

2009 No. 615

PENSIONS

The Occupational, Personal and Stakeholder Pensions (Miscellaneous Amendments) Regulations 2009

Made - - - - *10th March 2009*

Laid before Parliament *16th March 2009*

Coming into force in accordance with regulation 1

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 11(5)(b) and (c), 12C(1)(a), 20(1) and (2), 45(3)(a), 101C(2), 101D(2)(b) and (4)(b), 101E(1)(c), 101F(6)(b), 168(1) and (4), 181(1), 182(2) and (3) and 183(1) of the Pension Schemes Act 1993(a), sections 10(3), 40(1), 68(2)(e), 74(3)(e), 124(1) and 174(2) and (3) of the Pensions Act 1995(b), sections 1(3), 2(7), 8(1), 41(1) and (2), 45(2) and 83(4) and (6) of the Welfare Reform and Pensions Act 1999(c) and sections 232, 242(10), 243(2), 314, 315(2), (4) and (5) and 318(1) of the Pensions Act 2004(d).

In accordance with section 185(1) of the Pension Schemes Act 1993(e), 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.

Citation and commencement

1.—(1) These Regulations may be cited as the Occupational, Personal and Stakeholder Pensions (Miscellaneous Amendments) Regulations 2009.

(2) Except where paragraph (3) applies, these Regulations come into force on 6th April 2009.

(3) Regulation 19 comes into force—

- (a) for the purposes of paragraph (3)(b), on 6th April 2009, and
- (b) for all other purposes, on 23rd September 2010.

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- (a) 1993 c. 48. Section 12C was inserted by section 136(5) of the Pensions Act 1995 (c. 26). Section 20(1) was amended by paragraph 2(1) of Schedule 5 to the Child Support, Pensions and Social Security Act 2000 (c. 19). Sections 101C, 101D, 101E and 101F were inserted by section 37 of the Welfare Reform and Pensions Act 1999 (c. 30). Section 101E(1) was amended by paragraph 148 of Schedule 27 to the Civil Partnerships Act 2004 (c. 33). Section 168 was substituted by section 155(1) of the Pensions Act 1995 and amended by paragraph 27 of Schedule 12 to the Pensions Act 2004 (c. 35). Section 181(1) is cited because of the meaning it gives to “prescribe” 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.
- (b) 1995 c. 26. Section 74(3)(e) was inserted by section 270(2) of the Pensions Act 2004. Section 124(1) is cited because of the meaning it gives to “prescribed” and “regulations”.
- (c) 1999 c. 30. Section 8(1) is cited because of the meaning it gives to “prescribed”.
- (d) 2004 c. 35. Section 318(1) is cited because of the meaning it gives to “prescribed” and “regulations”.
- (e) Section 185(1) was amended by paragraph 46 of Schedule 3, and paragraph 80(a) of Schedule 5, to the Pensions Act 1995.

- [Regulation 2 amends regulation 27B of S.I. 1991/167.]
- [Regulation 3 inserts regulation 13A to S.I. 1991/168.]
- [Regulation 4 amends regulations 9 and 12 of S.I. 1996/1172.]
- [Regulation 5 amends regulation 1 of S.I. 1996/1462.]
- [Regulation 6 amends regulation 11 of S.I. 1996/1655.]
- [Regulation 7 amends regulation 4 of S.I. 1996/1679.]
- [Regulation 8 amends regulation 11 of S.I. 1996/1847.]
- [Regulation 9 amends regulation 8 of S.I. 1996/3126.]
- [Regulation 10 amends regulation 15 of S.I. 1997/470.]
- [Regulation 11 amends regulation 10 of S.I. 1997/946.]
- [Regulation 12 amends regulations 1 and 9 of S.I. 2000/1048.]
- [Regulation 13 amends regulations 1 and 9 of S.I. 2000/1049.]
- [Regulation 14 amends regulation 1 of S.I. 2000/1053.]
- [Regulation 15 amends regulations 1, 3, 7, 13 and 22 of S.I. 1997/470.]
- [Regulation 16 amends regulations 3 and 21 of S.I. 2000/1403.]
- [Regulation 17 amends regulation 13 of S.I. 2005/703.]
- [Regulation 18 amends regulation 17 and Schedule 2 of S.I. 2005/3377.]
- [Regulation 19 amends regulations 12, 13, 15, 16 and 17 of S.I. 2005/3378.]
- [Regulation 20 amends regulation 18 of S.I. 2006/349.]
- [Regulation 21 amends regulation 11 of S.I. 2006/558.]
- [Regulation 22 amends regulations 3 and 5 of S.I. 2006/714.]

