

## 2005 No. 449

### PENSIONS

#### The Pension Protection Fund (Hybrid Schemes) (Modification) Regulations 2005

<i>Made</i> - - - -	<i>3rd March 2005</i>
<i>Laid before Parliament</i>	<i>9th March 2005</i>
<i>Coming into force</i> -	<i>6th April 2005</i>

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 135(4), 307(1)(a) and (2)(b), 315(5) and 318(1) of the Pensions Act 2004(a), and of all other powers enabling him in that behalf, by this Instrument, which is made before the end of the period of six months beginning with the coming into force of the provisions of that Act by virtue of which it is made(b), makes the following Regulations:

#### **Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Pension Protection Fund (Hybrid Schemes) (Modification) Regulations 2005 and shall come into force on 6th April 2005.

(2) In these Regulations “the Act” means the Pensions Act 2004.

#### **Discharge of liabilities in respect of money purchase benefits during the assessment period**

2.—(1) The circumstances prescribed for the purposes of section 135(4) of the Act (restrictions on winding up, discharge of liabilities etc) are that—

- (a) the scheme concerned is a hybrid scheme; and
- (b) one or more members of the scheme are entitled, or have rights, under the scheme rules to money purchase benefits.

(2) The conditions prescribed for the purposes of section 135(4) of the Act are that—

- (a) a scheme failure notice issued under section 122 or 130 in relation to the scheme has become binding(c); and
- (b) the—
  - (i) liability of the scheme which is to be discharged is to, or in respect of, a member of the scheme in respect of money purchase benefits; or
  - (ii) member’s rights under the scheme rules which are to be transferred, or in respect of which transfer payments are to be made, are rights to money purchase benefits.

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

(b) See section 317 of the Pensions Act 2004 (c. 35) (“the Act”) which provides that the Secretary of State must consult such persons as he considers appropriate before making regulations by virtue of the provisions of that Act (other than Part 8). This duty does not apply where regulations are made before the end of the period of six months beginning with the coming into force of the provisions of that Act by virtue of which the regulations are made.

(c) See section 125 of the Act (binding notices confirming status of scheme).

(3) In this regulation—

“pension credit rights” means rights to future benefits under the scheme which are attributable (directly or indirectly) to a pension credit; and  
“rights” include pension credit rights.

### **Modification of Part 2 of the Act**

**3.**—(1) In relation to a hybrid scheme, section 134 of the Act (directions) applies as if, after subsection (2), there were inserted the following subsection—

“(2A)The Board may give a relevant person directions regarding the exercise during that period of his powers in respect of discharging the liabilities of the scheme to, or in respect of, a member of the scheme in respect of money purchase benefits.”.

(2) In relation to a hybrid scheme, in respect of a person who—

- (a) is (immediately before the assessment date) a member of that scheme; and
- (b) has rights to money purchase benefits under the scheme rules,

Schedule 7 to the Act (pension compensation provisions) applies with the modifications prescribed in sub-paragraphs (3) and (4).

(3) Paragraph 20(1)(b) of Schedule 7 to the Act (compensation in respect of scheme right to transfer payment or contribution refund) applies as if—

- (a) the reference to benefits does not include money purchase benefits; and
- (b) the reference to contributions does not include contributions made in respect of money purchase benefits under the scheme.

(4) Schedule 7 applies as if, after paragraph 31 (special provision in relation to certain pensions in payment before the assessment date), there were inserted the following paragraph—

*“Special provision in relation to certain persons not entitled to compensation*

**31A.** (1) Where—

- (a) immediately before the assessment date, a person (“the member”) is entitled to present payment of a pension or a lump sum, or has a right to a pension or a lump sum, under the scheme rules, and
- (b) the effect of disregarding rules within paragraph (a) of paragraph 35(2) is that he is not entitled to compensation under paragraph 3, 5, 7, 8, 10, 11, 14, 15, or 19 in respect of a period of pensionable service,

the Board must pay to the member the amount of the contributions made by him to the scheme in respect of that period of pensionable service together with interest on it.

(2) The interest shall be calculated at the base rate on a day to day basis from the time the contribution was made by the member to the scheme until the date of repayment and compounded with three-monthly rests.

(3) The amount is payable to the member immediately after the transfer notice given under section 160 (transfer notice) is received by the trustees or managers of the scheme.

(4) In this paragraph—

- (a) references to a pension or lump sum under the scheme rules, or to a right to a pension or lump sum under those rules, do not include a pension or lump sum, or a right to a pension or lump sum, which is a money purchase benefit,
- (b) the reference to contributions does not include contributions made in respect of money purchase benefits under the scheme,
- (c) “base rate” means the rate for the time being quoted by the reference banks as applicable to sterling deposits or, where there is for the time being more than one such base rate, the rate which, when the base rate

- quoted by each bank is ranked in a descending sequence of four, is the first in the sequence,
- (d) “date of repayment” means the date on which the full amount of the contributions made, together with the interest, is repaid to the person by the Board,
  - (e) “reference banks” means the four largest persons for the time being who—
    - (i) have permission under Part 4 of the Financial Services and Markets Act 2000(a) to accept deposits,
    - (ii) are incorporated in the United Kingdom and carrying on there a regulated activity of accepting deposits, and
    - (iii) quote a base rate applicable to sterling deposits.
  - (5) Sub-paragraph (4)(e) must be read with—
    - (a) section 22 of the Financial Services and Markets Act 2000,
    - (b) any relevant order under that section, and
    - (c) Schedule 2 to that Act.
  - (6) Where this paragraph applies to a member, regulations made under paragraph 31 do not apply to that member.”.

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

*Malcolm Wicks*  
Minister of State,  
Department for Work and Pensions.

3 March 2005

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### EXPLANATORY NOTE

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

These Regulations modify how the provisions of Part 2 of the Pensions Act 2004 (“the Act”) operate in relation to hybrid schemes. Part 2 of the Act makes provision in respect of the Board of the Pension Protection Fund (“the Board”), which is established under section 107 of the Act.

Regulation 2 prescribes the circumstances in which, and the conditions subject to which, the prohibition in section 135(4) on transferring, or making transfer payments in respect of, any member’s rights and discharging any liability to, or in respect of, a member, does not apply.

Regulation 3(1) modifies section 134 of the Act to provide for the Board to give directions to a relevant person (defined in section 134(3) of the Act) regarding the exercise of his powers during an assessment period (see section 132 of the Act) in respect of discharging liabilities of the scheme which relate to money purchase benefits. Regulation 3(2) and (3) modifies Schedule 7 so that compensation is not payable under paragraph 20 in relation to benefits or contributions that relate to money purchase benefits. Regulation 3(2) and (4) allows the Board to repay a person’s contributions to the scheme in respect of a pension or a lump sum (which are not money purchase benefits) in certain cases.

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(a) 2000 c. 8.

As these Regulations are made before the expiry of the period of six months beginning with the coming into force of the provisions of the 2004 Act by virtue of which they are made, the requirement of the Secretary of State to consult such persons as he considers appropriate does not apply.

A full regulatory impact assessment has not been produced for this Instrument as it has no impact on the costs of business.