STATUTORY INSTRUMENTS

2011 No. 1294

PENSIONS

The Occupational Pension Schemes (Contracting-out) Amendment Regulations 2011

Made - - - -	*18th May 2011*
Laid before Parliament	*23rd May 2011*
Coming into force - -	*1st October 2011*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 12A(4) and (5), 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 with such persons as the Secretary of State considers appropriate.

Citation and commencement

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Contracting-out) Amendment Regulations 2011.

(2) They come into force on 1st October 2011.

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

2.—(1) The Occupational Pension Schemes (Contracting-out) Regulations 1996(**3**) are amended as follows.

(2) In regulation 23 (requirements for meeting the statutory standard)(**4**)—

(a) for paragraph (a), substitute—

(**1**) 1993 c.48. Section 12A was inserted by section 136(5) of the Pensions Act 1995 (c.26) and section 12A(5) was amended by paragraph 5 of Schedule 5 to 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.

(**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**) S.I. 1996/1172.

(**4**) Regulation 23(a) was substituted by S.I. 2007/60 and amended by S.I. 2008/2301 and regulation 23(g) was added by S.I. 2002/681.

"(a) must comply with any standards adopted or prepared, and from time to time revised, by the Board for Actuarial Standards which are relevant to the matters specified in section 12A(4) of the 1993 Act;",

(b) in paragraph (f), after "payment of a lump sum" insert "but may not have regard to any payment of a lump sum made as a result of the death of an earner", and

(c) after paragraph (g), add—

"(h) must not have regard to any discretionary benefits; and

(i) must comply with the further requirements set out in Schedule 3.".

(3) After Schedule 2 (revocations), add as Schedule 3 the Schedule specified in the Schedule to these Regulations.

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

Steve Webb
Minister of State,
Department for Work and Pensions

18th May 2011

SCHEDULE

Regulation 2(3)

Addition of Schedule 3 to the Occupational Pension Schemes (Contracting-out) Regulations 1996

The Schedule to be added after Schedule 2 to the Occupational Pension Schemes (Contracting-out) Regulations 1996 is—

"SCHEDULE 3

Regulation 23(i)

Further requirements for meeting the statutory standard

1. The actuary must complete a reference scheme test certificate.

2. The reference scheme test certificate must—

(a) certify whether in the actuary's opinion, the scheme satisfies the statutory standard in relation to the provision of pensions for—

(i) earners, and

(ii) the widows, widowers or surviving civil partners of earners, and

(b) specify the date of the information used by the actuary for the purposes of completing the certificate (referred to in this Schedule as the "effective date").

3. The actuary must—

(a) send the completed reference scheme test certificate to Her Majesty's Revenue and Customs and send a signed copy of that certificate to the employer, or

(b) send the completed reference scheme test certificate to the employer and inform the employer that that certificate should be sent to Her Majesty's Revenue and Customs.

4. Where the actuary is sending the first reference scheme test certificate for a scheme, the actuary must also inform—

(a) the scheme and the employer that Her Majesty's Revenue and Customs provide guidance on contracting-out, including guidance on what changes need to be notified to Her Majesty's Revenue and Customs,

(b) the employer that it should provide a copy of the completed certificate to the scheme, and

(c) the employer that it should keep a record of any subsidiary or associated employers.

5.—(1) Where the employer asks the actuary to advise whether the statutory standard is satisfied, the actuary must inform the trustees or managers of the scheme that the employer has asked for that advice.

(2) Sub-paragraph (1) does not apply if the actuary has previously informed the trustees or managers of the scheme that the actuary provides advice to the employer.

6. Where the scheme calculates pensions by different methods for different members, the actuary—

(a) must decide whether the pensions provided under each method are broadly equivalent to, or better than, the pensions which would be provided under a reference scheme, and

(b) must not complete a reference scheme test certificate for any members whose pensions are calculated by a method which does not provide pensions that are broadly equivalent to, or better than, the pensions which would be provided under a reference scheme.

7. The actuary must not complete a reference scheme test certificate if the average value of pension provided under the scheme is less than the average value of pension which would be provided under a reference scheme.

8. Where an employer asks for a separate reference scheme test certificate which only includes its employees, the actuary must—

(a) provide that employer with a separate reference scheme test certificate, and

(b) consider only the employees of that employer for that certificate.

