STATUTORY INSTRUMENTS

2015 No. 118

PENSIONS

The Occupational Pension Schemes (Power to Amend Schemes to Reflect Abolition of Contracting-out) Regulations 2015

Made - - - -	*25th February 2015*
Laid before Parliament	*4th March 2015*
Coming into force - -	*6th April 2015*

The Secretary of State for Work and Pensions, in exercise of the powers conferred by sections 24(5) and 54(5) and (6), of and paragraphs 2(3) and (4), 4, 6, 10(1), 12, 13, and 14(1) and (2) of Schedule 14 to, the Pensions Act 2014(**1**), makes the following Regulations:

Citation and commencement

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Power to Amend Schemes to Reflect Abolition of Contracting-out) Regulations 2015.

(2) These Regulations come into force on 6th April 2015.

Interpretation

2. In these Regulations—

"the Act" means the Pensions Act 2014;

"the 2004 Act" means the Pensions Act 2004(**2**);

"actuarial valuation" has the meaning given by section 224(2)(a) of the 2004 Act (actuarial valuations and reports);

"the actuary" means the actuary appointed in accordance with regulation 10(2);

"the amendment date" means the date amendments made using the power take effect;

"the calculation date" means the date chosen in accordance with regulation 8(7);

"effective date" means the date referred to in section 224(2)(b) of the 2004 Act;

"the power" means the power under section 24(2) of the Act to amend an occupational pension scheme;

(**1**) 2014 c.19.
(**2**) 2004 c.35.

"principal employer" means, in relation to a multi-employer scheme–

(a) a person nominated by the employers, or by rules of the scheme, to act on behalf of the employers for the purposes of section 229 of the 2004 Act (matters requiring agreement of the employer), or

(b) where there is no such nominee, a person nominated by the employers to act on their behalf for the purposes of the use of the power;

"proposed amendments" means the amendments to be certified under paragraph 6(1) of Schedule 14 to the Act;

"segregated scheme" means a multi-employer scheme which is divided into two or more sections where–

(a) any contributions payable to the scheme by an employer in relation to the scheme, or by a member employed by that employer, are allocated to that employer's section, and if more than one section applies to an employer, to the section to which the employment relates, and

(b) a specified proportion of the assets of the scheme is attributable to each section of the scheme and cannot be used for the purposes of any other section; and

"technical provisions" has the meaning given by section 222(2) of the 2004 Act (the statutory funding objective).

Protected persons to whom the power does not apply

3.—(1) For the purposes of section 24(4)(a) of the Act (when the power may not be used) a person listed in this regulation is a "protected person in relation to a scheme".

(2) A person who is a "protected employee" as defined by regulation 2(1) of the Electricity (Protected Persons)(England and Wales) Pension Regulations 1990 (interpretation)(**3**) on or after the amendment date.

(3) A person who is a "protected employee" as defined by regulation 2(1) of the Electricity (Protected Persons)(Scotland) Pension Regulations 1990 (interpretation)(**4**) on or after the amendment date.

(4) A person who is a "protected employee" as defined by article 1(2) of the Railway Pensions (Protection and Designation of Schemes) Order 1994 (citation, commencement and interpretation)(**5**) to whom part II of that Order has effect in relation to relevant pension rights, within the meaning of paragraph 6(3) of Schedule 11 to the Railways Act 1993 (the powers of protection)(**6**), accruing on or after the amendment date.

(5) A person who is a "protected employee" as defined by regulation 2(1) of the Coal Industry (Protected Persons) Pensions Regulations 1994 (interpretation)(**7**) on or after the amendment date.

(6) A person who is a "protected person" as defined by article 1(3) of the London Transport Pension Arrangements Order 2000 (citation, commencement and interpretation)(**8**) to whom that Order has effect on or after the amendment date.

(7) A person who falls within paragraph 9(5) of Schedule 8 to the Energy Act 2004 (persons entitled to pension protection under paragraphs 10 and 11)(**9**) and to whom paragraph 9(2) of that Schedule applies.

