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STATUTORY INSTRUMENTS

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**2015 No. 493**

**PENSIONS**

**The Occupational Pension Schemes (Consequential and Miscellaneous Amendments) Regulations 2015**

<i>Made</i>	- - - -	<i>3rd March 2015</i>
<i>Laid before Parliament</i>		<i>9th March 2015</i>
<i>Coming into force</i>	- -	<i>6th April 2015</i>

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 12C(1)(c), 71(6), 181(1), 182(2) and (3) and 183(1) of the Pension Schemes Act 1993(1) and sections 67(3)(b), 68(2)(e), 91(5)(c)(iii), 124(1) and 174(2) and (3) of the Pensions Act 1995(2).

By virtue of section 185(2)(d) of the Pension Schemes Act 1993(3) and section 120(2)(b) of the Pensions Act 1995 these Regulations were not subject to consultation, because in this case it appeared to the Secretary of State that by reason of urgency consultation was inexpedient.

**Citation and commencement**

1. These Regulations may be cited as the Occupational Pension Schemes (Consequential and Miscellaneous Amendments) Regulations 2015 and come into force on 6th April 2015.

**Amendment to the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991**

2. In regulation 5(a) of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 (short service benefit in lump sum form)(4), after “(a), (b),” insert “(ba),”.

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(1) 1993 c.48. Section 12C was inserted by section 136(5) of the Pensions Act 1995 (c.26). Section 183(1) was amended by paragraph 79 of Schedule 5, paragraph 15(a) of Schedule 6 and Parts III and IV of Schedule 7 to that Act. Section 181(1) is cited because of the meaning it gives to “prescribed” and “regulations”.

(2) 1995 c.26. Sections 67 to 67I were substituted by section 262 of the Pensions Act 2004 (c.35). Section 91(5) was amended by paragraph 57(4)(a) of Schedule 12 to the Welfare Reform and Pensions Act 1999 (c.30); there are other amendments to section 91(5) but none is relevant. Section 124(1) is cited for the meaning it gives to “prescribed” and “regulations”.

(3) Section 185(2)(d) was inserted by paragraph 80(b) of Schedule 5 to the Pensions Act 1995.

(4) S.I. 1991/167. Regulation 5 was substituted by S.I. 2009/2930.

### **Amendment to the Occupational Pension Schemes (Contracting-out) Regulations 1996**

3. In regulation 20(1)(a) of the Occupational Pension Schemes (Contracting-out) Regulations 1996 (payment of a lump sum instead of a pension payable under a relevant scheme)(5), after paragraph (ii) insert—

“(ia) an uncrystallised funds pension lump sum for the purposes of paragraph 4A of that Part;”.

### **Amendment to the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997**

4. In regulation 2(1B)(b) of the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997 (commutation of a pension under an occupational pension scheme)(6), after “paragraph (a)” insert “, (ba)”.

### **Amendments to the Occupational Pension Schemes (Modification of Schemes) Regulations 2006**

5.—(1) The Occupational Pension Schemes (Modification of Schemes) Regulations 2006(7) are amended as follows.

(2) In paragraph (3) of regulation 1 (interpretation), after the definition of “the 2004 Act” insert—

““the 2015 Act” means the Pension Schemes Act 2015(8);”.

(3) In regulation 3 (non-application of the subsisting rights provisions), after paragraph (g) insert—

“(ga) which provides for the option specified in regulation 8B(3)(b) (conversion of flexible benefits for the purpose of payment of drawdown pension etc) to be made available under the scheme to any person referred to in sub-paragraph (a) or (b) of paragraph (2) of that regulation;”.

(4) After regulation 8A (modification of schemes: reduction in the rate of pension)(9) insert—

#### **“Modification of schemes: drawdown pensions, uncrystallised funds pension lump sums and death benefits**

**8B.**—(1) Subject to paragraph (5), the trustees of a trust scheme may by resolution modify the scheme for either or both of the following purposes—

- (a) providing for the nomination, in relation to a member of the scheme, of a nominee or successor of the member, as defined by paragraphs 27A and 27F of Schedule 28 to the 2004 Act (supplementary provision about authorised pensions – pension death benefit rules)(10);
- (b) providing for the payment of a drawdown pension fund lump sum death benefit or a flexi-access drawdown fund lump sum death benefit, as defined by paragraphs 17 and 17A of Schedule 29 to the 2004 Act (supplementary provision about authorised lump sums – lump sum death benefit rule)(11).

