

*Draft Regulations laid before Parliament under section 143(4) and (5)(a) of the Pensions Act 2008, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2012 No.**

**PENSIONS**

**The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) (No. 3) Regulations 2012**

*Made* - - - - *\*\*\**  
*Coming into force* - - *1st November 2012*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 16(3)(c), 99 and 144(2) and (4) of the Pensions Act 2008<sup>(1)</sup>.

A draft of these Regulations was laid before Parliament in accordance with section 143(4) and (5) (a) of the Pensions Act 2008 and approved by a resolution of each House of Parliament.

**Citation and commencement**

1. These Regulations may be cited as the Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) (No. 3) Regulations 2012 and come into force on 1st November 2012.

**Amendment of regulation 36 of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010**

2.—(1) Regulation 36 of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010<sup>(2)</sup> (certain schemes providing average salary benefits excluded from being qualifying schemes) is amended as follows.

(2) For paragraph (2)(c) substitute—

“(c) a discretionary power may be exercised in the revaluation of such benefits.”

(3) In paragraph (4)—

(a) in sub-paragraph (a) omit “in relation to a scheme which has members on 1st July 2012,”;

(b) in sub-paragraph (b) omit “in relation to any scheme,”; and

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(1) 2008 c. 30. Section 16 was amended by section 10 of the Pensions Act 2011 (c. 19). Section 99 is cited for the meaning it gives to “prescribed” and “regulations”.

(2) S.I. 2010/772. Regulation 36 was amended by S.I. 2012/1257, regulation 6.

- (c) in sub-paragraph (c) omit “in relation to any scheme,”.
- (4) In paragraph (5)(a)—
  - (i) for “level” in each place where it occurs, substitute “index”; and
  - (ii) in paragraph (ii) for “for any month” substitute “for a month”.

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

Date

*Name*  
Minister of State,  
Department for Work and Pensions

## EXPLANATORY NOTE

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

Regulation 2 amends regulation 36 of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 ([S.I. 2010/772](#)).

Paragraph (2) amends regulation 36(2) so as to provide that an average salary scheme where the trustees have a discretionary power in revaluing accrued benefits during pensionable service is not a qualifying scheme under section 16 of the Pensions Act 2008 ([c. 30](#)). Revaluation protects the value of the accrued benefits against the effects of inflation. However, where both the scheme's funding and statement of funding principles take account of the exercise of the discretionary power in providing for revaluation at or above the minimum rate, the scheme is not prevented from being a qualifying scheme.

Paragraph (3) makes amendments so that all average salary schemes may revalue by reference to the retail prices index, the general level of prices or 2.5%, whichever is the least or lower. Paragraph (4) makes minor corrections.

A full impact assessment has not been published for this instrument because it has a zero impact on business and civil society organisations.