The Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2011

Consultation on draft regulations

October 2010

Department for Work and Pensions

Contents

Foreword

This consultation document seeks views on the enclosed draft **Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2011**. The intention is that the regulations will come into force on 6 April 2011.

The consultation is primarily aimed at pension industry professionals, but we would be interested in views from any source.

Subject of consultation

A number of minor amendments to regulations governing occupational and personal pension schemes are proposed in order to:

- change the notification requirements for certain employers when changes to an occupational pension scheme are proposed;
- make amendments to regulations as a result of changes in the Guidance Notes prepared by the Board for Actuarial Standards;
- implement some minor policy changes;
- make an outstanding consequential amendment; and
- increase the maximum amount per member of the fraud compensation levy.

Purpose of the consultation

Your comments on any aspect of the draft regulations would be welcomed. This document is on the Department's website at:

www.dwp.gov.uk/consultations/2010/

We have sent this consultation document to a large number of people and organisations who have already been involved in this work or who have expressed an interest. Please do share this document with, or tell us about, anyone you think will want to be involved in this consultation.

It would be very helpful when responding to indicate whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation please make it clear whom the organisation represents and, where applicable, how the views of members were assembled.

The consultation arrangements

The Government Code of Practice on Consultation advises that a minimum of 12 weeks is appropriate for public consultations, unless there are good reasons for a shorter period. In this case, consultation will run for 12 weeks.

The consultation is being conducted in line with the Government Code of Practice on Consultation – http://www.berr.gov.uk/whatwedo/bre/consultation-guidance/page44420.html – and its seven consultation criteria, which are as follows:

- **When to Consult**. Formal consultation should take place at a stage when there is scope to influence the outcome.
- **Duration of consultation exercises.** Consultations should normally last for at least 12 weeks, with consideration given to longer timescales where feasible and sensible.
- **Clarity of scope and impact.** Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence, and the expected costs and benefits of the proposals.
- **Accessibility of consultation exercises.** Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is designed to reach.
- **The burden of consultation.** Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
- **Responsiveness of consultation exercises.** Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
- **Capacity to consult.** Officials running consultation exercises should seek guidance in how to run an effective consultation exercise, and share what they have learned from the experience.

How to respond

The consultation exercise will run from **18 October 2010 to 10 January 2011.**

Any replies received after that date may not be taken into account so please ensure your response reaches us by that date.

Please send your responses, preferably by email, to: **adelphi.sft@dwp.gsi.gov.uk**

or by post to:

Andy Sly
Department for Work and Pensions
7th Floor,
Caxton House
Tothill Street
London.
SW1H 9NA

Tel. 020 7449 7395

Please remember to indicate if you are responding on behalf of an organisation or as an individual (see page 3).

Freedom of Information

The information you send us may need to be passed to colleagues within the Department for Work and Pensions, published in a summary of responses received and referred to in the published consultation report.

All information contained in your response may be subject to publication or disclosure if requested under the Freedom of Information Act 2000. By providing personal information for the purposes of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information provided, or remove it completely. If you want the information in your response to the consultation to be kept confidential, you should explain why as part of your response, although we cannot guarantee to do this.

More information about the Freedom of Information Act can be found on the Ministry of Justice website: Ministry of Justice: FoI Guidance

Feedback on responses

A summary of responses will be published following the consultation. The Government will aim to publish this summary within three months of the consultation closing. The summary of responses will be available on the Department's website:

http://www.dwp.gov.uk/consultations/2010/

Feedback on this consultation

We value your feedback on how well we consult. If you have any comments on the process of this consultation (as opposed to the issues raised) please contact our Consultation Coordinator:

Roger Pugh
DWP Consultation Coordinator
1st floor, Crown House
2, Ferensway, Hull HU2 8NF

roger.pugh@dwp.gsi.gov.uk

In particular, please tell us if you feel that the consultation does not satisfy the Government Code of Practice on Consultation. Please also make any suggestions as to how the process of consultation could be improved further.

If you have any requirements that we need to meet to enable you to comment, please let us know.

Impact Assessment

A full impact assessment has not been published for these draft regulations as they have only a negligible impact on the private and civil society organisations.

Commentary on the draft regulations

The following summary explains the purpose of each of the provisions:

1. **Regulation 1** contains the citation and commencement arrangements. All provisions with the exception of regulation 7 will come into force on 6 April 2011.

