

2010 No. 499

PENSIONS

**The Occupational and Personal Pension Schemes
(Miscellaneous Amendments) Regulations 2010**

Made - - - - *25th February 2010*

Laid before Parliament *5th March 2010*

Coming into force - - *6th April 2010*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 21(1) and 181(1) of the Pension Schemes Act 1993(a), sections 47(5)(a), 68(2)(e), 73B(4)(a), 119 and 124(1) of the Pensions Act 1995(b), sections 30 and 83(4) of the Welfare Reform and Pensions Act 1999(c) and sections 230(2) and (3), 259(1) and (2) and 318(1) of the Pensions Act 2004(d).

In accordance with section 185(1) of the Pension Schemes Act 1993, section 120(1) of the Pensions Act 1995, section 83(11) of the Welfare Reform and Pensions Act 1999 and section 317(1) of the Pensions Act 2004, the Secretary of State has consulted with such persons as the Secretary of State considers appropriate.

Regulation 8 of these Regulations is consequential upon the coming into force of the Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2009(e) and is made before the end of the period of six months beginning with the coming into force of that provision(f).

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- (a) 1993 c.48. Section 21(1) was substituted by section 284(1) of the Pensions Act 2004 (c.35). Section 181(1) is cited because of the meaning it gives to “prescribed” and “regulations”.
- (b) 1995 c.26. Section 73B was inserted by section 270(1) of the Pensions Act 2004 (c.35). Section 119 was amended by section 319(1) of, and paragraphs 34 and 68 of Schedule 12 to, the Pensions Act 2004 (c.35), and by section 17 of, and paragraph 8 of Schedule 5 to, the Pensions Act 2007 (c. 22). Section 124(1) is cited because of the meaning it gives to “prescribed” and “regulations”.
- (c) 1999 c.30.
- (d) 2004 c.35. Section 230(3) was amended by section 17 of, and paragraph 9 of Schedule 5 to, and section 27(2) of, and Part 8 of Schedule 7 to, the Pensions Act 2007 (c. 22). Section 318(1) is cited because of the meaning it gives to “prescribed” and “regulations”.
- (e) S.I. 2009/3055, which, during a transitional period, modifies the rules of existing pension schemes to require any provision which would have required the agreement of the Inland Revenue or Her Majesty’s Revenue and Customs to make an amendment to a rule of a scheme to be disregarded in so far as that provision requires such agreement.
- (f) See section 120(2)(d) of the Pensions Act 1995 which provides that the requirement that the Secretary of State consult such persons as he considers appropriate before making regulations under Part I of that Act does not apply to regulations which state that they are consequential upon a specified enactment and are made before the end of the period of six months beginning with the coming into force of that enactment. *See also* section 176(1) of the Pension Act 1995 which provides that “enactment” includes an instrument comprised in subordinate legislation.

Citation and commencement

1. These Regulations may be cited as the Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2010 and shall come into force on 6th April 2010.

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

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

(2) In Regulation 60(1)(b)(payment of a guaranteed minimum pension as a lump sum)(b)—

- (a) omit “permitted either”,
- (b) in sub-paragraphs (i) and (ii), insert at the beginning “permitted”,
- (c) in sub-paragraph (i), omit (cc), and
- (d) at the end insert—

“; or

- (iii) made by a registered pension scheme (within the meaning given in section 150(2) of the Finance Act 2004 (meaning of “pension scheme”)), is a payment that is described in Part 2 of the 2009 Regulations and is made to or in respect of a member.”

Amendment of the Occupational Pension Schemes (Scheme Administration) Regulations 1996

3.—(1) The Occupational Pension Schemes (Scheme Administration) Regulations 1996(c) are amended as follows.

(2) In regulation 3 (exemptions from the professional advisers requirements)—

- (a) omit paragraph (1)(j), and
- (b) in paragraph (2)(b)(i)(d), omit “(j),”.

Amendment of the Occupational Pension Schemes (Winding Up) Regulations 1996

4.—(1) The Occupational Pension Schemes (Winding Up) Regulations 1996(e) are amended as follows.

(2) For regulation 1(5) (interpretation)(f) substitute—

“(5) References in these Regulations to BAS standards are to guidance or standards adopted or prepared, and from time to time revised, by the Board for Actuarial Standards, which are relevant to the determination, calculation and verification of the amount or value of the liabilities of the scheme to which section 73 applies.”.

(3) In regulation 4(1)(d)(calculation of the value or amount of scheme assets and liabilities)(g), for “the guidance given in GN19, so far as that guidance applies for the purposes of these Regulations” substitute “any relevant BAS standards”.

Amendment of the Pension Sharing (Valuation) Regulations 2000

5.—(1) The Pension Sharing (Valuation) Regulations 2000(h) are amended as follows.

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- (a) S.I. 1996/1172.
 - (b) Regulation 60 was substituted by S.I. 2006/744 and amended by S.I. 2006/1337 and S.I. 2009/2930.
 - (c) S.I. 1996/1715.
 - (d) Regulation 3(2)(b) was substituted by S.I. 2005/2426.
 - (e) S.I. 1996/3126.
 - (f) Regulation 1(5) was substituted by S.I. 2007/60 and amended by S.I. 2008/2301.
 - (g) Regulation 4 was substituted by S.I. 2005/706 as amended by S.I. 2005/2159.
 - (h) S.I. 2000/1052.

(2) In regulation 3 (calculation and verification of cash equivalents for the purposes of the creation of pension debits and credits)—

- (a) in paragraph (a), for “regulations 4 and 5” substitute “regulation 4”, and
- (b) in paragraph (b), for “regulations 6 and 7” substitute “regulations 5 and 7”.

