

2011 No. 672

PENSIONS

**The Occupational and Personal Pension Schemes
(Miscellaneous Amendments) Regulations 2011**

Made - - - - *5th March 2011*

Laid before Parliament *10th March 2011*

Coming into force in accordance with regulation 1(2)

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 28(2)(b), 73(4)(b), 101D(4)(b), 113(1), 181(1), 182(2) and (3) and 183(1) of the Pension Schemes Act 1993(a), sections 47(5)(a), 124(1) and 174(2) and (3) of the Pensions Act 1995(b) and sections 189(4), 259(1), 260(1), 315(2), (4) and (5) and 318(1) of the Pensions Act 2004(c).

In accordance with section 185(1) of the Pension Schemes Act 1993(d), section 120(1) of the Pensions Act 1995 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.

Citation and commencement

1.—(1) These Regulations may be cited as the Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2011.

(2) These Regulations come into force—

- (a) for the purposes of this regulation and regulation 8, on 31st March 2011, and
- (b) for all other purposes, on 6th April 2011.

Amendment of the Personal Pension Schemes (Disclosure of Information) Regulations 1987

2. In paragraph 15 of Schedule 1 to the Personal Pension Schemes (Disclosure of Information) Regulations 1987 (basic information about the scheme)(e), for “Occupational Pensions Advisory Service Limited” substitute “Pensions Advisory Service(f)”.

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- (a) 1993 c.48. Section 28(2)(b) was amended by paragraph 2(2) of Schedule 5 to the Child Support, Pensions and Social Security Act 2000 (c.19). Section 101D was inserted by section 37 of the Welfare Reform and Pensions Act 1999 (c.30). Section 113(1) was amended by section 52(1) of the Child Support, Pensions and Social Security Act 2000. Section 181(1) is cited for the meaning it gives to “prescribed” and “regulations”. Section 183(1) was amended by paragraph 79 of Schedule 5 and paragraph 15(a) of Schedule 6 to the Pensions Act 1995 (c.26).
 - (b) 1995 c.26. Section 124(1) is cited for the meaning it gives to “regulations”.
 - (c) 2004 c.35. Section 259(1) was modified by S.I. 2006/16. Section 318(1) is cited for the meaning it gives to “prescribed” and “regulations”.
 - (d) Section 185(1) was amended by paragraph 46 of Schedule 3 and paragraph 80(a) of Schedule 5 to the Pensions Act 1995.
 - (e) S.I. 1987/1110. Paragraph 15 was added by S.I. 1992/1531.
 - (f) The Pensions Advisory Service can be contacted at www.pensionsadvisoryservice.org.uk or at 11 Belgrave Road, London, SW1V 1RB.

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

3.—(1) The Occupational Pension Schemes (Preservation of Benefit) Regulations 1991(a) are amended as follows.

(2) In regulation 12 (transfer of member's accrued rights without consent)(b)—

(a) for paragraph (3), substitute—

“(3) The condition set out in this paragraph is that—

- (a) the relevant actuary gives a certification, by completing the certificate in Schedule 3, in relation to the members' rights in the receiving scheme;
- (b) the relevant actuary sends that certificate to the trustees or managers of the transferring scheme;
- (c) the transfer takes place within 3 months of the date of the relevant actuary's signature in the certificate; and
- (d) there are no significant changes to the benefits, data and documents used in making the certificate (see the benefits, data and documents specified in the certificate) by the date on which the transfer takes place.”,

(b) in paragraph (4), for “paragraph (3)(a)” substitute “making the certification in paragraph 1 of the certificate in Schedule 3”, and

(c) in paragraph (4A), for “paragraph (3)(b)” substitute “making the certification in paragraph 2 of the certificate in Schedule 3”.

(3) After Schedule 2 (revocations), insert as Schedule 3 the Schedule specified in Schedule 1 to these Regulations.

Amendment of the Protected Rights (Transfer Payment) Regulations 1996

4.—(1) The Protected Rights (Transfer Payment) Regulations 1996(c) are amended as follows.

(2) For regulation 3C(8)(b) (transfer payment to certain schemes without the member's consent)(d), substitute—

“(b) the relevant actuary gives a certification, by completing the certificate in Schedule 3, in relation to the members' protected rights in the receiving scheme;

(ba) the relevant actuary sends that certificate to the trustees or managers of the transferring scheme;

(bb) the transfer takes place within three months of the date of the relevant actuary's signature in the certificate;

(bc) there are no significant changes to the benefits, data and documents used in making the certificate (see the benefits, data and documents specified in the certificate) by the date on which the transfer takes place; and”.

