

**EXPLANATORY MEMORANDUM TO
THE OCCUPATIONAL AND PERSONAL PENSION SCHEMES (MISCELLANEOUS
AMENDMENTS) REGULATIONS 2010**

2010 No. 499

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. **Purpose of the instrument**
 - 2.1 These Regulations contain amendments to various sets of Regulations relating to occupational and personal pensions.
 - 2.2 They introduce an amendment which adds an addition to the ‘listed changes’ upon which an employer is required to consult when proposing changes to a defined benefit occupational pension scheme.
 - 2.3 They also make a number of minor changes to current Regulations to
 - reflect changes in the guidance issued by the Board for Actuarial Standards,
 - allow schemes with specific restrictive rules to make changes without the approval of Her Majesty’s Revenue and Customs,
 - extend the circumstances when small lump sums can be taken without incurring taxation charges,
 - remove Devonport Royal Dockyard Pension Scheme from the lists of schemes exempted from a requirement to appoint an actuary and an auditor and
 - correct some inaccuracies.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None
4. **Legislative Context**
 - 4.1 Larger employers are required by The Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 to consult with affected members or their representatives when certain significant changes (known as “listed changes”) are proposed to work-based pension arrangements. There have been recent examples of employers proposing changes which are not “listed changes” but which could still have a significant impact on a member’s pension benefits such as restricting the proportion of pay increases that will count towards pension benefits. To enable members to have the opportunity to have their views heard, changes to pensionable earnings will be added to the list of changes that require employer consultation.
 - 4.2 The Occupational Pension Schemes (Winding Up) Regulations 1996 (SI 1996/3126) and Occupational Pension Schemes (Scheme Funding) Regulations 2005 (SI 2005/3377) contain references to specific guidance notes which an actuary must take account of when advising pension schemes on winding up or funding issues. The Board for Actuarial Standards is revising the

format of its guidance and legislative references need to be amended to take account of this.

- 4.3 The Occupational Pension Schemes (Scheme Administration) Regulations 1996 (SI 1996/1715) exempts specified schemes from the requirement to appoint an auditor and actuary. The Devonport Royal Dockyard Pension Scheme is specified as exempt from these requirements, but changes to its management and oversight mean that this exemption is no longer appropriate.
- 4.4 The other changes are to correct inaccuracies in existing regulations or are the result of other amendments which have already been made to other regulations.

5. Territorial Extent and Application

This instrument applies to Great Britain. Corresponding provisions will be made in 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

- *What is being done and why*

The purpose of each of the provisions contained in the Regulations is outlined below:

- 7.1 Regulation 2 amends existing legislation which allows small lump sums to be taken instead of a pension without incurring taxation charges (“authorised payments”). Her Majesty’s Revenue and Customs have extended the circumstances in which this can occur and the Government wishes occupational pension schemes which are contracted out of the State Additional Pension to be able to make these payments as well. It was intended that amendments in the Occupational and Personal Pension Schemes (Authorised Payments) Amendment Regulations 2009 would allow this. However, those regulations contained a drafting error which means that the provision does not work as intended. The government response to the consultation on those regulations indicated that it would correct the deficiency in this set of miscellaneous amendments regulations and this regulation corrects the error.
- 7.2 When Devonport Royal Dockyard was privatised in 1997, the Ministry of Defence retained the right to approve changes to the Devonport Royal Dockyard Pension Scheme and to appoint a trustee director. Additionally, the Trust Deed contained the restriction that the scheme should only use the Government Actuary. The Ministry of Defence has now relinquished these rights and the restriction regarding the Government Actuary has been removed. Therefore, the intention is that the scheme should be required to comply with the requirements regarding professional advisers (actuaries and auditors) in the same way as other private sector pension schemes. This instrument removes the scheme from the list of those which are exempt from such requirements.

- 7.3 Existing regulations contain references to specific numbered guidance notes issued by The Board for Actuarial Standards (BAS) which an actuary must take account of when advising pension schemes on winding up or funding issues. The BAS is revising the format of its guidance and legislative references need to be amended to take account of this. The BAS is developing a new set of standards which will replace the existing guidance notes. Therefore, references in regulations to named guidance notes need to be replaced. Since each numbered guidance note will not be replicated by a separate standard, these amendments will replace references to specific guidance notes with a more generic term that directs the reader to any relevant guidance or standards that the BAS has issued on the respective subjects.
- 7.4 Regulation 5 corrects two inaccurate cross references in The Pension Sharing (Valuation) Regulations 2000 by replacing the wrong references with the correct numbered regulation.
- 7.5 Larger employers are required to consult with affected members or their representatives when certain significant changes (known as “listed changes”) are proposed to work-based pension arrangements. There have been recent examples of employers restricting the proportion of pay increases that will count towards pension benefits, or ‘freezing’ pensionable earnings altogether, in defined benefit occupational pension schemes, and consultation with affected members is not currently required before such changes are made. Changes to pensionable earnings can have a significant impact on pension benefits and the Government believes members should have the opportunity to have their views heard about such a proposed change. These regulations add certain changes to pensionable earnings to the listed changes on which an employer is required to consult.
- 7.6 The Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2009, which came into effect on 11 December, removed the requirement for approval from Her Majesty’s Revenue and Customs (HMRC) for rule changes to pension schemes. This regulation makes a consequential change which enables the trustees of a trust-based pension scheme to alter a power of amendment in the scheme rules to remove a requirement for HMRC approval for rule changes. It also enables trustees of a scheme where there is no power of amendment which would allow them to remove a requirement for HMRC approval in the scheme rules, to remove that requirement.