9. Where—

(a) an employer has two or more schemes, and

(b) none of those schemes can be contracted-out by itself under section 9(1) of the 1993 Act (requirements for certification of schemes: general),

the actuary may take into account the pensions provided under all those schemes.

10. The actuary must use any information about the earner's remuneration which—

(a) the actuary considers is relevant for the reference scheme test certificate,

(b) is the latest available information, and

(c) subject to paragraph 11, refers to the period of one year.

11. Where—

(a) the actuary is satisfied that the information about the earner's remuneration which refers to a period of one year is significantly abnormal, and

(b) the employer writes to the actuary stating that it is also so satisfied,

the actuary may use such information for the purposes of paragraph 10(c) which refers to the period of three years ending on the effective date.

12.—(1) This paragraph applies where, on the effective date, the scheme has not been established but is in the process of being established.

(2) For the purposes of carrying out the comparison under regulation 23, the actuary must use estimated membership information.

(3) In this paragraph, "estimated membership information" means any information about the earners who the actuary expects to join the scheme when it is established which—

(a) the actuary considers is necessary for the purposes of the comparison under regulation 23, and

(b) may include information on the age, gender and earnings of those earners.

13.—(1) The pensions provided under the scheme for the purposes of carrying out the comparison under regulation 23 are the pensions referred to in sub-paragraph (2).

(2) The pensions are those which the actuary expects will accrue in the three years after the effective date.

(3) For the purposes of sub-paragraph (2), the actuary must—

(a) assume that the earner leaves pensionable service—

(i) at the end of the three-year period mentioned in sub-paragraph (2), or

(ii) if the earner attains normal pension age before the end of that three-year period, on the date on which the earner attains normal pension age,

(b) assume that pensions are payable from the date on which the earner attains normal pension age,

(c) where the earner has accrued their maximum pension under the scheme during any part of the three-year period mentioned in sub-paragraph (2), assume that that maximum pension accrues at the same rate for each year of the pensionable service which the earner is likely to complete up to a maximum of 40 years, and

(d) take into account the person whom the actuary expects will be entitled to receive the pensions referred to in sub-paragraph (2).

14.—(1) For the purposes of carrying out the comparison under regulation 23, the actuary must use—

(a) where a statement of funding principles has been prepared or revised for the scheme under section 223 of the 2004 Act (statement of funding principles), the actuarial assumptions in the most recent such statement, and

(b) any other actuarial assumptions which the actuary considers necessary.

(2) The actuarial assumptions referred to in sub-paragraph (1) must be used for valuing—

(a) the pensions provided under the scheme, and

(b) the pensions which would be provided under a reference scheme.

15.—(1) For the purposes of carrying out the comparison under regulation 23, the pensions provided under the scheme for widows, widowers and surviving civil partners are subject to the following requirements of this paragraph.

(2) The actuary must carry out a separate comparison for pensions the actuary expects to accrue during the three-year period referred to in paragraph 13(2) in respect of—

(a) death in service (see sub-paragraphs (3), (9) and (10) of this paragraph),

(b) death in deferment (see sub-paragraph (4)), and

(c) death in retirement (see sub-paragraphs (5) and (11)).

(3) A death in service pension must be valued as if the earner died—

(a) three years after the effective date, or

(b) if the earner attains normal pension age before that date, on the day before the date on which the earner attains normal pension age.

(4) A death in deferment pension must be valued as if the earner died more than three years after the effective date.

(5) A death in retirement pension must be valued as if the earner died after the date on which the earner attains normal pension age.

(6) The actuary may not complete the reference scheme test certificate unless each of the pensions referred to in sub-paragraph (2) are broadly equivalent to, or better than, those which would be provided under a reference scheme.

(7) Sub-paragraph (8) applies where—

(a) a pension which is in payment for a widow, widower or surviving civil partner has been reduced under the scheme because they were at least 10 years younger than the earner, or

(b) a pension which may become payable in the future for a widow, widower or surviving civil partner would be reduced under the scheme if they were at least 10 years younger than the earner.

(8) Where this sub-paragraph applies, the actuary—

(a) must estimate, where sub-paragraph (7)(b) applies, the number and amount of future pension reductions which the actuary thinks are likely to occur, and

(b) may ignore any part of the reductions referred to in sub-paragraph (7) which are or are likely to be—

(i) made in respect of each complete year during which the age difference referred to in sub-paragraph (7) was at least 10, and

(ii) 2.5% or less for each such year.

