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STATUTORY INSTRUMENTS

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**2009 No. 615**

**PENSIONS**

**The Occupational, Personal and Stakeholder Pensions  
(Miscellaneous Amendments) Regulations 2009**

*Made - - - - 10th March 2009*  
*Laid before Parliament 16th March 2009*  
*Coming into force in accordance with regulation 1*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 11(5)(b) and (c), 12C(1)(a), 20(1) and (2), 45(3)(a), 101C(2), 101D(2) (b) and (4)(b), 101E(1)(c), 101F(6)(b), 168(1) and (4), 181(1), 182(2) and (3) and 183(1) of the Pension Schemes Act 1993(1), sections 10(3), 40(1), 68(2)(e), 74(3)(e), 124(1) and 174(2) and (3) of the Pensions Act 1995(2), sections 1(3), 2(7), 8(1), 41(1) and (2), 45(2) and 83(4) and (6) of the Welfare Reform and Pensions Act 1999(3) and sections 232, 242(10), 243(2), 314, 315(2), (4) and (5) and 318(1) of the Pensions Act 2004(4).

In accordance with section 185(1) of the Pension Schemes Act 1993(5), section 120(1) of the Pensions Act 1995, section 83(11) of the Welfare Reform and Pensions Act 1999 and section 317(1) of the Pensions Act 2004, the Secretary of State has consulted with such persons as the Secretary of State considers appropriate.

**Citation and commencement**

1.—(1) These Regulations may be cited as the Occupational, Personal and Stakeholder Pensions (Miscellaneous Amendments) Regulations 2009.

(2) Except where paragraph (3) applies, these Regulations come into force on 6th April 2009.

(3) Regulation 19 comes into force—

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- (1) 1993 c.48. Section 12C was inserted by section 136(5) of the Pensions Act 1995 (c.26). Section 20(1) was amended by paragraph 2(1) of Schedule 5 to the Child Support, Pensions and Social Security Act 2000 (c.19). Sections 101C, 101D, 101E and 101F were inserted by section 37 of the Welfare Reform and Pensions Act 1999 (c.30). Section 101E(1) was amended by paragraph 148 of Schedule 27 to the Civil Partnerships Act 2004 (c.33). Section 168 was substituted by section 155(1) of the Pensions Act 1995 and amended by paragraph 27 of Schedule 12 to the Pensions Act 2004 (c.35). Section 181(1) is cited because of the meaning it gives to “prescribe” and “regulations”. Section 183(1) was amended by paragraph 79 of Schedule 5, and paragraph 15(a) of Schedule 6, to the Pensions Act 1995.
- (2) 1995 c.26. Section 74(3)(e) was inserted by section 270(2) of the Pensions Act 2004. Section 124(1) is cited because of the meaning it gives to “prescribed” and “regulations”.
- (3) 1999 c.30. Section 8(1) is cited because of the meaning it gives to “prescribed”.
- (4) 2004 c.35. Section 318(1) is cited because of the meaning it gives to “prescribed” and “regulations”.
- (5) Section 185(1) was amended by paragraph 46 of Schedule 3, and paragraph 80(a) of Schedule 5, to the Pensions Act 1995.

- (a) for the purposes of paragraph (3)(b), on 6th April 2009, and
- (b) for all other purposes, on 23rd September 2010.

### **Amendment of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991**

2.—(1) The Occupational Pension Schemes (Preservation of Benefit) Regulations 1991(6) are amended in accordance with this regulation.

(2) In regulation 27B (offence and penalties)(7), for “Occupational Pensions Regulatory Authority may” substitute “Regulatory Authority may by notice in writing”.

### **Amendment of the Occupational Pension Schemes (Revaluation) Regulations 1991**

3.—(1) The Occupational Pension Schemes (Revaluation) Regulations 1991(8) are amended in accordance with this regulation.

(2) After regulation 13 (lump sum in respect of service before 6th April 1975), insert—

#### **“Purpose for which trustees may modify the scheme**

13A.—(1) This regulation prescribes a purpose for which the trustees of a trust scheme may by resolution modify the scheme under section 68 of the Pensions Act 1995 (power of trustees to modify schemes by resolution).

(2) The purpose is to—

- (a) reduce the rate or amount by which the scheme revalues any benefits(9) that accrue after the date of the resolution; or
- (b) change the method for determining that rate or amount in order to make such a reduction.