2. **Regulation 2** amends paragraph 15 of Schedule 1 to the Personal Pension Schemes (Disclosure of Information) Regulations 1987 (SI 1987/1110) to replace the reference to the Occupational Pensions Advisory Service with a reference to the Pensions Advisory Service. This consequential amendment to those regulations was not made in 2004 when the Pensions Advisory Service replaced the Occupational Pensions Advisory Service.

3. There will be no impact on business or the voluntary sector.

4. **Regulation 3** amends the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 (SI 1991/167) to reflect the replacement of guidance note GN16 by the Board for Actuarial Standards with principles-based guidance.

5. When a bulk transfer of members' pension rights without the members' consent is made from an occupational pension scheme to another occupational pension scheme, the actuary is required to certify that the members' rights in the receiving scheme are "broadly, no less favourable" than the rights being transferred.

6. The amendment provides for the actuarial certificate (which was in GN16 before it was withdrawn) to be inserted into regulations.

7. The new regulation 12(3)(c) will introduce a requirement that the bulk transfer without the members' consent must be made within three months of the date the actuary signs the certificate. This replaces the requirement in GN16 for the actuary to set a period of up to three months for which the certificate is valid. A time limit is needed because the timing of the transfer will not be known when the certificate is signed and the actuarial assumptions might

change before the transfer takes place. We would welcome comments in particular on the adequacy of this time limit.

8. This will have no new impact on business or the voluntary sector.

9. **Regulation 4** amends regulation 23 of the Occupational Pension Schemes (Contracting-out) Regulations 1996 (SI 1996/1172) to reflect the replacement of guidance note GN28 with principles-based guidance as the guidance which the Board for Actuarial Standards provides for actuaries needing to certify that a scheme meets the Reference Scheme Test (RST). Schemes operating on a salary-related basis must meet the RST in order to contract out of the State Second Pension.

10. The amendments insert into regulations some of the requirements that were in GN28. The actuary must follow these requirements. The amendments also provide that the actuary must follow any relevant standards the Board may introduce (for example, any standards that replace GN28).

11. To assist respondents to the consultation, we have included in regulation 4(2) and the inserted Schedule 3 references in {brackets} to the relevant paragraph of GN28 for which the legislation seeks to provide. Where certain requirements of GN28 have not been duplicated in Schedule 3, this is generally because those requirements are already provided for within legislation, e.g. regulation 28 of the Occupational Pension Schemes (Contracting-out) Regulations 1996 duplicates the requirement of paragraph 4.13.1 of GN28, so this requirement has not been included in the draft regulations.

12. There is no expected impact on business or the voluntary sector from these changes we are proposing to make to legislation.

13. **Regulation 5** amends regulation 3(1)(a) of the Occupational Pension Schemes (Scheme Administration) Regulations 1996 (SI 1996/1715). A scheme that is exempt from the requirement to appoint an auditor must be one which is made under an enactment **and** guaranteed by a Minister of the Crown or other public authority. The amendment confirms that regulation 3(1)(a) has this effect. (Regulation 3(1)(a) is made in compliance with Article 5 of Directive 2003/41/EC of the European Parliament: "Member States may choose not to apply Articles 9 to 17 to institutions where occupational retirement provision is made under statute, pursuant to legislation, **and** is guaranteed by a public authority." Article 10 relates to the requirement for annual accounts and annual reports and the need to be approved by authorised persons.)

14. There will be no impact on business or the voluntary sector.

15. **Regulation 6** amends the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (SI 2006/349). Those regulations require that when a "listed change" is proposed to a work-based pension arrangement, larger employers must consult the affected members for at least 60 days before making the change.

16. Where, in a multi-employer pension scheme, one of the employers proposes making a "listed change" and the only affected members work for that proposing employer, that employer is to be exempted from the requirement to notify the other employers in the multi-employer scheme of the proposed "listed change". (That proposing employer is still required to consult about the change.)

17. The amendment will remove a small burden from the employer in these circumstances so we anticipate that the impact on business or the voluntary sector would be negligible and beneficial.

18. **Regulation 7** will come into force on 31 March 2011 and amends the Occupational Pension Schemes (Fraud Compensation Levy) Regulations 2006 (SI 2006/558). Those regulations provide that for the purposes of meeting expenditure payable out of the Fraud Compensation Fund trustees or managers of occupational pension schemes shall be liable to pay a fraud compensation levy in respect of each financial year.

