

2015 No. 118

PENSIONS

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

<i>Made</i>	- - - -	<i>25th February 2015</i>
<i>Laid before Parliament</i>		<i>4th March 2015</i>
<i>Coming into force</i>	- -	<i>6th April 2015</i>

The Secretary of State for Work and Pensions, in exercise of the powers conferred by sections 24(5) and 54(5) and (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 2014(a), makes the following Regulations:

Citation and commencement

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Power to Amend Schemes to Reflect Abolition of Contracting-out) Regulations 2015.

(2) These Regulations come into force on 6th April 2015.

Interpretation

2. In these Regulations—

“the Act” means the Pensions Act 2014;

“the 2004 Act” means the Pensions Act 2004(b);

“actuarial valuation” has the meaning given by section 224(2)(a) of the 2004 Act (actuarial valuations and reports);

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

“the 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);

“effective date” means the date referred to in section 224(2)(b) of the 2004 Act;

“the power” means the power under section 24(2) of the Act to amend an occupational pension scheme;

“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 section 229 of the 2004 Act (matters requiring agreement of the employer), or

(a) 2014 c.19.
(b) 2004 c.35.

(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;

“proposed amendments” means the amendments to be certified under paragraph 6(1) of Schedule 14 to the Act;

“segregated scheme” means a multi-employer scheme which is divided into two 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; and

“technical provisions” has the meaning given by section 222(2) of the 2004 Act (the statutory funding objective).

Protected persons to whom the power does not apply

3.—(1) For the purposes of section 24(4)(a) of the Act (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)(England and Wales) Pension Regulations 1990 (interpretation)(a) on or after the amendment date.

(3) A person who is a “protected employee” as defined by regulation 2(1) of the Electricity (Protected Persons)(Scotland) Pension Regulations 1990 (interpretation)(b) on or after the amendment date.

(4) A person who is a “protected employee” as defined by article 1(2) of the Railway Pensions (Protection and Designation of Schemes) Order 1994 (citation, commencement and interpretation)(c) to whom part II of that Order has effect in relation to relevant pension rights, within the meaning of paragraph 6(3) of Schedule 11 to the Railways Act 1993 (the powers of protection)(d), accruing on or after the amendment date.

(5) A person who is a “protected employee” as defined by regulation 2(1) of the Coal Industry (Protected Persons) Pensions Regulations 1994 (interpretation)(e) on or after the amendment date.

(6) A person who is a “protected person” as defined by article 1(3) of the London Transport Pension Arrangements Order 2000 (citation, commencement and interpretation)(f) to whom that Order has effect on or after the amendment date.

(7) A person who falls within paragraph 9(5) of Schedule 8 to the Energy Act 2004 (persons entitled to pension protection under paragraphs 10 and 11)(g) 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 to the Act (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 3 of the 2004 Act (scheme funding) as at the calculation date.

(a) S.I. 1990/346.

(b) S.S.I 1990/510.

(c) S.I. 1994/1432, to which there are amendments not relevant to these Regulations.

(d) 1993 c.43.

(e) S.I. 1994/3070.

(f) S.I. 2000/3386, to which there are amendments not relevant to these Regulations.

(g) 2004 c.20.

(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 to the Act, 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).

(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—

“the 1992 Act” means the Social Security Contributions and Benefits Act 1992(a);

“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(b) of the 1992 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 1992 Act, and
- (b) in the context of the upper accrual point, means the equivalent prescribed under section 122(6A)(c) of that Act (interpretation); and

“the upper accrual point” has the meaning given by section 122(1)(d) of the 1992 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 to the Act, 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

(a) 1992 c.4.

(b) Section 5 was substituted by the Welfare Reform and Pensions Act 1999 (c.30), section 73 and Schedule 9 Part 1 paragraph 1.

(c) Section 122(6A) was inserted by the National Insurance Contributions Act 2008 (c.16), sections 3(1) and (4)(b).

(d) Definition of “the upper accrual point” in section 122(1) was inserted by the Pensions Act 2007 (c.22), section 12(3)(a) and substituted by the National Insurance Contributions Act 2008 (c.16), sections 3(1) and (4)(a).

- (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.
- (5) In this regulation, “money purchase benefits” have the meaning given by section 181 of the Pension Schemes Act 1993 (general interpretation)(a) .

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 three 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—

(a) 1993 c.48; the definition of “money purchase benefits” was amended by the Civil Partnership (Pensions and Benefit Payments)(Consequential, etc Provisions) Order 2005, S.I. 2005/2053 article 2 and paragraph 18 of the Schedule Part 3 and by the Pensions Act 2011 (c.19) section 29(1).

- (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 the scheme in calculating an initial cash equivalent under regulation 7B of the Occupational Pension Schemes (Transfer Values) Regulations 1996 (initial cash equivalents for salary related benefits other than cash balance benefits not calculated by reference to final salary)(a) 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 regulation 8(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 2005 (calculation of technical provisions)(b).

Further restrictions on the use of the power

9.—(1) 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 to the Act (requirement for actuary's certificate), “actuary” means a Fellow of the Institute and Faculty of Actuaries.

(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.

(a) S.I. 1996/1847; regulation 7B was inserted by S.I. 2008/1050, relevant amending instruments are 2008/2450 and 2014/1711.

(b) S.I. 2005/3377.

Requirement for 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 to the Act; 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
- (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—

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

before any amendments are made.

Information

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

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

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, section 10 of the Pensions Act 1995 (civil penalties)(a) 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 of the Act (abolition of contracting-out for salary related schemes etc) and Schedule 14 to the Act (power to amend schemes to reflect abolition of contracting-out) 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

(a) 1995 c.26; section 10(8A) was inserted by the Welfare Reform and Pensions Act 1999 (c.30), section 18 and Schedule 2 paragraph 11 and amended by the Crime and Courts Act 2013 (c.22), section 17(5) and Schedule 9 Part 3 paragraph 52(1)(b) and (2), and the Tribunals, Courts and Enforcement Act 2007, section 62(3) and Schedule 13 paragraph 121.

(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 a “scheme” are to be read as references to a “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 of the Act and Schedule 14 to the Act 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”; 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 of the Act and Schedule 14 to the Act 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 a “scheme” are to be read as references to a “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 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.

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

25th February 2015

Steve Webb
Minister of State
Department for Work and Pensions

SCHEDULE

Regulation 11

Information to be included in Actuary's certificate

Name and address of employer/principal employer

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

The amendments proposed to be made.

Data and assumptions used

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

What earnings data used: 1 year to calculation date or 3 years to 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 should 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 2014.

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 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 2014.

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

Signature:

Date:

Name:

Qualification:

Address:

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 24(2) of the Pensions Act 2014 (c.19) gives employers sponsoring contracting-out salary related occupational pension schemes a power to amend the scheme rules to reflect the abolition of contracting-out for these 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 under section 24(4)(a) of the Pensions Act 2014, who is a 'protected person in relation to a scheme'. These are employees in the electricity, rail, London transport, coal and nuclear energy industries in relation to whom legislation enacted at the time of privatisation of those industries 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 these amounts.

Regulation 7 sets out what earnings data should 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, and 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 in the Pensions Act 2014 and these Regulations as these 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.

An analysis of the impact of this legislation has been made. A copy is available from the libraries of both Houses of Parliament. A copy 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, 2D, Caxton House, Tothill Street, London SW1H 9NA.

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