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

10th March 2009

William D. McKenzie.
Parliamentary Under-Secretary of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make various amendments to twenty-one Statutory Instruments about occupational, personal and stakeholder pension schemes.

Regulations 3 and 7 introduce new powers for trustees to modify pension schemes. Modifications can be made to reduce the rate or amount by which pension benefits are revalued (amendment to the Occupational Pension Schemes (Revaluation) Regulations 1991 (S.I. 1991/168)) and to reduce the annual increase in the rate of pensions (amendment to the Occupational Pension Schemes (Indexation) Regulations 1996 (S.I. 1996/1679)). The employer must give consent before the trustees modify the pension scheme.

Regulation 4 amends the Occupational Pension Schemes (Contracting-out) Regulations 1996 (S.I. 1996/1172) to remove a requirement for an employer to consult with trade unions. No consultation is required when a pension scheme is being wound up and is surrendering a contracting-out certificate.

Regulation 5 amends the Contracting-out (Transfer and Transfer Payment) Regulations 1996 (S.I. 1996/1462) in relation to transferring a pension from one salary-related contracted-out pension scheme to another. The amendment allows a transfer when the scheme from which the transfer is being made used to be a salary-related contracted-out pension scheme, but is no longer such a scheme.

Regulation 10 makes an amendment to the Personal Pension Schemes (Appropriate Schemes) Regulations 1997 (S.I. 1997/470) which is consequential on section 12 of the Pensions Act 2007 (c. 22). That section changes the phrase “upper earnings limit” to “upper accrual point”.

Regulation 15 amends the Pension Sharing (Pension Credit Benefit) Regulations 2000 (S.I. 2000/1054). Paragraph (3) introduces a new provision which specifies the circumstances in which the pension credit benefit may be commuted. Paragraph (4) makes amendments to allow benefits which are different from pension credit benefit to be paid before normal benefit age where the person entitled to benefit is in ill health or has reached normal minimum pension age. It also amends the circumstances in which the trustees or managers are able to pay benefit without the consent of the person entitled to the benefit. Paragraph (6) makes amendments which update references to certain provisions of the Finance Act 2004 (c. 12). Paragraphs (2)(a) and (5) and regulation 9 make consequential amendments.

Regulation 18(2) amends the Occupational Pension Scheme (Scheme Funding) Regulations 2005 (S.I. 2005/3377) (“the Scheme Funding Regulations”) so that a section of a multi-employer pension scheme which is winding-up is exempt from the requirements of Part 3 of the Pensions Act 2004 (c. 35) where certain criteria are met. Regulation 18(3) makes amendments so that modifications to that Part and the Scheme Funding Regulations apply where the actuary has the power to determine any of the rates of contributions payable by the employer without the employer’s agreement.

Regulation 19 amends the Occupational Pension Schemes (Investment) Regulations 2005 (S.I. 2005/3378). With effect from 6th April 2009, regulation 19(3)(b) extends the category of institutions which are exempt from certain restrictions on employer-related investments. With effect from 23rd September 2010, the remainder of regulation 19 implements the requirements of article 18(1)(f) of the Directive 2003/41/EC (OJ L235, 23.09/2003 p 10) of the European Parliament and of the Council on the activities and supervision of institutions for occupational retirement provision.

Regulation 22 amends the Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations 2006 (S.I. 2006/714) for pension schemes which have more than one trustee, all of whom are companies. The amendment provides that where such a company has only independent directors, it is not required to have member-nominated directors.

The Pensions Regulator replaced the Occupational Pensions Regulatory Authority (“OPRA”) in April 2005. These Regulations remove obsolete references to OPRA (regulations 2, 11, 12(2), 13, 14, 15(2)(b) and 16).

A person can be required to pay a penalty if they fail to comply with certain pensions legislation. These Regulations make amendments which provide that the person must be given a notice in writing informing them of the requirement to pay such a penalty (regulations 2, 6, 8, 11, 12(3), 17 and 21). These Regulations also create a new penalty for certain employers who fail to consult their employees before making certain changes to their pension schemes (regulation 20).

Copies of a transposition note concerning the implementation of Directive 2003/41/EC by regulation 19 may be obtained from Private Pensions, Department for Work and Pensions, 3rd floor, Adelphi, 1-11 John Adam Street, London WC2N 6HT.

An assessment of the impact of these Regulations has been made. Copies of the impact assessment are available in the libraries of both Houses of Parliament and may also be obtained from the Better Regulation Unit of the Department for Work and Pensions, 7F Caxton House, Tothill Street, London SW1H 9NA or from the DWP website: <http://www.dwp.gov.uk/resourcecentre/ria.asp>.