19. The Fraud Compensation Fund is a statutory fund managed by the Board of the Pension Protection Fund and compensation payments from it may be made to eligible occupational pension schemes by the Board.

20. The Board of the Pension Protection Fund has responsibility for deciding whether to raise a fraud compensation levy and has decided to raise a levy of 23p per scheme member for the financial year 2010/11 and this is being collected by the Pensions Regulator. The levy has been charged twice before in 1997 and 2005.

21. This amendment will increase the maximum fraud compensation levy on occupational pension schemes that can be raised by the Board of the Pension Protection Fund in respect of each financial year to 75p per scheme member. The current maximum limit is 23p per scheme member and was set in 1997 in advance of the former Pensions Compensation Board opening for business.
22. The increase is necessary to allow the Board of the Pension Protection Fund to continue to manage the Fraud Compensation Fund effectively.

23. As the existing structure for charging the levy will remain the same, any administrative impact of this amendment on the private, public and voluntary sector is expected to be negligible.

Consultation questions

24. We would welcome any comments on:

(a) the policy proposals

- in particular on the 3 months time limit in new regulation 12(3)(c) of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 that requires the bulk transfer to take place within 3 months of the date the actuary signs the certificate;

(b) the draft regulations;

- in particular whether you think the inserted Schedule 3 to the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 implements the relevant provisions from GN28;and

(c) our assessment of the impact of the regulations

- in particular the changes to legislation being suggested as a result of the replacement of GN28 are not intended to impose any additional burdens on pension schemes, nor are they intended to require changes to scheme rules. Please let us know if you think that may not be the case and why.

Annex A: List of organisations consulted

Organisation
Age UK
Actuarial Profession
Association of British Insurers
Association of Chartered Certified Accountants
Association of Consulting Actuaries
Association of Corporate Trustees
Association of Independent Financial Advisers
Association of Pension Lawyers
Board for Actuarial Standards
British Chambers of Commerce
Better Regulation Executive
Carers UK
Confederation of British Industry
Consumers' Association
Department for Business, Innovation & Skills
Department for Social Development (Northern Ireland)
Engineering Employers' Federation
Equality and Human Rights Commission (EHRC)
Eversheds
Federation of Small Businesses
Financial Ombudsman Service
Financial Services Authority
Government Actuary's Dept
HM Revenue & Customs
HM Treasury
Hammonds LLP
Hewitt Associates

Industry Wide Pension Schemes Group
Institute of Chartered Accountants in England and Wales (ICAEW)
Institute of Chartered Accountants in Scotland
Institute of Directors
Investment and Life Assurance Group
Investment Management Association
Joint Working Group
Law Debenture
Law Society
Law Society of Scotland
National Association of Pension Funds
National Consumers Council
National Pensioners Convention
Office of Fair Trading
Pensions Management Institute
Pensions Ombudsman
Pensions Policy Institute
Scottish Parliament
Scotland Office
Society of Pension Consultants
The Pensions Advisory Service
The Pensions Regulator
Pension Protection Fund
Trades Union Congress
Welsh Assembly
Wales Office
Which?

Annex B: The draft Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2011

STATUTORY INSTRUMENTS

2011 No. xxxx

PENSIONS

The Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2011

Made - - - -	***
Laid before Parliament	***
Coming into force in accordance with regulation 1(2)	

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 12A(4) and (5), 73(4)(b), 113(1), 181(1), 182(2) and (3) and 183(1) of the Pension Schemes Act 1993(**a**), sections 47(5)(a), 124(1) and 174(2) and (3) of the Pensions Act 1995(**b**) and sections 189(4), 259(1), 260(1), 315(2), (4) and (5) and 318(1) of the Pensions Act 2004(**c**).

[In accordance with section 185(1) of the Pension Schemes Act 1993(**d**), section 120(1) of the Pensions Act 1995 and section 317(1) of the Pensions Act 2004, the Secretary of State has consulted with such persons as the Secretary of State considers appropriate.]

Citation and commencement

1.—(1) These Regulations may be cited as the Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2011.

(2) These Regulations come into force—

(a) for the purposes of this regulation and regulation 7, on 31st March 2011.

(b) for all other purposes, on 6th April 2011.

Amendment of the Personal Pension Schemes (Disclosure of Information) Regulations 1987

2. In paragraph 15 of Schedule 1 to the Personal Pension Schemes (Disclosure of Information) Regulations 1987 (basic information about the scheme)(**e**), for "Occupational Pensions Advisory Service Limited" substitute "Pensions Advisory Service".