(3) No modification may be made for the purpose in paragraph (2) without the consent of—

- (a) where there is one employer in relation to the scheme, that employer; or
- (b) where there is more than one employer in relation to the scheme—
  - (i) all those employers; or
  - (ii) a person nominated by all those employers, or in accordance with the scheme rules, to act as their representative.”.

### **Amendment of the Occupational Pension Schemes (Contracting-out) Regulations 1996**

4.—(1) The Occupational Pension Schemes (Contracting-out) Regulations 1996(10) are amended in accordance with this regulation.

(2) In regulation 9 (making of elections by employers for the variation or surrender of contracting-out certificates)(11)—

- (a) at the end of paragraph (5)(e)(i), insert “and”,
- (b) at the end of paragraph (5)(e)(ii), omit “and”,
- (c) paragraph (5)(e)(iii) becomes paragraph (5)(ea),

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(6) [S.I. 1991/167](#).

(7) Regulation 27B was inserted by [S.I. 1996/2131](#).

(8) [S.I. 1991/168](#).

(9) See sections 83 and 84 of, and paragraphs 1 and 2 of Schedule 3 to, the Pension Schemes Act 1993.

(10) [S.I. 1996/1172](#).

(11) Regulation 9 was amended by [S.I. 2002/681](#).

- (d) in paragraph (5)(ea), insert at the beginning “where the notice is not about surrendering a contracting-out certificate due to the scheme winding up, contain a statement that”, and
  - (e) in paragraph (6), for “such a notice as is mentioned in this regulation” substitute “a notice under this regulation which is not about surrendering a contracting-out certificate due to the scheme winding up”.
- (3) In regulation 12(4) (special provision for holding companies and subsidiaries), for “9(5)(e)(iii)” substitute “9(5)(ea)”.

#### **Amendment of the Contracting-out (Transfer and Transfer Payment) Regulations 1996**

5.—(1) The Contracting-out (Transfer and Transfer Payment) Regulations 1996(12) are amended in accordance with this regulation.

(2) In regulation 1(2) (interpretation) in the definitions of “connected employer transfer” and “connected employer transfer payment”, after the first and third times the words “salary-related contracted-out scheme” appear insert “(or a scheme which was formerly a salary-related contracted-out scheme)”.

#### **Amendment of the Occupational Pension Schemes (Disclosure of Information) Regulations 1996**

6.—(1) The Occupational Pension Schemes (Disclosure of Information) Regulations 1996(13) are amended in accordance with this regulation.

(2) In regulation 11 (civil penalties)(14), after “the Regulatory Authority may” insert “by notice in writing”.

#### **Amendment of the Occupational Pension Schemes (Indexation) Regulations 1996**

7.—(1) The Occupational Pension Schemes (Indexation) Regulations 1996(15) are amended in accordance with this regulation.

(2) After regulation 4 (indexation of certain transfers made on or after 6th April 2005)(16), insert—

##### **“Purpose for which trustees may modify the scheme**

5.—(1) This regulation prescribes a purpose for which the trustees of a trust scheme may by resolution modify the scheme under section 68 of the Act (power of trustees to modify schemes by resolution).

(2) The purpose is to—

- (a) reduce the amount of the annual increase in the rate of any pension(17) that accrues after the date of the resolution; or
- (b) change the method for determining that amount in order to make such a reduction.

(3) No modification may be made for the purpose in paragraph (2) without the consent of—

- (a) where there is one employer in relation to the scheme, that employer; or
- (b) where there is more than one employer in relation to the scheme—

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(12) S.I. 1996/1462. Relevant amending instrument is S.I. 2006/744.

(13) S.I. 1996/1655.

(14) Regulation 11 was substituted by S.I. 2005/704.

(15) S.I. 1996/1679.

(16) Regulation 4 was inserted by S.I. 2005/704.

(17) See section 51 of the Pensions Act 1995.

- (i) all those employers; or
- (ii) a person nominated by all those employers, or in accordance with the scheme rules, to act as their representative.”.

#### **Amendment of the Occupational Pension Schemes (Transfer Values) Regulations 1996**

**8.**—(1) The Occupational Pension Schemes (Transfer Values) Regulations 1996(**18**) are amended in accordance with this regulation.

(2) In regulation 11(6) (disclosure), after “the Regulatory Authority may” insert “by notice in writing”.

#### **Amendment of the Occupational Pension Schemes (Winding Up) Regulations 1996**

**9.**—(1) The Occupational Pension Schemes (Winding Up) Regulations 1996(**19**) are amended in accordance with this regulation.

