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STATUTORY INSTRUMENTS

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**2014 No.**

**PENSIONS**

**The Occupational Pension Schemes (Power to Amend Schemes to Reflect Abolition of Contracting-out) Regulations 2014**

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Secretary of State for Work and Pensions, in exercise of the powers conferred by sections 24(5) and 54(1), (5) and (6) of and paragraphs 2(3) and 2(4), 4, 6(1) and (2), 10(1), 12, 13, 14(1) and (2) of Schedule 14 to, the Pensions Act 2014(a), makes the following Regulations:

**Citation and commencement**

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Power to Amend Schemes to Reflect Abolition of Contracting-out) Regulations 2014.

(2) These Regulations come into force on [\*\*\*\*\*].

**Interpretation**

2. In these Regulations—

“the Act” means the Pensions Act 2014;

“the 2004 Act” means the Pensions Act 2004(b);

“the calculation date” means the date chosen by an employer in accordance with regulation 8(7);

“the power” means the power under section 24(2) of the Act to amend an occupational pension scheme;

“principal employer” means, in relation to a multi-employer scheme, the employer who is the principal employer for the purposes of the scheme in accordance with the scheme rules or the employer who has power to act on behalf of all employers in the scheme in relation to the scheme rules;

“segregated scheme” means a scheme in relation to which there is more than one employer and which is divided into two or more sections where—

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(a) 2014 c.  
(b) 2004 c.35.

- (a) any contributions payable to the scheme by an employer in relation to the scheme or by a member are allocated to that employer's section, and if more than one section applies to an employer to the section to which the employment relates; and
- (b) a specified proportion of the assets of the scheme is attributable to each section of the scheme and cannot be used for the purposes of any other section; and

"statement of funding principles" means the statement of funding principles prepared or revised for the scheme under section 223 of the 2004 Act.

### **Protected persons to whom the power does not apply**

**3.—**(1) For the purposes of section 24(4)(a) of the Act a person listed in this regulation is a "protected person in relation to a scheme".

(2) A person to whom regulation 3 of the Electricity (Protected Persons)(England and Wales) Pension Regulations 1990(**a**) applies.

(3) A person to whom regulation 3 of the Electricity (Protected Persons)(Scotland) Pension Regulations 1990(**b**) applies.

(4) A "protected employee", as defined by article 1 of the Railway Pensions (Protection and Designation of Schemes) Order 1994(**c**), to whom part II of that Order has effect.

(5) A "protected employee" as defined by regulation 2(1) of the Coal Industry (Protected Persons) Pensions Regulations 1994(**d**).

(6) A "protected person" as defined by article 1 of the London Transport Pension Arrangements Order 2000(**e**) to whom that Order has effect.

(7) A person who falls within paragraph 9(5) of Schedule 8 to the Energy Act 2004(**f**) and to whom paragraph 9(2) of that Schedule applies.

### **Total annual employee contributions of the relevant members**

**4.—**(1) For the purposes of paragraph 2(3)(a) of Schedule 14 to the Act, the "total annual employee contributions of the relevant members" means the total annual amount of employee contributions for the relevant members calculated using the employee contribution rates shown in the schedule of contributions adopted in relation to the scheme for the purposes of Part 3 of the 2004 Act as at the calculation date.

(2) The actuary is to calculate the increase in the total annual amount of employee contributions—

- (a) estimated to be payable in the one year after the calculation date;
- (b) using the earnings data specified in regulation 7; and
- (c) in accordance with the requirements in regulation 8.

### **Annual increase in an employer's national insurance contributions in respect of the relevant members**

**5.—**(1) For the purposes of paragraph 2(3)(b) of Schedule 14 to the Act, the "annual increase in an employer's national insurance contributions in respect of the relevant members" means the increase of 3.4% in the annual amount of national insurance contributions payable by the employer in respect of the relevant part of the earnings of relevant members due to the repeal of section 41 of the Pension Schemes Act 1993(**g**) (reduced rates of Class 1 contributions).

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(a) S.I. 1990/346.  
 (b) S.S.I 1990/510.  
 (c) S.I. 1994/1432.  
 (d) S.I. 1994/3070.  
 (e) S.I. 2000/3386.  
 (f) 2004 c.20.  
 (g) 1993 c.48.