(**3**) S.I. 1990/346.
(**4**) S.S.I 1990/510.
(**5**) S.I. 1994/1432, to which there are amendments not relevant to these Regulations.
(**6**) 1993 c.43.
(**7**) S.I. 1994/3070.
(**8**) S.I. 2000/3386, to which there are amendments not relevant to these Regulations.
(**9**) 2004 c.20.

Total annual employee contributions of the relevant members

4.—(1) For the purposes of paragraph 2(3)(a) of Schedule 14 to the Act (what can the power be used to do?), the "total annual employee contributions of the relevant members" means the total annual amount of employee contributions for the relevant members calculated using the employee contribution rates shown in the schedule of contributions adopted in relation to the scheme for the purposes of Part 3 of the 2004 Act (scheme funding) as at the calculation date.

(2) The actuary is to calculate the increase, due to the proposed amendments, in the total annual employee contributions of the relevant members–

(a) estimated to be payable over the period of one year beginning with the calculation date;

(b) using the earnings data specified in regulation 7; and

(c) in accordance with the requirements in regulation 8.

Annual increase in an employer's national insurance contributions in respect of the relevant members

5.—(1) For the purposes of paragraph 2(3)(b) of Schedule 14 to the Act, the "annual increase in an employer's national insurance contributions in respect of the relevant members" means the increase of 3.4% in the annual amount of national insurance contributions payable by the employer in respect of so much of the earnings of relevant members as exceeds the applicable lower earnings limit but not the upper accrual point (or the prescribed equivalents if the earner is paid otherwise than weekly).

(2) The actuary is to calculate the annual increase in the employer's national insurance contributions in respect of the relevant members–

(a) estimated to be payable over the period of one year beginning with the calculation date;

(b) using the earnings data specified in regulation 7; and

(c) in accordance with the requirements in regulation 8.

(3) In this regulation–

"the 1992 Act" means the Social Security Contributions and Benefits Act 1992(**10**);

"applicable" in relation to the lower earnings limit, means the limit or limits in force during the one year after the calculation date;

"lower earnings limit" is to be construed in accordance with section 5(**11**) of the 1992 Act (earnings limits and thresholds for class 1 contributions);

"the prescribed equivalents"–

(a) in the context of the lower earnings limit, means the equivalent prescribed under section 5(4) of the 1992 Act, and

(b) in the context of the upper accrual point, means the equivalent prescribed under section 122(6A)(**12**) of that Act (interpretation); and

"the upper accrual point" has the meaning given by section 122(1)(**13**) of the 1992 Act.

(**10**) 1992 c.4.
(**11**) Section 5 was substituted by the Welfare Reform and Pensions Act 1999 (c.30), section 73 and Schedule 9 Part 1 paragraph 1.
(**12**) Section 122(6A) was inserted by the National Insurance Contributions Act 2008 (c.16), sections 3(1) and (4)(b).
(**13**) Definition of "the upper accrual point" in section 122(1) was inserted by the Pensions Act 2007 (c.22), section 12(3)(a) and substituted by the National Insurance Contributions Act 2008 (c.16), sections 3(1) and (4)(a).

Scheme liabilities in respect of the benefits that accrue annually for or in respect of the relevant members

6.—(1) For the purposes of paragraph 2(3)(c) of Schedule 14 to the Act, a "scheme's liabilities in respect of the benefits that accrue annually for or in respect of the relevant members" means any liabilities which arise by virtue of any rights accruing to future benefits under the scheme rules for or in respect of the relevant members.

(2) Where those rights include discretionary benefits, the discretionary benefits are to be taken into account in the same way as in the scheme's technical provisions–

(a) where the calculation date is the same date as the effective date of an actuarial valuation, calculated by reference to that date, or

(b) where the calculation date is not the same date as that date, calculated by reference to the date of the most recent actuarial valuation before the calculation date.

(3) Where those rights include money purchase benefits, the money purchase benefits are not to be taken into account.