(**a**) 1993 c.48. Section 12A was inserted by section 136(5) of the Pensions Act 1995 (c.26) and section 12A(5) was amended by paragraph 5 of Schedule 5 to the Pensions Act 2007 (c.22). Section 113(1) was amended by section 52(1) of the Child Support, Pensions and Social Security Act 2000 (c.19). Section 181(1) is cited for the meaning it gives to "prescribed" and "regulations". Section 183(1) was amended by paragraph 79 of Schedule 5 and paragraph 15(a) of Schedule 6 to the Pensions Act 1995.
(**b**) 1995 c.26. Section 124(1) is cited for the meaning it gives to "regulations".
(**c**) 2004 c.35. Section 259(1) was modified by S.I. 2006/16. Section 318(1) is cited for the meaning it gives to "prescribed" and "regulations".
(**d**) Section 185(1) was amended by paragraph 46 of Schedule 3, and paragraph 80(a) of Schedule 5, to the Pensions Act 1995.
(**e**) S.I. 1987/1110. Paragraph 15 was added by S.I. 1992/1531.

Amendment of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991

3.—(1) The Occupational Pension Schemes (Preservation of Benefit) Regulations 1991(**a**) are amended as follows.

(2) In regulation 12 (transfer of member's accrued rights without consent)(**b**)—

(a) for paragraph (3), substitute—

"(3) The condition set out in this paragraph is that—

(a) the relevant actuary gives a certification, by completing the certificate in Schedule 3, in relation to the members' rights in the receiving scheme;

(b) the relevant actuary sends that certificate to the trustees or managers of the transferring scheme;

(c) the transfer takes place within 3 months of the date of the relevant actuary's signature in the certificate; and

(d) there are no changes to the benefits, data and documents used in making the certificate (see the benefits, data and documents specified in the certificate) by the date on which the transfer takes place.",

(b) in paragraph (4), for "paragraph (3)(a)" substitute "making the certification in paragraph 1 of the certificate in Schedule 3", and

(c) in paragraph (4A), for "paragraph (3)(b)" substitute "making the certification in paragraph 2 of the certificate in Schedule 3".

(3) After Schedule 2 (revocations), insert as Schedule 3 the Schedule specified in Schedule 1 to these Regulations.

Amendment of the Occupational Pension Schemes (Contracting-out) Regulations 1996

4.—(1) The Occupational Pension Schemes (Contracting-out) Regulations 1996(**c**) are amended as follows.

(2) In regulation 23 (requirements for meeting the statutory standard)(**d**)—

(a) for paragraph (a), substitute—

"(a) must follow any standards adopted or prepared, and from time to time revised, by the Board for Actuarial Standards which are relevant to the matters specified in section 12A(4) of the 1993 Act;",

(b) in paragraph (f), after "payment of a lump sum" insert "but may not have regard to any payment of a lump sum following the death of an earner in employed earner's employment", and {p4.13.3}

(c) after paragraph (g), insert—

"(h) must not have regard to any discretionary benefits; and {p4.13.4}

(i) must comply with the further requirements set out in Schedule 3.".

(3) After Schedule 2 (revocations), insert as Schedule 3 the Schedule specified in Schedule 2 to these Regulations.

(**a**) S.I. 1991/167.
(**b**) Regulation 12(3) was substituted by S.I. 1993/1822 and amended by S.I.s 1997/786 and 1999/2543, regulation 12(4) was substituted by S.I. 1993/1822 and regulation 12(4A) was inserted by S.I. 1993/1822 and amended by S.I. 1999/2543.
(**c**) S.I. 1996/1172.
(**d**) Regulation 23(a) was substituted by S.I. 2007/60 and amended by S.I. 2008/2301 and regulation 23(g) was added by S.I. 2002/681.

Amendment of the Occupational Pension Schemes (Scheme Administration) Regulations 1996

5. At the end of regulation 3(1)(a)(i) of the Occupational Pension Schemes (Scheme Administration) Regulations 1996 (exemptions from the professional advisers requirements)(**a**), insert "and".

Amendment of the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006

6. In regulation 7 of the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (notifications to employers and duty to consult)(**b**)—

(a) at the end of paragraph (2)(b), insert—

", or

(c) where the person proposing the change employs all the affected members.", and

(b) for paragraph (3), substitute—

"(3) A relevant employer must consult about the listed change in accordance with regulations 11 to 16 if—

(a) they employ all the affected members, or

(b) their employees appear to them to include affected members and they are a relevant employer who—

(i) has been notified under paragraph (1), or

(ii) falls within paragraph (2)(b).".

