

Explanatory text for *The Armed Forces (Transitional and Consequential Provisions) Regulations 2014 to be made under the Public Service Pensions Act 2013*

1. Purpose of the Instruments

1.1 *This set of Regulations is one of the sets of Regulations which Her Majesty's Treasury requires to be made for Public Service Pension Schemes. Those sets of Regulations will make transitional and consequential provision in relation to new public service pension schemes under the Public Service Pensions Act 2013 (c. 25). They will modify the effect of other statutory provisions in their application to such schemes.*

2. Legislative Context

2.1 The instruments constituting those sets of Regulations (“the Regulations”) implement reforms to public service pension schemes under the Public Service Pensions Act 2013 (“the 2013 Act”).

2.2 The 2013 Act was enacted in response to the recommendations of the Independent Public Service Pensions Commission led by Lord Hutton of Furness. The Commission reported on 10 March 2011. Under the 2013 Act, new pension schemes (“new schemes”) are being established for persons in public service, by regulations (“scheme regulations”) made under section 1.

2.3 To date, scheme regulations have been made to establish pension schemes for teachers in England in Wales: the Teachers’ Pension Scheme Regulations 2014 (S.I. 2014/512); and for civil servants and other Crown employees: the Public Service (Civil Servants and Others) Pensions Regulations 2014 (S.I. 2014/1964) and *for the armed forces, the Armed Forces Pension Regulations 2014 (S.I.2014/2336).*

3. Policy background

Certification provisions for contracting-out

3.1 The Government intends that the new schemes, like the existing schemes, should be contracted-out of the additional state pension, until contracting-out ends in April 2016. Part 2 of the Regulations dis-applies the requirement in the Pension Schemes Act 1993 (c.48) (“the 1993 Act”) for a new “contracting-out certificate” from HM Revenue and Customs. Certain procedural requirements are also disapplied that would otherwise apply by virtue of the Occupational Pension Schemes (Contracting Out) Regulations 1996 (S.I. 1996/1172): for example, formal notices to earners. New schemes must still meet the requirements in section 9 of the 1993

Act: in particular, satisfy the “reference scheme test”, the minimum standard of benefits a contracted-out pension scheme has to provide.

Provisions about pensionable service and early leavers

- 3.2 The effect of the 2013 Act and scheme regulations is that existing schemes must close, and current members (except for specific protected groups) transfer into new schemes. However, these transferring members will retain certain benefits in their existing scheme (described in the Regulations as their “old scheme”). Although they will accrue benefits in the new scheme only, they will, strictly speaking, belong to both schemes at once.
- 3.3 Part 3 of the Regulations reflects the policy intention that those with continuous service in an old scheme and a new scheme should generally be treated as if they remained active members or in “pensionable service” for their old schemes until their pensionable service in their new scheme is terminated. The objective is to prevent them becoming deferred members and triggering rights that are inconsistent with them remaining in service with the same employer in a successor pension scheme.
- 3.4 The 1993 Act contains provisions about occupational pension schemes – not only public service schemes – including as to their contracting-out of the additional state pension (see Part III of the 1993 Act); and as to members who leave their scheme before retirement age (“early leavers”) (Part IV).
- 3.5 For the purposes of the 2013 Act and scheme regulations, a number of those provisions need to be modified in relation to a member of an old scheme who transfers to a new scheme. The modifications described below affect only this category of members, and not those who remain fully active members of an old scheme (primarily, those near to retirement age at the time of the reforms), nor brand new members who join after 1 April 2015.
- 3.6 One reference to “pensionable service” in Part III of the 1993 Act, which concerns certification requirements for contracted-out pension schemes, is modified so that the person is treated as having a single period of pensionable service in one scheme.
- 3.7 There are further provisions in Part IV of the 1993 Act, which concerns the rights of early leavers. Chapter 1 provides for preservation of benefits and sets out the principle of short service benefit for those persons. *The Regulations provide* that a person will not acquire the right to short service benefit until pensionable service terminates in the new scheme, rather than

when the person transfers into the new scheme. Certain provisions will apply as though the old scheme and the new scheme were a single scheme.

