

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations prescribe certain requirements which must be met where an occupational pension scheme is modified using a power conferred on any person by a scheme and where the subsisting rights provisions apply. The subsisting rights provisions are contained in sections 67 to 67I of the Pensions Act 1995 (c. 26) (amended and inserted by section 262 of the Pensions Act 2004 (c. 35)) and require that modifications to which they apply must either comply with the consent requirements or the actuarial equivalence requirements, as well as, the trustee approval and reporting requirements. These Regulations also enable trustees, in prescribed circumstances, to modify a trust scheme by way of a resolution.

Regulation 2 exempts categories of schemes from the subsisting rights provisions.

Regulation 3 exempts from the subsisting rights provisions modifications made in a prescribed manner. In particular paragraphs (f) and (g) exempt certain modifications which may be made as a result of provisions in the Finance Act 2004 (c. 12) which relate to unauthorised member payments or which relate to certain charges. Paragraph (h) exempts modifications which have the same effect as any or all the modifications in regulations 3 to 8 of the Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2006 (S.I. 2006/364). Paragraph (i) exempts modifications which deal with providing benefits to surviving civil partners so that they may be treated in the same way as widows or widowers.

Regulation 4 prescribes the qualifications and experience required for a person providing an actuarial equivalence statement, where a modification of a scheme must comply with the actuarial equivalence requirements.

Regulation 5 prescribes requirements for calculating the actuarial value of an affected member's subsisting rights, where the actuarial equivalence requirements apply to a modification of a scheme.

Regulation 6 prescribes that the trustees of a trust scheme may by resolution modify the scheme for the purposes of achieving the same effect as all of the modifications in regulations 3 to 8 of the Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2006. Such a resolution must be passed before 6th April 2011 and it may only have effect on or after 6th April 2006.

Regulation 7 prescribes that the trustees of a trust scheme may by resolution modify the scheme for the purposes of providing benefits to surviving civil partners so that they may be treated in the same way as widows or widowers. Such modifications must not be made without the consent of the employer where the modification confers rights in excess of what is required to comply with the Civil Partnership Act 2004 (c. 33). In the case of a multi-employer scheme such consent must be given by all of the employers, however a person may be nominated to give such consent or an employer may waive his consent.

Regulation 8 exempts certain schemes from the provisions which allow trustees of trust schemes to modify the scheme by resolution.

Regulation 9 and the Schedule revoke the Occupational Pension Schemes (Modification of Schemes) Regulations 1996 (S.I. 1996/2517) and amending regulations.

In relation to regulations 6 to 8, the Secretary of State has considered it inexpedient to consult because of urgency. As the remainder of the Regulations are made before the expiry of the period of six months beginning with the coming into force of section

**OCCUPATIONAL PENSIONS SCHEMES (MODIFICATION OF SCHEMES)  
REGULATIONS 2006**

262 of Pensions Act 2004 (which amended and inserted sections 67 to 67I of the Pensions Act 1995) the requirement for the Secretary of State to consult such persons as he considers appropriate does not apply. However, a consultation exercise has nevertheless taken place.

An assessment of the impact on business, charities and the voluntary sector of the provisions in these Regulations was included in the Regulatory Impact Assessment that accompanied the Pensions Act 2004. Copies of this assessment were placed in the libraries of both Houses of Parliament. A copy may be obtained from the Department for Work and Pensions, Better Regulation Unit, 4th Floor, 1-11 John Adam Street, London, WC2N 6HT.