

**EXPLANATORY MEMORANDUM TO**  
**THE PENSIONS (INSTITUTE AND FACULTY OF ACTUARIES AND**  
**CONSULTATION BY EMPLOYERS – AMENDMENT) REGULATIONS 2012**

**2012 No. 692**

**1.** This explanatory memorandum has been prepared by the Department for Work and Pensions (“DWP”) and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 This instrument covers changes to the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 [www.legislation.gov.uk/uksi/2006/349/contents/made](http://www.legislation.gov.uk/uksi/2006/349/contents/made). It amends consultation requirements which apply where changes are proposed to an occupational pension scheme. It requires employers to consult before a change is made to the rules relating to increases to pensions in payment and the revaluation of deferred pensions.

2.2 This instrument also amends existing legislation following the merger of the Institute of Actuaries and the Faculty of Actuaries.

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

None.

**4. Legislative Context**

4.1 The changes to the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 arise from the Government’s decision to use the Consumer Prices Index (“CPI”) as the basis for the statutory minimum revaluation and indexation of occupational pension schemes.

4.2 The Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (S.I. 2006/349) requires employers to consult employees if they wish to make specified changes to the rules of an occupational pension scheme. This instrument amends this by requiring employers to consult before there is a change to a scheme’s revaluation or indexation rules. There is no requirement on employers to consult if that change is beneficial for employees. The consultation has to be carried out only if an employer has any employees who are active or prospective members of its scheme (an active member is currently accruing rights to a pension).

4.3 The remaining changes in this instrument arise from the merger of the Institute of Actuaries and the Faculty of Actuaries to form the Faculty and Institute of Actuaries. There are a number of references to the former bodies in secondary legislation that are being updated.

## **5. Territorial Extent and Application**

This instrument applies to Great Britain and extends to Northern Ireland in respect of Regulations 9 and 14.

## **6. European Convention on Human Rights**

As the 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 change to current legislation arises from the Government decision to use the Consumer Prices Index (“CPI”) as the basis for the statutory minimum revaluation and indexation of occupational pension schemes. The instrument is part of the legislative changes being introduced to make this change. Existing private pension legislation requires the Secretary of State to make a judgment each year on the percentage increase in the general level of prices. The Government decided that CPI is the most appropriate measure of inflation for state benefits and that it is appropriate to take a consistent approach for private pensions. As the change to CPI affects the requirement in legislation for schemes to increase revaluation and indexation on pensions by a minimum amount, schemes may continue to make more generous increases than CPI if they want.

7.2 In August 2010, the Government consulted widely on using CPI in private sector occupational pension schemes and related issues such as whether there should be legislative provision to enable schemes to adopt CPI as their preferred inflation measure. This consultation also covered proposals on changing the requirements on employers to consult their employees before important changes are made to their occupational pension scheme’s rules on indexation and revaluation.

7.3 The instrument makes amendments which provide that consultation must be carried out before the rate at which pensions are revalued or indexed (increased) can be changed in an occupational pension scheme. A change to revaluation or indexation rules is important because it can affect the value of members’ pensions. The instrument ensures that views of employees (active and prospective members of schemes) are sought before this change is made.

7.4 The consequential amendments arise as a result of the merger of the Institute of Actuaries and the Faculty of Actuaries in Scotland into the Institute and Faculty of Actuaries from 1 August 2010.

7.5 Any references to the former two bodies have been removed and replaced with references to the new legal body “The Institute and Faculty of Actuaries”.

- ***Consolidation***

7.6 Informal consolidation of this instrument will be included in due course in DWP's "the Law Relating to Social Security" (the Blue Volumes). These are free on the internet at: <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-lawrelating-to-social-security/>

## **8. Consultation outcome**

8.1 There were two separate consultations undertaken on the areas covered in this instrument, since when the two Statutory Instruments have been merged.

8.2 On 8 December 2010 DWP published a consultation paper seeking views on the implications of the decision to use the CPI as the measure of price increases on private sector occupational pension schemes. The consultation also sought views on proposed amendments to the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006.

