

2015 No. 372

PENSIONS

**The Occupational Pension Schemes (Power to Amend Schemes
to Reflect Abolition of Contracting-out) Regulations
(Northern Ireland) 2015**

Made - - - - *19th November 2015*

Coming into operation - *14th December 2015*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 24(5) and 51(6) of, and paragraphs 2(3) and (4), 4, 6, 10(1), 12, 13 and 14(1) and (2) of Schedule 14 to, the Pensions Act (Northern Ireland) 2015(a).

Citation and commencement

1. These Regulations may be cited as the Occupational Pension Schemes (Power to Amend Schemes to Reflect Abolition of Contracting-out) Regulations (Northern Ireland) 2015 and shall come into operation on 14th December 2015.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Pensions Act (Northern Ireland) 2015;

“actuarial valuation” has the meaning given by Article 203(2)(a) of the 2005 Order (actuarial valuations and reports);

“the actuary” means the actuary appointed in accordance with regulation 10(2);

“amendment date” means the date amendments made using the power take effect;

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

“the effective date” means the date referred to in Article 203(2)(b) of the 2005 Order;

“the power” means the power under section 24(2) (abolition of contracting-out for salary related schemes etc.) to amend an occupational pension scheme;

“the principal employer” means, in relation to a multi-employer scheme—

(a) a person nominated by the employers, or by rules of the scheme, to act on behalf of the employers for the purposes of Article 208 of the 2005 Order (matters requiring agreement of the employer), or

(b) where there is no such nominee, a person nominated by the employers to act on their behalf for the purposes of the use of the power;

“the proposed amendments” means the amendments to be certified under paragraph 6(1) of Schedule 14 (power to amend schemes to reflect abolition of contracting-out);

“segregated scheme” means a multi-employer scheme which is divided into 2 or more sections where—

- (a) any contributions payable to the scheme by an employer in relation to the scheme, or by a member employed by that employer, 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;

“technical provisions” has the meaning given by Article 201(2) of the 2005 Order (the statutory funding objective).

(2) In these Regulations—

- (a) any reference to section 24 is a reference to section 24 of the Act, and
- (b) any reference to Schedule 14 is a reference to Schedule 14 to the Act.

Protected persons to whom the power does not apply

3.—(1) For the purposes of section 24(4)(a) (when the power may not be used), a person listed in this regulation is a “protected person in relation to a scheme”.

(2) A person who is a “protected employee” as defined by regulation 2(1) of the Electricity (Protected Persons) Pensions Regulations (Northern Ireland) 1992(a) on or after the amendment date.

(3) A person who falls within paragraph 9(5) of Schedule 8 to the Energy Act 2004(b) (persons entitled to pension protection under paragraphs 10 and 11) 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 (what can the power be used to do?), 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 4 of the 2005 Order (scheme funding) as at the calculation date.

(2) The actuary is to calculate the increase, due to the proposed amendments, in the total annual employee contributions of the relevant members—

- (a) estimated to be payable over the period of one year beginning with 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, 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 so much of the earnings of relevant members as exceeds the applicable lower earnings limit but not the upper accrual point (or the prescribed equivalents if the earner is paid otherwise than weekly).

(a) S.R. 1992 No. 93
(b) 2004 c. 20

(2) The actuary is to calculate the annual increase in the employer's national insurance contributions in respect of the relevant members—

- (a) estimated to be payable over the period of one year beginning with 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—

“applicable”, in relation to the lower earnings limit, means the limit or limits in force during the one year after the calculation date;

“lower earnings limit” is to be construed in accordance with section 5(a) of the Contributions and Benefits Act (earnings limits and thresholds for Class 1 contributions);

“the prescribed equivalents”—

- (a) in the context of the lower earnings limit, means the equivalent prescribed under section 5(4) of the Contributions and Benefits Act, and
- (b) in the context of the upper accrual point, means the equivalent prescribed under section 121(6A)(b) of the Contributions and Benefits Act;

“the upper accrual point” has the meaning given by section 121(1)(c) of the Contributions and Benefits Act.