(4) The actuary is to calculate the reduction, due to the proposed amendments, in the scheme's liabilities in respect of the benefits that accrue annually for or in respect of the relevant members–

(a) estimated for the period of one year beginning with the calculation date;

(b) using the earnings data specified in regulation 7; and

(c) in accordance with the requirements of regulation 8.

(5) In this regulation, "money purchase benefits" have the meaning given by section 181 of the Pension Schemes Act 1993 (general interpretation)(**14**) .

Earnings data

7.—(1) The actuary must use earnings data which, except where paragraph (3) applies, is for the period of one year ending with the calculation date.

(2) Where paragraph (3) applies, calculations may be made using earnings data which refers to the period of three years ending with the calculation date.

(3) This paragraph applies where–

(a) the actuary is satisfied that the earnings data for some or all of the relevant members for the period of one year ending with the calculation date is significantly abnormal; and

(b) the–

(i) principal employer in a case falling within regulation 14 or 15, or

(ii) employer in any other case;

writes to the actuary stating that it is also so satisfied.

General calculation requirements

8.—(1) The actuary must comply with the following requirements in carrying out the calculations under regulations 4(2), 5(2) and 6(4).

(2) The calculations are to be carried out–

(a) as if the proposed amendments took effect on the calculation date;

(b) taking account only of the effect of the proposed amendments;

(**14**) 1993 c.48; the definition of "money purchase benefits" was amended by the Civil Partnership (Pensions and Benefit Payments) (Consequential, etc Provisions) Order 2005, S.I. 2005/2053 article 2 and paragraph 18 of the Schedule Part 3 and by the Pensions Act 2011 (c.19) section 29(1).

(c) at the present value at the calculation date; and

(d) where an assumption is used in more than one calculation, using the same assumption for each calculation in which it is used.

(3) Any data used in the calculations, other than earnings data, must be data–

(a) the actuary considers is relevant; and

(b) which–

(i) is as at the calculation date, or

(ii) refers to the period of one year ending with the calculation date,

as the actuary considers appropriate.

(4) Calculations must be made using–

(a) the methods and assumptions used to calculate the scheme's technical provisions–

(i) where the calculation date is the same date as the effective date of an actuarial valuation, calculated by reference to that date, or

(ii) where the calculation date is not the same date as that date, calculated by reference to the date of the most recent actuarial valuation before the calculation date, updated if necessary to reflect market conditions at the calculation date; and

(b) any other assumptions which the actuary considers necessary and which are consistent with the assumptions used to calculate the scheme's technical provisions, updated if necessary to reflect market conditions at the calculation date.

(5) Where paragraph (6) applies, the actuary must adjust the requested assumptions to a best estimate basis by removing any margin for prudence provided the actuary is satisfied such adjustments are consistent with the principles that would be used by the trustees or managers of the scheme in calculating an initial cash equivalent under regulation 7B of the Occupational Pension Schemes (Transfer Values) Regulations 1996 (initial cash equivalents for salary related benefits other than cash balance benefits not calculated by reference to final salary)(**15**) at the calculation date.

(6) This paragraph applies where the–

(a) principal employer in a case falling within regulation 14 or 15; or

(b) employer in any other case,

writes to the actuary instructing the actuary to adjust any assumptions ("the requested assumptions") to remove any margin for prudence.

(7) Subject to regulation 8(8), the–

(a) principal employer in a case falling within regulation 14 or 15; or

(b) employer in any other case,

must choose a calculation date which may be any date after 31st December 2011.

(8) Where the power is used in relation to the same members in the same scheme on a second or subsequent occasion the calculation date must be the same date as on the first occasion the power was used.

(9) In this regulation, "any margin for prudence" means any margin for adverse deviation allowed for in accordance with regulation 5(4)(a) of the Occupational Pension Schemes (Scheme Funding) Regulations 2005 (calculation of technical provisions)(**16**).

(**15**) S.I. 1996/1847; regulation 7B was inserted by S.I. 2008/1050, relevant amending instruments are 2008/2450 and 2014/1711.
(**16**) S.I. 2005/3377.