

2018 No.

PENSIONS

**The Pension Protection Fund (Compensation) (Amendment)
Regulations 2018**

Made - - - - ***
Laid before Parliament ***
Coming into force - - [24th February] 2018

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 315(2), (4) and (5) and 318(1) of, and paragraphs 23(1) and (2), 25, 25A and 33(1) and (2) of Schedule 7 to, the Pensions Act 2004(a).

The Secretary of State for Work and Pensions has, in accordance with section 317(1) of the Pensions Act 2004, consulted such persons as the Secretary of State considers appropriate.

Citation and commencement

1. These Regulations may be cited as the Pension Protection Fund (Compensation) (Amendment) Regulations 2018 and come into force on [24th February] 2018.

Amendments to the Pension Protection Fund (Compensation) Regulations 2005

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

- (2) In regulation 1(2) (interpretation)(c), after the definition of “the assessment date” insert—
- ““the basic element” and “the bridging element”, in relation to a bridging pension, have the meanings given in regulation 28(2)(a) (variable-rate schemes which provide for a decrease in annual rate of pension: modification of Schedule 7 to the Act);
 - ““bridging pension” means a pension by virtue of which regulation 29 applies to a scheme”;

(3) In regulation 2(2) (circumstances where a person shall be entitled to early payment of compensation)(d)—

- (a) at the end of sub-paragraph (a) omit “and”; and

(a) 2004 c. 35. Paragraph 33 of Schedule 7 to the Pensions Act 2004 was amended by paragraph 15 of Schedule 8 to the Pensions Act 2008 (c. 30). Paragraph 25A was inserted by paragraph 13 of Schedule 18 to the Pensions Act 2008 and substituted by paragraph 22 of Schedule 4 to the Pensions Act 2011 (c. 19). Section 318(1) is cited for the meaning it gives to “prescribed” and “regulations”.

(b) S.I. 2005/670; relevant amending instruments are S.I.s 2005/2113, 2010/560, 2013/627 and 2016/294.

(c) The definition of “the assessment date” was inserted into regulation 1(2) by S.I. 2005/2113. There are other amendments to regulation 1(2) but none is relevant.

(d) Regulation 2(2) was amended by S.I. 2016/294.

- (b) at the end of sub-paragraph (b) insert—
 - “; and
 - (c) where the notice referred to in sub-paragraph (a) relates, in whole or in part, to compensation in respect of a bridging pension, that the notice—
 - (i) relates to both the compensation in respect of the basic element and that in respect of the bridging element; and
 - (ii) specifies the same date in relation to each for the purposes of paragraph (3)(a)(iii).”.
- (4) In regulation 2C (conditions subject to which periodic and lump sum compensation can be postponed)(a), after paragraph (4) insert—
 - “(4A) The fourth condition is that, where the person elects to postpone any periodic compensation in respect of a bridging pension, they must elect to postpone both the compensation in respect of the basic element and that in respect of the bridging element.”.
- (5) In regulation 4 (compensation for surviving dependants)(b)—
 - (a) in paragraph (3), at the beginning insert “Subject to paragraph (4),”; and
 - (b) after paragraph (3) insert—
 - “(4) Paragraph (3) does not give rise to any entitlement to periodic compensation in respect of the bridging element of a bridging pension.”.
- (6) After Part 11 (career average revalued earnings schemes)(c) insert—

“Part 12

Variable-rate schemes: modification of Schedule 7 to the Act

Variable-rate schemes which provide for a decrease in annual rate of pension: modification of Schedule 7 to the Act

- 28.**—(1) Regulation 29 applies to a scheme if—
- (a) an assessment period in relation to the scheme begins on or after [24th February] 2018; and
 - (b) under the admissible rules of the scheme, immediately before the assessment date a person (“the member”) is entitled, or has accrued rights or pension credit rights, to a pension (“the bridging pension”), the annual rate of which would (had no assessment period begun in relation to the scheme and the rules remained unchanged) have decreased on a date (“the scheme decrease date”) that falls on or after that assessment date.
- (2) In this regulation and in regulation 29—
- (a) in relation to the bridging pension—
 - “the basic element” means the portion of the annual rate of the bridging pension to which the member was, or would have been, entitled for life under the admissible rules of the scheme;
 - “the bridging element” means the portion of the annual rate of the bridging pension to which the member was, or would have been, entitled only until the scheme decrease date under the admissible rules of the scheme; and
 - “the PPF decrease date” means—

(a) Regulation 2C was inserted by S.I. 2013/627.
 (b) Regulation 4(3) was amended by S.I. 2013/627.
 (c) Part 11 was inserted by S.I. 2010/560.

- (i) in a case to which paragraph (4) applies, the date determined in accordance with that paragraph;
- (ii) in a case to which paragraph (5) applies, the date determined by the Board in accordance with that paragraph; and
- (iii) in any other case, the scheme decrease date; and

(b) references to “Schedule 7” are to Schedule 7 to the Act.

