

2005 No. 652

PENSIONS

The Pension Protection Fund (Reviewable Ill Health Pensions) Regulations 2005

<i>Made</i> - - - -	<i>10th March 2005</i>
<i>Laid before Parliament</i>	<i>16th 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 140(3)(b) and (6), 141(2) and (6), 315(2), (4) and (5) and 318(1) of, and paragraph 37(4) of Schedule 7 to, the Pensions Act 2004(a) and of all other powers enabling him in that behalf, by this instrument, which contains regulations 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 they are made(b), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Pension Protection Fund (Reviewable Ill Health Pensions) Regulations 2005 and shall come into force on 6th April 2005.

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

Prescribed period for the purposes of review

2. The prescribed period for the purposes of section 140(3)(b) of the Act (reviewable ill health pensions) is six months.

Notice of review

3.—(1) Where the Board decides to review a reviewable ill health pension in accordance with section 140(2) of the Act it must notify the member entitled to that pension.

(2) A notice issued by the Board under paragraph (1) may require the member to—

- (a) produce any document or a copy of any document;
- (b) provide such further information,

by such time as the Board may specify in the notice.

(a) 2004 c. 35. The Pensions Act 2004 is modified in its application to partially guaranteed schemes by the Pension Protection Fund (Partially Guaranteed Schemes) Regulations 2005 (S.I. 2005/277), in its application to hybrid schemes by the Pension Protection Fund (Hybrid Schemes) (Modification) Regulations 2005 (S.I. 2005/449), and in its application to multi-employer schemes by the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations 2005 (S.I. 2005/441). Section 318(1) is cited because of the meaning there given to “modifications”, “prescribed” and “regulations”.

(b) See section 317(2)(c) of the Pensions Act 2004 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 six months beginning with the coming into force of the provisions of that Act by virtue of which the regulations are made.

Medical examination

4. For the purposes of deciding whether the conditions set out in section 141(3)(b) of the Act (effect of a review) are satisfied, the Board may require the member entitled to the ill health pension to attend a medical examination.

Failure to produce a document, provide information or attend a medical examination

5. Where a member fails to—

- (a) produce a document or a copy of a document in accordance with a notice issued under regulation 3(1);
- (b) provide such further information as the Board may require in accordance with a notice issued under regulation 3(1); or
- (c) attend a medical examination in accordance with regulation 4,

the Board may decide whether the conditions set out in section 141(3)(b) of the Act are satisfied on the basis of the information available to it.

Matters to be taken into account in making a decision

6. In deciding whether the conditions specified in section 141(3)(b) of the Act have been satisfied, the Board must take into account—

- (a) any document produced or information provided by the member in accordance with a notice given under regulation 3(1);
- (b) any document produced or information provided by a person in accordance with a notice given by the Board in respect of the review under section 191(1) of the Act (notices requiring provision of information);
- (c) the results of any medical examination carried out under regulation 4;
- (d) any other documents produced or information made available by the member or the trustees or managers of the scheme.

Notice of decision

7. The Board must send a copy of its decision under section 141 of the Act to

- (a) the member entitled to the ill health pension; and
- (b) the trustees or managers of the scheme.

Content of the decision

8.—(1) The copy of the decision sent to the member in accordance with regulation 7(a) must include—

- (a) a statement confirming whether in the opinion of the Board the conditions set out in section 141(3) of the Act are satisfied;
- (b) the reasons for that decision;
- (c) a statement confirming whether the Board has determined under section 141(2) of the Act that the compensation payable in respect of the ill health pension is to be determined in accordance with these Regulations on or after the relevant date;
- (d) an explanation as to the effect of any determination;
- (e) references to any relevant legislation;
- (f) a statement that if the member is dissatisfied with—
 - (i) a decision of the Board under section 141 of the Act; or
 - (ii) a determination of the Board under section 141(2) of the Act,
 he may make a written application for review of the matter; and
- (g) the time by which an application for review must be made.

(2) The copy of the decision sent to the trustees or managers of the scheme in accordance with regulation 7(b) must include the matters specified in paragraph (1)(a), (c), (d) and (e).

Effect of the decision

9. A decision or determination by the Board under section 141 of the Act is not binding until—

- (a) the period within which the decision or determination may be reviewed by virtue of Chapter 6 of Part 2 of the Act has expired; and
- (b) if the decision or determination is so reviewed—
 - (i) the review and any reconsideration;
 - (ii) any reference to the PPF Ombudsman in respect of the matter; and
 - (iii) any appeal against his determination or directions,

Words in reg. 9(a)
inserted by reg. 7(a) of
S.I. 2005/993 as from
1.4.05.

has been finally disposed of.

Costs of providing information or attending a medical examination

10. Subject to the provision of such evidence of expenditure as the Board may require, the Board may reimburse any costs reasonably incurred by a member in—

- (a) producing any document or providing any information in accordance with a notice given under regulation 3(1); or
- (b) attending a medical examination in accordance with regulation 4.

Effect of a review on compensation payable under paragraph 3 of Schedule 7

11.—(1) Where the Board—

- (a) decides that the conditions set out in section 141(3) of the Act are satisfied; and
- (b) determines under section 141(2) of the Act that the compensation payable in respect of the pension is to be determined in accordance with these Regulations,

paragraph 3 of Schedule 7 to the Act (pensions in payment at the assessment date) shall apply with the modifications prescribed in paragraph (2).

(2) Where paragraph (1) applies paragraph 3 of Schedule 7 shall apply as if in sub-paragraph (4) from “-” to the end of that sub-paragraph there were substituted “0 (nil) %.”.