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, 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 in the scheme's technical provisions—

- (a) where the calculation date is the same date as the effective date of an actuarial valuation, calculated by reference to that date, or
- (b) where the calculation date is not the same date as that date, calculated by reference to the date of the most recent actuarial valuation before 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, due to the proposed amendments, in the scheme's liabilities in respect of the benefits that accrue annually for or in respect of the relevant members—

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

(a) Section 5 was substituted by paragraph 1 of Schedule 10 to the Welfare Reform and Pensions Act 1999 (c. 30) and amended by section 8(2) and (3) of the Pensions Act 2007 (c. 22) and section 2(1) of the National Insurance Contributions Act 2008 (c. 16)

(b) Section 121(6A) was inserted by section 102(4)(b) of the Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13 (N.I.))

(c) The definition of “the upper accrual point” was inserted by section 10(3)(a) of the Pensions Act (Northern Ireland) 2008 (c. 1 (N.I.)) and substituted by section 102(4)(a) of the Pensions (No. 2) Act (Northern Ireland) 2008

(5) In this regulation, “money purchase benefits” has the meaning given by section 176(1)(a) of the Pension Schemes Act.

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 3 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 14 or 15, 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 carrying out the calculations under regulations 4(2), 5(2) and 6(4).

(2) The calculations are to be carried out—

(a) as if the proposed amendments took effect on the calculation date;

(b) taking account only of the effect of the proposed amendments;

(c) at the present value at the calculation date, and

(d) where an assumption is used in more than one calculation, using the same assumption for each calculation in which it is used.

(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 using—

(a) the methods and assumptions used to calculate the scheme’s technical provisions—

(i) where the calculation date is the same date as the effective date of an actuarial valuation, calculated by reference to that date, or

(ii) where the calculation date is not the same date as that date, calculated by reference to the date of the most recent actuarial valuation before the calculation date, 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 the assumptions used to calculate the scheme’s technical provisions, updated if necessary to reflect market conditions at the calculation date.

(5) Where paragraph (6) applies, the actuary must adjust the requested assumptions to a best estimate basis by removing any margin for prudence provided the actuary is satisfied such adjustments are consistent with the principles that would be used by the trustees or managers of

(a) The definition of “money purchase benefits” was amended by section 27(1) of the Pensions Act (Northern Ireland) 2012 (c. 3 (N.I.)) and paragraph 19 of the Schedule to S.R. 2005 No. 434

the scheme in calculating an initial cash equivalent under regulation 7B of the Occupational Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1996^(a) (initial cash equivalents for salary related benefits other than cash balance benefits not calculated by reference to final salary: assumptions and guidance) at the calculation date.

(6) This paragraph applies where the—

- (a) principal employer in a case falling within regulation 14 or 15, or
- (b) employer in any other case,

writes to the actuary instructing the actuary to adjust any assumptions (“the requested assumptions”) to remove any margin for prudence.

(7) Subject to paragraph (8), the—

- (a) principal employer in a case falling within regulation 14 or 15, or
- (b) employer in any other case,

must choose a calculation date which may be any date after 31st December 2011.

(8) Where the power is used in relation to the same members in the same scheme on a second or subsequent occasion, the calculation date must be the same date as on the first occasion the power was used.

(9) In this regulation, “any margin for prudence” means any margin for adverse deviation allowed for in accordance with regulation 5(4)(a) of the Occupational Pension Schemes (Scheme Funding) Regulations (Northern Ireland) 2005^(b) (calculation of technical provisions).

Further restrictions on the use of the power

9. The power may not be used to make amendments which would remove a power to determine any matter from the trustees or managers of a scheme.

Actuary

10.—(1) For the purposes of paragraph 6(2)(a) of Schedule 14 (requirement for actuary’s certificates), “actuary” means a Fellow of the Institute and Faculty of Actuaries^(c).

(2) The—

- (a) principal employer in a case falling within regulation 14 or 15, or
- (b) employer in any other case,

must appoint an actuary.

Requirement for the actuary’s certificate

11.—(1) Except in a case where regulation 8(8) applies, the actuary must certify whether, in the actuary’s opinion—

- (a) the proposed amendments comply with paragraph 2(2) of Schedule 14, and
- (b) the calculations have been made in accordance with the requirements of regulations 4(2), 5(2), 6(2) to (4), 7 and 8(2) to (6).

