

Regulation 2(3) of this instrument is made in consequence of a defect in S.I. 2011/1294 and this instrument is being issued free of charge to all known recipients of S.I. 2011/1294.

STATUTORY INSTRUMENTS

2012 No. 542

PENSIONS

The Occupational Pension Schemes (Contracting-out and Modification of Schemes) (Amendment) Regulations 2012

<i>Made</i>	- - - -	<i>25th February 2012</i>
<i>Laid before Parliament</i>		<i>29th February 2012</i>
<i>Coming into force</i>	- -	<i>6th April 2012</i>

The Secretary of State for Work and Pensions, in exercise of the powers conferred by sections 12A(4), 16(3), 181(1) and 182(3) of the Pension Schemes Act 1993⁽¹⁾ and sections 68(2)(e), 124(1) and 174(3) of the Pensions Act 1995⁽²⁾, makes the following Regulations.

The Secretary of State has consulted such persons as the Secretary of State considers appropriate in accordance with section 185(1)(3) of the Pension Schemes Act 1993 and section 120(1) of the Pensions Act 1995.

Citation and commencement

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Contracting-out and Modification of Schemes) (Amendment) Regulations 2012.

(2) They come into force on 6th April 2012.

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

2.—(1) The Occupational Pension Schemes (Contracting-out) Regulations 1996⁽⁴⁾ are amended as follows.

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- (1) [1993 c.48](#). Section 12A was inserted by section 136(5) of the Pensions Act [1995 \(c.26\)](#). Section 16(3) was amended by section 151 of, and paragraph 28(a) of Schedule 5 to, the Pensions Act 1995. Section 181(1) is cited for the meaning it gives to “prescribed” and “regulations”.
- (2) [1995 c.26](#). Section 124(1) is cited for the meaning it gives to “prescribed” and “regulations”.
- (3) Section 185(1) was amended by sections 122, 151 and 177 of, and paragraph 46 of Schedule 3 to, and paragraphs 80(a), (d) and (f) of Schedule 5 to, and Schedule 7 to, the Pensions Act 1995.
- (4) [S.I. 1996/1172](#).

(2) In regulation 62(2)(5) (fixed rate revaluation of guaranteed minimum pensions for early leavers)—

(a) in sub-paragraph (f), for “6th April 2007, 4 per cent.” substitute “6th April 2007 but before 6th April 2012, 4 per cent.”, and

(b) after sub-paragraph (f) add—

“(g) where that period of service terminates on or after 6th April 2012, 4.75 per cent. compound.”.

(3) In Schedule 3(6) (further requirements for meeting the statutory standard), in paragraph 4(a) and (b), for “scheme” substitute “trustees or managers of the scheme”.

Amendment of the Occupational Pension Schemes (Modification of Schemes) Regulations 2006

3. In the Occupational Pension Schemes (Modification of Schemes) Regulations 2006(7), after regulation 7 (modification of schemes: surviving civil partners) insert—

“Modification of schemes: abolition of protected rights

7A.—(1) The trustees of a trust scheme may by resolution passed before 6th April 2018 modify the scheme for the purposes of removing all or part of a scheme rule which makes special provision in relation to the protected rights of members, and which no longer reflects a statutory provision as a result of the coming into force of provisions contained within—

- (a) section 15(1) of, and Schedule 4 to, the Pensions Act 2007(8) (abolition of contracting-out for defined contribution pension schemes);
- (b) sections 106 and 148 of, and Part 3 of Schedule 11 to, the Pensions Act 2008(9) (contracting-out: abolition of all protected rights);
- (c) the Pensions Act 2007 (Abolition of Contracting-out for Defined Contribution Pension Schemes) (Consequential Amendments) Regulations 2011(10);
- (d) the Pensions Act 2008 (Abolition of Protected Rights) (Consequential Amendments) Order 2011(11);
- (e) the Pensions Act 2007 (Abolition of Contracting-out for Defined Contribution Pension Schemes) (Consequential Amendments) (No. 2) Regulations 2011(12); and
- (f) the Pensions Act 2008 (Abolition of Protected Rights) (Consequential Amendments) (No. 2) Order 2011(13).

(2) Modifications made by resolution under paragraph (1)—

- (a) must only have effect from a date on or after the date of the coming into force of the provisions specified in paragraph (1)(a) to (f) to which those modifications relate, and
- (b) may have effect from a date before the resolution is passed.

