

## 2005 No. 1720 (C. 73)

### PENSIONS

#### The Pension Act 2004 (Commencement No. 6, Transitional Provisions and Savings) Order 2005

Made - - - -

28th June 2005

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 91(9), 302(2), 315(2) and (5) and 322(1) and (5) of the Pensions Act 2004(a), and of all other powers enabling him in that behalf, hereby makes the following Order:

#### Citation and interpretation

1.—(1) This Order may be cited as the Pensions Act 2004 (Commencement No. 6, Transitional Provisions and Savings) Order 2005.

(2) In this Order—

“the 1993 Act” means the Pension Schemes Act 1993(b);

“the 1995 Act” means the Pensions Act 1995(c);

“the Act” means the Pensions Act 2004;

“the Pensions Compensation Board” means the Pensions Compensation Board established under section 78(d) of the 1995 Act (the Compensation Board).

#### Appointed days

2.—(1) The day appointed for the purposes of section 91(9) of the Act (procedure for issue and publication of codes of practice) for the coming into effect of the Pensions Regulator Code of Practice No. 2: Notifiable Events is 30th June 2005.

(2) The day appointed for the coming into force of section 121(7) of the Act (insolvency event, insolvency date and insolvency practitioner) is 30th June 2005.

(3) The day appointed for the coming into force of—

(a) sections 182, 183, 185 and 186 of the Act (fraud compensation payments); and

(b) paragraph 76(5) of Schedule 12 to the Act (amendment of paragraph 1 of Schedule 1 to the Welfare Reform and Pensions Act 1999(e)), in so far as it relates to Chapter 4 of Part 2 of the Act, and section 319(1) of the Act in so far as it relates to that paragraph,

for the purpose only of conferring power to make regulations, is 12th July 2005, and for all other purposes, is 1st September 2005.

(4) The day appointed for the coming into force of section 213, except subsections (4)(e) and (5)(e), of the Act (reference of reviewable matter to the PPF Ombudsman)—

(a) for the purpose only of conferring power to make regulations, is 1st July 2005; and

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(a) 2004 c. 35.

(b) 1993 c. 48.

(c) 1995 c. 26.

(d) Section 78 of the Pensions Act 1995 was amended by article 145 of S.I. 2001/3649.

(e) 1999 c. 30.

## Art. 2

- (b) for all other purposes, is the day after the day on which the first regulations under that section are made.

(5) The day appointed for the coming into force of section 214, except subsection (2)(k), of the Act (investigation by the PPF Ombudsman of complaints of maladministration)–

- (a) for the purpose only of conferring power to make regulations, is 1st July 2005; and
- (b) for all other purposes, is the day after the day on which the first regulations under that section are made.

(6) The day appointed for the coming into force of–

- (a) sections 212 (annual reports to Secretary of State) and 215 to 218 (referral of questions of law, publishing reports etc, determinations of the PPF Ombudsman and obstruction etc of the PPF Ombudsman) of the Act; and
- (b) paragraph 29(5) of Schedule 5 to the Act (exemption from liability in damages), and section 319(1) of the Act in so far as it relates to that paragraph,

is the first day after the day on which the first regulations made under section 213 or 214 of the Act come into force, whichever is the earlier.

(7) The day appointed for the coming into force of section 239 of the Act (categories of pension scheme)–

- (a) for the purpose only of conferring power to make regulations, is 1st July 2005; and
- (b) for all other purposes–
  - (i) in the case of an occupational pension scheme that has its main administration in the United Kingdom, is 22nd September 2005; and
  - (ii) in all other cases, is 6th April 2006.

(8) The day appointed for the coming into force of section 256 of the Act (no indemnification for fines or civil penalties) is 30th June 2005.

(9) The day appointed for the coming into force of section 283 of the Act (power to prescribe conditions by reference to Inland Revenue approval) is 1st July 2005.

