

2006 No. 759

PENSIONS

**The Occupational Pension Schemes (Modification of Schemes)
Regulations 2006**

<i>Made</i> - - - -	<i>14th March 2006</i>
<i>Laid before Parliament</i>	<i>16th March 2006</i>
<i>Coming into force</i>	
<i>regulations 6 and 7</i>	<i>30th March 2006</i>
<i>remainder</i>	<i>6th April 2006</i>

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 67(1)(b) and (3)(b), 67C(7)(a)(ii), 67D(4) and (5), 68(2)(e) and (6), 124(1) and 174(2) and (3) of the Pensions Act 1995(a).

The Secretary of State considered consultation inexpedient because of urgency in the case of regulations 6 to 8(b).

The remainder of the Regulations are consequential upon section 262 of the Pensions Act 2004(c) and are made before the end of the period of six months beginning with the coming into force of that provision(d).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Modification of Schemes) Regulations 2006.

(2) Regulations 6 and 7 shall come into force on 30th March 2006 and all other regulations shall come into force on 6th April 2006.

(3) In these Regulations—

“the 1993 Act” means the Pension Schemes Act 1993(e);

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- (a) 1995 c.26. Sections 67 to 67I of the Pensions Act 1995 were substituted by section 262 of the Pensions Act 2004 (c.35). Section 68 of the Pensions Act 1995 was amended by section 45(2) of the Child Support, Pensions and Social Security Act 2000 (c.19), paragraph 54 of Schedule 12 to the Welfare Reform and Pensions Act 1999 (c.30) and paragraph 56 of Schedule 12 to the Pensions Act 2004. Section 124(1) of the Pensions Act 1995 is cited because of the meaning there given to “prescribed” and “regulations”.
- (b) See section 120(2)(b) of the Pensions Act 1995 which provides that the requirement under section 120(1) of that Act for the Secretary of State to consult such persons as he considers appropriate before making any regulations by virtue of the provisions of Part I of that Act does not apply where he considers consultation inexpedient because of urgency.
- (c) 2004 c.35.
- (d) See section 120(2)(d) of the Pensions Act 1995 which provides that the requirement under section 120(1) of that Act for the Secretary of State to consult such persons as he considers appropriate before making regulations by virtue of the provisions of Part I of that Act does not apply where regulations are consequential upon a specified enactment and are made before the end of the period of six months beginning with the coming into force of that enactment.
- (e) 1993 c.48.

“the 1995 Act” means the Pensions Act 1995;

“the 2004 Act” means the Finance Act 2004(a);

“the 2006 Regulations” means the Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2006(b);

“protected rights” has the same meaning as in section 10 of the 1993 Act(c) (protected rights and money purchase benefits);

“public service pension scheme” has the same meaning as in section 1 of the 1993 Act(d) (categories of pension schemes);

“registered pension scheme” means a scheme which is a registered pension scheme for the purposes of Part 4 of the 2004 Act (pension schemes etc.);

“scheme” means an occupational pension scheme;

“the scheme administrator” has the same meaning as in section 270 of the 2004 Act (meaning of scheme administrator);

“the transitional period” has the same meaning as in regulation 1(2) of the 2006 Regulations;

“unauthorised member payment” has the same meaning as in section 160(2) of the 2004 Act (payments by registered pension schemes).

Schemes exempted from the subsisting rights provisions

2. For the purposes of section 67(1)(b) of the 1995 Act (the subsisting rights provisions), a scheme of a prescribed description is—

- (a) a scheme with fewer than two members; or
- (b) a scheme which is not a registered pension scheme.

Non-application of the subsisting rights provisions

3. For the purposes of section 67(3)(b) of the 1995 Act, the prescribed manner of the exercise of any modification power in relation to a scheme to which the subsisting rights provisions do not apply, is any modification of a scheme—

- (a) which provides for any or all of a member’s or survivor’s subsisting rights to—
 - (i) be assigned;
 - (ii) be commuted;
 - (iii) be surrendered;
 - (iv) be charged;
 - (v) have a lien exercised in respect of them; or
 - (vi) have a set-off exercised in respect of them,provided that a modification in such a manner is not prohibited under section 91 of the 1995 Act(e) (inalienability of occupational pension), any other enactment or other rule of law;

(a) 2004 c.12.