(2) In a case where regulation 8(8) applies, the actuary must certify whether, in the actuary’s opinion—

- (a) all the amendments comply with the requirement in paragraph (1)(a) as if all the amendments are being made on this second or subsequent (as appropriate) occasion, and

(a) S.R. 1996 No. 619; regulation 7B was inserted by regulation 4 of S.R. 2008 No. 370 and amended by regulation 3(2) of S.R. 2008 No. 388 and regulation 31(5) of S.R. 2014 No. 204

(b) S.R. 2005 No. 568

(c) The Institute and Faculty of Actuaries can be contacted at 7th Floor, 328-330 High Holborn, London WC1V 7PP and at www.actuaries.org.uk

(b) the calculations have been made in accordance with the requirements in paragraph (1)(b) and regulation 8(8).

(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 in relation to the same members in the same scheme as covered by the proposed amendments.

(4) The actuary must provide a certificate under this regulation that includes the information specified in the Schedule.

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

- (a) principal employer in a case falling within regulation 14 or 15, or
- (b) employer in any other case,

before any amendments are made.

Information

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

- (a) principal employer in a case falling within regulation 14 or 15, or
- (b) employer in any other case,

in connection with the use of the power.

(2) The information must be provided in writing within such reasonable period as agreed with the principal employer or employer as applicable.

(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, Article 10(a) of the 1995 Order (civil penalties) applies.

Segregated schemes with single employer sections

13.—(1) This regulation applies to a section of a segregated scheme where there is one employer in relation to that section of the scheme.

(2) Section 24 and Schedule 14 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 of an occupational pension scheme”, 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(2), 3(1), 9 and 15 references to “scheme” are to be read as references to “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 that section as if the section were a separate scheme.

Non-segregated multi-employer schemes

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

(2) Section 24 and Schedule 14 apply with the following modifications.

(a) Article 10 was amended by paragraph 9 of Schedule 2 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)) and Schedule 11 to the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1))

- (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

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

(2) Section 24 and Schedule 14 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 of an occupational pension scheme”;
 - (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 references to “the employers’ national insurance contributions”, and
 - (b) in paragraphs 2(2), 3(1), 9 and 15 references to “scheme” are to be read as references to “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 that section as if the section were a separate scheme.

Notification of the amendment date

16.—(1) Following the issue of a certificate by the actuary in accordance with regulation 11(5), the—

- (a) principal employer in a case falling within regulation 14 or 15, or
- (b) employer in any other case,

must consult the trustees or managers of the scheme about an appropriate amendment date.

(2) The principal employer or employer as applicable, must, as soon as reasonably practicable after consultation, notify the trustees or managers of the scheme of the amendment date.

(3) The notification required by paragraph (2) must be in writing.

(4) Amendments may not have effect before 6th April 2016.

Sealed with the Official Seal of the Department for Social Development on 19th November 2015

(L.S.)

Anne McCleary
A senior officer of the Department for Social Development

SCHEDULE

Regulation 11

Information to be included in the actuary's certificate

Name and address of employer/the principal employer.

Name and Scheme Contracted-out Number (SCON(s)) of scheme/section.

The amendments proposed to be made.

Data and assumptions used

The calculation date.

Date of scheme actuarial valuation.

Any additional assumptions used.

Any assumptions which the employer requested were adjusted to remove the margin for prudence.

Earnings data used: 1 year to the calculation date or 3 years to the calculation date.

Other data sources used.

Estimates of values of scheme amendments

A statement that the actuary's estimate of the following values is for the proposed amendments as set out in the certificate and on the basis of the data referred to, the methods and assumptions used to calculate the scheme's technical provisions and the additional assumptions set out in the certificate.

The values for—

the annual increase in the employer's national insurance contributions in respect of the earnings of relevant members as exceeds the lower earnings limit but not the upper accrual point;

the increase in the total annual employee contributions of the relevant members (if applicable);

the reduction in the scheme's liabilities in respect of the benefits that accrue annually for or in respect of the relevant members (if applicable);

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 (if applicable).

