

EXPLANATORY MEMORANDUM TO
THE OCCUPATIONAL AND PERSONAL PENSION SCHEMES
(MISCELLANEOUS AMENDMENTS) REGULATIONS 2006

2006 No. 778

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 These Regulations contain a variety of amendments to various sets of regulations relating to occupational and personal pensions. They correct minor and technical errors or omissions in current regulations, together with amendments made in the Pensions Act 2004 and consequential amendments to complement pension tax simplifications introduced by the Finance Act 2004.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Background**
 - 4.1 These regulations are made under powers in the Pension Schemes Act 1993 and the Pensions Act 1995. They are subject to the negative resolution procedure.
 - 4.2 The Regulations make minor corrective, consequential and technical amendments to the following statutory instruments:
 - The Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997 (S.I. 1997/785);
 - The Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) Regulations 1996 (S.I. 1996/1975);
 - The Occupational Pension Schemes (Contracting-out) Regulations 1996 (S.I. 1996/1172);
 - The Occupational Pension Schemes (Investment) Regulations 2005 (S.I. 2005/3378);
 - The Personal Pension Schemes (Payments by Employers) Regulations 2000 (S.I. 2000/2692);
 - The Pension Sharing (Pension Credit Benefits) Regulations 2000 (S.I. 2000/1054);

- The Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (S.I. 2006/349); and the
- The Occupational Pension Schemes (Scheme Administration) Regulations 1996 (S.I. 1996/1715).

5. Extent

5.1 This instrument applies to Great Britain. Regulation 2 also extends to Northern Ireland.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

7.1 These amending Regulations correct minor and technical errors in a variety of pieces of secondary legislation relating to occupational and personal pension schemes.

7.2 Regulations 2 and 3 amend the “Contracting out Regulations” in Northern Ireland and Great Britain respectively. They specify that a Contributions Equivalent Premium (CEP – which restores rights to the State Second Pension where a person leaves a scheme with less than two years’ service) need not be paid when the early leaver has elected to take a cash transfer sum under the new provisions for early leavers coming in from April. The cash transfer sum will not be reduced to take account of the payment of a CEP, so if a CEP is paid as well there would be double provision. The amendments prevent that.

7.3 Regulation 4 updates and amends definitions of various terms used in the “Scheme Administration Regulations”. It also makes a minor corrective amendment to those regulations which constitutes the substitution of “(e)” for “(d)” in regulation 3(2)(b)(i). (d) relates to public service pension schemes and (e) relates to unfounded occupational pension schemes. This is in the context of a list of schemes that are exempted from the requirement to appoint a professional adviser to the scheme. (d) had already been omitted from the list through another regulation (reg. 3(3)(g) in the Scheme Administration Amendment Regulations 2005 S.I. No. 2005 No. 2426) so it was incorrect to cross refer to it in another regulation in that S.I. This was a drafting error. We are unaware that the error has had any practical consequences.

7.4 Regulation 5 contains consequential updates and amendments to the “Scheme Audited Accounts Regulations” to take account of the

replacement of the 1996 version of the Occupational Pension Schemes (Investment) Regulations by the 2005 version.

- 7.5 Regulation 6 amends the Assignment Regulations. The legislation provides a facility to commute Equivalent Pension Benefit (a pension provided by an occupational pension scheme to a member who was “contracted out” of the State graduated pension scheme which ran from 1961 to 1975) to a lump sum. Such commutation extinguishes the scheme’s liability to pay what is invariably a very small, unindexed pension from pensionable age. Currently the member’s consent to the commutation is required. This amendment will allow commutation to proceed on the basis of deemed consent where the scheme has written to the member’s last known address and has received no reply within two months.
- 7.6 Regulation 7 amends the “Pension Credit Benefit Regulations”. It contains a minor corrective amendment connected with the sharing of private pensions on divorce. The policy behind this legislation is to allow a former spouse who is an active member of an occupational pension scheme taking early retirement on incapacity grounds to commute part of her pension credit benefit into a lump sum providing that the benefit is held separately in the same occupational pension scheme and that she has reached age 50. When the regulation was drafted, instead of “and” an error was made and “or” was included. This has led to payment of pension credit benefit being made from age 50 even when the former spouse is not taking early retirement on incapacity grounds. This is contrary to the policy intention, and the amendment will correct the drafting error.
- 7.7 Regulation 8 amends the “Payments by Employers Regulations”. It preserves an existing requirement, which is applicable to the trustees or managers of certain personal and stakeholder pension schemes, under which they must send a statement of the payments made into the scheme each year to relevant employees.
- 7.8 Regulation 9 makes a small number of corrective amendments to the “Investment Regulations”. These include correcting the cross reference to the European Directive on Life Assurance contained in the definition of “insurance policy” in regulation 1(2) (regulation 9(2)(a)) and inserting the correct reference to Part II of Schedule 1 to the Financial Services and Markets Act 2000 (regulated activities) Order 2001 referred to in the definition of “specified qualifying insurance policy” (regulation 9(2)(b)). It also corrects some typographical errors in regulation 13(7) and inserts two new subsections to regulation 13(6) to cover sums that fall to be treated as debts due from the employer to the trustees under Minimum Funding Requirement provisions (these will continue to apply under transitional provisions until the trustees of a scheme have put in place its first schedule of contributions under the new scheme funding requirements). The new scheme funding

requirements replaced the Minimum Funding Requirement from 30 December 2005.

- 7.9 Regulation 10 amends the “Consultation by Employers Regulations” to ensure that the same employers that are required to consult on other workplace issues under the DTI’s Information and Consultation of Employees Regulations are also required to consult on proposed changes to the pension scheme. Ministers gave an undertaking to make this amendment when the Consultation by Employers Regulations were debated in both Houses earlier this year. The Consultation by Employers Regulations provide that certain employers are required to consult the affected scheme members when certain changes are proposed to an occupational pension scheme, or a personal pension scheme where the employer contributes via a direct payment arrangement.
- 7.10 Regulations 1, 2, 3, 4, 6 and 7 have been consulted upon. No comments were received on them. Regulations 5, 8 and 9 were not consulted upon as they come into force within six months of the sections of the Pensions Act 2004 (section 244 which substitutes a new section 35 of the Pensions Act 1995, and 268 which is a stand-alone provision) under which they are made. In respect of regulation 10 it appears to the Secretary of State for Work and Pensions that, by reason of urgency, because the regulations which it amends are to come into force from 6 April 2006, consultation is inexpedient. Ministers had given an undertaking during debate on the main regulations amended by regulation 10 – the “Consultation by employers” Regulations that the amendment in regulation 10 would be introduced urgently.

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.
- 8.2 This instrument imposes no new costs on the public sector.

9. Contact

Barry White at the Department for Work and Pensions Tel: 020-7962-8563 or e-mail: Barry.White@dwp.gsi.gov.uk can answer any queries regarding the instrument.