(10) The day appointed for the coming into force of section 302(1) of the Act (dissolution of the Pensions Compensation Board) is 1st September 2005.

(11) The day appointed for the coming into force of paragraph 74 of Schedule 12 to the Act (amendment of section 8(2)(a) of the Welfare Reform and Pensions Act 1999), and section 319(1) of the Act in so far as it relates to that paragraph, is 22nd September 2005.

(12) The day appointed for the coming into force of paragraph 76(3) of Schedule 12 to the Act, in so far as it relates to sections 67 and 318 of the Act, and section 319(1) of the Act in so far as it relates to that paragraph, is 30th June 2005.

(13) The day appointed for the coming into force of Schedule 13 to the Act (repeals), in so far as it relates to the repeal of sections 28 and 29 of the 1993 Act, and section 320 of the Act in so far as it relates to those sections, is 6th April 2006.

(14) The day appointed for the coming into force of the provisions of the Act specified in Part 1 of the Schedule to this Order–

- (a) for the purpose only of conferring power to make regulations, is 1st July 2005; and
- (b) for all other purposes, is 22nd September 2005.

(15) The day appointed for the coming into force of the provisions of the Act specified in Part 2 of the Schedule to this Order–

- (a) for the purpose only of conferring power to make regulations, is 1st July 2005; and
- (b) for all other purposes, is 6th April 2006.

(16) The day appointed for the coming into force of the provisions of the Act specified in Part 3 of the Schedule to this Order is 1st September 2005.

### **Transfer of property, rights and liabilities of the Pensions Compensation Board**

3. All property, rights and liabilities to which the Pensions Compensation Board is entitled or subject immediately before 1st September 2005 shall, on that day, become the property, rights and liabilities of the Board.

### **Transitional provisions**

4.—(1) In this article, unless the context otherwise requires, “function of the Pensions Compensation Board” means—

- (a) the determination of the terms and conditions on which to make compensation payments in accordance with section 78(4) of the 1995 Act (terms and conditions of payments);
- (b) the duty under section 79(a) of the 1995 Act (reports to the Secretary of State) to prepare and send reports to the Secretary of State;
- (c) the review under section 80(b) of the 1995 Act (review of decisions) or article 78 of the Pensions (Northern Ireland) Order 1995(c) (review of Compensation Board’s decisions) of a determination made by the Pensions Compensation Board before 1st September 2005 in relation to a function of the Pensions Compensation Board specified in any of sub-paragraphs (a) and (d) to (g);
- (d) the determination under section 81(4) of the 1995 Act or article 79(4) of the Pensions (Northern Ireland) Order 1995 (recoveries of value) as to whether anything received by the trustees of an occupational pension scheme is a recovery of value;
- (e) the determination that section 81(d) of the 1995 Act or article 79(e) of the Pensions (Northern Ireland) Order 1995 (cases where compensation provisions apply) applies to applications for compensation payments and that such applications comply with the requirements of section 82 of the 1995 Act or, as the case may be, article 80 of the Pensions (Northern Ireland) Order 1995 (applications for payments);
- (f) the determination of settlement dates, and making pension compensation payments in accordance with section 83(f) of the 1995 Act or article 81(g) of the Pensions (Northern Ireland) Order 1995 (amount of compensation);
- (g) the determination as to when to make payments in anticipation under section 84 of the 1995 Act or article 82 of the Pensions (Northern Ireland) Order 1995 (payments made in anticipation);
- (h) the duty to keep proper accounts and records, to prepare a statement of accounts for each financial year and to send copies of the statement to such

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(a) Section 79 was amended by paragraph 16 of Schedule 2 to the Welfare Reform and Pensions Act 1999.

(b) Section 80 was amended by section 277(2) of the Pensions Act 2004.

(c) S.I. 1995/3213 (N.I. 22). Article 78 was amended by article 254(2) of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)).