(2) The actuary is to calculate the increase in the annual amount of national insurance contributions payable by the employer—

- (a) estimated to be payable in the one year after the calculation date;
- (b) using the earnings data specified in regulation 7; and
- (c) in accordance with the requirements in regulation 8.

(3) In this regulation ‘relevant part’ has the meaning given by section 41(1) of the Pension Schemes Act 1993.

### **Scheme liabilities in respect of the benefits that accrue annually for or in respect of the relevant members**

**6.—**(1) For the purposes of paragraph 2(3)(c) of Schedule 14 to the Act, a “scheme’s liabilities in respect of the benefits that accrue annually for or in respect of the relevant members” means any liabilities which arise by virtue of any rights accruing to future benefits under the scheme rules for or in respect of the relevant members.

(2) Where those rights include discretionary benefits, the discretionary benefits are to be taken into account in the same way as specified in the statement of funding principles as at the calculation date.

(3) Where those rights include money purchase benefits, the money purchase benefits are not to be taken into account.

(4) The actuary is to calculate the reduction in the amount of the liabilities which arise by virtue of any rights accruing to future benefits—

- (a) estimated for the one year after the calculation date;
- (b) using the earnings data specified in regulation 7; and
- (c) in accordance with the requirements of regulation 8.

### **Earnings data**

**7.—**(1) The actuary must use earnings data which, except where paragraph (3) applies, is for the period of one year ending with the calculation date.

(2) Where paragraph (3) applies, calculations may be made using earnings data which refers to the period of three years ending with the calculation date.

(3) This paragraph applies where—

- (a) the actuary is satisfied that the earnings data for some or all of the relevant members for the period of one year ending with the calculation date is significantly abnormal; and
- (b) the—
  - (i) principal employer in a case falling within regulation 15 or 16, or
  - (ii) employer in any other case;

writes to the actuary stating that it is also so satisfied.

### **General calculation requirements**

**8.—**(1) — The actuary must comply with the following requirements in calculating the amounts under regulation 4(2), 5(2) and 6(4).

(2) The amounts are to be calculated—

- (a) as if the proposed amendments took effect on the calculation date;
- (b) taking account only of the affect of the proposed amendments;
- (c) at present value at the calculation date; and
- (d) using the same assumptions for all calculations.

(3) Any data used in the calculations, other than earnings data, must be data—

- (a) the actuary considers is relevant; and
- (b) which—
  - (i) is as at the calculation date, or
  - (ii) refers to the period of one year ending with the calculation date, as the actuary considers appropriate.
- (4) Calculations must be made, except where paragraph (6) applies, using—
  - (a) the methods and assumptions used to calculate the scheme's technical provisions as recorded in the statement of funding principles—
    - (i) applicable at the calculation date; and
    - (ii) updated if necessary to reflect market conditions at the calculation date; and
  - (b) any other assumptions which the actuary considers necessary and which are consistent with those assumptions.
- (5) Where paragraph (6) applies, the actuary must adjust the assumptions to a best estimate basis provided the actuary is satisfied such adjustments are consistent with the underlying principles that would be used by the trustees or managers of the scheme in calculating an initial cash equivalent under regulation 7B of the Occupational Pension Schemes (Transfer Values) Regulations 1996<sup>(a)</sup> at the calculation date.
- (6) This paragraph applies where the—
  - (a) principal employer in a case falling within regulation 15 or 16; or
  - (b) employer in any other case,

writes to the actuary instructing the actuary to adjust the assumptions to remove any margin for prudence.

(7) The employer must choose a calculation date which may be any date after 31 December 2011.

#### **Additional calculation requirements where the power is used more than once**

**9.**—(1) This regulation applies where an employer uses the power in relation to the same members on a second or subsequent occasion.

(2) The calculation date must be the same date as on the first occasion the power was used.

(3) The value of the amounts being calculated for the purposes of regulation 8(1) shall be the present value at the calculation date.

#### **Further restrictions on the use of the power by shared cost schemes**

**10.**—(1) This regulation applies to schemes under the provisions of which contributions are payable by the employer and active members in specified proportions.

