STATUTORY INSTRUMENTS

2016 No. 1079

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Early Exit Pension Charges) Regulations 2016

Made - - - -	*8th November 2016*
Laid before Parliament	*9th November 2016*
Coming into force - -	*31st March 2017*

The Treasury make these Regulations in exercise of the powers conferred by section 137FBB(8) of the Financial Services and Markets Act 2000(**1**):

Citation and commencement

1. These Regulations may be cited as the Financial Services and Markets Act 2000 (Early Exit Pension Charges) Regulations 2016 and come into force on 31st March 2017.

Interpretation

2. In these Regulations—

"the Act" means the Financial Services and Markets Act 2000;

"illustrative value" means the value of a member's benefits under a relevant pension scheme(**2**) at the time that member asks to take, convert or transfer their benefits from the scheme, with that value being calculated in the same manner as would be used to calculate the value of that member's benefits for the purpose of providing information to the member if it was required by regulation 17 of, and Part 1 of Schedule 6 to, the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013(**3**);

"member's asset share" means the part of the total assets of a relevant pension scheme associated with a member of that scheme, where it is aimed that the assets comprising the whole of that part will provide the minimum value of the member's benefits;

"point of surrender" means the point in time at which the member takes, converts or transfers benefits from a relevant pension scheme; and

(**1**) 2000 c.8. Section 137FBB was inserted by section 35 of the Bank of England and Financial Services Act 2016 (c.14).
(**2**) "Relevant pension scheme" is defined in section 137FBB of the Financial Services and Markets Act 2000.
(**3**) S.I. 2013/2734, Part 1 of Schedule 6 was amended by S.I. 2014/1711.

"surrender value" means the value of the benefits which the member takes, converts or transfers from a relevant pension scheme.

Matters not to be treated as early exit charges

3.—(1) A charge is not to be treated as an early exit charge for the purposes of section 137FBB of the Act where that charge is the result of—

(a) adjustments made—

(i) to the value of a member's benefits under a relevant pension scheme in order to calculate the surrender value of those benefits, or

(ii) to the means by which the surrender value is calculated, and

(b) those adjustments satisfy at least one of the conditions in paragraph (2) and the condition in paragraph (3).

(2) The conditions in this paragraph are that the adjustments—

(a) reflect a difference between the illustrative value of a member's benefits and their market value at the point of surrender,

(b) are made so that the surrender value of the member's benefits better reflect the member's asset share at the point of surrender,

(c) are made—

(i) to smooth the value of the member's benefits in consequence of market fluctuations, or

(ii) as a consequence of the previous application of adjustments to smooth the value of the member's benefits in consequence of market fluctuations, or

(d) are otherwise necessary in order to protect the interests of—

(i) the relevant pension scheme's remaining members, or

(ii) the policyholders(**4**) of a fund, where that fund contributes to the member's benefits under that scheme.

(3) The condition in this paragraph is that the adjustments are made—

(a) for the purpose of ensuring that—

(i) the total assets of the relevant pension scheme are fairly distributed between the members of the scheme, or

(ii) the total assets of a fund which contributes to the member's benefits under the scheme are fairly distributed between the policyholders of that fund, and

(b) in accordance with relevant actuarial principles and the FCA's general rules and guidance(**5**) (other than the FCA's general rules made in accordance with section 137FBB of the Act).

Adjustments excluded from the conditions in regulation 3

4. Adjustments to the illustrative value of a member's benefits are not to be treated as satisfying the conditions in regulation 3 to the extent that the member has a reasonable expectation that they are entitled to the value of those benefits at the point of surrender.

(**4**) The meaning of "policyholder" in the Financial Services and Markets Act 2000 is specified in article 3 of the Financial Services and Markets Act 2000 (Meaning of Policy and Policyholder) Order 2001 (S.I. 2001/2361).

(**5**) The FCA's general rules and guidance are made under sections 137A and 139A of the Act, respectively.

Robert Syms
Stephen Barclay
Two of the Lords Commissioners of Her Majesty's Treasury

8th November 2016

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 137FBB of the Financial Services and Markets Act 2000 (c. 8) (as inserted by the Bank of England and Financial Services Act 2016 (c. 14)) requires the Financial Conduct Authority to make rules preventing specified charges being imposed on members of pension schemes who take, convert or transfer pension benefits after they have reached normal minimal pension age but before their expected retirement date. These Regulations specify matters that are not to be treated as early exit pension charges for the purposes of section 137FBB.

Regulation 3 provides that adjustments made to the value of a member's benefits in the course of calculating the surrender value of those benefits, or adjustments to the means by which that value is calculated, are not charges for the purpose of section 137FBB providing at least one of the four conditions in paragraph (2) and the condition in paragraph (3) of regulation 3 are met. Regulation 4 provides that where a member has acquired a reasonable expectation that they are entitled to the value of certain benefits at the point of surrender, such as might arise in certain circumstances in relation to some types of bonus, an adjustment to that value which is an early exit charge (as defined in section 137FBB) is to be treated as such, and regulation 3 does not apply.

An impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector has not been prepared. However, an assessment of the impact of the policy of prohibiting early exit pension charges in certain circumstances, incorporating the impact of excluding the charges specified in this instrument, on the costs to business and the voluntary sector was published in the course of Parliament considering the Bank of England and Financial Services Bill. A copy of this impact assessment is available in the libraries of both Houses of Parliament. Copies may also be obtained from the Better Regulation Unit of the Her Majesty's Treasury, 1 Horse Guards Road, London, SW1A 2HQ.