(3) In any case where the Board is satisfied that it is not possible to identify the portions of the annual rate of the bridging pension which constitute the basic element and the bridging element respectively, the Board may, having regard to the admissible rules of the scheme, treat those elements as constituting such portions of the annual rate of the bridging pension as it considers appropriate.

(4) In any case where—

- (a) the scheme decrease date would, under the admissible rules of the scheme, have been determined by reference to an enactment as in force at a particular time; and
- (b) that time falls after the assessment date,

the PPF decrease date is to be the scheme decrease date, but determined by reference to the enactment as in force on the assessment date.

(5) In any case where the Board is satisfied that it is not possible to identify the scheme decrease date, the Board may, having regard to the admissible rules of the scheme, determine the PPF decrease date in such manner as it considers appropriate.

29.—(1) Schedule 7 has effect with the following modifications in relation to a scheme to which this regulation applies.

(2) In this regulation “the member” and “the bridging pension” have the same meanings as in regulation 28.

(3) Schedule 7 (apart from paragraph 33) and any regulations made under it (apart from regulation 28 and this regulation) have effect as if the basic element and the bridging element of the bridging pension were separate pensions.

(4) Where compensation is payable under paragraph 3 of Schedule 7 (pensions in payment at assessment date) in respect of the bridging pension, sub-paragraph (2) of that paragraph has effect in its application to the bridging element as if—

- (a) for “for life” there were substituted “until the PPF decrease date”; and
- (b) at the end there were inserted “if earlier”.

(5) Where compensation is payable under paragraph 5 of Schedule 7 (pension benefits postponed at assessment date) in respect of the bridging pension, that paragraph has effect in its application to the bridging element as if—

- (a) in sub-paragraph (2)—
 - (i) at the beginning there were inserted “Subject to sub-paragraph (2A),”;
 - (ii) for “for life” there were substituted “until the PPF decrease date”; and
 - (iii) at the end there were inserted “if earlier”; and

(b) after sub-paragraph (2) there were inserted—

“(2A) No compensation is payable under this paragraph in respect of the pension if, on the PPF decrease date—

- (a) the commencement of periodic compensation in respect of the pension has been postponed by virtue of paragraph 25A; and
- (b) that postponement has not ceased.”.

(6) Where compensation is payable under paragraph 8 (active members over normal pension age at assessment date), 11 (active members who have not attained normal pension age at assessment date) or 15 (deferred members who have not attained normal pension age

at assessment date) of Schedule 7 in respect of the bridging pension, that paragraph has effect in its application to the bridging element as if—

- (a) in sub-paragraph (2)—
 - (i) at the beginning there were inserted “Subject to sub-paragraph (2A),”; and
 - (ii) for “for life” there were substituted “until the PPF decrease date”; and
- (b) after sub-paragraph (2) there were inserted—

“(2A) No compensation is payable under this paragraph in respect of the pension if, on the PPF decrease date—

 - (a) the commencement of periodic compensation in respect of the pension has been postponed by virtue of paragraph 25A; and
 - (b) that postponement has not ceased.”.

(7) Where paragraph (5) or (6) applies, paragraph 25A(2) of Schedule 7 (postponement of compensation) has effect as if after “ceases to be postponed,” there were inserted “except where sub-paragraph (2A) of that paragraph applies,”.

(8) Where paragraph 26 of Schedule 7 (compensation cap) requires any periodic compensation in respect of the bridging element of the bridging pension to be restricted (or would so require, but for the modifications made by this paragraph), that paragraph has effect with the following modifications for the purposes of determining the periodic compensation payable to the member, or to another person in respect of the member, under Schedule 7—

- (a) sub-paragraph (6) has effect for the purpose of determining the “annual value” of the bridging element as if—
 - (i) at the end of each of paragraphs (a), (b), (d) and (f); and
 - (ii) in paragraph (c)(i), after “paragraph 3(3)(a)”, there were inserted “, actuarially reduced in accordance with sub-paragraph (8A)”; and
- (b) where the modifications in sub-paragraph (a) apply, paragraph 26 of Schedule 7 has effect as if after sub-paragraph (8) there were inserted—

“(8A) The Board must determine the amount of the actuarial reduction to be applied under sub-paragraph (6) having regard to the length of the period beginning with the date on which entitlement to compensation in respect of the benefit commences and ending on the day before the PPF decrease date (as defined in regulation 28(2)(b) of the Pension Protection Fund (Compensation) Regulations 2005 (variable-rate schemes which provide for a decrease in annual rate of pension: modification of Schedule 7 to the Act)).”.

(9) Where periodic compensation is payable under paragraph 4 of Schedule 7 (pensions in payment at assessment date – compensation for survivors) in respect of the bridging pension, that paragraph has effect in its application to the bridging element as if in sub-paragraph (2) for “for life” there were substituted “until the PPF decrease date”.