(2) Where the power is used to make amendments to—

- (a) increase the employee contributions; or
- (b) alter the future accrual of benefits,

(3) Any amendment to the proportion specified for employer and active member contributions must—

- (a) apply only in relation to relevant members; and
- (b) be no more than is necessary in order to ensure—
  - (i) where paragraph (4) applies, only the employee contributions are increased, or
  - (ii) where paragraph (5) applies, the employee contributions are not decreased.

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<sup>(a)</sup>

(4) This paragraph applies where the power is used to make amendments to increase the employee contributions.

(5) This paragraph applies where the power is used to make amendments to alter the future accrual of benefits.

## **Actuary**

**11.** For the purposes of paragraph 6(2)(a) of Schedule 14 to the Act, “actuary” means a Fellow of the Institute and Faculty of Actuaries.

## **Requirement for actuary’s certificate**

**12.**—(1) Except in a case where regulation 9 applies, the actuary must certify whether, in the actuary’s opinion—

- (a) the proposed amendments comply with paragraphs 2(2) and 3 of Schedule 14 to the Act; and
- (b) the calculations have been made in accordance with the requirements of regulations 4(2), 5(2), 6(2) to (4), 7(1) and 8(2) to (6) of these Regulations.

(2) In a case where regulation 9 applies, where the power is being used in relation to the same members on a second or subsequent occasion, the actuary must certify whether, in the actuary’s opinion—

- (a) all the amendments comply with the requirements in paragraph (1)(a) as if all the amendments are being made on this occasion; and
- (b) the calculations have been made in accordance with the requirements in paragraph (1)(b) and regulation 9(2) and (3).

(3) For the purposes of this regulation, “all the amendments” means the proposed amendments and the amendments made by the previous use, or uses, of the power.

(4) In a case where regulation 10 applies, where the power is being used to amend the specified proportion for employer and active member contributions, the actuary must certify in addition whether, in the actuary’s opinion the proposed amendment to the specified proportion complies with regulation 10(3).

(5) The actuary must provide a certificate under this regulation in the form specified in the Schedule and include such information as is specified in that form.

(6) The actuary must issue a certificate under this regulation to the trustees or managers of the scheme, and—

- (a) the principal employer in a case falling within regulation 15 or 16; or
- (b) in any other case the employer,

before any amendments are made.

## **Information**

**13.**—(1) The trustees or managers of an occupational pension scheme must provide any information requested by—

- (a) the principal employer in a case falling within regulation 15 or 16; or
- (b) in any other case the employer,

in connection with the use of the power.

(2) The information must be provided in writing within four weeks of the date on which the trustees or managers of the occupational pension scheme receive the request.

(3) Where the trustees or managers of a scheme have failed to take all reasonable steps to comply with any requirement imposed on them by this regulation, section 10 of the Pensions Act 1995 (civil penalties) applies.

### **Multi-employer segregated schemes with single employer sections**

**14.—**(1) This regulation applies to sections of segregated schemes where there is one employer in relation to that section of the scheme.

(2) Section 24 of the Act (Abolition of contracting-out for salary related schemes etc) and Schedule 14 to the Act (Power to amend schemes to reflect abolition of contracting-out) apply with the following modifications.

(3) In section 24(2) the reference to—

- (a) “an employer” is to be read as a reference to “an employer in relation to a section”; and
- (b) “an occupational pension scheme” is to be read as a reference to “that section of an occupational pension scheme”.

(4) In Schedule 14 in paragraphs 2, 9 and 15, references to a “scheme” are to be read as references to a “section of a scheme”.

(5) Where these Regulations (apart from this regulation) apply to a section of a segregated scheme where there is one employer in relation to that section of the scheme, they shall apply to each of the sections as if the section were a separate scheme.

### **Non-segregated multi-employer schemes**

**15.—**(1) This regulation applies to multi-employer schemes which are not segregated schemes.

(2) Section 24 of the Act (Abolition of contracting-out for salary related schemes etc) and Schedule 14 to the Act (Power to amend schemes to reflect abolition of contracting-out) apply with the following modifications.

(3) In section 24(2) the reference to—

- (a) “an employer” is to be read as a reference to “the principal employer”; and
- (b) “the employer’s national insurance contributions” is to be read as a reference to “the employers’ national insurance contributions”.