(b) S.I. 2006/364

(c) Section 10 was amended by Schedule 5 to the Pensions Act 1995 (c. 26), section 32(2) of the Welfare Reform and Pensions Act 1999 (c.30), Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2) and Schedule 11 to the Proceeds of Crime Act 2002 (c.29).

(d) The definition of “public service pension scheme” was amended by S.I. 1999/1820.

(e) Section 91 was amended by paragraph 57 of Schedule 12 to, and Schedule 13 to, the Welfare Reform and Pensions Act 1999, section 266 of the Pensions Act 2005 and paragraph 23 of the Schedule to S.I. 2005/2053.

- (b) which provides for any or all of a member's or survivor's subsisting rights to be forfeited provided that a modification in such a manner is not prohibited under section 92 of the 1995 Act^(a) (forfeiture), any other enactment or other rule of law;
- (c) to provide for the revaluation of an earner's earnings factors in accordance with section 16(1) or (2) of the 1993 Act (guaranteed minimum pensions: revaluation of earnings factors for purposes of section 14: early leavers etc.);
- (d) which provides for the rate of pension or annuity provided in respect of subsisting rights which are protected rights—
 - (i) to be calculated on the basis that the member will not, in the event of his death, be survived by a widow, widower or surviving civil partner, and
 - (ii) provides that the member must consent to the calculation of his pension or annuity being on that basis;
- (e) which provides for the transfer of a member's or survivor's subsisting rights—
 - (i) with his consent; or
 - (ii) without his consent in accordance with the conditions specified in regulation 12 of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991^(b) (short service benefit: transfer of member's accrued rights without consent);
- (f) which ensures that any payment made by the scheme, relating to rights which accrued on or after 6th April 2006, is not an unauthorised member payment;
- (g) which ensures that the scheme administrator can pay—
 - (i) any short service refund lump sum charge or special lump sum death benefits charge under sections 205 and 206 of the 2004 Act (short service refund lump sum charge and special lump sum death benefits charge) for which it is liable;
 - (ii) any lifetime allowance charge for which, under section 217 of the 2004 Act (persons liable to charge), it is jointly and severally liable with the individual (to whom the charge relates);
- (h) which has the same effect as any or all of the modifications in regulations 3 to 8 of the 2006 Regulations (modification of rules of existing schemes), but without limitation to the transitional period; or
- (i) which provides in relation to all or part of a member's subsisting rights that after his death—
 - (i) a surviving civil partner is treated in the same way as a widow or widower, and
 - (ii) the rights of any other survivor of the member are determined as if the surviving civil partner were a widow or widower.

Qualifications or experience required for a person providing an actuarial equivalence statement

4. For the purposes of section 67C(7)(a)(ii) of the 1995 Act (the actuarial equivalence requirements), a person with the prescribed qualifications or experience is a—

- (a) Fellow of the Faculty of Actuaries^(c); or
- (b) Fellow of the Institute of Actuaries^(d).

(a) Section 92 was amended by paragraph 58 of Schedule 12 to, and Schedule 13 to, the Welfare Reform and Pensions Act 1999 and paragraph 23 of the Schedule to S.I. 2005/2053.
 (b) S.I. 1991/167; the relevant amending instruments are S.I. 1992/1531, 1993/1822, 1994/1062, 1995/3067, 1996/2131, 1997/786, 1999/2543 and 2000/1403.
 (c) The Faculty of Actuaries is at Maclaurin House, 18 Dublin Street, Edinburgh, EH1 3PP.
 (d) The Institute of Actuaries is at Staple Inn Hall, High Holborn, London, WC1V 7QJ.

Calculation of the actuarial value of affected member's subsisting rights

5.—(1) The prescribed requirements with which any calculation of the actuarial value of an affected member's subsisting rights must conform, for the purposes of the actuarial value requirement in section 67C(5) of the 1995 Act, are those specified in paragraph (2).