(10) Where periodic compensation is payable under paragraph 6 of Schedule 7 (pension benefits postponed at assessment date – compensation for survivors) in respect of the bridging pension, that paragraph has effect in its application to the bridging element as if—

- (a) in sub-paragraph (2)—
 - (i) for “sub-paragraph 4” there were substituted “sub-paragraphs (2A) and (4)”; and
 - (ii) for “for life” there were substituted “until the PPF decrease date”; and
- (b) after sub-paragraph (2) there were inserted—

“(2A) No compensation is payable under this paragraph in respect of the pension if the postponed pensioner dies on or after the PPF decrease date.”.

(11) Where periodic compensation is payable under paragraph 9 of Schedule 7 (active members over normal pension age at assessment date – compensation for survivors) in respect of the bridging pension, that paragraph has effect in its application to the bridging element as if—

- (a) in sub-paragraph (2)—
 - (i) for “sub-paragraph 4” there were substituted “sub-paragraphs (2A) and (4)”; and
 - (ii) for “for life” there were substituted “until the PPF decrease date”; and
- (b) after sub-paragraph (2) there were inserted—

“(2A) No compensation is payable under this paragraph in respect of the pension if the active member dies on or after the PPF decrease date.”.

(12) Where the member dies after attaining normal pension age and periodic compensation is payable under paragraph 13 of Schedule 7 (active members who have not attained normal pension age at assessment date – compensation for survivors) in respect of the bridging pension, that paragraph has effect in its application to the bridging element as if—

- (a) in sub-paragraph (2)—
 - (i) for “sub-paragraph 4” there were substituted “sub-paragraphs (2A) and (4)”; and
 - (ii) for “for life” there were substituted “until the PPF decrease date”; and
- (b) after sub-paragraph (2) there were inserted—

“(2A) No compensation is payable under this paragraph in respect of the pension if the active member dies on or after the PPF decrease date.”.

(13) Where the member dies after attaining normal pension age and periodic compensation is payable under paragraph 18 of Schedule 7 (deferred members who have not attained normal pension age at assessment date – compensation for survivors) in respect of the bridging pension, that paragraph has effect in its application to the bridging element as if—

- (a) in sub-paragraph (2)—
 - (i) for “sub-paragraph 4” there were substituted “sub-paragraphs (2A) and (4)”; and
 - (ii) for “for life” there were substituted “until the PPF decrease date”; and
- (b) after sub-paragraph (2) there were inserted—

“(2A) No compensation is payable under this paragraph in respect of the pension if the deferred member dies on or after the PPF decrease date.”.

(14) Where the member dies before attaining normal pension age—

- (a) if periodic compensation is payable under paragraph 13 of Schedule 7 in respect of the bridging pension, that paragraph has effect in its application to the bridging element as if—
 - (i) in sub-paragraph (2) for “life” there was substituted “the bridging period”; and
 - (ii) after sub-paragraph (2) there were inserted—

“(2A) In sub-paragraph (2), “the bridging period” means a period equal in length to the period—

 - (a) beginning with the date on which the active member would have attained normal pension age; and
 - (b) ending with the day before the PPF decrease date.”; and
- (b) if periodic compensation is payable under paragraph 18 of Schedule 7 in respect of the bridging pension, that paragraph has effect in its application to the bridging element as if—

- (i) in sub-paragraph (2) for “life” there was substituted “the bridging period”; and
 - (ii) after sub-paragraph (2) there were inserted—
- “(2A) In sub-paragraph (2), “the bridging period” means a period equal in length to the period—
- (a) beginning with the date on which the deferred member would have attained normal pension age; and
 - (b) ending with the day before the PPF decrease date.”.

(15) Paragraph 37(1) of Schedule 7 (other definitions) has effect as if after the definition of “pension credit rights” there were inserted—

““PPF decrease date” has the meaning given by regulation 28(2)(a) of the Pension Protection Fund (Compensation) Regulations 2005 (variable-rate schemes which provide for a decrease in annual rate of pension: modification of Schedule 7 to the Act).”.”.

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

Date	<i>Name</i> Parliamentary Under Secretary of State Department for Work and Pensions
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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, and also make other related amendments to the Compensation Regulations.

Regulation 2(6) inserts new regulations 28 and 29 into the Compensation Regulations. New regulation 28 provides that the modifications to Schedule 7 apply to schemes in relation to which an assessment period begins on or after the date on which these Regulations come into force, where under the scheme immediately before the assessment date a member is entitled, or has accrued rights, to a pension the annual rate of which would have decreased on or after the assessment date (referred to as a “bridging pension”). New regulation 29 sets out details of the modifications to Schedule 7 which apply in relation to those schemes.

Under Schedule 7 to the 2004 Act periodic compensation is usually calculated by reference to the annual rate of the pension immediately before the assessment date, or, where the pension is not yet payable, what would have been the initial annual rate. The modifications set out in new regulation 29 of the Compensation Regulations provide for the annual rate of periodic compensation in respect of a bridging pension to decrease at a specified point in time, to reflect the decrease which would have occurred in the rate of the bridging pension under the member’s scheme. The Regulations also make other related modifications to Schedule 7, including to provide for the application of the compensation cap under paragraph 26 of Schedule 7 to a person who is entitled to compensation in respect of a bridging pension to take account of the decrease which will occur in the rate of that compensation.