
STATUTORY INSTRUMENTS

2015 No. 493

The Occupational Pension Schemes (Consequential and Miscellaneous Amendments) Regulations 2015

Amendments to the Occupational Pension Schemes (Modification of Schemes) Regulations 2006

5.—(1) The Occupational Pension Schemes (Modification of Schemes) Regulations 2006(1) are amended as follows.

(2) In paragraph (3) of regulation 1 (interpretation), after the definition of “the 2004 Act” insert—
““the 2015 Act” means the Pension Schemes Act 2015(2);”.

(3) In regulation 3 (non-application of the subsisting rights provisions), after paragraph (g) insert—

“(ga) which provides for the option specified in regulation 8B(3)(b) (conversion of flexible benefits for the purpose of payment of drawdown pension etc) to be made available under the scheme to any person referred to in sub-paragraph (a) or (b) of paragraph (2) of that regulation;”.

(4) After regulation 8A (modification of schemes: reduction in the rate of pension)(3) insert—

“Modification of schemes: drawdown pensions, uncrystallised funds pension lump sums and death benefits

8B.—(1) Subject to paragraph (5), the trustees of a trust scheme may by resolution modify the scheme for either or both of the following purposes—

- (a) providing for the nomination, in relation to a member of the scheme, of a nominee or successor of the member, as defined by paragraphs 27A and 27F of Schedule 28 to the 2004 Act (supplementary provision about authorised pensions – pension death benefit rules)(4);
- (b) providing for the payment of a drawdown pension fund lump sum death benefit or a flexi-access drawdown fund lump sum death benefit, as defined by paragraphs 17 and 17A of Schedule 29 to the 2004 Act (supplementary provision about authorised lump sums – lump sum death benefit rule)(5).

(2) Subject to paragraph (5), the trustees of a trust scheme may by resolution modify the scheme for the purpose of offering one or more of the options specified in paragraph (3) to any person who is—

(1) [S.I. 2006/759](#), amended by [S.I. 2013/1754](#); there are other amending instruments but none is relevant.

(2) [2015 c.8](#).

(3) Regulation 8A was inserted by [S.I. 2013/1754](#).

(4) See regulation 1(3) of [S.I. 2006/759](#) for the meaning of “the 2004 Act”. Paragraphs 27A and 27F of Schedule 28 to the Finance Act 2004 ([c.12](#)) were inserted by paragraph 3(1) of Schedule 2 to the Taxation of Pensions Act 2014 ([c.30](#)).

(5) Paragraph 17 of Schedule 29 was amended by paragraph 37 of Schedule 16 to the Finance Act 2011 ([c.11](#)) and paragraph 23 of Schedule 1 to the Taxation of Pensions Act 2014. Paragraph 17A of Schedule 29 was inserted by paragraph 24 of Schedule 1 to the Taxation of Pensions Act 2014.

- (a) a member who has attained normal minimum pension age (as defined by section 279(1) of the 2004 Act) or who meets the ill-health condition specified in paragraph 1 of Schedule 28 to the 2004 Act; or
 - (b) a survivor of a member.
- (3) The options referred to in paragraph (2) are—
- (a) designation of sums or assets held for the purpose of providing money purchase benefits as available for the payment of—
 - (i) drawdown pension (as defined by paragraph 4 of Schedule 28 to the 2004 Act⁽⁶⁾);
 - (ii) dependants' drawdown pension (as defined by paragraph 18 of Schedule 28 to the 2004 Act⁽⁷⁾);
 - (iii) nominees' drawdown pension (as defined by paragraph 27B of Schedule 28 to the 2004 Act⁽⁸⁾); or
 - (iv) successors' drawdown pension (as defined by paragraph 27G of Schedule 28 to the 2004 Act⁽⁹⁾);
 - (b) conversion of flexible benefits which are not money purchase benefits into money purchase benefits for the purpose of the exercise of an option specified in sub-paragraph (a);
 - (c) in the case of a member, payment of an uncrystallised funds pension lump sum (as defined by paragraph 4A of Schedule 29 to the 2004 Act⁽¹⁰⁾).
- (4) A modification under paragraph (2) may include conditions on the exercise of an option specified in paragraph (3), including in particular—
- (a) provision for payment of a fee by the member or survivor on exercising an option specified in sub-paragraph (a) or (c) of paragraph (3);
 - (b) where a member—
 - (i) has not attained normal pension age (as defined by section 76(1) of the 2015 Act) under the scheme; and
 - (ii) exercises an option specified in sub-paragraph (b) or (c) of paragraph (3) in relation to subsisting rights to flexible benefits which are not money purchase benefits,
 provision for a reduction in the value or amount of the portion of the member's subsisting rights in respect of which the option is exercised.
- (5) No modification under this regulation may 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 appointed in accordance with the scheme rules, to act as the employers' representative (the "employer representative") consents; or
 - (ii) where there is no such employer representative, all of the employers in relation to the scheme consent other than any employer who has waived his right to give such consent.

⁽⁶⁾ Paragraph 4 of Schedule 28 was amended by paragraph 3 of Schedule 16 to the Finance Act 2011.

⁽⁷⁾ Paragraph 18 of Schedule 28 was amended by paragraph 13 of Schedule 16 to the Finance Act 2011.

⁽⁸⁾ Paragraph 27B of Schedule 28 was inserted by paragraph 3(1) of Schedule 2 to the Taxation of Pensions Act 2014.

⁽⁹⁾ Paragraph 27G of Schedule 28 was inserted by paragraph 3(1) of Schedule 2 to the Taxation of Pensions Act 2014.

⁽¹⁰⁾ Paragraph 4A of Schedule 29 was inserted by paragraph 57 of Schedule 1 to the Taxation of Pensions Act 2014.

(6) In this regulation, “flexible benefit” has the meaning given by section 74 of the 2015 Act.

Modification of schemes: independent advice requirement in respect of transfers

8C.—(1) The trustees of a trust scheme may by resolution modify the scheme for the purpose of providing that, where the circumstances specified in paragraph (2) apply, the trustees are not required to make the proposed transfer payment referred to in paragraph (2)(a).

(2) The circumstances specified for the purpose of paragraph (1) are—

- (a) the rules of the scheme would, in the absence of any modification made under this regulation, require the trustees to make a transfer payment in respect of a member’s or survivor’s subsisting rights to benefits (“the proposed transfer payment”);
- (b) section 48 of the 2015 Act (independent advice in respect of conversions and transfers) requires the trustees to check that the member or survivor has received appropriate independent advice (as defined by subsection (8) of that section) before making the proposed transfer payment; and
- (c) the trustees—
 - (i) are unable to carry out the check by reason of factors outside their control; or
 - (ii) have carried out the check but the check did not confirm that the member or survivor had received appropriate independent advice.”.