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STATUTORY INSTRUMENTS

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**2010 No. 772**

The Occupational and Personal Pension Schemes  
(Automatic Enrolment) Regulations 2010

PART 11

Test Scheme

**Requirements for meeting the test scheme standard**

**39.**—(1) This regulation applies for the purposes of section 22(4) of the Act.

(2) No person other than—

- (a) the scheme actuary, or
- (b) the employer of the relevant members of the scheme,

may certify that a scheme satisfies the test scheme standard.

(3) An employer may certify a scheme under paragraph (2)(b) only in cases that do not require any calculation, comparison or assessment of a description usually carried out by actuaries.

(4) In determining whether a scheme satisfies the test scheme standard, a scheme actuary or employer—

- (a) must have regard to the benefits to be provided under the scheme for persons who, at the date by reference to which the determination is made (which may precede the date on which it is made), are relevant members of the scheme; and
- (b) must not have regard to—
  - (i) pension credit benefits;
  - (ii) death benefits;
  - (iii) discretionary benefits (apart from those arising from discretionary pre-retirement revaluation made in the case of schemes providing for average salary benefits);
  - (iv) survivors' benefits;
  - (v) money purchase benefits (but this is subject to regulations 41 and 42);
  - (vi) benefits in respect of any person who is not a jobholder for the purposes of the Act;
  - (vii) benefits in respect of any jobholder whose annual rate of benefit accrual under the scheme has been reduced below the rate specified in section 23(4)(a) of the Act, where the reduction is made as a result of a request made by the jobholder in question in accordance with scheme rules; or
  - (viii) benefits in respect of any jobholder who has given notice under section 8 (jobholder's right to opt out) of the Act.

(5) A scheme actuary or employer may not certify that a scheme satisfies the test scheme standard if the benefits to be provided for more than 10% of relevant members are not at least as valuable as the benefits which would be provided for them under a test scheme.

(6) In determining whether—

- (a) any of paragraphs (3) to (5) apply in relation to a scheme; or
- (b) a scheme otherwise satisfies the test scheme standard,

a scheme actuary or employer must follow any guidance issued by the Secretary of State under section 22(5) of the Act which is for the time being in force.

(7) “Scheme actuary” has the meaning given in section 22(7) of the Act except—

- (a) where the scheme is a defined benefits or hybrid scheme within section 18(b) (occupational pension schemes) of the Act;
- (b) where the scheme is a defined benefits or hybrid scheme within section 18(c) of the Act and there is an actuary appointed to the scheme who satisfies the requirements of regulations made under section 47(5) (professional advisers) of the 1995 Act<sup>(1)</sup>; or
- (c) in any other circumstances where, by virtue of regulations made under section 47 of the 1995 Act<sup>(2)</sup>, the scheme is not required to appoint a scheme actuary.

(8) In any case falling within paragraph (7)(b), “scheme actuary” means the actuary referred to in that paragraph who is appointed to the scheme.

(9) “Relevant members” has the meaning given in section 22(2) of the Act.

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<sup>(1)</sup> See the Occupational Pension Schemes (Scheme Administration) Regulations 1996 (S.I. 1996/1715).

<sup>(2)</sup> Ibid.