

**2011 No. 726**

**PENSIONS**

**The Pension Protection Fund (Pensions on Divorce etc:  
Charges) Regulations 2011**

<i>Made</i> - - - -	<i>10th March 2011</i>
<i>Laid before Parliament</i>	<i>15th March 2011</i>
<i>Coming into force</i> - -	<i>6th April 2011</i>

The Secretary of State for Work and Pensions, in exercise of the powers conferred by sections 168A, 203(1)(a), 315(2), (4) and (5) and 318(1) of the Pensions Act 2004(a), makes the following Regulations:

In accordance with section 317(1) of that Act, the Secretary of State has consulted such persons as the Secretary of State considers appropriate.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Pension Protection Fund (Pensions on Divorce etc: Charges) Regulations 2011 and shall come into force on 6th April 2011.

(2) In these Regulations—

“implementation period” has the same meaning as in section 34(1) of the Welfare Reform and Pensions Act 1999(b);

“party” means a party to a pension sharing order or provision, or to a pension attachment order or provision;

“pension attachment order or provision” means an order or provision which is made under or by virtue of any of the provisions specified in regulation 2(1)(b) to (f), or (in Scotland) a provision contained in a qualifying agreement corresponding to provision which may be made by an order under section 8(1)(ba) of the Family Law (Scotland) Act 1985(orders for financial provision)(c) ;

“pension sharing order or provision” means an order or (in Scotland) a provision contained in a qualifying agreement, which provides that one party’s shareable rights under a specified occupational pension scheme be subject to pension sharing for the benefit of the other party, and specifies the percentage value or (in Scotland) the amount to be transferred.

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(a) 2004 c. 35. Section 168A was inserted by section 121 of the Pensions Act 2008 (c. 30). Section 318(1) is cited because of the meaning there given to “prescribed” and “regulations”.

(b) 1999 c. 30. Section 34 was amended by paragraph 160 of Schedule 27 to the Civil Partnership Act 2004 (c. 33).

(c) 1985 c. 37. Section 8(1)(ba) was inserted by section 167(1) of the Pensions Act 1995 (c. 26).

“PPF compensation” means compensation payable under the pension compensation provisions specified in section 162(2) of the Pensions Act 2004 or Article 146(2) of the Pensions (Northern Ireland) Order 2005(a);

**Information to be provided where the Board is under a duty to comply with a pension sharing or attachment order or provision**

2.—(1) This regulation applies where the Board has assumed responsibility for a scheme in accordance with Chapter 3 of Part 2 of the Pensions Act 2004 (pension protection), and is required to—

- (a) implement a pension sharing order or provision by virtue of the modifications made by the Pension Protection Fund (Pension Sharing) Regulations 2006(b);
- (b) make payments in accordance with an order made under section 23 of the Matrimonial Causes Act 1973(c) (financial provision orders in connection with divorce proceedings, etc.), which—
  - (i) includes provision made by virtue of section 25B (pensions) or 25C (pensions: lump sums) of that Act(d); and
  - (ii) applies in relation to the Board by virtue of section 25E(e) (the Pension Protection Fund) of that Act;
- (c) make payments in accordance with an order made under Part 1 of Schedule 5 to the Civil Partnership Act 2004(f) (financial provision in connection with dissolution, nullity or separation), which—
  - (i) includes provision made by virtue of Part 6 of that Schedule (making of Part 1 orders having regard to pension benefits); and
  - (ii) applies in relation to the Board by virtue of Part 7 of that Schedule (Pension Protection Fund compensation etc);
- (d) make payments in accordance with an order made under Article 25 of the Matrimonial Causes (Northern Ireland) Order 1978(g) (financial provision orders in connection with divorce proceedings, etc.), which—
  - (i) includes provision made by virtue of Article 27B (pensions) or 27C (pensions: lump sums) of that Order(h); and
  - (ii) applies in relation to the Board by virtue of Article 27E (the Pension Protection Fund) of that Order (i);
- (e) make payments in accordance with an order made under Part 1 of Schedule 15 to the Civil Partnership Act 2004 (financial provision in connection with dissolution, nullity or separation), which—

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- (a) S.I. 2005/255 (N.I. 1).
  - (b) S.I. 2006/1690.
  - (c) 1973 c. 18; section 23 was amended by section 16 of the Administration of Justice Act 1982 (c. 53).
  - (d) Sections 25B and 25C were inserted by section 166(1) of the Pensions Act 1995 (c. 26); section 25B was amended by paragraph 1 of Schedule 4 to the Welfare Reform and Pensions Act 1999 (c. 30) and is modified, in cases where the Board becomes involved with or assumes responsibility for a scheme, by S.I. 2006/1932. Section 25C was amended by paragraph 2 of Schedule 4 to that Act.
  - (e) Section 25E was inserted by paragraph 3 of Schedule 12 to the Pensions Act 2004 and was amended by paragraphs 1 and 6 of Part 1 of Schedule 6 and Part 4 of Schedule 11 to the Pensions Act 2008.
  - (f) 2004 c. 33.
  - (g) S.I. 1978/1045 (N.I. 15); Article 25 was amended by Article 5 of the Matrimonial and Family Proceedings Act (Northern Ireland) Order 1989 (S.I. 1989/677 (N.I. 4)).
  - (h) Articles 27B and 27C were inserted by Article 162(1) of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)). Article 27B was amended by paragraph 1 of Schedule 4 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)) and is modified, in cases where the Board becomes involved with or assumes responsibility for a scheme, by S.R. 2006 No. 310. Article 27C was amended by paragraph 2 of Schedule 4 to that Order.
  - (i) Article 27E was inserted by paragraph 1 of Schedule 10 to the Pensions (Northern Ireland) Order 2005 and was amended by paragraphs 114(1) and (4), 172 and 173 of Schedule 18 to S.I. 2010/976 and paragraphs 1 and 6 of Part 1 of Schedule 5 and Part 4 of Schedule 10 to the Pensions (No. 2) Act (Northern Ireland) Order 2008 (c. 13 (N.I.)).

