
STATUTORY INSTRUMENTS

1996 No. 2517

PENSIONS

**The Occupational Pension Schemes
(Modification of Schemes) Regulations 1996**

<i>Made</i>	- - - -	<i>2nd October 1996</i>
<i>Laid before Parliament</i>		<i>9th October 1996</i>
<i>Coming into force</i>	- -	<i>6th April 1997</i>

The Secretary of State for Social Security, in exercise of the powers conferred on him by sections 10(3), 67(4), (5) and (6), 68(6), 124(1), 125(4) and 174(2) and (3) of the Pensions Act 1995⁽¹⁾, and of all other powers enabling him in that behalf, by this instrument, which is made before the end of the period of six months beginning with the coming into force of the provisions of Part I of that Act by virtue of which they are made⁽²⁾, hereby makes the following regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Modification of Schemes) Regulations 1996 and shall come into force on 6th April 1997.

(2) In these Regulations—

“the 1995 Act” means the Pensions Act 1995; and

“public service pension scheme” has the same meaning as in section 1 of the Pension Schemes Act 1993⁽³⁾.

(3) In these Regulations, unless the context otherwise requires, a reference—

(a) to a numbered regulation is to the regulation bearing that number in these Regulations;

(b) in a regulation to a numbered paragraph is to the paragraph bearing that number in that regulation.

(1) 1995 c. 26. Section 124(1) is cited because of the meaning ascribed to “prescribed” and “regulations”.

(2) See section 120(2)(c) of the Pensions Act 1995. This provides that the requirement to consult does not apply where regulations are made before the end of six months beginning with the coming into force of the provisions of Part I of the Pensions Act 1995 by virtue of which they are made.

(3) 1993 c. 48.

Extension of the meaning of “member”

2. In a case where a member (as defined in section 124(1) of the 1995 Act) has died, the meaning of “member” shall, for the purposes of section 67 of the 1995 Act and these Regulations, be extended to include the widow or widower or, in the case where there is no widow or widower, any other person who has an entitlement to a payment under the scheme in respect of the deceased member.

Certification requirement in respect of a power which would or might affect any entitlement or accrued right

3.—(1) For the purposes of section 67(4)(a) of the 1995 Act (certification requirements in respect of any power conferred on any person by an occupational pension scheme to modify that scheme) the prescribed requirement is that an actuary shall certify to the trustees of the scheme that, in his opinion, the exercise of the power in the proposed manner to modify the scheme would not adversely affect any member of the scheme (without his consent) in respect of his entitlement, or accrued rights, acquired before that power is exercised.

(2) The reference to an actuary in paragraph (1) shall mean—

- (a) in a case where the requirement of section 47(1)(b) of the 1995 Act (appointment of professional advisers) applies, the individual appointed by the trustees or managers as actuary in accordance with the requirements of section 47 of the 1995 Act;
- (b) in any other case—
 - (i) a Fellow of the Institute of Actuaries,
 - (ii) a Fellow of the Faculty of Actuaries, or
 - (iii) a person with actuarial qualifications who is approved by the Secretary of State.

Consent requirement in respect of a power which would or might affect any entitlement or accrued right

4. For the purposes of section 67(4)(b) of the 1995 Act (consent requirements in respect of any power conferred on any person by an occupational pension scheme to modify that scheme) the prescribed requirement is that the consent of the member of a scheme to the proposed exercise of the power to modify be in writing.

Circumstances where consent to the exercise of a power to modify shall be treated as given

5. Where a power to which section 67 of the 1995 Act applies may not (apart from that section) be exercised without the consent of any person, such consent may be treated as given where—

- (a) the trustees have sent written notification (“the first notification”) to the member’s last known address of the proposed exercise of the power to modify the scheme;
- (b) a further written notification (“the second notification”) was sent by the trustees at least 2 months after the date the first notification was sent; and
- (c) no response was received from the member in respect of both the first notification and second notification before the end of a period of 1 month from the date the second notification was sent.

Exemption from the restriction on powers to modify schemes

6. For the purposes of section 67(5) of the 1995 Act (restriction on the power to modify does not apply to the exercise of a power in a prescribed manner) the prescribed manner is, in the case of an occupational pension scheme which is not a trust scheme, the exercise of the power by the managers with the member’s consent.

Power of trustees to modify trust schemes by resolution

7. For the purposes of section 68(6) of the 1995 Act (power to modify schemes by resolution does not apply to trust schemes falling within a prescribed class or description) the prescribed class or description is any trust scheme—

- (a) in respect of which any Minister of the Crown has given a guarantee or made arrangements for the purpose of securing that the assets of the scheme are sufficient to meet its liabilities; or
- (b) which is a public service pension scheme.

Civil penalties

8. Where any person fails to comply with the requirements in a case where either regulation 3, 4 or 5 applies, the Occupational Pensions Regulatory Authority⁽⁴⁾ may require that person to pay within 28 days a penalty which shall—

- (a) in the case of an individual not exceed £5,000; and
- (b) in any other case, not exceed £50,000.

Signed by authority of the Secretary of State for Social Security.

Department of Social Security
2nd October 1996

Oliver Heald
Parliamentary Under-Secretary of State,

(4) The Occupational Pensions Regulatory Authority is established by virtue of section 1 of the Pensions Act 1995.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Occupational Pension Schemes (Modification of Schemes) Regulations 1996 (“the Regulations”) are made before the end of the period of six months beginning with the coming into force of sections 67 and 68 of the 1995 Act. The Regulations are accordingly exempt from the requirement to consult by virtue of section 120(2)(c) of the Pensions Act 1995 (c. 26).

Regulation 1 relates to citation, commencement and interpretation.

Regulation 2 extends the meaning of “member” for the purposes of section 67 of the Pensions Act and these Regulations.

Regulation 3 makes provision in respect of the certification requirements which an actuary must provide before any person can exercise a power to modify the scheme.

Regulation 4 makes provision in respect of obtaining the consent of a member before any person can exercise a power to modify the scheme.

Regulation 5 makes provision in respect of the circumstances in which consent of a member may be treated as given in respect of a power to modify the scheme.

Regulation 6 provides that the restriction on the power to modify does not apply to the exercise of the power in a prescribed manner.

Regulation 7 exempts certain schemes from the provisions which allow trustees of trust schemes to modify the scheme by resolution.

Regulation 8 provides for civil penalties to be imposed by the Occupational Pensions Regulatory Authority where the requirements of specified regulations have not been complied with.

An assessment of the compliance cost for employers of the measures arising from the Pensions Act 1995, including regulations, has been placed in the libraries of both Houses of Parliament. Copies can be obtained by post from the Department of Social Security, Private Pensions, 11th Floor, Adelphi, 1-11 John Adam Street, London WC2N 6HT.