board has within the period of 14 days beginning with the day on which the Board assumed responsibility of the scheme—
 - (i) provided that party with a written schedule of the charges which are owed and the date by which payment in whole or in part is required; and
 - (ii) informed that party, in writing, of the method by which it intends to recover those charges.

Charges in relation to attachment orders – method of recovery

6.—(1) The Board may recover the charges specified in regulation 5(1) by using either of the methods described in paragraph (2).

(2) The methods of recovery described in this paragraph are—

- (a) requiring payment from a party liable for payment of the charges; or
- (b) in the circumstances described in paragraph (3), deducting the charges from PPF compensation which would otherwise be payable to a party liable for payment of the charges.

(3) The circumstances prescribed for the purposes of paragraph 2(b) are the circumstances specified in paragraph 4(3)(b) to (d) of regulation 4.

(4) If a pension sharing order or provision includes provision about the apportionment between the parties to an attachment order of any charge, the Board must comply with the terms of the order or provision.

(5) The Board may not recover any of the charges referred to in paragraph (1) from a party to an attachment order by using either of the methods prescribed in paragraph (2) if that party has paid in full all the charges for which they are liable.

(a) 1999 (c.30).

(b) Section 24D was inserted by section 19 of and paragraphs 1 and 4 of Schedule 3 to the Welfare Reform and Pensions Act 1999 (c. 30).

(c) 1985 (c.37).

(d) S.I.1997/3147 (N.I. 11).

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

Address	<i>Name</i>
Date	Parliamentary Under Secretary of State Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations apply where a pension sharing order or provision or an attachment order was made before the Board of the Pension Protection Fund assumed responsibility for an occupational pension scheme and was not implemented by the trustees or managers of the scheme. The Regulations set out the information which must be provided to the parties to the order or provision and the circumstances in which the Board may recover the costs incurred as a result of implementing a pension sharing order or provision and administration of a pension attachment order.

Regulation 1 provides for citation, commencement and interpretation of the Regulations.

Regulation 2 sets out the information that the Board must provide to the parties where a relevant order or provision has been made before the Board assumed responsibility for a scheme.

Regulation 3 permits the Board to recover from the parties the costs of implementing a pension sharing order or provision and of providing information associated with implementation, provided that the parties have been notified in advance of the charges that will be incurred.

Regulation 4 sets out the methods by which the Board may recover charges and the conditions which must be fulfilled before recovery.

Regulation 5 sets out the charges which the Board may recover in respect of administration of an attachment order, and the preconditions which apply to recovery of those charges.

Regulation 6 sets out the methods by which the Board may recover charges in relation to administration of an attachment order.

No Impact Assessment for this instrument has been produced as any impact on the private and voluntary sectors will be negligible. 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>.