

**EXPLANATORY MEMORANDUM TO
THE OCCUPATIONAL PENSION SCHEMES (CONTRACTING-OUT) AMENDMENT
REGULATIONS 2011**

2011 No. 1294

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

This instrument places in legislation essential information for actuaries contained within the Board for Actuarial Standards Guidance Note 28 (which gives guidance on comparing a pension scheme's benefits to those of the reference scheme for the purposes of contracting-out of the State Additional Pension), in preparation for the withdrawal of that Guidance Note by the Board for Actuarial Standards.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Context

4.1 Existing legislation allows a salary related occupational pension scheme to contract out of the State Additional Pension, on the condition that the statutory standard is met. The statutory standard requires that pensions provided by that scheme are broadly equivalent to, or better than, pensions provided under a reference scheme.

4.2 As part of the statutory standard, actuaries are responsible for comparing the benefits supplied by a contracted-out occupational pension scheme against the reference scheme (the comparison is called the "reference scheme test"). Where a contracted-out scheme meets the requirements of the reference scheme test, a reference scheme test certificate can be completed by the actuary for that contracted-out scheme. Schemes are re-tested usually at intervals of no more than three years to ensure continuing compliance, unless there has been a relevant change of circumstances within that time, in which case a further testing may be required.

4.3 Existing legislation states that the actuary "must follow guidance note Guidance Note 28 adopted or prepared, and from time to time revised, by the Board for Actuarial Standards" when deciding whether a scheme meets the statutory standard. Guidance Note 28 is due to be withdrawn by the Board for Actuarial Standards in 2011.

5. Territorial Extent and Application

This instrument applies to Great Britain.

6. European Convention on Human Rights

As this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 The contents of Guidance Note 28 contain the practical considerations required of the actuary when deciding whether a salary related contracted-out occupational pension scheme meets the statutory standard.

7.2 The Board for Actuarial Standards informed the Department that this particular Guidance Note would be withdrawn in 2011 and would be replaced by principles-based guidance. The considerations presently covered in Guidance Note 28 would not be included in their entirety in that new guidance.

7.3 The crucial aspects of the information contained in Guidance Note 28 have been placed by this instrument into legislation, through amendments to the Occupational Pension Schemes (Contracting-out) Regulations 1996 (the Contracting-out Regulations), to ensure continuity of standards for actuaries when assessing whether a scheme meets the reference scheme test. This instrument essentially reflects the guidance which was contained in Guidance Note 28.

7.4 Without the amendments by this instrument, actuaries would lack the necessary guidance to enable them to certify whether a salary related contracted-out occupational pension scheme meets the statutory standard and therefore whether the scheme may maintain its contracted-out status.

7.5 The intention is that Guidance Note 28 will be withdrawn at the same time as this instrument comes into force.

- *Consolidation*

7.6 Consolidation of the regulations included within this instrument will be included in due course in the Department's "The law relating to Social Security" (the Blue Volumes), which are available at no cost to the public on the internet at - <http://www.dwp.gov.uk/advisers/docs/lawvols/bluevol/>

8. Consultation outcome

8.1 These draft regulations were originally included in the consultation for the Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2011, which took place from 18 October 2010 to 10 January 2011.¹

8.2 Of the 13 organisations which responded, 8 organisations provided 67 comments to this draft amendment, either on or after the closing date. To give proper consideration to the all technical comments which were received, this regulation was withdrawn from that package of amendments. The Government response to that consultation was published on 21 February², and explained that the proposed amendment to regulation 23 of the Contracting-out Regulations would be made at a later date.

8.3 Some of the responses were minor drafting comments, or posed questions as to what particular words used in the Schedule could mean. However, some respondents queried whether parts of Guidance Note 28 had been incorrectly interpreted, or had been omitted altogether.

8.4 In response to these concerns, some of the text of this instrument has been re-drafted to ensure that the vital information contained in Guidance Note 28 is properly included. For instance, there is now a reference to where a person has built up their maximum entitlement in the pension scheme, and how this should be treated by the actuary; a different definition of the “effective date” of the reference scheme test certificate has been used, to ensure the actuary refers to the correct date when making their considerations; the sections dealing with how prospective service benefit and death in service pensions should be regarded have been revised to more fully reflect the wording currently in Guidance Note 28; and the section setting out action to be taken where the actuary has been informed of changes has been revised to include a provision to enable the actuary to consider whether there have been any changes which would prevent a reference scheme test certificate being issued.

8.5 A more detailed response has been published on the Department’s website:
<http://www.dwp.gov.uk/consultations/2010/>

9. Guidance

9.1 The Schedule contains the majority of the guidance which actuaries must follow when considering whether a salary related contracted-out occupational pension scheme meets the statutory standard. It will replace the existing Guidance Note 28 issued by the Board for Actuarial Standards when that is withdrawn later this year.

9.2 The Board for Actuarial Standards will publicise this change within the actuarial profession when Guidance Note 28 is withdrawn.

¹ <http://www.dwp.gov.uk/consultations/2010/>

² <http://www.dwp.gov.uk/docs/occ-pers-pen-amend-regs-2010-response.pdf>

10. Impact

10.1 There is no new impact on the private sector and civil society organisations.

10.2 The impact on the public sector is negligible.

10.3 A full Impact Assessment has not been published for this instrument.

11. Regulating small business

The legislation has no new impact on small business.

12. Monitoring & review

The Department will monitor the impact of this instrument via the relevant professional bodies, and review where appropriate.

13. Contact

Clare Yiannakou at the Department for Work and Pensions can answer any queries regarding the instrument, tel: 020 8281 1797 or email: Clare.Yiannakou@dwp.gsi.gov.uk