- **Consolidation**

- 7.7 Informal consolidation of the instrument will be included in due course in the Department’s “The law relating to Social Security” (the Blue Volumes), which are available at no cost to the public on the internet at <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/>

8. Consultation outcome

- 8.1 A draft SI containing the provisions contained in regulations 3 to 7 of this instrument was subject to a twelve-week consultation exercise which ran from 25 September to 18 December 2009. The document was emailed to over 60 stakeholders or interested parties and then publicised to the pensions press.

- 8.2 Twelve responses were received, eight of which made substantive comments. The Government's response to the consultation is published at <http://www.dwp.gov.uk/consultations/2009/>
- 8.3 One response suggested that the wording in the draft regulations which introduced generic references to Board for Actuarial Standards (BAS) standards rather than specific, numbered guidance notes could be open to more than one interpretation about the form in which BAS were issuing the new standards. The respondent suggested an alternative form of words. After discussion with BAS, this wording has been included, with minor amendments, in the regulations.
- 8.4 The other comments all related to the requirement to consult if changing the definition of 'pensionable earnings'. A number of responses included helpful points, such as scenarios which may or may not have been captured by the draft regulation. Some of these are reflected in these Regulations.
- 8.5 Regulation 8 is consequential to The Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2009. As this is a consequential provision, there is no requirement for formal consultation. However, as a matter of courtesy and to draw on expertise of pensions' lawyers, the Association of Pensions Lawyers was asked for its views on the proposal. Its comments have been taken into account.
- 8.6 The change in Regulation 2 permits additional circumstances in which a Guaranteed Minimum Pension (from a scheme which is contracted out of the State additional pension) can be taken as a lump sum instead of a pension without incurring taxation charges ("authorised payments"). This was consulted on from 19 August to 29 September 2009 (within the draft Occupational and Personal Pension Schemes (Authorised Payments) Amendment Regulations 2009). During the consultation, five organisations suggested that the regulations as drafted would not work as intended. The Government agreed that the wording should be amended but, unfortunately, it was not done before the regulations were made. The consultation response can be found here <<http://www.dwp.gov.uk/docs/pensions-auth-pyt-consultation-response.pdf>> Since this change has already been consulted on and the comments accepted, there is no requirement for further consultation.

9. Guidance

- 9.1 This Department does not issue guidance on private pension issues as a matter of course. The specialist pensions press will be notified so the introduction of these regulations will be publicised within the pension s industry.
- 9.2 However, the Department does publish guidance on the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (which are amended by regulation 7) at <http://www.dwp.gov.uk/docs/occ-personal-pens-schemes-regs06.pdf>. This will be updated to include the new listed change by April.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible since: most employers are already consulting affected members of their defined benefit occupational pension schemes when changes to pensionable earnings are proposed; the changes to the Devonport Royal Dockyard Pension Scheme will affect only that scheme; the amendments regarding the modification of scheme rules will affect a very few pension schemes; and the changes to actuarial guidance will predominately affect actuaries.

10.2 The impact on the public sector is negligible.

10.3 A full impact assessment has not been prepared for this instrument.

11. Regulating small business

Most of the legislation applies to small business but the impact is negligible. The additional requirement for employers to consult do not apply to employers with less than 50 employees or to certain very small schemes

12. Monitoring & review

The effectiveness of the changes, particularly those relating to actuarial guidance and to consultation on proposed changes to pensionable earnings will be informally monitored through existing stakeholder engagement arrangements. DWP seeks and receives regular feedback on private pensions issues through groups such as the Joint Working Group on occupational pensions and the Deregulatory Review Advisory Group; it sends an observer to BAS meetings; and has regular discussions with the Pensions Regulator.

13. Contact

Caroline Blackett at the Department for Work and Pensions Tel: 020 7449 7370 or email: caroline.blackett@dwp.gsi.gov.uk can answer any queries regarding the instrument.