(2) The actuary—

- (a) shall calculate the value of the subsisting rights of an affected member by adopting methods and making assumptions which—
 - (i) have been notified to the trustees of the scheme;
 - (ii) are consistent with methods and assumptions used by the trustees as at the date of the modification to calculate a cash equivalent transfer value in accordance with regulation 7(3)(b) of the Occupational Pension Schemes (Transfer Values) Regulations 1996(a) (manner of calculation and verification of cash equivalents); and
 - (iii) exclude any provisions relating to a reduction in the value of an affected member's cash equivalent transfer value due to the funding position of the scheme;
- (b) shall ensure that the calculation of the actuarial value of an affected member's subsisting rights is made in accordance with any guidance that is prepared by the Faculty and Institute of Actuaries which is current on the date that the actuarial equivalence statement is obtained by the trustees;
- (c) shall exclude from the subsisting rights calculation—
 - (i) the value of any subsisting rights that have been surrendered, commuted or forfeited before the date on which the modification of the scheme takes effect;
 - (ii) the value of any amounts paid, or due to be paid, in respect of any pension or other benefit in payment to an affected member in respect of a period prior to the date on which the modification takes effect;
 - (iii) the value of discretionary benefits that have not been awarded to an affected member or are not in payment on the date on which the modification takes effect;
 - (iv) any subsisting rights which consist wholly or partly of rights to money purchase benefits where—
 - (aa) those benefits are not valued in a manner which involves making estimates of the value of the rights, and
 - (bb) the modification has no effect on the value of those rights.

Modification of schemes: Finance Act 2004

6.—(1) The trustees of a trust scheme may by resolution passed before 6th April 2011 modify the scheme for the purposes of—

- (a) achieving the same effect as all of the modifications in regulations 3 to 8 of the 2006 Regulations, but without limitation as to the transitional period; and
- (b) amending the scheme rules so that the 2006 Regulations no longer apply in relation to the scheme with effect from the date on which the modifications referred to in sub-paragraph (a) take effect.

(2) Modifications made by resolution under paragraph (1) may have effect from a date before the date the resolution is passed but not before 6th April 2006.

(3) Modifications made under paragraph (1) shall have effect from any date on or after 6th April 2006.

(a) S.I. 1996/1847. The relevant amending instruments are S.I. 1997/786 and 2005/3377.

(4) Without prejudice to section 67 of the 1995 Act, modifications made by resolution under paragraph (1)(a) may be modified by exercise of any power conferred on any person by a scheme to modify the scheme.

Modification of schemes: surviving civil partners

7.—(1) Subject to paragraph (2), the trustees of a trust scheme may by resolution modify the scheme in relation to all or part of a member's subsisting rights so that after his death—

- (a) a surviving civil partner is treated in the same way as a widow or widower, and
- (b) the rights of any other survivor are determined as if the surviving civil partner were a widow or widower.

(2) A modification under paragraph (1) which confers rights on surviving civil partners which are in excess of what is required to comply with the relevant requirements of the Civil Partnership Act 2004^(a) shall not be made unless—

- (a) the employer in relation to the scheme consents; or
- (b) in the case of a scheme where there is more than one employer—
 - (i) a person nominated by the employers, or otherwise in accordance with the scheme rules, to act as the employers' representative (the "nominee") consents; or
 - (ii) where there is no such nominee, all of the employers in relation to the scheme consent other than any employer who has waived his right to give such consent.

Modification of schemes: prescribed schemes

8. For the purposes of section 68(6) of the 1995 Act (the power to modify schemes by resolution does not apply to trust schemes within a prescribed class or description), the prescribed class or description of trust schemes is any scheme—

- (a) in respect of which any Minister of the Crown has given a guarantee or made arrangements for the purposes of securing that the assets of the scheme are sufficient to meet its liabilities; and
- (b) which is a public service pension scheme.

Revocations

9. The enactments listed in the Schedule are revoked to the extent specified.

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

14th March 2006

Stephen C. Timms
Minister of State,
Department for Work and Pensions

(a) 2004 c.33.

SCHEDULE

<i>Revocations</i>	<i>Reference</i>	<i>Extent of revocation</i>
The Occupational Pension Schemes (Modification of Schemes) Regulations 1996	S.I. 1996/2517	The whole of the Regulations
The Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1997	S.I. 1997/786	Paragraph 16 of Schedule 1
The Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1999	S.I. 1999/3198	Regulation 9
The Occupational and Personal Pension Schemes (Contracting-out) (Miscellaneous Amendments) Regulations 2002	S.I. 2002/681	Regulation 5
The Civil Partnership (Contracted-out Occupational and Appropriate Personal Pension Schemes) (Surviving Civil Partners) Order 2005	S.I. 2005/2050	Paragraph 35 of Schedule 2
The Civil Partnership (Pensions, Social Security and Child Support) (Consequential, etc Provisions) Order 2005.	S.I. 2005/2877	Paragraph 6 of Schedule 2

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 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.

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