8.3 One hundred and fifty one responses to the consultation were received for the wider consultation on CPI changes and around a third responded on the draft regulations. Respondents included pension industry representative organisations, insurance companies, law firms, member representative organisations and trade unions and individuals.

8.4 Whilst the majority of respondents thought that it was right to apply the employer consultation requirements in respect of changes to scheme rules on indexation and revaluation, a few questioned the need for employers to consult on these changes. A very small number of respondents wanted employers to consult all members including deferred members (a deferred member is not currently accruing rights to a pension but has previously accrued such rights) and pensioners. Consulting all pension scheme members including deferred and pensioner members would have been beyond the scope of the employer's duty under the existing legislation (as their duty to consult is only with their employees). A few respondents suggested other changes to the draft regulations; changes have been made to this instrument in the light of some of these suggestions.

8.5 The consultation and Government's response can be seen on the DWP website <http://www.dwp.gov.uk/consultations/2010/cpi-private-pens-consultation.shtml>

8.6 The consultation on amendments to replace references to the Institute of Actuaries and The Faculty of Actuaries in Scotland which merged to become the Institute and Faculty of Actuaries ran for a six week period from 1 December 2011 to 12 January 2012. The limited consultation reflects the fact that the changes were not driven by a policy change decision but merely reflect the merger and renaming of actuarial bodies.

8.7 The consultation generated 3 responses. As the changes were minor technical amendments to reflect the title of the merged body, none of the responses required changes to be made to the regulations as consulted on. A copy of the consultation

response document can be seen on the DWP website at <http://www.dwp.gov.uk/consultations/2011/actuaries-regs.shtml>

## **9. Guidance**

9.1 DWP published guidance in 2010 on employers' duty to consult with regards to S.I. 2006/349. The guidance is available online at <http://www.dwp.gov.uk/docs/occ-personal-pens-schemes-regs06.pdf> and can be accessed via Businesslink and the Pensions Regulator's web site. This guidance will be updated to include employers' duties as a result of the instrument.

## **10. Impact**

10.1 These regulations have a negligible impact on business and civil society organisations.

10.2 These regulations have a negligible impact on the public sector.

10.3 An assessment of the impact of the changes to the employer consultation regulations was included in the impact assessment entitled 'Impact of the move to CPI for Occupational Pensions' which has been published on the DWP website at <http://www.dwp.gov.uk/consultations/2010/cpi-private-pens-consultation.shtml>; the figures remain accurate. The relevant extract is annexed to this memorandum and will be published alongside it on [www.legislation.gov.uk](http://www.legislation.gov.uk).

## **11. Regulating small business**

The duty to consult applies to sponsoring employers in Great Britain with 50 or more employees and which offer occupational pension schemes where direct payment arrangements exist. Reflecting the merger of two actuarial bodies into a single entity does not introduce new legislation.

## **12. Monitoring & review**

DWP will keep the changes under review.

## **13. Contact**

Maureen Rafferty at the Department for Work & Pensions, Tel: 020 7449 7388, E-mail: [Adelphi.sft@dwp.gsi.gov.uk](mailto:Adelphi.sft@dwp.gsi.gov.uk), can answer any queries regarding this instrument.

## ANNEX

An extract from the “Impact of the move to CPI for Occupational Pensions” is shown below, you can find the impact assessment on the DWP website at;

<http://www.dwp.gov.uk/docs/cpi-private-pensions-consultation-ia-120711.pdf>

### Impact Assessment

“This (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (SI 2006/349) requires scheme sponsors to consult with active members of their schemes before making such a change. In the short term it is likely that a relatively high proportion of schemes would wish to make such a change and so the aggregate cost for the first three years is estimated at £400,000 – based on the assumption that 25% of schemes consult on such a change each year at a cost of consulting of £0.68 per communication per member and 2.4m active members. Over time changes of this sort will be no more frequent than any other changes and so the ongoing cost of this listing is estimated at £80,000 with only 5% of schemes considering such a change in a given year”.