- (i) includes provision made by virtue of Part 5 (making of Part 1 orders having regard to pension benefits) of that Schedule(a); and
- (ii) applies in relation to the Board by virtue of Part 6 (Pension Protection Fund compensation etc.) of that Schedule(b);
- (f) make payments in accordance with an order made under section 8(1)(ba) of the Family Law (Scotland) Act 1985 which applies in relation to the Board; or
- (g) make payments under any provision corresponding to provision which may be made by a pension sharing order or an order under section 8(1)(ba) of that Act and—
  - (i) which is contained in a qualifying agreement (to which section 28(3) of the Welfare Reform and Pensions Act 1999 relates); and
  - (ii) applies in relation to the Board.
- (2) The Board must inform the parties of—
  - (a) the date on which the Board assumed responsibility for the scheme; and
  - (b) the fact that the Board will implement the order or provision or, as the case may be, will comply with the pension attachment order or provision.
- (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.

#### **General requirements as to charges**

- 3.—(1) The Board may not recover any of the charges specified in regulation 4 unless—
- (a) before the pension sharing order or provision or pension attachment order or provision was made, the trustees or managers of the scheme had—
    - (i) informed the member or the member’s spouse or civil partner, as the case may be, in writing, of their intention to recover costs incurred in connection with implementation of a pension sharing order or provision, or compliance with a pension attachment order or provision; 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; and
  - (b) the Board has provided the party from whom the Board intends to recover the charges with a written schedule of charges owed by that party and the date by which payment in whole or in part is required.
- (2) If a pension sharing order or provision includes provision about the apportionment of charges between the parties to pension sharing, any recovery of charges by the Board must comply with the terms of the order or provision.

#### **Charges in respect of pension sharing and pension attachment**

4. For the purposes of section 168A(1) (charges in respect of pension sharing etc) of the Pensions Act 2004, the prescribed 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 pension sharing order or provision which applies in relation to the Board;
  - (b) provision of information associated with that implementation; and
  - (c) charges which represent the reasonable administrative expenses which the Board has incurred by reason of complying with a pension attachment order or provision.

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(a) Part 5 of Schedule 15 was amended by paragraph 75(1) and (3) of Schedule 18 to S.I. 2010/976.  
 (b) Part 6 of Schedule 15 was amended by paragraph 75(1) and (4) of Schedule 18 to S.I. 2010/976.

## **Charges in respect of pension sharing and pension attachment – methods of recovery**

5.—(1) In the circumstances prescribed in paragraph (3), and subject to paragraph (4), the Board may recover the charges specified in regulation 4 by using either of the methods specified in paragraph (2).

- (2) The methods of recovery specified in this paragraph are—
- (a) requiring payment from a party liable for payment of the charges; and
  - (b) deducting the charges from PPF compensation which would otherwise be payable to a party liable for payment of the charges.
- (3) The circumstances prescribed in this paragraph are—
- (a) in the case of a pension sharing order or provision, that—
    - (i) the implementation period for the pension sharing order or provision has commenced;
    - (ii) the Board is not aware of any appeal against the order having begun on or after the day on which the order takes effect; and
    - (iii) 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, together with details of the methods which may be used to recover the charges; or
  - (b) in the case of a pension attachment order or provision, that the circumstances prescribed in paragraph (3)(a)(ii) and (iii) apply.
- (4) The Board may not recover any of the charges specified in regulation 4 from a party 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.

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

*Steve Webb*  
Minister of State  
Department for Work and Pensions

10th March 2011

### **EXPLANATORY NOTE**

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

These Regulations apply where a pension sharing or pension attachment order or provision was made before the Board of the Pension Protection Fund (“the Board”) assumed responsibility for an occupational pension scheme and (in the case of a pension sharing order or provision) was not implemented by the trustees or managers of the scheme prior to the scheme’s transfer to the Pension Protection Fund. The Regulations set out the costs which may be charged to the parties to the order or provision and the circumstances in which the Board may recover the costs of implementing a pension sharing order or provision, or complying with a pension attachment order or provision.

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 pension sharing order or provision or pension attachment order or provision has been made before the Board assumed responsibility for a scheme, and the Board has become responsible for implementing or complying with the order or provision.

Regulation 3 sets out the circumstances in which the Board may recover costs from the parties to a pension sharing order or provision or an attachment order or provision.

Regulation 4 permits the Board to recover from the parties to a pension sharing order or provision the costs of implementing that order and of providing information associated with implementation of that order. The Board may also recover costs in relation to the reasonable administrative expenses which it has incurred by reason of complying with a pension attachment order or provision.

Regulation 5 sets out the methods by which and the circumstances in which the Board may recover the costs.

Before making these Regulations the Secretary of State has consulted such persons as the Secretary of State considered appropriate.

A full impact assessment has not been produced for this instrument as it has no impact on the private sector and civil society organisations. An assessment of the impact of the legislative changes made by Part 3 of the Pensions Act 2008 (c. 30) was included as part of the Impact Assessment that accompanied the Act, published on 5th December 2007. This is available from the DWP website: <http://www.dwp.gov.uk/resourcescentre/ria.asp>.

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