(3) After Schedule 2 (transitional provisions), insert as Schedule 3 the Schedule specified in Schedule 2 to these Regulations.

(a) S.I. 1991/167.

(b) Regulation 12(3) was substituted by S.I. 1993/1822 and amended by S.I.s 1997/786 and 1999/2543, regulation 12(4) was substituted by S.I. 1993/1822 and regulation 12(4A) was inserted by S.I. 1993/1822 and amended by S.I. 1999/2543.

(c) S.I. 1996/1461.

(d) Regulation 3C was inserted by S.I. 2005/2906.

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

5. At the end of regulation 3(1)(a)(i) of the Occupational Pension Schemes (Scheme Administration) Regulations 1996 (exemptions from the professional advisers requirements)(a), insert “and”.

Amendment of the Pension Sharing (Pension Credit Benefit) Regulations 2000

6.—(1) The Pension Sharing (Pension Credit Benefit) Regulations 2000(b) are amended as follows.

(2) In regulation 10 (transfer of a person’s pension credit rights without consent)—

(a) for paragraph (3)(c), substitute—

“(3) The condition set out in this paragraph is that, subject to paragraph (6)—

- (a) the relevant actuary gives a certification, by completing the certificate in the Schedule, in relation to the person’s pension credit rights in the receiving scheme;
- (b) the relevant actuary sends that certificate to the trustees or managers of the transferring scheme;
- (c) the transfer takes place within 3 months of the date of the relevant actuary’s signature in the certificate; and
- (d) there are no significant changes to the benefits, data and documents used in making the certificate (see the benefits, data and documents specified in the certificate) by the date on which the transfer takes place.”; and

(b) in paragraph (4), for “paragraph (3)(b)” substitute “making the certification in paragraph 2 of the certificate in the Schedule”.

(3) Insert as the Schedule the Schedule specified in Schedule 3 to these Regulations.

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

7. In regulation 7 of the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (notifications to employers and duty to consult)(d)—

(a) at the end of paragraph (2)(b), insert—

“, or

(c) where the person proposing the change employs all the affected members.”; and

(b) for paragraph (3), substitute—

“(3) A relevant employer must consult about the listed change in accordance with regulations 11 to 16 if—

- (a) it employs all the affected members, or
- (b) its employees appear to it to include affected members and it is a relevant employer who—
 - (i) has been notified under paragraph (1), or
 - (ii) falls within paragraph (2)(b).”.

(a) S.I. 1996/1715. Regulation 3(1)(a) was substituted by S.I. 2005/2426.

(b) S.I. 2000/1054.

(c) Regulation 10(3) was amended by S.I. 2000/2691.

(d) S.I. 2006/349.

Amendment of the Occupational Pension Schemes (Fraud Compensation Levy) Regulations 2006

8. In regulation 3(3)(b) of the Occupational Pension Schemes (Fraud Compensation Levy) Regulations 2006 (the fraud compensation levy)(a), for “23” substitute “75”.

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

5th March 2011

Steve Webb
Minister of State
Department for Work and Pensions

SCHEDULE 1

Regulation 3(3)

**Insertion of Schedule 3 to the Occupational Pension Schemes
(Preservation of Benefit) Regulations 1991**

The specified Schedule, which is inserted after Schedule 2 to the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991, is as follows—

“SCHEDULE 3

Regulation 12(3)

Actuary’s certificate

Given for the purposes of regulation 12(3) of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991.

THIS CERTIFICATE IS SUBJECT TO THE NOTES BELOW

The name of the transferring scheme is:

The reference number of Her Majesty’s Revenue and Customs for that scheme is:

The name of the receiving scheme is:

The reference number of Her Majesty’s Revenue and Customs for that scheme is:

1. I certify that in my opinion, the transfer credits to be acquired for each member under the receiving scheme in the categories of member covered by this certificate are, broadly, no less favourable than the rights to be transferred.

2. Where it is the established custom for discretionary benefits or increases in benefits to be awarded under the transferring scheme, I certify that in my opinion, there is good cause to believe that the award of discretionary benefits or increases in benefits under the receiving scheme will (making allowance for any amount by which transfer credits under the receiving scheme are more favourable than the rights to be transferred) be, broadly, no less favourable.