(d) Section 81 was amended by section 17(1) and (2) of the Welfare Reform and Pensions Act 1999 and section 277(3) of the Pensions Act 2004.

(e) Article 79 was amended by article 16(1) and (2) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)) and article 254(3) of the Pensions (Northern Ireland) Order 2005.

(f) Section 83 was amended by section 17(3) to (6) of the Welfare Reform and Pensions Act 1999 and section 277(4) of the Pensions Act 2004.

(g) Article 81 was amended by article 16(3) to (6) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 and article 254(4) of the Pensions (Northern Ireland) Order 2005.

persons, at such times as are set out in paragraph 17 of Schedule 2 to the 1995 Act (accounts).

(2) Anything done (or having effect as if done) by, or in relation to, the Pensions Compensation Board before 1st September 2005 pursuant to, or for the purposes of, any function of the Pensions Compensation Board shall, so far as is required for continuing its effect, have effect as if done by, or in relation to, the Board pursuant to, or for the purposes of, that function.

(3) Subject to paragraph (5), anything which, immediately before 1st September 2005, is in the process of being done by, or in relation to, the Pensions Compensation Board pursuant to, or for the purposes of, any function of the Pensions Compensation Board shall be continued by, or in relation to, the Board pursuant to, or for the purposes of, that function.

(4) Any reference to the Pensions Compensation Board in any document constituting or relating to anything to which paragraph (2) or (3) applies in relation to any function of the Pensions Compensation Board shall, so far as is required for giving effect to those provisions, be construed as a reference to the Board.

(5) Where any function of the Pensions Compensation Board described in paragraph (6) would, but for its dissolution, fall to be exercised on or after 1st September 2005, or fell to be exercised before 1st September 2005 but has not been exercised, that function shall be exercised by the Board as if it were a function of the Board conferred on it under, or by virtue of, the Act or the Pensions (Northern Ireland) Order 2005(a).

(6) The functions of the Board to which paragraph (5) refers are—

(a) the functions referred to in paragraph (1); and

(b) any determination in relation to an application for a pension compensation payment made where the circumstances in paragraph (7) apply.

(7) An application under section 82 of the 1995 Act or article 80 of the Pensions (Northern Ireland) Order 1995 may be made after 1st September 2005 by a person prescribed in regulations made under that section or, as the case may be, that article where—

(a) the employer in relation to an occupational pension scheme was insolvent before 6th April 2005;

(b) the determination of an application under that section or that article was not made before 1st September 2005; and

(c) section 182(1) of the Act or article 165(1) of the Pensions (Northern Ireland) Order 2005 (cases where fraud compensation payments can be made) does not apply.

(8) ►<sup>1</sup>◀

(9) Where, by virtue of section 302(2) of the Act (transfer of functions, property etc. of the Pensions Compensation Board), information created by the Pensions Compensation Board has been obtained by the Board, such information shall be treated for the purposes of sections 197 to 201 and 203 of the Act or articles 179 to 183 and 185 of the Pensions (Northern Ireland) Order 2005 (disclosure of information and provision of information to members of schemes etc) as having been obtained by the Board in the exercise of its functions from the Pensions Compensation Board.

(10) Where paragraph (3) applies—

(a) sections 78(4) and 79 to 84 of, and paragraph 17 of Schedule 2 to, the 1995 Act shall be read as if references to “the Compensation Board” were references to “the Board of the Pension Protection Fund”;

<sup>1</sup>Art. 4(8) omitted by art. 2(1) of S.I. 2009/1583 as from 26.6.09.

(a) S.I. 2005/255 (N.I. 1).

(b) section 79 of the 1995 Act shall be modified as if after subsection (1) there were inserted—

“(1A) Sub-paragraph (5) of paragraph 17(a) of Schedule 2 (meaning of financial year beginning with 6th April 2005) shall apply for the purposes of subsection (1) as for those of that paragraph.”; and

(c) paragraph 17 of Schedule 2 to the 1995 Act shall be modified as if after sub-paragraph (4) there were added—

S (5) In this paragraph, for the financial year beginning with 6th April 2005, “financial year” means the period beginning with 6th April 2005 and ending with 31st August 2005.”.