Amendment of the Occupational Pension Schemes (Fraud Compensation Levy) Regulations 2006

7. In regulation 3(3)(b) of the Occupational Pension Schemes (Fraud Compensation Levy) Regulations 2006 (the fraud compensation levy)(**c**), for "23" substitute "75".

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

Name
Minister of State,
Department for Work and Pensions

Date

SCHEDULE 1

Regulation 3(3)

Insertion of Schedule 3 to the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991

After Schedule 2 to the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991, insert—

(**a**) S.I. 1996/1715. Regulation 3(1)(a) was substituted by S.I. 2005/2426.
(**b**) S.I. 2006/349.
(**c**) S.I. 2006/558.

“SCHEDULE 3

Regulation 12(3)

Actuary’s certificate

Given for the purposes of regulation 12(3) of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991.

This certificate is subject to the Notes below

The name of the transferring scheme is:

The reference number of Her Majesty’s Revenue and Customs for that scheme is:

The name of the receiving scheme is:

The reference number of Her Majesty’s Revenue and Customs for that scheme is:

1. I certify that in my opinion, the transfer credits to be acquired for each member under the receiving scheme in the categories of member covered by this certificate are, broadly, no less favourable than the rights to be transferred.

2. Where it is the established custom for discretionary benefits or increases in benefits to be awarded under the transferring scheme, I certify that in my opinion, there is good cause to believe that the award of discretionary benefits or increases in benefits under the receiving scheme will (making allowance for any amount by which transfer credits under the receiving scheme are more favourable than the rights to be transferred) be, broadly, no less favourable.

In making this certification:

— I used these benefits:

— I used this data:

— I used these key actuarial assumptions to value the rights, transfer credits, any discretionary benefits and any discretionary increases in benefits:

— I used these documents:

The categories of member covered by this certificate are:

Signature:

Date of signature:

Name:

Qualification:

Address:

Name of employer (if applicable):

Notes:

Phrases used in this Certificate have the same meaning as in the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 (“the 1991 Regulations”).

The certification in paragraph 1 was made in accordance with regulation 12(4) of the 1991 Regulations. The certification in paragraph 2 was made in accordance with regulation 12(4A) of the 1991 Regulations.

This Certificate is valid only for the purposes of the 1991 Regulations.

This Certificate must not be taken by the trustees or managers of the scheme as authority to make a transfer without members’ consents. It must also not be taken as a recommendation to make a transfer without members’ consents. The trustees or managers of the scheme need to satisfy themselves that making the transfer is consistent with their duties to the transferring members and the remaining members. The trustees of the scheme need to satisfy themselves that making the transfer is consistent with their responsibilities and powers under trust law.

The actuary is not expressing in this Certificate an opinion on whether or not the amount of the transfer value is reasonable.

The actuary has taken account of the benefits accrued by the date of this certificate. The actuary has not taken account of any differences between the terms and conditions of any benefits that may accrue in the future under the transferring scheme and the receiving scheme.”.

SCHEDULE 2

Regulation 4(3)

Insertion of Schedule 3 to the Occupational Pension Schemes (Contracting-out) Regulations 1996

After Schedule 2 to the Occupational Pension Schemes (Contracting-out) Regulations 1996, insert—

“SCHEDULE 3

Regulation 23(i)

Further requirements for meeting the statutory standard

1. The actuary must complete a reference scheme test certificate.{p2.1}

2. The reference scheme test certificate must—

(a) certify whether in the actuary’s opinion, the scheme satisfies the statutory standard in relation to the provision of pensions for—

(i) earners, and

(ii) the widows, widowers or surviving civil partners of earners, and

(b) specify the effective date.

3. The actuary must—

(a) send the completed reference scheme test certificate to the employer, and {p3.1}

(b) either—

(i) send the completed reference scheme test certificate to Her Majesty’s Revenue and Customs, or

(ii) inform the employer that the completed reference scheme test certificate should be sent to Her Majesty's Revenue and Customs.{p2.1}

4. Where the actuary is sending the first reference scheme test certificate for a scheme, the actuary must also inform—

(a) the scheme and the employer that Her Majesty's Revenue and Customs provide guidance on contracting-out, including guidance on what changes need to be notified to Her Majesty's Revenue and Customs,

(b) the employer that they should provide a copy of the completed certificate to the scheme, and

(c) the employer that they should keep a record of any subsidiary or associated employers.{p2.2}

5.—(1) Where the employer asks the actuary to advise whether the statutory standard is satisfied, the actuary must inform the trustees or managers of the scheme that the employer has asked for that advice.