(a) S.I. 2006/558.

In making this certification:

- I used these benefits:

- I used this data:

- I used these key actuarial assumptions to value the rights, transfer credits, any discretionary benefits and any discretionary increases in benefits:

- I used these documents:

The categories of member covered by this certificate are:

Signature:

Date of signature:

Name:

Qualification:

Address:

Name of employer (if applicable):

Notes:

Phrases used in this certificate have the same meaning as in the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 (“the 1991 Regulations”).

The certification in paragraph 1 was made in accordance with regulation 12(4) of the 1991 Regulations. The certification in paragraph 2 was made in accordance with regulation 12(4A) of the 1991 Regulations.

This certificate is valid only for the purposes of the 1991 Regulations.

This certificate must not be taken by the trustees or managers of the scheme as authority to make a transfer without members’ consents. It must also not be taken as a recommendation to make a transfer without members’ consents. The trustees or managers of the scheme need to satisfy themselves that making the transfer is consistent with their duties to the transferring members and the remaining members. The trustees of the scheme need to satisfy themselves that making the transfer is consistent with their responsibilities and powers under trust law.

The actuary is not expressing in this certificate an opinion on whether or not the amount of the transfer value is reasonable.

The actuary has taken account of the benefits accrued by the date of this certificate. The actuary has not taken account of any differences between the terms and conditions of any benefits that may accrue in the future under the transferring scheme and the receiving scheme.”.

SCHEDULE 2

Regulation 4(3)

Insertion of Schedule 3 to the Protected Rights (Transfer Payment) Regulations 1996

The specified Schedule, which is inserted after Schedule 2 to the Protected Rights (Transfer Payment) Regulations 1996, is as follows—

“SCHEDULE 3

Regulation 3C(8)

Actuary’s certificate

Given for the purposes of regulation 3C(8)(b) of the Protected Rights (Transfer Payment) Regulations 1996.

THIS CERTIFICATE IS SUBJECT TO THE NOTES BELOW

The name of the transferring scheme is:

The reference number of Her Majesty’s Revenue and Customs for that scheme is:

The name of the receiving scheme is:

The reference number of Her Majesty’s Revenue and Customs for that scheme is:

I certify that in my opinion, the transfer credits to be acquired for each member under the receiving scheme in the categories of member covered by this certificate in respect of their protected rights are, broadly, no less favourable than the rights to be transferred.

In making this certification:

— I used these benefits:

— I used this data:

— I used these key actuarial assumptions to value the rights, transfer credits, any discretionary benefits and any discretionary increases in benefits:

— I used these documents:

The categories of member covered by this certificate are:

Signature:

Date of signature:

Name:

Qualification:

Address:

Name of employer (if applicable):

Notes:

Phrases used in this certificate have the same meaning as in the Protected Rights (Transfer Payment) Regulations 1996 (“the 1996 Regulations”).

This certificate is valid only for the purposes of the 1996 Regulations.

This certificate must not be taken by the trustees or managers of the scheme as authority to make a transfer without members’ consents. It must also not be taken as a recommendation to make a transfer without members’ consents. The trustees or managers of the scheme need to satisfy themselves that making the transfer is consistent with their duties to the transferring members and the remaining members. The trustees of the scheme need to satisfy themselves that making the transfer is consistent with their responsibilities and powers under trust law.

The actuary is not expressing in this certificate an opinion on whether or not the amount of the transfer value is reasonable.

The actuary has taken account of the benefits accrued by the date of this certificate. The actuary has not taken account of any differences between the terms and conditions of any benefits that may accrue in the future under the transferring scheme and the receiving scheme.”.

SCHEDULE 3

Regulation 6(3)

Insertion of the Schedule to the Pension Sharing (Pension Credit Benefit) Regulations 2000

The specified Schedule, which is inserted in the Pension Sharing (Pension Credit Benefit) Regulations 2000, is as follows—

“SCHEDULE

Regulation 10(3)

Actuary’s certificate

Given for the purposes of regulation 10(3) of the Pension Sharing (Pension Credit Benefit) Regulations 2000.

