

**EXPLANATORY MEMORANDUM TO**  
**THE OCCUPATIONAL PENSION SCHEMES (CONSEQUENTIAL AND**  
**MISCELLANEOUS AMENDMENTS) REGULATIONS 2015**

**2015 No. 493**

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**

- 2.1 This instrument makes miscellaneous amendments to four sets of regulations governing occupational pension schemes. The amendments have two main purposes; first, to enable schemes to offer the new flexible options for the payment of pension benefits which were introduced by the Taxation of Pensions Act 2014. Second, to enable schemes to change their rules to reflect a new requirement placed on trustees by the Pension Schemes Act 2015.
- 2.2 The sets of regulations amended are the:
  - Occupational Pension Schemes (Modification of Schemes) Regulations 2006 (S.I. 2006/759);
  - Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997 (S.I. 1997/785);
  - Occupational Pension Schemes (Contracting-out) Regulations 1996 (S.I. 1996/1172); and
  - Occupational Pension Schemes (Preservation of Benefits) Regulations 1991 (S.I. 1991/167).

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

- 3.1 None.

**4. Legislative Context**

- 4.1 Part 4 of the Finance Act 2004 (“the 2004 Act”) sets out the tax rules in relation to pension schemes. It provides the requirements for registration of a pension scheme so as to be eligible for tax reliefs under the Act, and the circumstances and form in which a registered pension scheme is authorised to pay pension benefits. The Taxation of Pensions Act 2014 (“the 2014 Act”), which received Royal Assent on 17 December 2014, amends, with effect from 6 April 2015, the rules in the 2004 Act on the authorised payments that can be paid in respect of money purchase arrangements (including cash balance arrangements), significantly increasing the flexibility of access to pension savings. The changes, known as the ‘pension flexibilities’, include the introduction of a new type of authorised lump sum payment (an ‘uncrystallised funds pension lump sum’) under section 166 of the 2004 Act, which can be paid in respect of part or all of a member’s rights to money purchase benefits under a scheme. The

pension flexibilities also include a relaxation of restrictions on the payment of drawdown pensions, allowing part or all of a person's accumulated pension fund under a money purchase arrangement to be designated as a 'flexi-access drawdown fund' from which uncapped income can be drawn. The 2014 Act also relaxed a restriction on the persons to whom drawdown pensions can be paid in respect of a member's money purchase arrangement following the member's death.

- 4.2 Part 4 of the Pension Schemes Act 2015 ("the 2015 Act"), which received Royal Assent on 3rd March 2015, amends existing primary legislation and makes substantive new provisions to support the pension flexibilities and ensure they operate as intended. These include the creation of a new defined term, 'flexible benefits', to identify for the purposes of pensions legislation the types of benefits to which the pension flexibilities apply. This is necessary because the term 'money purchase benefits' as defined in tax legislation includes a much broader range of benefit types (including cash balance benefits) than it does as defined in the Department for Work and Pensions' legislation (where it excludes cash balance benefits). The 2015 Act also includes provisions to ensure that a person receives independent advice before transferring their rights from a defined benefits arrangement to an arrangement which provides flexible benefits, and about how the pension flexibilities work in relation to cash balance benefits under occupational pension schemes (including a provision limiting the designation of assets as a flexi-access drawdown fund under such a scheme to assets held in respect of money purchase benefits, as narrowly defined in DWP legislation).
- 4.3 These Regulations make amendments to secondary legislation governing the operation of occupational pension schemes, in light of the changes introduced by the 2014 and 2015 Acts.

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

- 5.1 This instrument applies to Great Britain.

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

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

## **7. Policy background**

- *What is being done and why*

### The Occupational Pension Schemes (Modification of Schemes) Regulations 1991 ("the Modification Regulations")

- 7.1 Occupational pension schemes which want to offer some or all of the new pension flexibilities may not have the power to change their rules in order to do so. The amendments to the Modification Regulations give the trustees of

such a scheme the power to change the scheme's rules for the purpose of offering the pension flexibilities. The consent of the scheme's employer to the change is required, and the scheme may impose conditions (such as payment of a fee) on the flexibilities offered.

- 7.2 Where the rules of a scheme do provide a power to amend the rules, there are restrictions in legislation on any use of that power which affects existing rights under the scheme in certain ways, including a change which would or might result in any right to non-money purchase benefits under the scheme being converted into a right to money purchase benefits (as narrowly defined in DWP legislation). The amendments to the Modification Regulations provide that, where the rules of a scheme are changed to enable a person to convert their benefits under the scheme into money purchase benefits in order to designate assets as a flexi-access drawdown fund, the restrictions do not apply.
- 7.3 The purpose of these amendments is to enable relevant schemes to offer the pension flexibilities if they wish to do so. In some cases the amendments will also allow scheme rules to be changed for this purpose more quickly and at less cost than would otherwise be the case.
- 7.4 The amendments to the Modification Regulations also allow the trustees of a scheme to change the scheme's rules to take account of a new requirement placed on trustees by the 2015 Act. Where a person with rights to defined benefits under a scheme wants to transfer the value of those rights to buy rights to flexible benefits under another scheme, the 2015 Act requires trustees to check, before carrying out the transaction, that the person has received independent advice. The Modification Regulations are amended so that the trustees can change a scheme rule which would otherwise require them to carry out a transfer in circumstances where they have not been able to establish that the person requesting the transfer has received independent advice. The purpose of this amendment is to enable trustees to change their scheme rules to remove a potential conflict with the requirements of the 2015 Act.