(2) Sub-paragraph (1) does not apply if the actuary has previously informed the trustees or managers of the scheme that the actuary provides advice to the employer.{p3.1}

6. Where the scheme calculates pensions by more than one method, the actuary must decide whether the pensions provided under each method are broadly equivalent to, or better than, the pensions which would be provided under a reference scheme.{p4.3.1}

7. The actuary must not complete a reference scheme test certificate if the average value of pension provided under the scheme is less than the average value of pension which would be provided under a reference scheme. {p4.3}

8. Where an employer asks for a separate reference scheme test certificate which only includes their employees—

(a) the actuary must provide that employer with a separate reference scheme test certificate, and

(b) the actuary must consider only the employees of that employer for that certificate.{p4.3.2}

9. Where—

(a) an employer has two or more schemes, and

(b) none of those schemes can be contracted-out under section 9(1) of the 1993 Act (requirement for certification of schemes: general),

the actuary may take into account the pensions provided under all those schemes.{p4.3.3}

10. The actuary must use any information about the earner's remuneration which—

(a) the actuary considers is relevant for the reference scheme test certificate, and

(b) subject to paragraph 11, refers to a period of one year.{p4.5.2}

11. Where—

(a) the actuary is satisfied that the information about the earner's remuneration which refers to a period of one year is significantly abnormal, and

(b) the employer writes to the actuary stating that they are also so satisfied,

the actuary may use such information which refers to a period of three years. {p4.5.2}

12.—(1) This paragraph applies where, on the effective date, the scheme has not been established but is in the process of being established. {p4.7}

(2) For the purposes of carrying out the comparison under regulation 23, the actuary must estimate the membership information. {p4.7}

(3) In this paragraph, “membership information” means any information about the earners who the actuary expects to join the scheme when it is established which—

(a) the actuary considers is necessary for the purposes of the comparison under regulation 23, and

(b) may include information on the age, gender and earnings of those earners. {p4.7}

13.—(1) The pensions provided under the scheme for the purposes of carrying out the comparison under regulation 23 are the pensions referred to in sub-paragraph (2).

(2) The pensions are those which the actuary expects will accrue in the three years after the effective date. {p4.9}

(3) For the purposes of sub-paragraph (2), the actuary must assume that—

(a) the earner leaves pensionable service—

(i) at the end of the three-year period mentioned in sub-paragraph (2), or

(ii) if the earner attains normal pension age before the end of that three-year period, on the date on which the earner attains normal pension age, and {p4.10}

(b) pensions are payable from the date on which the earner attains normal pension age. {p4.14.1}

14.—(1) For the purposes of carrying out the comparison under regulation 23, the actuary must use—

(a) the actuarial assumptions in any statement of funding principles prepared or revised for the scheme under section 223 of the 2004 Act (statement of funding principles), and

(b) any other actuarial assumptions which the actuary considers necessary. {p4.14}

(2) The actuarial assumptions referred to in sub-paragraph (1) must be used for valuing—

(a) the pensions provided under the scheme, and

(b) the pensions which would be provided under a reference scheme. {p4.14}

15.—(1) For the purposes of carrying out the comparison under regulation 23, the pensions provided under the scheme for widows, widowers and surviving civil partners are subject to the requirements in this paragraph in addition to the requirements in paragraphs 13 and 14. {p4.12}

(2) The actuary must carry out a separate comparison for pensions the actuary expects to accrue during the three-year period referred to in paragraph 13(2) in respect of—

(a) death in service (see sub-paragraph (3) of this paragraph),

(b) death in deferment (see sub-paragraph (4)), and

(c) death in retirement (see sub-paragraph (5)). {p4.12}

(3) A death in service pension must be valued as if the earner died—

(a) three years after the effective date, or

(b) if the earner attains normal pension age before that date, on the day before the date on which the earner attains normal pension age. {p4.14.2}

(4) A death in deferment pension must be valued as if the earner died more than three years after the effective date. {p4.14.3}

