

2015 No.

PENSIONS

**The Occupational Pension Schemes (Consequential and
Miscellaneous Amendments) Regulations 2015**

Made - - - - - ***

Laid before Parliament ***

Coming into force - - - - - 6th April 2015

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 12C(1)(c), 71(6), 181(1), 182(2) and (3) and 183(1) of the Pension Schemes Act 1993(a) and sections 67(3)(b), 68(2)(e), 91(5)(c)(iii), 124(1), and 174(2) and (3) of the Pensions Act 1995(b).

By virtue of section 185(2)(d) of the Pension Schemes Act 1993(c) and section 120(2)(b) of the Pensions Act 1995 these Regulations were not subject to consultation, because in this case it appeared to the Secretary of State that by reason of urgency consultation was inexpedient.

Citation and commencement

1. These Regulations may be cited as the Occupational Pension Schemes (Consequential and Miscellaneous Amendments) Regulations 2015 and come into force on 6th April 2015.

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

2.—(1) The Occupational Pension Schemes (Preservation of Benefit) Regulations 1991(d) are amended as follows.

(2) Regulation 5 (short service benefit in lump sum form)(e) becomes paragraph (1) of regulation 5.

(3) In regulation 5(1)(a), after “(a), (b),” insert “(ba),”.

(4) After regulation 5(1), insert—

“(2) Where the payment of a lump sum to the member is permitted in accordance with paragraph (ba) of the lump sum rule in section 166(1) of the Finance Act 2004, the trustees

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- (a) 1993 c.48. Section 12C was inserted by section 136(5) of the Pensions Act 1995 (c.26). Section 183(1) was amended by paragraph 79 of Schedule 5, and paragraph 15(a) of Schedule 6, to that Act. Section 181(1) is cited because of the meaning it gives to “prescribed” and “regulations”.
- (b) 1995 c.26. Sections 67 to 67I of the Pensions Act 1995 were substituted by section 262 of the Pensions Act 2004 (c.35). Section 91(5) was amended by paragraph 57(4)(a) of Schedule 12 to the Welfare Reform and Pensions Act 1999. Section 124(1) of the Pensions Act 1995 is cited for the meaning it gives to “prescribed” and “regulations”.
- (c) Section 185(2)(d) was inserted by section 151 of, and paragraph 80(b) of Schedule 5 to, the Pensions Act 1995.
- (d) S.I. 1991/167.
- (e) Regulation 5 was substituted by S.I. 2009/2930.

or managers may provide for payment of any number of short term benefits they choose in the form of a lump sum before normal pension age.”.

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

3. In regulation 20(1)(a) of the Occupational Pension Schemes (Contracting-out) Regulations 1996 (payment of a lump sum instead of a pension under a relevant scheme)(a), after paragraph (ii) insert—

“(iia) an uncrystallised funds pension lump sum for the purposes of paragraph 4A of that Part;”.

Amendment to the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997

4.—(1) The Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997(b) are amended as follows.

(2) In regulation 2(1B)(b) (commutation of a pension under an occupational pension scheme)(c), after “paragraph (a)” insert “, (ba)”.

Amendments to the Occupational Pension Schemes (Modification of Schemes) Regulations 2006

5.—(1) The Occupational Pension Schemes (Modification of Schemes) Regulations 2006(d) are amended as follows.

(2) In paragraph (3) of regulation 1 (interpretation), after the definition of “the 2004 Act” insert—

““the 2015 Act” means the Pension Schemes Act 2015(e);”.

(3) In regulation 3 (non-application of the subsisting rights provisions), after paragraph (g) insert—

“(ga) which provides for the option specified in regulation 8B(3)(b) to be made available under the scheme to any person referred to in sub-paragraph (a) or (b) of paragraph (2) of that regulation;”.

(4) After regulation 8A (modification of schemes: reduction in the rate of pension)(f) insert—

“Modification of Schemes: drawdown pensions, uncrystallised funds pension lump sums and death benefits

8B.—(1) Subject to paragraph (5), the trustees of a trust scheme may by resolution modify the scheme for either or both of the following purposes—

- (a) providing for the nomination of a nominee or successor of a member, as defined by paragraphs 27A and 27F of Schedule 28 to the 2004 Act(g);
- (b) providing for the payment of a drawdown pension fund lump sum death benefit or a flexi-access drawdown fund lump sum death benefit, as defined by paragraphs 17 and 17A of Schedule 29 to the 2004 Act.

(2) Subject to paragraph (5), the trustees of a trust scheme may by resolution modify the scheme for the purpose of offering one or more of the options specified in paragraph (3) to any person who is—

(a) S.I. 1996/1172. Regulation 20 was substituted by S.I. 2006/744 and amended by S.I. 2009/2930.
(b) S.I. 1997/785, amended by S.I. 2006/744; there are other amending instruments but none is relevant.
(c) Paragraph (1B) of regulation 2 was inserted by S.I. 2006/744.
(d) S.I. 2006/759, amended by S.I. 2013/1754; there are other amending instruments but none is relevant.
(e) 2015 c.[-]
(f) Regulation 8A was inserted by S.I. 2013/1754.
(g) The Finance Act 2004 (c.12), as amended by the Taxation of Pensions Act 2014 (c.30).