The Occupational Pension Schemes (Preservation of Benefits) Regulations 1991 (“the Preservation Regulations”)

- 7.5 Where a member of an occupational pension scheme ceases to be a member of that scheme before reaching the scheme's normal pensionable age, that scheme is required to take steps to preserve the member's accrued benefits (their “short service benefits”). The Preservation Regulations set out those steps and how this short service benefit is to be paid, including the conditions under which it may be paid as a lump sum. The amendment to the Preservation Regulations adds the uncrystallised funds pension lump sum to the list of lump sums that may be paid.

## The Occupational Pension Schemes (Contracting-out) Regulations 1996 (“the Contracting-out Regulations”)

- 7.6 Occupational pension schemes can be ‘contracted-out’. Both the sponsoring employer and employees pay lower National Insurance contributions, but employees have their entitlement to the additional state pension adjusted to reflect the lower National Insurance contributions. Since April 1997, a scheme can be contracted out if it complies with the requirements of section 9(2B) of the Pension Schemes Act 1993. Regulations may specify when benefits accrued in a scheme contracted-out under section 9(2B) may be paid as a lump sum instead of as a pension.
- 7.7 The Contracting-out Regulations set out the circumstances in which such a lump sum can currently be paid. The amendment adds an uncrystallised funds pension lump sum to the list of lump sum payments that may be made. This is to enable pension schemes which were contracted out after April 1997 and are offering flexible benefits to provide such a lump sum, if they so wish.

- ***Consolidation***

- 7.8 Informal consolidated text of instruments is available to the public free of charge via ‘The Law Relating to Social Security’ (Blue Volumes) on the Department for Work and Pensions website at <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/> or the National Archive website [legislation.gov.uk](http://legislation.gov.uk). An explanation as to which instruments are maintained on each site is available [here](#).

## **8. Consultation Outcome**

- 8.1 The amendments made by these regulations were not subject to consultation because, in this case, the Secretary of State considered that by reason of urgency consultation was inexpedient. The amendments made by this instrument are necessary to ensure that the changes to primary legislation made by the Taxation of Pensions Act 2014 and the Pension Schemes Act 2015, which come fully into force on 6th April 2015, operate as intended. The changes will allow occupational pension schemes to amend their rules to offer the new flexibilities and to remove a potential conflict with the requirements of the 2015 Act. The changes will also enable the payment of benefits in the form of an uncrystallised funds pension lump sum, where appropriate.
- 8.2 The Department for Work and Pensions established an Industry Working Group of approximately 20 members in September 2014 which has met regularly to discuss the proposed changes to legislation. This Group included Arms Length Bodies, representatives of pension schemes and related associations; pension lawyers; and businesses from the pensions industry. This

group saw a draft version of the amendments to the Modification Regulations. Changes were made where the group felt clarification would be useful, in particular around the employer consent in the context of multi-employer schemes and this version reflects their comments.

- 8.3 The minor changes to the other sets of regulations were also shown to the group who had no comments on them.

## **9. Guidance**

- 9.1 These Regulations introduce straightforward amendments, and no separate guidance is considered necessary.

## **10. Impact**

- 10.1 The amendments made by these Regulations enable, but do not require, relevant occupational pension schemes to offer the pension flexibilities, with the consent of the scheme's sponsoring employer. They also allow schemes to change their rules to remove a conflict with the requirement placed on trustees by the 2015 Act in relation to transfers from defined benefits arrangements. The regulations do not therefore impose costs on businesses.
- 10.2 As described in paragraph 10.1 the amendments to these Regulations do not require relevant occupational pension schemes to offer the pension flexibilities. Schemes which wish to do so, must obtain the consent of the employer. Therefore they do not impose any costs on civil society organisations. This is also the case for any relevant public sector pension schemes.
- 10.3 The changes being made by this set of regulations are not, in themselves, age discriminatory. However, under the 2014 Act some payments made to members under the pension flexibilities are only authorised if the member concerned is over the minimum age – currently age 55 (unless the member has an earlier pension age protected under transitional provisions in the 2004 Act), or is in serious ill health. The changes made by this set of regulations reflect this.

## **11. Regulating Small Business**

- 11.1 These Regulations apply to small businesses as to any other businesses. However, for the reasons given in paragraph 10.1 above (employers do not have to agree changes to their schemes rules to allow for the pension flexibilities), they do not impose costs on small businesses.

## **12. Monitoring & Review**

- 12.1 The Department for Work and Pensions keeps its legislation under review as a matter of course, and is committed to monitoring practices which emerge in the operation of occupational pension schemes. The Tax Information & Impact

Note published at Budget 2014, and republished at Autumn Statement 2014, commits the Government to continuing to monitor the pension flexibilities policy through tax data, and HMRC publishes significant amounts of data on tax receipts and liabilities annually.

### **13. Contact**

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