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

Certification

A statement that, in the actuary's opinion—

the proposed amendments to the scheme/section set out in this certificate comply with paragraph 2(2) of Schedule 14 to the Pensions Act (Northern Ireland) 2015;

the calculations have been made in accordance with the requirements of regulations 4(2), 5(2), 6(2) to (4), 7 and 8(2) to (6) of the Occupational Pension Schemes (Power to Amend Schemes to Reflect Abolition of Contracting-out) Regulations (Northern Ireland) 2015.

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

A statement that, in the actuary's opinion—

all the amendments to the scheme/section, those proposed and set out in this certificate and those made by the previous use or uses of the power and set out in resolutions (give dates) comply with paragraph 2(2) of Schedule 14 to the Pensions Act (Northern Ireland) 2015 as if all the amendments are being made on the second or subsequent (as appropriate) occasion;

the calculations have been made in accordance with the requirements of regulations 4(2), 5(2), 6(2) to (4), 7 and 8(2) to (6) and (8) of the Occupational Pension Schemes (Power to Amend Schemes to Reflect Abolition of Contracting-out) Regulations (Northern Ireland) 2015.

Signature:

Date:

Name:

Qualification:

Address:

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 24(2) of the Pensions Act (Northern Ireland) 2015 (“the Act”) gives employers sponsoring contracted-out salary related occupational pension schemes a power to amend the scheme rules to reflect the abolition of contracting-out for those schemes (“the power”). Amendments may be made to increase employee contributions or alter the future accrual of benefits, or do both, 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 for the purposes of section 24(4)(a) of the Act, who is a “protected person in relation to a scheme”. They are employees in former nationalised industries, such as the electricity industry, in relation to whom legislation enacted at the time of privatisation 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 those amounts.

Regulation 7 sets out earnings data to be used in the calculations. Regulation 8 sets out further requirements for how the actuary is to carry out the calculations, and for the use of other data and actuarial methods and assumptions when making the calculations required when using the power. Regulation 8(8) provides that when an employer is using the power to make scheme amendments on a second or subsequent occasion the calculation date must be the same as the original calculation date.

Regulation 9 imposes a restriction on the type of amendments that may be made. An employer may not make an amendment that would take the power to determine any matter away from the trustees or managers of the scheme.

Regulation 10 describes the category of person who may act as the actuary appointed by the employer. Regulation 11 sets out what the actuary must certify before any proposed amendments may take effect. The Schedule sets out the information that must be included in the certificate that the actuary must provide to the trustees or managers and sponsoring employer or principal employer in a multi-employer scheme. Regulation 12 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 13 to 15 modify certain provisions of the Act and these Regulations as they apply to multi-employer schemes. In respect of sections of a multi-employer scheme that have a single sponsoring employer, 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 16 provides that the employer or principal employer must consult with the scheme trustees or managers about an appropriate date for the amendments to take effect and after consultation notify them of the amendment date. No amendments made using the power can take effect before 6th April 2016 when contracting-out for salary related occupational pension schemes is due to be abolished.

The Pensions (2015 Act) (Commencement No. 1) Order (Northern Ireland) 2015 (S.R. 2015 No. 307 (C. 15)) provides for the coming into operation of section 24(5) of, and Schedule 14 to, the Act, some of the enabling provisions under which these Regulations are made, on 16th July 2015.

An assessment of the impact of these Regulations is detailed in a Regulatory Impact Assessment, a copy of which has been laid in the Business Office and the Library of the Northern Ireland Assembly. Copies of the Assessment are available from the Department for Social Development, Social Security Policy and Legislation Division, Level 1, James House, 2-4 Cromac Avenue, Gasworks Business Park, Ormeau Road, Belfast BT7 2JA or from the website: <https://www.dsdni.gov.uk/articles/pension-information>. A copy of the Assessment is also annexed to the Explanatory Memorandum which is available alongside this Statutory Rule on the website: <http://www.legislation.gov.uk/nisr>.

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STATUTORY RULES OF NORTHERN IRELAND

2015 No. 372

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(Northern Ireland) 2015

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