(11) Where paragraph (5) applies, Schedule 9 to the Act (reviewable matters) shall be modified as if after paragraph 30 there were added—

“31 Any determination by the Board, or any failure by the Board, to exercise any function of the Pensions Compensation Board under sections 78(4) and 81 to 84 of the Pensions Act 1995 (compensation provisions) where any such function is exercised by the Board as if it were a function of the Board conferred on it under, or by virtue of, this Act.”.

### Savings

5.—(1) Subject to the transitional provisions in article 4(10), the provisions of the 1995 Act specified in paragraph (2) shall, so far as is required for the purpose of giving effect to article 4(3), continue to have effect as they were in force immediately before their repeal by Part 1 of Schedule 13 to the Act.

(2) The provisions of the 1995 Act referred to in paragraph (1) are—

- (a) section 78(4);
- (b) section 79;
- (c) section 80;
- (d) section 81;
- (e) section 82;
- (f) section 83;
- (g) section 84; and
- (h) paragraph 17 of Schedule 2.

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

28 June 2005

*Stephen C. Timms*  
Minister of State,  
Department for Work and Pensions

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(a) Sub-paragraph (5) of paragraph 17 is added by article 4(10)(c) of this Order.

SCHEDULE

Article 2

PART 1

**PROVISIONS OF THE ACT COMING INTO FORCE ON 1st JULY  
2005 FOR THE PURPOSE ONLY OF CONFERRING POWER TO  
MAKE REGULATIONS AND ON 22nd SEPTEMBER 2005 FOR ALL  
OTHER PURPOSES**

<i>Provisions of the Act</i>	<i>Subject matter</i>
section 252	UK-based scheme to be trust with effective rules
section 255	activities of occupational pension schemes

PART 2

**PROVISIONS OF THE ACT COMING INTO FORCE ON 1st JULY  
2005 FOR THE PURPOSE ONLY OF CONFERRING POWER TO  
MAKE REGULATIONS AND ON 6th APRIL 2006 FOR ALL OTHER  
PURPOSES**

<i>Provisions of the Act</i>	<i>Subject matter</i>
section 269	payments made by employers and members to occupational pension schemes
section 284	restrictions on commutation and age at which benefits may be received

PART 3

**PROVISIONS OF THE ACT COMING INTO FORCE ON 1st  
SEPTEMBER 2005**

<i>Provisions of the Act</i>	<i>Subject matter</i>
section 110(1)(b)	Board's functions in relation to fraud compensation
section 172(2) to (6) except subsection (5)(d)	relationship with fraud compensation regime

<i>Provisions of the Act</i>	<i>Subject matter</i>
section 184	fraud compensation – recovery of value
section 188 except subsection (3)(d)	Fraud Compensation Fund
Schedule 9, paragraphs 20 to 26, 29 and 30	reviewable matters in so far as they relate to fraud compensation
Schedule 12, paragraphs 56(b) and 76(3) in so far as it relates to Chapter 4 of Part 2 of the Act, and section 319(1) in so far as it relates to those provisions	consequential amendments
Schedule 13, in so far as it relates to the repeals there specified in relation to–	repeals
the Parliamentary Commissioner Act 1967, in so far as not already in force;	
the House of Commons Disqualification Act 1975, in so far as not already in force;	
the Northern Ireland Assembly Disqualification Act 1975, in so far as not already in force;	
the Tribunals and Inquiries Act 1992, in so far as not already in force;	
the Pensions Act 1995, sections 78 to 86;	
the Welfare Reform and Pensions Act 1999, section 17, paragraph 1(2)(b)(ix) of Schedule 1 and paragraph 16 of Schedule 2;	
the Freedom of Information Act 2000, in so far as not already in force;	
and section 320 in so far as it relates to those provisions	

**EXPLANATORY NOTE**

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

This Order makes further provision for the coming into force of provisions of the Pensions Act 2004 (c. 35) (“the Act”).