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(5) S.I. 1996/1172. Regulation 20 was substituted by S.I. 2006/744 and amended by S.I. 2009/2930.

(6) S.I. 1997/785. Paragraph (1B) of regulation 2 was inserted by S.I. 2006/744.

(7) S.I. 2006/759, amended by S.I. 2013/1754; there are other amending instruments but none is relevant.

(8) 2015 c.8.

(9) Regulation 8A was inserted by S.I. 2013/1754.

(10) See regulation 1(3) of S.I. 2006/759 for the meaning of “the 2004 Act”. Paragraphs 27A and 27F of Schedule 28 to the Finance Act 2004 (c.12) were inserted by paragraph 3(1) of Schedule 2 to the Taxation of Pensions Act 2014 (c.30).

(11) Paragraph 17 of Schedule 29 was amended by paragraph 37 of Schedule 16 to the Finance Act 2011 (c.11) and paragraph 23 of Schedule 1 to the Taxation of Pensions Act 2014. Paragraph 17A of Schedule 29 was inserted by paragraph 24 of Schedule 1 to the Taxation of Pensions Act 2014.

- (2) Subject to paragraph (5), the trustees of a trust scheme may by resolution modify the scheme for the purpose of offering one or more of the options specified in paragraph (3) to any person who is—
- (a) a member who has attained normal minimum pension age (as defined by section 279(1) of the 2004 Act) or who meets the ill-health condition specified in paragraph 1 of Schedule 28 to the 2004 Act; or
  - (b) a survivor of a member.
- (3) The options referred to in paragraph (2) are—
- (a) designation of sums or assets held for the purpose of providing money purchase benefits as available for the payment of—
    - (i) drawdown pension (as defined by paragraph 4 of Schedule 28 to the 2004 Act<sup>(12)</sup>);
    - (ii) dependants' drawdown pension (as defined by paragraph 18 of Schedule 28 to the 2004 Act<sup>(13)</sup>);
    - (iii) nominees' drawdown pension (as defined by paragraph 27B of Schedule 28 to the 2004 Act<sup>(14)</sup>); or
    - (iv) successors' drawdown pension (as defined by paragraph 27G of Schedule 28 to the 2004 Act<sup>(15)</sup>);
  - (b) conversion of flexible benefits which are not money purchase benefits into money purchase benefits for the purpose of the exercise of an option specified in sub-paragraph (a);
  - (c) in the case of a member, payment of an uncrystallised funds pension lump sum (as defined by paragraph 4A of Schedule 29 to the 2004 Act<sup>(16)</sup>).
- (4) A modification under paragraph (2) may include conditions on the exercise of an option specified in paragraph (3), including in particular—
- (a) provision for payment of a fee by the member or survivor on exercising an option specified in sub-paragraph (a) or (c) of paragraph (3);
  - (b) where a member—
    - (i) has not attained normal pension age (as defined by section 76(1) of the 2015 Act) under the scheme; and
    - (ii) exercises an option specified in sub-paragraph (b) or (c) of paragraph (3) in relation to subsisting rights to flexible benefits which are not money purchase benefits,provision for a reduction in the value or amount of the portion of the member's subsisting rights in respect of which the option is exercised.
- (5) No modification under this regulation may be made unless—
- (a) the employer in relation to the scheme consents; or
  - (b) in the case of a scheme where there is more than one employer—
    - (i) a person nominated by the employers, or otherwise appointed in accordance with the scheme rules, to act as the employers' representative (the "employer representative") consents; or

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(12) Paragraph 4 of Schedule 28 was amended by paragraph 3 of Schedule 16 to the Finance Act 2011.

(13) Paragraph 18 of Schedule 28 was amended by paragraph 13 of Schedule 16 to the Finance Act 2011.