- (2) In regulation 8(7) (requirements to be satisfied by transferee schemes, annuities etc.)(**20**)—
- (a) at the end of sub-paragraph (a), insert “or”, and
  - (b) omit sub-paragraph (c) and the word “or” immediately preceding it.

#### **Amendment of the Personal Pension Schemes (Appropriate Schemes) Regulations 1997**

**10.**—(1) The Personal Pension Schemes (Appropriate Schemes) Regulations 1997(**21**) are amended in accordance with this regulation.

(2) In regulation 15(7)(e) (calculation or estimation of earnings), for “earnings limit” substitute “accrual point”.

#### **Amendment of the Occupational Pension Schemes (Age-related Payments) Regulations 1997**

**11.**—(1) The Occupational Pension Schemes (Age-related Payments) Regulations 1997(**22**) are amended in accordance with this regulation.

(2) In regulation 10 (penalties), for “Occupational Pensions Regulatory Authority may” substitute “Regulatory Authority may by notice in writing”.

#### **Amendment of the Pensions on Divorce etc. (Provision of Information) Regulations 2000**

**12.**—(1) The Pensions on Divorce etc. (Provision of Information) Regulations 2000(**23**) are amended in accordance with this regulation.

- (2) In regulation 1(2) (interpretation), omit the definition of “the Regulatory Authority”.
- (3) In regulation 9 (penalties), after “Regulatory Authority may” insert “by notice in writing”.

#### **Amendment of the Pensions on Divorce etc. (Charging) Regulations 2000**

**13.**—(1) The Pensions on Divorce etc. (Charging) Regulations 2000(**24**) are amended in accordance with this regulation.

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(18) [S.I. 1996/1847](#).

(19) [S.I. 1996/3126](#).

(20) Regulation 8(7) was inserted by [S.I. 2005/706](#).

(21) [S.I. 1997/470](#).

(22) [S.I. 1997/946](#).

(23) [S.I. 2000/1048](#).

(24) [S.I. 2000/1049](#).

(2) In regulation 1(2) (interpretation), omit the definition of “the Regulatory Authority”.

(3) In regulation 9(6)(b) (charges in respect of pension sharing activity – method of recovery), for “Regulatory Authority” substitute “Pensions Regulator<sup>(25)</sup>”.

### **Amendment of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000**

**14.**—(1) The Pension Sharing (Implementation and Discharge of Liability) Regulations 2000<sup>(26)</sup> are amended in accordance with this regulation.

(2) In regulation 1(2) (interpretation) in the definition of “the Regulatory Authority”, for “Occupational Pensions Regulatory Authority” substitute “Pensions Regulator”.

### **Amendment of the Pension Sharing (Pension Credit Benefit) Regulations 2000**

**15.**—(1) The Pension Sharing (Pension Credit Benefit) Regulations 2000<sup>(27)</sup> are amended in accordance with this regulation.

(2) In regulation 1(2) (interpretation)—

(a) omit the definition of “incapacity”, and

(b) in the definition of “Regulatory Authority”, for “Occupational Pensions Regulatory Authority” substitute “Pensions Regulator”.

(3) For regulations 3 (commutation of the whole of pension credit benefit) and 4 (commutation of part of pension credit benefit)<sup>(28)</sup>, substitute—

#### **“Pension credit benefit in lump sum form**

**3.** For the purposes of section 101C(2) of the 1993 Act (basic principle as to pension credit benefit), the circumstances in which the trustees or managers of a scheme may provide for payment of pension credit benefit in the form of a lump sum before normal benefit age are those which permit payment of a lump sum in accordance with paragraph (a), (b), (e), (f) or (g) of the lump sum rule in section 166(1) of the Finance Act 2004 (lump sum rule)<sup>(29)</sup>.”.

(4) In regulation 7 (early retirement or deferred retirement)—

(a) for paragraphs (2) and (3), substitute—

“(2) The benefits referred to in paragraph (1) must include a benefit that is both—

(a) payable to the person entitled to the pension credit benefit; and

(b) not payable before normal benefit age except where the person entitled to the benefit has either—

(i) met the ill-health condition in accordance with paragraph 1 of Schedule 28 to the Finance Act 2004 (registered pension schemes – defined benefits and money purchase arrangements – ill-health condition) immediately before that person became entitled to the benefit; or

(ii) attained normal minimum pension age as defined in section 279(1) of that Act (other definitions).”.

(b) in paragraph (4)(a), for “incapacity or serious ill health” substitute “physical or mental infirmity”, and

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<sup>(25)</sup> The Pensions Regulator was established under section 1 of the Pensions Act 2004.