Article 2(1) appoints the day for the purposes of section 91(9) of the Act (procedure for issue and publication of codes of practice) for the coming into effect of the Pensions Regulator Code of Practice No. 2: Notifiable Events as 30th June 2005.

Article 2(2) appoints the day for the coming into force of section 121(7) of the Act (insolvency event etc) as 30th June 2005.

Article 2(3) appoints the day for the coming into force of sections 182, 183, 185 and 186 of the Act (fraud compensation payments) for the purposes of conferring power to make regulations as 12th July 2005 and for all other purposes as 1st September 2005.

Article 2(4) appoints the day for the coming into force of section 213 of the Act (reference of reviewable matters to the PPF Ombudsman) for the purposes of conferring power to make regulations as 1st July 2005 and for all other purposes as the day after the first regulations under section 213 are made.

Article 2(5) appoints the day for the coming into force of section 214 of the Act (investigation by the PPF Ombudsman of complaints of maladministration) for the purposes of conferring power to make regulations as 1st July 2005 and for all other purposes as the day after the first regulations under section 214 are made.

Article 2(6) appoints the day for the coming into force of sections 212 and 215 to 218 of the Act (annual reports and further provisions concerning the functions of the PPF Ombudsman) as the first day after the first regulations made under section 213 or 214 of the Act come into force, whichever is the earlier.

Article 2(7) appoints the day for the coming into force of section 239 of the Act (categories of pension scheme) for the purpose of conferring power to make regulations as 1st July 2005 and for all other purposes, and in respect of particular cases, as 22nd September 2005 and 6th April 2006 respectively.

Article 2(8) appoints the day for the coming into force of section 256 of the Act (no indemnification for fines etc) as 30th June 2005.

Article 2(9) appoints the day for the coming into force of section 283 of the Act (power to prescribe conditions by reference to Inland Revenue approval) as 1st July 2005.

Article 2(10) appoints the day for the coming into force of section 302(1) of the Act (dissolution of the Pensions Compensation Board) as 1st September 2005.

Article 2(11) and (12) appoints the days for the coming into force of certain provisions in Schedule 12 to the Act which makes consequential amendments to the Welfare Reform and Pensions Act 1999 (c. 30) as 30th June 2005 and 22nd September 2005 respectively.

Article 2(13) appoints the day for the coming into force of certain repeals specified in Schedule 13 to the Act as 6th April 2006.

Article 2(14) and Part 1 of the Schedule appoints the day for the coming into force of sections 252 (UK schemes to be trust based with effective rules) and 255 (activities of occupational pension schemes) of the Act for the purpose of conferring power to make regulations as 1st July 2005 and for all other purposes on 22nd September 2005.

Article 2(15) and Part 2 of the Schedule appoints the day for the coming into force of sections 269 (payments made by employers etc) and 284 (restrictions on commutation etc) of the Act for the purposes of conferring power to make regulations as 1st July 2005 and for all other purposes as 6th April 2006.

Article 2(16) and Part 3 of the Schedule appoints the day for the coming into force of further provisions and repeals, in respect of fraud compensation, as 1st September 2005.

Article 3 makes provision, in connection with the coming into force on 1st September 2005 of section 302(1) of the Act which provides for the dissolution of the Pensions Compensation Board, for the transfer of property, rights and liabilities of the Pension Compensation Board to the Board of the Pension Protection Fund.

Articles 4 and 5 make transitional provisions and savings in connection with the dissolution of the Pensions Compensation Board.

[The notes as to earlier commencement orders is not reproduced here. A full list of commencement dates is given in Annex 2 to the Pensions Act 2004 in Part I of this volume.]