(14) Paragraph 27B of Schedule 28 was inserted by paragraph 3(1) of Schedule 2 to the Taxation of Pensions Act 2014.

(15) Paragraph 27G of Schedule 28 was inserted by paragraph 3(1) of Schedule 2 to the Taxation of Pensions Act 2014.

(16) Paragraph 4A of Schedule 29 was inserted by paragraph 57 of Schedule 1 to the Taxation of Pensions Act 2014.

- (ii) where there is no such employer representative, all of the employers in relation to the scheme consent other than any employer who has waived his right to give such consent.

(6) In this regulation, “flexible benefit” has the meaning given by section 74 of the 2015 Act.

**Modification of schemes: independent advice requirement in respect of transfers**

**8C.**—(1) The trustees of a trust scheme may by resolution modify the scheme for the purpose of providing that, where the circumstances specified in paragraph (2) apply, the trustees are not required to make the proposed transfer payment referred to in paragraph (2)(a).

(2) The circumstances specified for the purpose of paragraph (1) are—

- (a) the rules of the scheme would, in the absence of any modification made under this regulation, require the trustees to make a transfer payment in respect of a member’s or survivor’s subsisting rights to benefits (“the proposed transfer payment”);
- (b) section 48 of the 2015 Act (independent advice in respect of conversions and transfers) requires the trustees to check that the member or survivor has received appropriate independent advice (as defined by subsection (8) of that section) before making the proposed transfer payment; and
- (c) the trustees—
  - (i) are unable to carry out the check by reason of factors outside their control; or
  - (ii) have carried out the check but the check did not confirm that the member or survivor had received appropriate independent advice.”.

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

3rd March 2015

*Steve Webb*  
Minister of State,  
Department for Work and Pensions

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make amendments to secondary legislation on occupational pension schemes in consequence of the Taxation of Pensions Act 2014 (“the 2014 Act”) and the Pension Schemes Act 2015 (“the 2015 Act”). The 2014 Act introduced new types of authorised payments by registered pension schemes, and amended conditions applying to some existing categories of authorised payments. Part 4 of the 2015 Act makes provisions consequential on, or connected with, the changes introduced by the 2014 Act.

Regulation 2 amends the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 (S.I. 1991/167). The amendment is consequential on the changes made by the 2014 Act. It ensures that an occupational pension scheme can provide a short service benefit (which is a benefit paid for a member whose pensionable service terminates before normal pension age) using one of the new types of authorised payment (an uncrystallised funds pension lump sum).

Regulation 3 amends regulation 20(1)(a) of the Occupational Pension Schemes (Contracting-out) Regulations 1996 (S.I. 1996/1172) consequential on the changes made by the 2014 Act. The amendment ensures that an occupational pension scheme which is, or has been, contracted-out since April 1997 can pay an uncrystallised funds pension lump sum in respect of pension rights accrued since April 1997 when the scheme was contracted-out.

Regulation 4 amends the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997 (S.I. 1997/785) in consequence of the changes made by the 2014 Act. The amendment ensures that the prohibition on commutation of a pension under an occupational pension scheme does not apply to payment of an uncrystallised funds pension lump sum.

Regulation 5 amends the Occupational Pension Schemes (Modification of Schemes) Regulations 2006 (S.I. 2006/759) (“the Modification Regulations”). The amendment made by regulation 5(3) provides that statutory restrictions on the modification of subsisting rights under occupational pension schemes do not apply to a modification which enables members or their survivors to access new types of authorised payments by converting benefits into money purchase benefits. Regulation 5(4) inserts new regulation 8B into the Modification Regulations, providing a power for trustees to modify their scheme for the purpose of offering the new types of authorised payments. Consent of the scheme’s employer or employers is required for such a modification, and conditions may be placed in relation to accessing the new types of authorised payments.

Regulation 5(4) also inserts new regulation 8C, providing a power for trustees to modify their scheme to ensure that they are not required to make a transfer payment under the scheme rules if they are unable to carry out a check required by section 48 of the 2015 Act, or the check does not confirm that the person seeking the transfer has received appropriate independent advice.

No impact assessment has been prepared for this instrument as it does not impose costs on businesses, civil society or the public sector.