<sup>(26)</sup> S.I. 2000/1053.

<sup>(27)</sup> S.I. 2000/1054.

<sup>(28)</sup> Regulation 3 was amended by S.I.s 2006/744 and 2007/1930 and regulation 4 was amended by S.I.s 2006/744 and 778.

<sup>(29)</sup> 2004 c.12.

(c) omit paragraph (6).

(5) In regulation 13 (conditions on which pension credit benefit secured by insurance policies and annuity contracts may be commuted), for “if it satisfies the requirements of regulation 3 or 4 (commutation of the whole of pension credit benefit, or commutation of part of pension credit benefit)” substitute “in the circumstances described by regulation 3 (pension credit benefit in lump sum form)”.

(6) In regulation 22(1)(b) (requirements to be met by an eligible scheme)(30)—

(a) omit “any of sub-paragraphs (a) to (e) of” and “(a), (c) or (e)”, and

(b) after “is made is”, in the second place where it occurs, insert “also”.

### **Amendment of the Stakeholder Pension Schemes Regulations 2000**

**16.**—(1) The Stakeholder Pension Schemes Regulations 2000(31) are amended in accordance with this regulation.

(2) In sub-paragraphs (a) and (f) of regulation 3(5) (requirements applying to all stakeholder pension schemes as regards instruments establishing such schemes), omit “Occupational Pensions Regulatory”.

(3) In regulation 21(1) (access to the register), omit “Occupational Pensions Regulatory”.

### **Amendment of the Occupational Pension Schemes (Independent Trustee) Regulations 2005**

**17.**—(1) The Occupational Pension Schemes (Independent Trustee) Regulations 2005(32) are amended in accordance with this regulation.

(2) In regulation 13(5) (disclosure requirements and penalty), after “the Regulator may” insert “by notice in writing”.

### **Amendment of the Occupational Pension Schemes (Scheme Funding) Regulations 2005**

**18.**—(1) The Occupational Pension Schemes (Scheme Funding) Regulations 2005(33) are amended in accordance with this regulation.

(2) In regulation 17 (exemptions – general)—

(a) in paragraph (1)(l)(34), after “a scheme” insert “or a section of a scheme”, and

(b) in paragraph (2), after the definition of “section 615(6) scheme” insert—

““a section of a scheme” means a section of a multi-employer scheme where a specified part or proportion of the assets of the scheme is attributable to that section and cannot be used for the purposes of any other section of the scheme;”.

(3) In Schedule 2 (modifications of the Act and Regulations) in paragraph 9 (schemes under which the rates of contributions are determined by the trustees or managers or by the actuary)—

(a) in sub-paragraph (5)—

(i) after “scheme under which” insert “any of”, and

(ii) for “the rates shown in” substitute “any such rates forming part of”,

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(30) Regulation 22(1) was amended by [S.I. 2000/2691](#).

(31) [S.I. 2000/1403](#).

(32) [S.I. 2005/703](#).

(33) [S.I. 2005/3377](#).

(34) Regulation 17(1)(l) was amended by [S.I. 2006/1733](#).

- (b) in sub-paragraph (6), for “the rates of contributions shown in this schedule” substitute “any rates of contributions forming part of this schedule which the scheme requires me to determine”, and
- (c) in sub-paragraph (7), after “to determine” insert “any of”.

### **Amendment of the Occupational Pension Schemes (Investment) Regulations 2005**

**19.**—(1) The Occupational Pension Schemes (Investment) Regulations 2005<sup>(35)</sup> are amended in accordance with this regulation.

(2) In regulation 12 (restrictions on employer-related investments)—

(a) for paragraph (2), substitute—

“(2) Subject to regulations 13 and 16, not more than five per cent. of the current market value of the resources of a scheme may at any time be invested in employer-related investments.

(2A) Subject to regulations 14, 15, 15A and 16, none of the resources of a scheme may at any time be invested in any employer-related loan.

(2B) Subject to regulation 16, employer-related loans under regulations 14, 15 and 15A are to be regarded as employer-related investments for the purposes of determining the percentage of a scheme’s resources invested in employer-related investments under paragraph (2).”, and

(b) in paragraph (4), for “14 and 15” substitute “14, 15 and 15A”.

(3) In regulation 13 (investments to which restrictions do not apply)—

(a) omit paragraph (2),

(b) in paragraph (3)(b)<sup>(36)</sup>, insert at the end—

“; or

(c) the Bank of England.”,

(c) omit paragraphs (3), (4), (8) and (9),

(d) in paragraph (10), after “of these Regulations” insert “and where it would not be reasonably practicable to otherwise dispose of them”, and

(e) omit paragraph (13).