(5) A death in retirement pension must be valued as if the earner died at any time after the date on which the earner attains normal pension age. {p4.14.4}

(6) The actuary may not complete the reference scheme test certificate unless each of the pensions referred to in sub-paragraph (2)(a) to (c) are broadly equivalent to, or better than, those which would be provided under a reference scheme. {p4.12}

(7) Sub-paragraph (8) applies where—

(a) a pension which is in payment for a widow, widower or surviving civil partner has been reduced under the scheme because they were at least 10 years younger than the earner, or

(b) a pension which may become payable in the future for a widow, widower or surviving civil partner would be reduced under the scheme if they were at least 10 years younger than the earner. {p4.12.1}

(8) Where this sub-paragraph applies, the actuary—

(a) must estimate, where sub-paragraph (7)(b) applies, the number and amount of future pension reductions which the actuary thinks are likely to occur, and

(b) may ignore any part of the reductions referred to in sub-paragraph (7) which are or are likely to be—

(i) made in respect of each complete year during which the age difference referred to in sub-paragraph (7) was at least 10, and

(ii) 2.5% or less for each such year.{p4.12.1}

(9) Sub-paragraph (10) applies where any death in service pensions—

(a) both—

(i) are calculated by reference to the number of years of pensionable service which the earner has completed in the scheme, and

(ii) have an accrual rate of less than 1/160ths of any earnings within the meaning of section 12B(5) of the 1993 Act (reference scheme)(**a**), or

(b) are not calculated by reference to the number of years of pensionable service which the earner has completed in the scheme. {p4.12.3}

(10) Where this sub-paragraph applies, the actuary, for the comparison referred to in sub-paragraph (2)(a), must—

(a) use the earner's pensionable service up to the date which applies under paragraph 13(3), and

(b) ignore any of the earner's pensionable service which took place before—

(i) the date on which a contracting-out certificate was first issued to the scheme, or

(ii) 6th April 1988 where, in the case of female earners or surviving civil partners, 6th April 1988 is later than the date referred to in sub-paragraph (i). {p4.12.3}

(11) Where—

(a) any part of a death in retirement pension can be paid as a lump sum, or

(b) a death in retirement pension can be reduced under the scheme if the earner takes part of their pension as a lump sum on retirement,

the death in retirement pension must be reduced by an amount broadly equal to the average such lump sums taken for other earners under the scheme. {p4.14.4}

16.—(1) This paragraph applies—

(a) where the actuary has been informed of any changes to—

(i) the scheme rules, or

(ii) the membership of the scheme,

which the actuary thinks might affect the scheme's ability to satisfy the statutory standard, and{p5.2 and p2.3}

(b) every three years after the effective date.{p5.1}

(**a**) Section 12B was inserted by section 136(5) of the Pensions Act 1995 and subsection (5) was amended by paragraph 36(a) of Schedule 1 to the Pensions Act 2007.

(2) This paragraph does not apply where the scheme is no longer required to satisfy the statutory standard.{p5.1}

(3) The actuary must consider whether there have been any changes which would have prevented the reference scheme test certificate from being issued.

(4) If any changes referred to in sub-paragraph (3) have been made, the actuary must inform in writing—

(a) the trustees or managers,

(b) Her Majesty's Revenue and Customs, and

(c) the employer.

17. In this Schedule—

"accrual rate" means the rate at which, under the scheme rules, rights to the pension accrue over time by reference to periods of service in any description of employment to which the scheme applies;

"death in deferment pension" means a pension payable in respect of an earner who dies—

(a) otherwise than in pensionable service under the scheme, and

(b) before their own entitlements to pensions under the scheme have commenced;

"death in retirement pension" means a pension payable in respect of an earner whose own entitlements to pensions under the scheme have commenced;

"death in service pension" means a pension payable in respect of an earner who dies in pensionable service under the scheme;

"earner" means an earner in employed earner's employment;

"effective date" means the date specified in the completed reference scheme test certificate as the date on which the information used in that certificate was correct;

"normal pension age" means the earliest age at which an earner may be entitled to payment of an unreduced pension;

"unreduced pension" means a pension which—

(a) has not been actuarially reduced as a result of early payment of the pension,

(b) does not include any discretionary benefits.".

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make various amendments to six Statutory Instruments about occupational and personal pensions.

[To be completed]

A full impact assessment has not been published for this instrument as it has only a negligible regulatory impact on the private and voluntary sectors.

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