(4) In Schedule 14—

- (a) in paragraph 2(2), references to “the employer’s national insurance contributions” are to be read as references to “the employers’ national insurance contributions”; and
- (b) in paragraph 2(5), the reference to “the employer is” is to be read as a reference to “the employers are”.

### **Segregated schemes with multi employer sections**

**16.—**(1) This regulation applies to sections of segregated schemes where there is more than one employer in relation to that section of the scheme.

(2) Section 24 of the Act (Abolition of contracting-out for salary related schemes etc) and Schedule 14 to the Act (power to amend schemes to reflect abolition of contracting-out) apply with the following modifications.

(3) In section 24(2) the reference to—

- (a) “an employer” is to be read as a reference to “the principal employer in relation to a section”;
- (b) “an occupational pension scheme” is to be read as a reference to “that section of an occupational pension scheme”; and
- (c) “the employer’s national insurance contributions” is to be read as a reference to “the employers’ national insurance contributions”.

(4) In Schedule 14—

- (a) in paragraph 2(2), references to “the employer’s national insurance contributions” are to be read as a reference to “the employers’ national insurance contributions”; and

- (b) in paragraphs 2, 9 and 15, references to a “scheme” are to be read as references to a “section of a scheme”.

(5) Where these Regulations (apart from this regulation) apply to a section of a segregated scheme where there is more than one employer in relation to that section of the scheme, they shall apply to each of the sections as if the section were a separate scheme.

### **Schemes with different rules for different members**

**17.—**(1) This regulation applies to schemes that have different rules for different members where members in each section—

- (a) pay a different rate of employee contributions; or
- (b) accrue rights to different future benefits.

(2) Paragraph 2(2) of Schedule 14 to the Act (Power to amend schemes to reflect abolition of contracting-out) applies with the following modifications.

(3) References to “the relevant members” in—

- (a) sub-paragraph (2)(a) and (b) and in sub-paragraph (2)(c) in the first two places the words appear, are to be read as references to ‘the relevant members in the section of the scheme’ and
- (b) sub-paragraph (2)(c) in the final place the words appear, is to be read as a reference to ‘the relevant members in that section of the scheme’.

(4) Where these Regulations (apart from this regulation) apply to a scheme with different rules for different members to which this regulation applies, they shall apply to each of the sections as if the section were a separate scheme.

(5) For the purposes of this regulation, “section” means each section of the scheme which has different rules.

Signatory text

Address  
Date

*Name*  
Parliamentary Under Secretary of State  
Department

## **SCHEDULE 1**

Regulation [12]

### **Actuary’s Certificate**

#### **Form of Actuary’s certification**

Name of employer/principal employer:

Employer address:

Name of Scheme/section:

Scheme/section SCON(s):

Different rules for different members section (if applicable):

**Data and assumptions used**

Calculation date:

Date of statement of funding principles:

Any additional assumptions used:

Earnings data used:        1 year to calculation date        3 years to calculation date  
(delete answer not applicable)

Other data sources used:

**Estimates of values of scheme amendments**

My estimate of the following values is on the basis of the data referred to above, the assumptions set out in the statement of funding principles referred to above and the additional assumptions set out above:

the increase in the total annual employee contributions of the relevant members:

the reduction in the scheme's liabilities in respect of the benefits that accrue annually for or in respect of the relevant members is:

the sum of the increase in the total annual employee contributions and the reduction in the scheme's liabilities in respect of the benefits that accrue annually for or in respect of the relevant members is:

the annual increase in the employer's national insurance contributions in respect of the relevant part of the earnings of relevant members is:

Note: In a case where the power is being used on a second or subsequent occasion, estimates should be for the changes due to all the amendments, those proposed and the amendments made by the previous use or uses of the power.

In a case where the power is being used to amend schemes with different rules for different members, each section should be certified separately. Section should be identified in appropriate place on front page of this certificate.

**Certification**

I certify that, in my opinion—

The proposed amendments to the scheme/section set out in a draft deed dated:

comply with paragraphs 2(2) and 3 of Schedule 14 to the Pensions Act 2014.

The calculations have been made in accordance with the requirements of regulations 4(2), 5(2), 6(2) to (4), 7(1) and 8(2) to (6) of the Occupational Pension Schemes (Power to Amend Schemes to Reflect Abolition of Contracting-out) Regulations 2014.