(4) After regulation 15 (loans that become employer-related), insert—

#### **“Deposits**

**15A.**—(1) Regulation 12(2A) shall not prohibit an investment in paragraph (2) of this regulation to the extent that it can be construed as an employer-related loan mentioned in regulation 12(4) of these Regulations.

(2) This regulation applies to any employer-related investment of resources in an account (including a current, deposit or shared account) with—

(a) a person who has permission under Part 4 of the FSM Act (permission to carry on regulated activities) to accept deposits;

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<sup>(35)</sup> S.I. 2005/3378.

<sup>(36)</sup> Regulation 13(3) is amended by this sub-paragraph from 6th April 2009. Regulation 13(3) is omitted by sub-paragraph (c) from 23rd September 2010. See regulation 1(3) of these Regulations.



- (b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits; or
  - (c) the Bank of England.”
- (5) In regulation 16 (multi-employer schemes)—
- (a) in paragraphs (1), (2) and (3), for “15” substitute “15A”, and
  - (b) in paragraph (5)(a), for “12(2)(a)” substitute “12(2)”.
- (6) In regulation 17 (scheme undertaking cross-border activities)—
- (a) in paragraph (c), after “,” insert “and”,
  - (b) for paragraph (d), substitute—
    - “(d) regulation 13(12).”, and
  - (c) omit paragraphs (e) and (f).

### **Amendment of the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006**

**20.**—(1) The Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006<sup>(37)</sup> are amended in accordance with this regulation.

- (2) In regulation 18 (exclusivity of remedy)—
- (a) for the heading and paragraph (1), substitute—

#### **“Remedies for failure to comply**

**18.**—(1) The only remedies for a failure to comply with any obligations under regulations 6 to 16 in respect of any proposal or decision to make a listed change are—

- (a) making a complaint to the Regulator,
  - (b) an improvement notice issued under section 13 of the Pensions Act 2004 (improvement notices), and
  - (c) a penalty imposed under regulation 18A.”, and
- (b) in paragraph (2), after “A complaint” insert “under paragraph (1)(a)”.
- (3) After regulation 18, insert—

#### **“Penalties**

**18A.**—(1) Where a person fails, without reasonable excuse, to comply with a requirement to consult under regulation 7(3), the Regulator may by notice in writing require that person to pay a penalty.

- (2) Any such penalty must be paid within 28 days and must not exceed—
- (a) in the case of an individual, £5,000; and
  - (b) in any other case, £50,000.”.



### **Amendment of the Occupational Pension Schemes (Fraud Compensation Levy) Regulations 2006**

**21.**—(1) The Occupational Pension Schemes (Fraud Compensation Levy) Regulations 2006<sup>(38)</sup> are amended in accordance with this regulation.

(2) In regulation 11 (penalties), after “the Regulator may” insert “by notice in writing”.

### **Amendment of the Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations 2006**

**22.**—(1) The Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations 2006<sup>(39)</sup> are amended in accordance with this regulation.

(2) In regulation 3(m) (prescribed exemptions from requirement to have member-nominated directors of corporate trustees), for “the sole director, or all the directors” substitute “all the directors (or the sole director) of the trustee (or trustees)”.

(3) In regulation 5 (modifications of sections 241 and 242 of the Act)—

(a) in paragraph (1), for “paragraphs (2) to (6)” substitute “paragraphs (2) to (7)”, and

(b) after paragraph (6), insert—

“(7) In relation to a scheme where—

(a) every trustee is a company,

(b) at least one trustee only has directors who are independent (or a sole director who is independent) within the meaning given by section 23(3) of the 1995 Act, and

(c) at least one trustee has one or more directors who are not independent within that meaning,

section 242 of the Act is modified as if after subsection (1), there were inserted—

“(1A) But subsection (1) does not apply to such a company which only has directors who are independent (or a sole director who is independent) within the meaning given by section 23(3) of the Pensions Act 1995.””.

Signed by authority of the Secretary of State for Work and Pensions.

10th March 2009

*William D. McKenzie.*  
Parliamentary Under-Secretary of State,  
Department for Work and Pensions

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<sup>(38)</sup> S.I. 2006/558.

<sup>(39)</sup> S.I. 2006/714.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make various amendments to twenty-one Statutory Instruments about occupational, personal and stakeholder pension schemes.