- 3.8 Chapter 2 of Part IV concerns revaluation of benefits. *The Regulations* provide that old scheme benefits are not to be revalued while the member remains in pensionable service in the new scheme: in other words, they are not to be treated as a deferred member of the old scheme during this period. Amendments made by the 2013 Act to the Pensions (Increase) Act 1971 (c.56) mean that a person continues in “service” when they transfer to the new scheme and their benefits are treated as if they are an active member.
- 3.9 Chapter 3 of Part IV concerns “anti-franking”, or the protection of increases in guaranteed minimum pensions (“GMPs”) which contracted-out schemes had to provide until 1997. For this purpose, *the Regulations provide* that the “cessation date” when a person ceases to be in contracted-out employment under the old scheme (and from which point GMPs may need to be increased) is treated as the date when the person leaves their new scheme, and not the date when they transfer from the old scheme to the new scheme.
- 3.10 Chapter 4 of Part IV concerns cash equivalent transfers for early leavers. *The Regulations* provide that a person will not acquire the right to a cash equivalent under the old scheme until pensionable service terminates in the new scheme, rather than when the person transfers into the new scheme. However, where calculations of benefit are made based on length of service in the old or the new scheme, the two schemes are then treated separately.
- 3.11 There are also modifications to the Occupational (Transfer Values) Regulations 1996 (S.I. 1996/1847) which were made under that Chapter, to enable scheme managers to delay transfers of preserved benefits until after the transition member has left new scheme employment. This is designed to restrict transfers out (from either scheme) by a person who has voluntarily opted out of membership of the new scheme, but remains in employment.
- 3.12 Chapter 5 of Part IV concerns cash transfer sums or contribution refunds for those who leave a scheme after 3 months but within 2 years. *The Regulations* provide that a person will not acquire rights under Chapter 5 until pensionable service terminates in the new scheme, rather than when the person transfers into the new scheme. The statutory time periods are also measured as though the person had one continuous period of service. However, where calculations of benefit are made based on length of service in the old or the new scheme, the two schemes are then treated separately.

Ill-health benefits

- 3.13 The Government has chosen to adopt a ‘single source’ model for the payment of ill health pensions in the new schemes. Under the single source model, all payments of ill health pension will be made from the new pension scheme during the period between retirement and the scheme member reaching normal pension age in the old scheme. This model delivers certainty over the ill health pensions that are payable to members with service in both schemes, and prevents the administrative difficulty of performing two parallel ill health calculations.
- 3.14 Accordingly, the pension payable to the scheme member from the new scheme will contain 3 elements:
- (1) A pension in respect of service in the old scheme;
 - (2) A pension in respect of service in the new scheme; and
 - (3) In the case of ill health pensions, an uplift.
- 3.15 When the person receiving an ill health pension from the new scheme reaches their normal pension age in the old scheme, then the first element will cease to be paid out of the new scheme and their old scheme pension will come into payment. They will see no difference in the amount that they receive.
- 3.16 Part 4 of the Regulations modifies the tax regime in order to correct some unexpected consequences.
- 3.17 Under the current legislation then element (1) would count as an increase in the value of the pension over the pension input period. If that increase meant that the amount of the annual allowance for the pension input period was exceeded, then a tax charge would arise. The Regulations will modify the application of the current legislation to remove element (1) from the calculation of the pension input period during the pension input period in which the member takes ill health retirement.
- 3.18 Under the current legislation, the initial value of the ill health pension – would be measured against the lifetime allowance. However, when the member taking early retirement reaches the normal pension age under the new scheme, the current legislation would measure the old scheme pension coming into payment against the member’s remaining lifetime allowance, notwithstanding that element (1) will cease to be paid from the new scheme. If that second measurement results in the total amount of pension exceeding the lifetime allowance, then a tax charge will arise. The Regulations will modify the application of the current legislation to ensure that the payment of the old scheme pension will not count against the lifetime allowance.

- 3.19 Accordingly, the Regulations operate so that a member will not suffer any unexpected tax consequences as a result of the way the Government has chosen to structure the ill health provisions of the new scheme.

Deferred pension age for the uniformed services

- 3.20 Part 5 resolves a conflict between the short service benefit provisions in Chapter 1 of Part IV of the 1993 Act, and the requirements as to pension age in section 10 of the 2013 Act, that an active member has a normal pension age of 60 but a deferred member has a pension age set equal to the state pension age.
- 3.21 The short service benefit provisions in the 1993 Act operate to ensure that the benefits of a deferred member (short service benefits) are calculated in the same way as the equivalent benefits held by an active member (long service benefits).
- 3.22 However, section 10 of the 2013 Act requires different calculation of active and deferred members. For example, an active member aged 61 could take an immediate unreduced pension as they have reached their pension age, but a deferred member aged 61 has not reached their pension age and is not entitled to an immediate unreduced pension.
- 3.23 The Government's policy in relation to active and deferred members of the new scheme is clear. Active members are entitled to retire at an earlier age so that their age does not compromise their operational effectiveness. However, deferred members of the scheme are not engaged in public sector work that requires this level of operational effectiveness, and so do not require the extra protection of earlier access to an unreduced pension.
- 3.24 The Regulations will resolve this conflict by ensuring that any difference in the calculation of the short service benefits of deferred members and the long service benefits of active members resulting from the necessary requirements of section 10 about pension age does not breach the short service benefit provisions in the 1993 Act.