- (a) a member who has attained normal minimum pension age, or in respect of whom the ill-health condition is met; or
 - (b) a survivor of a member.
- (3) The options referred to in paragraph (2) are—
- (a) designation of sums or assets held for the purpose of providing money purchase benefits as available for the payment of—
 - (i) drawdown pension (as defined by paragraph 4 of Schedule 28 to the 2004 Act);
 - (ii) dependants' drawdown pension (as defined by paragraph 18 of Schedule 28 to the 2004 Act);
 - (iii) nominees' drawdown pension (as defined by paragraph 27B of Schedule 28 to the 2004 Act); or
 - (iv) successors' drawdown pension (as defined by paragraph 27G of Schedule 28 to the 2004 Act);
 - (b) conversion of flexible benefits which are not money purchase benefits into money purchase benefits for the purpose of the exercise of an option specified in sub-paragraph (a);
 - (c) in the case of a member, payment of an uncrystallised funds pension lump sum.
- (4) A modification under paragraph (2) may include conditions on the exercise of an option specified in paragraph (3), including in particular—
- (a) provision for payment of a fee by the member or survivor on exercising an option specified in sub-paragraph (a) or (c) of paragraph (3);
 - (b) where a member—
 - (i) has not attained normal pension age under the scheme; and
 - (ii) exercises an option specified in sub-paragraph (b) or (c) of paragraph (3) in relation to subsisting rights to flexible benefits which are not money purchase benefits,
 provision for a reduction in the value or amount of that portion of the member's subsisting rights in respect of which the option is exercised.
- (5) No modification under this regulation may be made unless—
- (a) the employer in relation to the scheme consents; or
 - (b) in the case of a scheme where there is more than one employer—
 - (i) a person nominated by the employers, or otherwise appointed in accordance with the scheme rules, to act as the employers' representative (the "employer representative") consents; or
 - (ii) where there is no such employer representative, all of the employers in relation to the scheme consent other than any employer who has waived his right to give such consent.
- (6) In this regulation:
- "flexible benefit" has the meaning given by [clause 72] of the 2015 Act;
 - "the ill-health condition" is the condition specified in paragraph 1 of Schedule 28 to the 2004 Act;
 - "normal minimum pension age" has the meaning given by section 279(1) of the 2004 Act;
 - "normal pension age" (except in the phrase "normal minimum pension age") has the meaning given by [clause 74(1)] of the 2015 Act;
 - "uncrystallised funds pension lump sum" has the meaning given by paragraph 4A of Schedule 29 to the 2004 Act.

Modification of schemes: independent advice requirement in respect of transfers

8C.—(1) The trustees of a trust scheme may by resolution modify the scheme for the purpose of providing that, where the circumstances specified in paragraph (2) apply, the trustees are not required to make the transfer payment referred to in paragraph (2)(a).

(2) The circumstances specified for the purpose of paragraph (1) are—

- (a) the rules of the scheme would, in the absence of any modification made under this regulation, require the trustees to make a transfer payment in respect of a member's or survivor's subsisting rights to safeguarded benefits ("the transfer payment");
- (b) [clause 48] of the 2015 Act (together with any regulations made under it) requires the trustees to check that the member or survivor has received appropriate independent advice before making the transfer payment; and
- (b) the trustees—
 - (i) are unable to carry out the check by reason of factors outside their control; or
 - (ii) have carried out the check but the check did not confirm that the member or survivor had received appropriate independent advice.

(3) In this regulation "safeguarded benefits" and "appropriate independent advice" have the meanings given by [clause 48(8)] of the 2015 Act."

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

[Date]

Steve Webb
Minister of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to secondary legislation in consequence of the Taxation of Pensions Act 2014 (“the 2014 Act”) and the Pension Schemes Act 2015 (“the 2015 Act”). The 2014 Act introduced new types of authorised payments by registered pension schemes, and amended conditions applying to some existing categories of authorised payments. Part 4 of the 2015 Act makes provisions consequential on, or connected with, the changes introduced by the 2014 Act.

Regulation 2 amends the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 (S.I. 1991/167). The amendment is consequential on the changes made by the 2014 Act. It ensures that an occupational pension scheme can provide a short service benefit (which is a benefit paid for a member whose pensionable service terminates before normal pension age) using one of the new types of authorised payment (an uncrystallised funds pension lump sum).

Regulation 3 amends regulation 20(1)(a) of the Occupational Pension Schemes (Contracting-out) Regulations 1996 (S.I. 1996/1172) consequential on the changes made by the 2014 Act. The amendment ensures that an occupational pension scheme which is, or has been, contracted-out since April 1997, can offer as a lump sum rather than a pension one of the new types of authorised payment (an uncrystallised funds pension lump sum) in respect of pension accrued since April 1997 when the scheme was contracted-out.

Regulation 4 amends the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997 (S.I. 1997/785) in consequence of the changes made by the 2014 Act. The amendment ensures that the prohibition on commutation of a pension under an occupational pension scheme does not apply to payment of an uncrystallised funds pension lump sum.

Regulation 5 amends the Occupational Pension Schemes (Modification of Schemes) Regulations 2006 (S.I. 2006/759) (“the Modification Regulations”). The amendment made by regulation 5(3) provides that statutory restrictions on the modification of subsisting rights under occupational pension schemes do not apply to a modification which enables members or their survivors to access new types of authorised payments by converting benefits into money purchase benefits. Regulation 5(4) inserts new regulation 8B into the Modification Regulations, providing a power for trustees to modify their scheme for the purpose of offering the new types of authorised payments. Consent of the scheme’s employer or employers is required for such a modification, and conditions may be placed in relation to accessing the new types of authorised payments.

Regulation 5(4) also inserts new regulation 8C, providing a power for trustees to modify their scheme to ensure that they are not required to make a transfer payment under the scheme rules if they are unable to carry out a check required by [clause 48] of the 2015 Act, or the check does not confirm that the person seeking the transfer has received appropriate independent advice.

No impact assessment has been prepared for this instrument as it does not impose costs on businesses, civil society or the public sector.