
STATUTORY INSTRUMENTS

2010 No. 772

**The Occupational and Personal Pension Schemes
(Automatic Enrolment) Regulations 2010**

PART 10

Exclusion as a qualifying scheme

Certain schemes providing average salary benefits excluded from being qualifying schemes

36.—(1) A pension scheme which provides for average salary benefits to be provided to or in respect of a jobholder is not a qualifying scheme if, subject to paragraph (3), the scheme has any of the features specified in paragraph (2).

(2) The specified features are that, in relation to any jobholder who has accrued rights to benefits under the scheme (“accrued benefits”)—

- (a) there is no provision for revaluation of such benefits;
- (b) such benefits are to be revalued at less than the minimum rate; or
- (c) such benefits are to be revalued only on the exercise of a discretionary power,

at any time when the jobholder’s pensionable service is continuing.

(3) Paragraph (1) does not apply to a scheme with the feature specified in paragraph (2)(c) if—

- (a) the funding of the scheme takes account of the exercise of the discretionary power and does so on the assumption that accrued benefits would be revalued at or above the minimum rate; and
- (b) such funding is provided for in the scheme’s statement of funding principles under section 223 (statement of funding principles) of the Pensions Act 2004⁽¹⁾ or, if the scheme is not required to have such a statement, in an equivalent statement of the scheme’s funding plan.

(4) For the purposes of this regulation, the minimum rate on a revaluation of accrued benefits is an annual increase by—

- (a) the percentage increase in the retail prices index for the year by reference to which the revaluation is made; or
- (b) 2.5 %,

whichever is the lesser.

(5) In paragraph (4)(a), “retail prices index” means—

- (a) the general index of retail prices (for all items) published by the Statistics Board; or
- (b) where that index is not published for any month, any substituted index or figures published by the Board.

Status: *This is the original version (as it was originally made).*