THIS CERTIFICATE IS SUBJECT TO THE NOTES BELOW

The name of the transferring scheme is:

The reference number of Her Majesty’s Revenue and Customs for that scheme is:

The name of the receiving scheme is:

The reference number of Her Majesty’s Revenue and Customs for that scheme is:

1. I certify that in my opinion, the transfer credits to be acquired for each person with pension credit rights under the receiving scheme in the categories of person covered by this certificate are, broadly, no less favourable than the rights to be transferred.

2. Where it is the established custom for discretionary benefits or increases in benefits to be awarded under the transferring scheme, I certify that in my opinion, there is good cause to believe that the award of discretionary benefits or increases in benefits under the receiving scheme will (making allowance for any amount by which transfer credits under the receiving scheme are more favourable than the rights to be transferred) be, broadly, no less favourable.

In making this certification:

- I used these benefits:

- I used this data:

- I used these key actuarial assumptions to value the rights, transfer credits, any discretionary benefits and any discretionary increases in benefits:

- I used these documents:

The categories of person covered by this certificate are:

Signature:

Date of signature:

Name:

Qualification:

Address:

Name of employer (if applicable):

Notes:

Phrases used in this certificate have the same meaning as in the Pension Sharing (Pension Credit Benefit) Regulations 2000 (“the 2000 Regulations”).

The certification in paragraph 2 was made in accordance with regulation 10(4) of the 2000 Regulations.

This certificate is valid only for the purposes of the 2000 Regulations.

This certificate must not be taken by the trustees or managers of the scheme as authority to make a transfer without the consent of each person with pension credit rights. It must also not be taken as a recommendation to make a transfer without each such person’s consent. The trustees or managers of the scheme need to satisfy themselves that making the transfer

is consistent with their duties to the transferring persons and the remaining persons. The trustees of the scheme need to satisfy themselves that making the transfer is consistent with their responsibilities and powers under trust law.

The actuary is not expressing in this certificate an opinion on whether or not the amount of the transfer value is reasonable.

The actuary has taken account of the benefits accrued by the date of this certificate. The actuary has not taken account of any differences between the terms and conditions of any benefits that may accrue in the future under the transferring scheme and the receiving scheme.”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

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

Regulation 2 amends the Personal Pension Schemes (Disclosure of Information) Regulations 1987 (S.I. 1987/1110) to remove an obsolete reference to the Occupational Pensions Advisory Service, which no longer exists under that name.

The Board for Actuarial Standards is withdrawing Guidance Note 16 (“GN16”). When certain persons’ rights to a pension are transferred from one pension scheme to another, an actuary is required to certify that the value of certain benefits remains broadly the same after the transfer. GN16 includes a certificate for actuaries to complete when making that certification. As a result of the withdrawal of GN16, the following provisions of these Regulations make several amendments which insert that certificate into legislation:

- regulation 3 and Schedule 1 amend the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 (S.I. 1991/167),
- regulation 4 and Schedule 2 amend the Protected Rights (Transfer Payment) Regulations 1996 (S.I. 1996/1461), and
- regulation 6 and Schedule 3 amend the Pension Sharing (Pension Credit Benefit) Regulations 2000 (S.I. 2000/1054).

Regulation 5 amends the Occupational Pension Schemes (Scheme Administration) Regulations 1996 (S.I. 1996/1715) to make clear that an occupational pension scheme does not have to appoint an auditor where the scheme is both set up under legislation and is guaranteed by a public authority.

Regulation 7 amends the Occupational Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (S.I. 2006/349) to alter the circumstances in which an employer has to consult scheme members about a change to the scheme. An employer has to consult if it employs all the members affected by the change. Such an employer does not have to inform any other employers in the scheme that it is making the change.

Regulation 8 amends the Occupational Pension Schemes (Fraud Compensation Levy) Regulations 2006 (S.I. 2006/558) to increase the maximum fraud compensation levy that may be raised in any one financial year from 23 pence per member to 75 pence per member. The fraud compensation levy is paid by occupational pension schemes and is used to fund the Fraud Compensation Fund, which makes payments to certain schemes that have lost money due to fraud.

A full impact assessment has not been published for this instrument as it has only a negligible impact on the private sector and civil society organisations and it includes an amendment of an existing statutory levy regime.

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STATUTORY INSTRUMENTS

2011 No. 672

PENSIONS

The Occupational and Personal Pension Schemes
(Miscellaneous Amendments) Regulations 2011

£5.75