Regulations 3 and 7 introduce new powers for trustees to modify pension schemes. Modifications can be made to reduce the rate or amount by which pension benefits are revalued (amendment to the Occupational Pension Schemes (Revaluation) Regulations 1991 (S.I. 1991/168)) and to reduce the annual increase in the rate of pensions (amendment to the Occupational Pension Schemes (Indexation) Regulations 1996 (S.I. 1996/1679)). The employer must give consent before the trustees modify the pension scheme.

Regulation 4 amends the Occupational Pension Schemes (Contracting-out) Regulations 1996 (S.I. 1996/1172) to remove a requirement for an employer to consult with trade unions. No consultation is required when a pension scheme is being wound up and is surrendering a contracting-out certificate.

Regulation 5 amends the Contracting-out (Transfer and Transfer Payment) Regulations 1996 (S.I. 1996/1462) in relation to transferring a pension from one salary-related contracted-out pension scheme to another. The amendment allows a transfer when the scheme from which the transfer is being made used to be a salary-related contracted-out pension scheme, but is no longer such a scheme.

Regulation 10 makes an amendment to the Personal Pension Schemes (Appropriate Schemes) Regulations 1997 (S.I. 1997/470) which is consequential on section 12 of the Pensions Act 2007 (c.22). That section changes the phrase “upper earnings limit” to “upper accrual point”.

Regulation 15 amends the Pension Sharing (Pension Credit Benefit) Regulations 2000 (S.I. 2000/1054). Paragraph (3) introduces a new provision which specifies the circumstances in which the pension credit benefit may be commuted. Paragraph (4) makes amendments to allow benefits which are different from pension credit benefit to be paid before normal benefit age where the person entitled to benefit is in ill health or has reached normal minimum pension age. It also amends the circumstances in which the trustees or managers are able to pay benefit without the consent of the person entitled to the benefit. Paragraph (6) makes amendments which update references to certain provisions of the Finance Act 2004 (c.12). Paragraphs (2)(a) and (5) and regulation 9 make consequential amendments.

Regulation 18(2) amends the Occupational Pension Scheme (Scheme Funding) Regulations 2005 (S.I. 2005/3377) (“the Scheme Funding Regulations”) so that a section of a multi-employer pension scheme which is winding-up is exempt from the requirements of Part 3 of the Pensions Act 2004 (c.35) where certain criteria are met. Regulation 18(3) makes amendments so that modifications to that Part and the Scheme Funding Regulations apply where the actuary has the power to determine any of the rates of contributions payable by the employer without the employer’s agreement.

Regulation 19 amends the Occupational Pension Schemes (Investment) Regulations 2005 (S.I. 2005/3378). With effect from 6th April 2009, regulation 19(3)(b) extends the category of institutions which are exempt from certain restrictions on employer-related investments. With effect from 23rd September 2010, the remainder of regulation 19 implements the requirements of article 18(1)(f) of the Directive 2003/41/EC (OJ L235, 23.09/2003 p 10) of the European Parliament and of the Council on the activities and supervision of institutions for occupational retirement provision.

Regulation 22 amends the Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations 2006 (S.I. 2006/714) for pension schemes which have more than one

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trustee, all of whom are companies. The amendment provides that where such a company has only independent directors, it is not required to have member-nominated directors.

The Pensions Regulator replaced the Occupational Pensions Regulatory Authority (“OPRA”) in April 2005. These Regulations remove obsolete references to OPRA (regulations 2, 11, 12(2), 13, 14, 15(2)(b) and 16).

A person can be required to pay a penalty if they fail to comply with certain pensions legislation. These Regulations make amendments which provide that the person must be given a notice in writing informing them of the requirement to pay such a penalty (regulations 2, 6, 8, 11, 12(3), 17 and 21). These Regulations also create a new penalty for certain employers who fail to consult their employees before making certain changes to their pension schemes (regulation 20).

Copies of a transposition note concerning the implementation of Directive [2003/41/EC](#) by regulation 19 may be obtained from Private Pensions, Department for Work and Pensions, 3rd floor, Adelphi, 1-11 John Adam Street, London WC2N 6HT.

An assessment of the impact of these Regulations has been made. Copies of the impact assessment are available in the libraries of both Houses of Parliament and may also be obtained from the Better Regulation Unit of the Department for Work and Pensions, 7F Caxton House, Tothill Street, London SW1H 9NA or from the DWP website: <http://www.dwp.gov.uk/resourcecentre/ria.asp>.