**Alternative certification where the power is being used on a second or subsequent occasion**

I certify that, in my opinion—

All the amendments to the scheme/section, those proposed and set out in a draft deed dated:

and those made by the previous use or uses of the power and set out in deed/s dated:

comply with paragraphs 2(2) and 3 of Schedule 14 to the Pensions Act 2014.

The calculations have been made in accordance with the requirements of regulations 4(2), 5(2), 6(2) to (4), 7(1), 8(2) to (6) and 9(2) and (3) of the Occupational Pension Schemes (Power to Amend Schemes to Reflect Abolition of Contracting-out) Regulations 2014.

**Additional certification where the power is being used by a shared cost scheme**

I certify that, in my opinion—

The proposed amendments to the scheme/section set out in the draft deed referred to above, comply with regulation 10(3) of the Occupational Pension Schemes (Power to Amend Schemes to Reflect Abolition of Contracting-out) Regulations 2014.

Signature:

Date:

Name:

Qualification:

Address

**EXPLANATORY NOTE**

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

Section 24(2) of the Pensions Act 2014<sup>(a)</sup> gives employers sponsoring contracting-out salary related occupational pension schemes a power to amend the scheme rules to reflect the abolition of contracting-out for these schemes. Amendments may be made to increase employee contributions

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<sup>(a)</sup> 2014 c.

or reduce the future accrual of benefits for or in respect of some or all of the scheme members. But the extent to which the scheme rules may be amended using this power is limited by reference to the increase in the sponsoring employer's national insurance contributions due to the abolition of contracting-out.

These Regulations set out the detail of how the power may be used, in particular how an actuary is to calculate and certify that the value of the proposed amendments is not greater than the increase in the employer's national insurance contributions.

Regulation 3 defines, as required under section 24(4)(a) of the Pensions Act 2014, who is a 'protected person in relation to a scheme'. These are employees in the electricity, rail, including London transport, coal and nuclear energy industries in relation to whom legislation enacted at the time of privatisation of those industries continues to have effect.

Regulation 4 defines what is meant by the "total annual employee contributions of the relevant members" and specifies how the actuary is to calculate this amount. Regulations 5 and 6 define what is meant by "annual increase in an employer's national insurance contributions in respect of the relevant members" and a "scheme's liabilities in respect of the benefits that accrue annually for or in respect of the relevant members" respectively and similarly provide for calculation of these amounts.

Regulation 7 sets out what earnings data should be used in the calculations whilst regulation 8 sets out the requirements for the use of other data and actuarial methods and assumptions.

Regulation 9 imposes additional calculation requirements when an employer is using the power to make scheme amendments on a second or subsequent occasion. Regulation 10 imposes extra requirements regarding the scheme amendments when amendments are made in relation to a scheme where the employer and employee contributions to the scheme are made in specified proportions (these are commonly known as shared cost schemes).

Regulation 11 describes the category of person who may act as the actuary and Regulation 12 sets out what the actuary must certify before any proposed amendments may take effect. Schedule 1 sets out the certificate that the actuary must provide to the trustees or managers and sponsoring employer or principal employer in a multi employer scheme. Regulation 13 imposes an obligation on the trustees or managers of a scheme to provide any information requested by the sponsoring employer or principal employer in connection with the use of the power.

Regulations 14 to 16 modify certain provisions in the Pensions Act 2014 and these Regulations as these apply to multi-employer schemes. In respect of sections of a multi employer scheme that have a single sponsoring employer, then each section is to be treated as a separate scheme and each employer may make amendments. In schemes which are not segregated, or sections of schemes which have more than one employer, the principal employer in relation to the scheme or section may make the amendments.

Regulation 17 provides for schemes where there are different rules for different members if these relate to the member contributions or level of scheme benefits. In these cases each section with different rules is to be treated as a separate scheme.

An analysis of the impact of this legislation has been made. A copy is available in the libraries of both Houses of Parliament. A copy is annexed to the Explanatory Memorandum which is available alongside this instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk). Copies may also be obtained from the Better Regulation Unit of the Department for Work and Pensions, 2D, Caxton House, Tothill Street, London SW1H 9NA.