(5) Regulation 62(2) was amended by [S.I. 2002/681](#) and [2007/814](#).

(6) Schedule 3 was added by [S.I. 2011/1294](#).

(7) [S.I. 2006/759](#).

(8) [2007 c.22](#). Schedule 4 to the Pensions Act 2007 is amended by article 8 of [S.I. 2011/1730](#) which comes into force immediately before 6th April 2012.

(9) [2008 c.30](#).

(10) [S.I. 2011/1245](#).

(11) [S.I. 2011/1246](#).

(12) [S.I. 2011/1724](#).

(13) [S.I. 2011/1730](#).

(3) A resolution passed under paragraph (1) is without prejudice to a member's money purchase benefits under the scheme (including any payments that become money purchase benefits under section 31 of the 1993 Act⁽¹⁴⁾ (investment and resources of scheme) on or after 6th April 2012).

(4) In this regulation, "protected rights" has the meaning given in section 181(1)⁽¹⁵⁾ of the 1993 Act (interpretation).".

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

25th February 2012

Steve Webb
Minister of State,
Department for Work and Pensions

⁽¹⁴⁾ Section 31 is amended by section 151 of, and paragraph 36 of Schedule 5 to, the Pensions Act 1995 and section 1 of, and paragraph 43 of Schedule 1 to, the [Social Security \(Transfer of Functions, etc.\) Act 1999\(c.2\)](#), and amended by [S.I. 2011/1730](#) (from 6th¹April 2012). It is to be repealed by section 15 of, and paragraph 49 of Schedule 4 to, the Pensions Act 2007 [\(c.22\)](#) from 6th April 2015 (see [S.I. 2011/1267](#)).

⁽¹⁵⁾ The definition of "protected rights" is amended by [S.I. 2011/1730](#) from 6th April 2012.

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)

These Regulations amend the Occupational Pension Schemes (Contracting-out) Regulations 1996 ([S.I. 1996/1172](#)) (“the Contracting-out Regulations”) and the Occupational Pension Schemes (Modification of Schemes) Regulations 2006 ([S.I. 2006/759](#)) (“the Modification of Schemes Regulations”).

Regulation 2(2) amends regulation 62 of the Contracting-out Regulations to provide for a new fixed rate percentage to be used for the revaluation of a person’s guaranteed minimum pension (if the scheme provides for revaluation by that method in accordance with section 16(2) of the Pension Schemes Act 1993 (c. 48)), if they leave contracted-out employment on or after 6th April 2012.

Regulation 2(3) corrects an error in a previous amendment to the Contracting-out Regulations (made by [S.I. 2011/1294](#)), and clarifies that it is the trustees or managers of the scheme to whom the actuary and the employer must provide the specified information under paragraph 4(a) and (b) of Schedule 3 to those Regulations.

Regulation 3 inserts a new regulation 7A into the Modification of Schemes Regulations. The new regulation provides a power for trustees to modify their scheme rules for the purposes of amending or removing rules which make special provision for the protected rights of members, where those rules are no longer required, or where the rules no longer reflect a statutory provision, as a result of the coming into force of the listed statutory provisions which implement the abolition of contracting-out on a defined contribution basis and the abolition of protected rights. The power can be used to make limited retrospective changes. The provision makes clear that the removal of rules relating to protected rights does not affect the member’s underlying entitlement to money purchase benefits under the scheme.

Regulation 2 amends an existing regulatory regime and has no new impact on the private sector and civil society organisations. Publication of an impact assessment is not necessary for such legislation.

Regulation 3 of this instrument enables more schemes to benefit from the abolition of the special provisions in relation to protected rights. An assessment of the impact of regulation 3 was included in the impact assessment published alongside the statutory instruments which implement the abolition of contracting-out on a defined contribution basis and the abolition of protected rights ([S.I. 2011/1245](#), [2011/1246](#), [2011/1724](#) and [2011/1730](#)). A copy of that impact assessment is available in the libraries of both Houses of Parliament and is annexed to the Explanatory Memorandum which is available alongside this instrument on www.legislation.gov.uk. Copies may also be obtained from the Better Regulation Unit of the Department for Work and Pensions, Caxton House, Tothill Street, London SW1H 9NA, or from the DWP website: <http://www.dwp.gov.uk/resourcecentre/ria.asp>.