Effect of a review on compensation payable under paragraph 15 of Schedule 7

12. Where—

- (a) a pensioner is entitled to periodic compensation under paragraph 3(2) of Schedule 7; and
- (b) the appropriate percentage in paragraph 3(4) of that Schedule is 0 (nil) %,

paragraph 15 of that Schedule (deferred members who have not attained normal pension age at assessment date) shall apply as if, after paragraph 15, there were inserted -

“ 15A. Where—

- (a) a pensioner is entitled to periodic compensation under paragraph 3(2); and
- (b) the appropriate percentage under paragraph 3(4) is 0 (nil) %,

that pensioner shall be treated for the purposes of paragraph 15 as being a person who is a deferred member of the scheme immediately before the assessment date who has not attained normal pension age in respect of his rights to a pension under the scheme.”.

Effect of a lump sum payment where a person is treated as being a deferred member

13.—(1) Subject to paragraph (2), where a person—

- (a) received a lump sum under the scheme rules before the assessment date; and
- (b) is treated as being a deferred member of the scheme immediately before the assessment date by virtue of paragraph 15A of Schedule 7 to the Act,

Schedule 7 to the Act shall apply as if paragraph 19 of Schedule 7 (compensation payable as a lump sum) were omitted.

(2) Paragraph (1) does not apply where that person received the lump sum by reason of exercising an option to commute any portion of the pension for a lump sum.

Effect of commutation where a person is treated as being a deferred member

14.—(1) Where a person—

- (a) opted to commute a portion of an ill health pension for a lump sum under the scheme rules applicable at the time of the award of that pension; and
- (b) is treated as being a deferred member of the scheme immediately before the assessment date by virtue of paragraph 15A of Schedule 7 to the Act,

paragraph (2) shall apply.

(2) Where paragraph (1) applies, Schedule 7 shall apply as if—

- (a) after paragraph 15(4) of Schedule 7 there were inserted—

“►(4A)◄ Where the deferred member has exercised an option to commute a portion of a pension for a lump sum under the scheme rules, the protected pension rate shall be reduced by the percentage of the pension commuted for a lump sum under the scheme rules.

►(4B) Sub-paragraph (4A)◄ shall not apply where the admissible rules provide, in whatever form, that the initial annual rate of the pension shall be reduced by reference to the amount of the pension commuted for a lump sum under the scheme rules”; and

- (b) paragraph 24 (commutation of periodic compensation) were omitted.

Words in reg. 14(2)(a) substituted by reg. 7(b) of S.I. 2005/993 as from 1.4.05.

Definition of ill health

15. For the purposes of Schedule 7 to the Act references to “ill health” are to be construed as including any reference (in whatever terms) in the admissible rules of a scheme to—

- (a) illness; or
- (b) physical or mental deterioration,

resulting in incapacity for employment or a particular form of employment.

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

10th March 2005

Malcolm Wicks
Minister of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the review of reviewable ill health pensions by the Board of the Pension Protection Fund (“the Board”), the procedure to be followed in relation to a review and the determination of compensation payable in respect of an ill health pension where the conditions set out in section 141(3) of the Pensions Act 2004 (c. 35) (“the Act”) are satisfied.

The Board is established by section 107 of the Act to provide for compensation for members of certain occupational pension schemes in the event of the insolvency of the scheme’s sponsoring employer and where the pension scheme is underfunded at a certain level.

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

Regulation 2 provides that an ill health pension may be reviewed by the Board where the award was made before the end of six months beginning with the assessment date.

Regulation 3 provides that where the Board decides to review an ill health pension it must notify the member entitled to that pension. Paragraph (2) provides that a notice may require the member to produce any document or provide such further information by such time as the Board may specify in the notice.

Regulation 4 provides that the member may be required by the Board to attend a medical examination in certain circumstances.

Regulation 5 provides that where a member fails to produce a document, provide information or attend a medical examination the Board may review the ill health pension based on the information available to it.

Regulation 6 sets out the matters that the Board must take into account in deciding whether the conditions specified in section 141(3)(b) of the Act are satisfied.

Regulation 7 provides that the Board must send a copy of the decision to the member and the trustees or managers of the scheme.

Regulation 8 sets out the matters to be included in the copy of the decision sent to the member and the copy sent to the trustees or managers of the scheme.

Regulation 9 provides that the decision is not binding until the period during which it may be reviewed has expired or any review, reference or appeal has been finally resolved.

Regulation 10 provides that the Board may in certain circumstances reimburse costs reasonably incurred by a member in producing any document, providing any information or attending a medical examination.

Regulation 11 provides that where—

- (a) the conditions set out in section 141(3) of the Act (effect of the review) are satisfied; and
- (b) the Board determines that compensation payable in respect of the pension is to be determined in accordance with these Regulations,

the appropriate percentage for purpose of calculating the annual rate of periodic compensation under paragraph 3 of Schedule 7 shall be nil percent.

Regulation 12 provides that where regulation 11 applies the pensioner is to be treated as being a deferred member of the scheme immediately before the assessment date.

Regulation 13(1) provides that where a person who is treated as being a deferred member of a scheme has received a lump sum under the scheme rules (other than by commutation) he shall not be entitled to lump sum compensation on attaining normal pension age.

Regulation 14 provides that where a person who is treated as being a deferred member of a scheme has already opted to commute part of his pension for a lump sum—

- (a) he shall not be entitled to commute a portion of his periodic compensation; and
- (b) his entitlement to periodic compensation shall be adjusted by reference to amount of the pension commuted under the scheme rules.

Regulation 15 provides that references to “ill health” in Schedule 7 are to be construed as including any reference in the admissible rules of the scheme to illness or physical or mental deterioration resulting in incapacity for employment or a particular form of employment.

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 Act by virtue of which they are made, the requirement for 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.