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STATUTORY INSTRUMENTS

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**2009 No. 846**

**PENSIONS**

**The Occupational Pension Schemes (Contracting-out) (Amendment) Regulations 2009**

*Made* - - - - *2nd April 2009*  
*Coming into force* - - *6th April 2009*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 24B(5), 24C, 181(1), 182(2) and (3) and 183(1) of the Pension Schemes Act 1993(1).

In accordance with section 185(1) of that Act(2), the Secretary of State has consulted such persons as the Secretary of State considers appropriate.

A draft of these Regulations has been laid before Parliament in accordance with section 186(3)(a) of that Act(3) and approved by a resolution of each House of Parliament.

**Citation and commencement**

1. These Regulations may be cited as the Occupational Pension Schemes (Contracting-out) (Amendment) Regulations 2009 and shall come into force on 6th April 2009.

**Amendment of the Occupational Pension Schemes (Contracting-out) Regulations 1996**

2.—(1) The Occupational Pension Schemes (Contracting-out) Regulations 1996(4) are amended in accordance with this regulation.

(2) After regulation 69 (miscellaneous provisions affecting section 51 of the 1993 Act), insert—

**“Conversion of guaranteed minimum pensions into other benefits: actuarial equivalence**

**69A.**—(1) For the purposes of Condition 1 of section 24B of the 1993 Act (the conversion conditions), actuarial equivalence is to be determined in accordance with this regulation.

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(1) 1993 c.48. Sections 24B and 24C were inserted by section 14(3) of the Pensions Act 2007 (c.22). 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).  
(2) Section 185(1) was amended by paragraph 46 of Schedule 3, and paragraph 80(a) of Schedule 5, to the Pensions Act 1995.  
(3) Section 186(3)(a) was inserted by section 14(12)(a) of the Pensions Act 2007.  
(4) S.I. 1996/1172.

- (2) The trustees are responsible for determining actuarial equivalence.
- (3) In determining actuarial equivalence, the trustees must—
  - (a) obtain advice from the actuary about what assumptions are appropriate at the conversion date,
  - (b) consider that advice,
  - (c) decide what assumptions are appropriate at the conversion date and, if the trustees later think it is necessary, change that decision, and
  - (d) arrange for the actuary to calculate the actuarial values of the post-conversion benefits and the pre-conversion benefits in accordance with paragraph (4).
- (4) In calculating the actuarial values mentioned in paragraph (3)(d), the actuary must—
  - (a) use the assumptions chosen by the trustees under paragraph (3)(c), and
  - (b) ignore the value of any—
    - (i) benefits that have been commuted,
    - (ii) amounts that have been paid in respect of any benefits,
    - (iii) amounts in respect of any benefits that, before the conversion date, became due to be paid, and
    - (iv) discretionary benefits that might be awarded in the future.
- (5) When the actuarial values mentioned in paragraph (3)(d) have been calculated, the actuary must send the trustees a certificate if the post-conversion benefits are actuarially at least equivalent to the pre-conversion benefits.
- (6) The certificate must—
  - (a) state that—
    - (i) the calculations have been completed, and
    - (ii) the post-conversion benefits are actuarially at least equivalent to the pre-conversion benefits, and
  - (b) be sent to the trustees no later than three months after the calculations have been completed.

### **Conversion of guaranteed minimum pensions into other benefits: survivors' benefits**

**69B.**—(1) For the purposes of Condition 4 of section 24B of the 1993 Act, the circumstances in which, and periods during which, the converted scheme must provide survivors' benefits are prescribed in this regulation.

- (2) The circumstances are that—
  - (a) an earner's pre-conversion benefits include a guaranteed minimum pension, and
  - (b) the scheme before conversion provided that—
    - (i) if such an earner dies leaving a widow, widower or surviving civil partner (whether before or after attaining pensionable age), the widow, widower or surviving civil partner will be entitled to a guaranteed minimum pension, and
    - (ii) such a widower or surviving civil partner's guaranteed minimum pension will be payable in the circumstances set out in regulation 57(a) to (c)(5).
- (3) The periods are—

- (a) for widows, widowers and surviving civil partners, any period mentioned in section 17(4A)(a) and (b) of the 1993 Act (minimum pensions for widows and widowers)(6),
  - (b) for widows, widowers and surviving civil partners whose entitlement by virtue of the earner's contributions to a widowed parent's allowance or bereavement allowance has come to an end at a time after the widow, widower or surviving civil partner attained the age of 45, so much of the period beginning with the time when that entitlement came to an end as neither—
    - (i) comprises a period during which the widow, widower or surviving civil partner and—
      - (aa) a person of the opposite sex are living together as husband and wife, or
      - (bb) a person of the same sex are living together as if they were civil partners, nor
    - (ii) falls after the time of any—
      - (aa) marriage, or
      - (bb) formation of a civil partnership,by the widow, widower or surviving civil partner which takes place after the earner's death,
  - (c) for widows, any period for which a widowed mother's allowance or widow's pension is payable to the widow by virtue of the earner's contributions, and
  - (d) for widowers and surviving civil partners, any period which is, by virtue of regulation 58(7), a prescribed period for the purposes of section 17(6) of the 1993 Act(8).
- (4) Paragraph (3)(b)(i)(bb) and (ii)(bb) does not apply where the earner died before 5th December 2005.”.

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

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

2 April 2009

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(6) Section 17(4A) was inserted by paragraph 1(1) of Schedule 5 to the Child Support, Pensions and Social Security Act 2000 (c.19) and amended by S.I. 2005/2050.  
(7) Regulation 58 was amended by S.I. 2005/2050.  
(8) Section 17(6) was amended by paragraph 1(3) of Schedule 5 to the Child Support, Pensions and Social Security Act 2000 and S.I. 2005/2050.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## EXPLANATORY NOTE

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

These Regulations amend the Occupational Pension Schemes (Contracting-out) Regulations 1996 (S.I. 1996/1172) (“the 1996 Regulations”).

Guaranteed minimum pensions (“GMPs”) can be converted into other pension benefits under new provisions introduced by section 14 of the Pensions Act 2007 (c.22). These Regulations relate to two conditions in connection with that conversion.

Regulation 2(2) inserts a new regulation 69A into the 1996 Regulations. It makes provision for how trustees are to determine whether the value of a pension scheme member’s benefits after the conversion of their GMPs are actuarially at least equivalent to their value before the conversion. The trustee must take advice from the actuary and decide the assumptions to be used. The assumptions should be appropriate at the date on which the conversion takes effect. The actuary must use the assumptions and ignore certain amounts to calculate the actuarial values of the benefits. If the benefits are actuarially at least equivalent, the actuary must send the trustees a certificate.

Regulation 2(2) inserts a new regulation 69B into the 1996 Regulations. It prescribes the circumstances in which, and the periods during which, survivors’ benefits must be provided after conversion. The circumstances and periods are the same as the requirements for survivors’ benefits in existing legislation on GMPs.

An assessment of the impact on private and voluntary sector pension schemes of the provisions in these regulations is included in the impact assessment that accompanied the Pensions Act 2007. Copies of that 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, level 4, the Adelphi, 1-11 John Adam Street, London WC2N 6HT or from the DWP website: <http://www.dwp.gov.uk/resourcecentre/ria.asp>.