

STATUTORY INSTRUMENTS

2010 No. 772

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

PART 11

Test Scheme

Test scheme: requirements to revalue accrued benefits and increase pensions in payment

37.—(1) Paragraph (2) applies for the purposes of [^{F1}section 23(1)(c)] (test scheme) of the Act.

(2) The following must be satisfied in relation to a test scheme—

- (a) the requirements of [^{F2}section 84] (basis of revaluation) of the 1993 Act; and
- (b) the requirements of section 51 (annual increase in rate of pension) of the 1995 Act ^{M1}[^{F3}in relation to a scheme which provides for a member to be entitled to a pension commencing at the appropriate age and continuing for life].

[^{F4}(3) For the purposes of paragraph (2)(a)—

- (a) a test scheme which falls within section 23(2)(a) of the Act and a test scheme which falls within regulation 39A(2) must satisfy the requirements of section 84 of the 1993 Act by reference to the final salary method; and
- (b) a test scheme to which regulation 39A(3) applies must satisfy the requirements of section 84 of the 1993 Act by reference to the average salary method or the final salary method.]

F1 Words in reg. 37(1) substituted (1.7.2012) by [The Automatic Enrolment \(Miscellaneous Amendments\) Regulations 2012 \(S.I. 2012/215\)](#), regs. 1(2)(c), **32(a)**

F2 Words in reg. 37(2)(a) substituted (1.11.2013) by [The Automatic Enrolment \(Miscellaneous Amendments\) Regulations 2013 \(S.I. 2013/2556\)](#), regs. 1(1), **5(8)(a)**

F3 Words in reg. 37(2)(b) added (1.7.2012) by [The Automatic Enrolment \(Miscellaneous Amendments\) Regulations 2012 \(S.I. 2012/215\)](#), regs. 1(2)(c), **32(b)**

F4 Reg. 37(3) substituted (1.11.2013) by [The Automatic Enrolment \(Miscellaneous Amendments\) Regulations 2013 \(S.I. 2013/2556\)](#), regs. 1(1), **5(8)(b)**

Marginal Citations

M1 Section 51 was amended by paragraph 51 of Schedule 12 to the [Welfare Reform and Pensions Act 1999 \(c.30\)](#), **section 51(1)** of the [Child Support, Pensions and Social Security Act 2000 \(c.19\)](#), **section 278** of the [Pensions Act 2004 \(c.35\)](#) and S.I. 2006/745.

[^{F5}Appropriate age

38.—(1) For the purposes of making a relevant determination, the appropriate age prescribed for a member whose pensionable age is over 65 is the age at which the member attains pensionable age.

(2) In this regulation, “relevant determination” means a determination under section 22 (test scheme standard) of the Act as to whether a scheme satisfies the test scheme standard in relation to a jobholder.]

F5 Reg. 38 and heading substituted (1.11.2013) by [The Automatic Enrolment \(Miscellaneous Amendments\) Regulations 2013 \(S.I. 2013/2556\)](#), regs. 1(1), **5(9)**

Requirements for meeting the test scheme standard

39.—(1) This regulation applies for the purposes of section 22(4) of the Act.

(2) No person other than—

- (a) the scheme actuary, or
- (b) the employer of the relevant members of the scheme,

may certify that a scheme satisfies the test scheme standard.

(3) An employer may certify a scheme under paragraph (2)(b) only in cases that do not require any calculation, comparison or assessment of a description usually carried out by actuaries.

(4) In determining whether a scheme satisfies the test scheme standard, a scheme actuary or employer—

- (a) must have regard to the benefits to be provided under the scheme for persons who, at the date by reference to which the determination is made (which may precede the date on which it is made), are relevant members of the scheme; and
- (b) must not have regard to—
 - (i) pension credit benefits;
 - (ii) death benefits;
 - (iii) discretionary benefits (apart from those arising from discretionary pre-retirement revaluation made in the case of schemes providing for average salary benefits);
 - (iv) survivors' benefits;
 - (v) money purchase benefits ^{F6}...;
 - (vi) benefits in respect of any person who is not a jobholder for the purposes of the Act;
 - (vii) benefits in respect of any jobholder whose annual rate of benefit accrual under the scheme has been reduced below the rate specified in section 23(4)(a) of the Act, where the reduction is made as a result of a request made by the jobholder in question in accordance with scheme rules; or
 - (viii) benefits in respect of any jobholder who has given notice under section 8 (jobholder's right to opt out) of the Act.