Amendment of the Occupational Pension Schemes (Scheme Funding) Regulations 2005

6.—(1) The Occupational Pension Schemes (Scheme Funding) Regulations 2005(a) are amended as follows.

(2) For regulation 15 (guidance relating to actuarial advice)(b) substitute—

“Guidance relating to actuarial advice

15. When advising the trustees or managers of a scheme on any of the matters specified in section 230(1) of the 2004 Act, the actuary shall have regard to any guidance or standards adopted or prepared, and from time to time revised, by the Board for Actuarial Standards which are relevant to the matters specified in that section.”.

Amendment of the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006

7.—(1) The Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006(c) are amended as follows.

(2) In regulation 8(3) (listed changes: occupational pension schemes), at the end insert—

“(e) to change what elements of pay constitute pensionable earnings, or to change the proportion of or limit the amount of any element of pay that forms part of pensionable earnings, for or in respect of members or members of a particular description.”.

(3) After regulation 8(4) insert—

“(5) “Pensionable earnings” means the earnings by reference to which pension benefits are calculated, and an “element of pay” includes basic salary, a pay rise, an overtime payment, and a bonus payment.”.

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

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

(2) After regulation 6, insert the following regulation—

“Modification of Schemes: the Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2009

6A.—(1) Paragraph (2) applies where any power to amend the rules of an existing trust scheme, as those rules stood immediately before 6th April 2006, is subject to the agreement, consent, approval of, or confirmation of continued approval of the scheme by—

- (a) the Inland Revenue, the Board of Inland Revenue, the Commissioners of Inland Revenue, or any officer of any of them (whether referred to as such or by reference to another title), or

(a) S.I. 2005/3377.

(b) Regulation 15 was substituted by S.I. 2007/60 and amended by S.I. 2008/2301.

(c) S.I. 2006/349.

(d) S.I. 2006/759.

(b) Her Majesty's Revenue and Customs, the Commissioners for Her Majesty's Revenue and Customs or an officer of Revenue and Customs.

(2) Where this paragraph applies, the trustees of a trust scheme may by resolution modify the power of amendment mentioned in paragraph (1) so as to remove that requirement for agreement, consent, approval, or confirmation of continued approval.

(3) Paragraph (4) applies where (apart from this regulation) the trustees of an existing trust scheme do not have power to make such alterations to the scheme as may be required to remove any requirement in the scheme rules, as they stood immediately before 6th April 2006, for the agreement, consent, approval of or confirmation of continued approval of the scheme by any of the bodies or persons mentioned in sub-paragraphs (1)(a) and (b).

(4) Where this paragraph applies, the trustees of a trust scheme may by resolution amend the rules of the scheme so as to remove that requirement for agreement, consent, approval or confirmation of continued approval.”

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

25th February 2010

Angela Eagle
Minister of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make various amendments to seven Statutory Instruments about occupational and personal pension schemes.

Regulation 2 amends the Occupational Pension Schemes (Contracting-out) Regulations 1996 (S.I. 1996/1172) to correct an error in regulation 60.

Regulation 3 amends the Occupational Pension Schemes (Scheme Administration) Regulations 1996 (S.I. 1996/1715) to remove the Devonport Royal Dockyard Pension Scheme from the list of those pension schemes which are exempt from the professional advisers requirements.

Regulation 4 replaces a reference in the Occupational Pension Schemes (Winding Up) Regulations 1996 (S.I. 1996/3126) to the Board for Actuarial Standards (BAS) guidance note “GN19” with a reference to relevant BAS standards, which should be taken into account for the purposes of calculating the value or amount of scheme assets or liabilities on wind-up.

Regulation 5 makes an amendment to the Pensions Sharing (Valuation) Regulations 2000 (S.I. 2000/1052) to correct certain cross references.

Regulation 6 replaces a reference in the Occupational Pension Schemes (Scheme Funding) Regulations 2005 (S.I. 2005/3377) to the BAS guidance note “GN49” with a general reference to any relevant guidance or standards issued by the BAS, which the actuary should have regard to when advising trustees and managers on the matters listed in section 230(1) of the Pensions Act 2004 (c.35).

Regulation 7 amends the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (S.I. 2006/349) to include in the listed changes on which an employer is required to consult the affected members before making that change to an occupational pension scheme, changing what elements of pay are included within pensionable earnings, and changing the proportion or limiting the amount of any element of pay that forms part of pensionable earnings.

Regulation 8 amends the Occupational Pension Schemes (Modification of Schemes) Regulations 2006 (S.I. 2006/759) by inserting regulation 6A. This regulation permits the trustees of a trust scheme by resolution to alter a power of amendment in the scheme rules so as to remove a requirement for agreement, consent or approval of or continued approval of the scheme (referred to in this Note as ‘consent’) by the Inland Revenue or Her Majesty’s Revenue and Customs. It also permits the trustees of a scheme which has no power of amendment to modify the scheme so as to remove a requirement in the rules for consent by the Inland Revenue or Her Majesty’s Revenue and Customs. It is consequential to modifications made by regulation 2 of the Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2009 (scheme rule amendments not to require the approval of H M Revenue and Customs), which requires trustees, in making an amendment to the scheme rules, to disregard any such requirement for consent to the extent that the provision requires such consent.

A full impact assessment has not been produced for this instrument as it has only a negligible impact on the private and voluntary sectors.

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STATUTORY INSTRUMENTS

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