(9) Sub-paragraph (10) applies where any death in service pensions—

(a) have an accrual rate of less than 1/160ths of any qualifying earnings within the meaning of section 12B(5) of the 1993 Act (reference scheme)(**5**) and are calculated by reference to—

(i) the number of years of pensionable service which the earner has completed in the scheme, and

(ii) any amount which is additional to the number of years of pensionable service referred to in sub-paragraph (i), or

(b) are not calculated by reference to the number of years of pensionable service.

(10) Where this sub-paragraph applies, the actuary must compare under sub-paragraph (2)(a) the death in service pension with a reference scheme—

(a) based on the earner's pensionable service up to the date which applies under sub-paragraph (3), and

(b) excluding any of the earner's pensionable service which took place before—

(i) the date on which a contracting-out certificate was first issued to the scheme, or

(ii) in the case of female earners or surviving civil partners, 6th April 1988 where that date is later than the date referred to in sub-paragraph (i).

(11) Where a death in retirement pension can be reduced under the scheme if the earner takes part of their pension as a lump sum on retirement, the actuary must reduce the death in retirement pension by an amount broadly consistent with the average such reductions made by the scheme in relation to other earners.

16.—(1) Subject to sub-paragraph (2), this paragraph applies in each of the following circumstances—

(a) where the actuary has been informed of any changes to—

(i) the scheme rules, or

(ii) the membership of the scheme (including changes to the remuneration of scheme members),

which the actuary thinks might affect the scheme's ability to satisfy the statutory standard;

(b) where, after estimated membership information has been used in accordance with paragraph 12, actual information becomes available about the members who have joined the scheme;

(c) unless paragraph (a) or (b) applies, three years after the effective date;

(d) three years after the date on which this paragraph (that is, paragraph 16 of this Schedule) last applied.

(2) This paragraph does not apply where the scheme is no longer required to satisfy the statutory standard.

(3) The actuary must consider whether there have been any changes which would prevent a reference scheme test certificate from being issued.

(4) If—

(**5**) Section 12B was inserted by section 136(5) of the Pensions Act 1995 and section 12B(5) was amended by paragraph 36(a) of Schedule 1 to the Pensions Act 2007.

(a) there have been any changes referred to in sub-paragraph (3), and

(b) no further changes have been made which the actuary considers would enable a reference scheme test certificate to be issued,

the actuary must inform in writing the trustees or managers of the scheme, Her Majesty's Revenue and Customs and the employer.

17. In this Schedule—

"accrual rate" means the rate at which, under the scheme rules, rights to the pension accrue over time by reference to periods of service in any description of employment to which the scheme applies;

"death in deferment pension" means a pension payable in respect of an earner who dies—

(a) otherwise than in pensionable service under the scheme, and

(b) before their own entitlements to pensions under the scheme have commenced;

"death in retirement pension" means a pension payable in respect of an earner who dies after their own entitlements to pensions under the scheme have commenced;

"death in service pension" means a pension payable in respect of an earner who dies in pensionable service under the scheme;

"earner" means an earner in employed earner's employment;

"effective date" has the meaning given in paragraph 2(b);

"normal pension age" means the earliest age at which an earner may be entitled to payment of an unreduced pension;

"unreduced pension" means a pension which—

(a) has not been actuarially reduced as a result of early payment of the pension, and

(b) does not include any discretionary benefits.".

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"). They make provision in relation to salary-related occupational pension schemes which meet the reference scheme test ("the test"). Persons can contract out of the State Additional Pension into such a scheme.

The Board for Actuarial Standards is withdrawing Guidance Note 28: Retirement Benefit Schemes – Adequacy of Benefits for Contracting-out ("GN28"). GN28 contains detailed guidance for actuaries on the test. In order for an occupational pension scheme to meet the test, an actuary must be satisfied that the pension rights under the scheme are broadly equal to (or better than) the minimum rights referred to in the test. Actuaries are required by the 1996 Regulations to follow the guidance in GN28.

As a result of the withdrawal of GN28, these Regulations insert the guidance for actuaries into the 1996 Regulations.

Regulation 2 inserts some of the guidance into the 1996 Regulations. It also inserts a requirement for actuaries to comply with any relevant standards issued by the Board for Actuarial Standards. The Schedule inserts the majority of the guidance into the 1996 Regulations.

A full impact assessment has not been published for this instrument as it has only a negligible regulatory impact on the private sector and civil society organisations.