(5) A scheme actuary or employer may not certify that a scheme satisfies the test scheme standard if the benefits to be provided for more than 10% of relevant members are not at least as valuable as the benefits which would be provided for them under a test scheme.

(6) In determining whether—

- (a) any of paragraphs (3) to (5) apply in relation to a scheme; or
- (b) a scheme otherwise satisfies the test scheme standard,

a scheme actuary or employer must follow any guidance issued by the Secretary of State under section 22(5) of the Act which is for the time being in force.

(7) “Scheme actuary” has the meaning given in section 22(7) of the Act except—

^{F7}(a)

(b) where the scheme is a defined benefits or hybrid scheme within section 18(c) of the Act and there is an actuary appointed to the scheme who satisfies the requirements of regulations made under section 47(5) (professional advisers) of the 1995 Act ^{M2}; or

(c) in any other circumstances where, by virtue of regulations made under section 47 of the 1995 Act ^{M3}, the scheme is not required to appoint a scheme actuary.

(8) In any case falling within paragraph (7)(b), “scheme actuary” means the actuary referred to in that paragraph who is appointed to the scheme.

(9) “Relevant members” has the meaning given in section 22(2) of the Act.

- F6** Words in reg. 39(4)(b)(v) omitted (1.7.2012) by virtue of [The Automatic Enrolment \(Miscellaneous Amendments\) Regulations 2012 \(S.I. 2012/215\)](#), regs. 1(2)(c), **34**
- F7** Reg. 39(7)(a) omitted (31.12.2020) by virtue of [The Occupational and Personal Pension Schemes \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/192\)](#), regs. 1, **33(5)**; 2020 c. 1, Sch. 5 para. 1(1)

Marginal Citations

- M2** See the [Occupational Pension Schemes \(Scheme Administration\) Regulations 1996 \(S.I. 1996/1715\)](#).
- M3** Ibid.

[^{F8}**Lump sum test scheme requirements**

39A.—(1) For the purposes of section 23(6) of the Act the requirement relating to the sum of money is specified in paragraph (2) in the case of a final salary lump sum test scheme and paragraph (3) in the case of an average salary lump sum test scheme.

(2) The requirement for a final salary lump sum test scheme is that the sum of money to be made available for the provision of benefits to a member amounts to 16% of final pensionable pay, multiplied by the number of years of pensionable service up to a maximum of 40 years.

(3) The requirement for an average salary lump sum test scheme is that either of the requirements specified in paragraph (4) or paragraph (5) is met.

(4) The requirement in this paragraph is that the sum of money to be made available for the provision of benefits to a member amounts to 16% of average annual qualifying earnings during pensionable service multiplied by the number of years of pensionable service up to a maximum of 40 years.

(5) The requirement in this paragraph is that the sum of money to be made available for the provision of benefits to a member amounts to the sum of—

- (a) 8% of average annual qualifying earnings during pensionable service multiplied by the number of years of pensionable service up to a maximum of 40 years; plus
- (b) during any period in which a member is deferred, an amount equal to an annual increase on accrued rights at 3.5% above any increase that is required by virtue of regulation 37(2)(a).

(6) For the purposes of paragraphs (4) and (5), average annual qualifying earnings are to be calculated on the basis that each year’s qualifying earnings are revalued during pensionable service at—

- (a) the minimum rate specified in regulation 36(4), where paragraph (4) applies; and
- (b) 3.5% above the minimum rate specified in regulation 36(4), where paragraph (5) applies.

(7) In this regulation—

“average salary lump sum test scheme” means a test scheme falling within section 23(2)(b) of the Act under which the sum of money is determined by reference to average qualifying earnings over the period of pensionable service;

“final pensionable pay” means average annual qualifying earnings in the last three tax years preceding the end of pensionable service; and

“final salary lump sum test scheme” means a test scheme falling within section 23(2)(b) of the Act under which the sum of money is determined by reference to final pensionable pay.]

F8 Reg. 39A and heading substituted (1.11.2013) by [The Automatic Enrolment \(Miscellaneous Amendments\) Regulations 2013 \(S.I. 2013/2556\)](#), regs. 1(1), **5(10)**

Changes to legislation:

There are currently no known outstanding effects for the The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010, PART 11.