EXPLANATORY MEMORANDUM TO

THE OCCUPATIONAL PENSION SCHEMES (MISCELLANEOUS AMENDMENTS) REGULATIONS 2014

2014 No. 540

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 These Regulations introduce a set of miscellaneous amendments to four sets of regulations governing occupational pension schemes.

2.2 These are the:

- Occupational Pension Schemes (Scheme Administration) Regulations 1996 (S.I. 1996/1715);
- Occupational Pension Schemes (Discharge of Liability) Regulations 1997 S.I. 1997/784);
- Transfer of Employment (Pension Protection) Regulations 2005 (S.I. 2005/649); and
- Occupational Pension Schemes (Employer Debt) Regulations 2005 (S.I. 2005/678)

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

3.1 None.

4. Legislative Context

4.1 Amendments to the Occupational Pension Schemes (Scheme Administration) Regulations 1996 (the "Scheme Administration Regulations") will make it easier for very large trust-based multi-employer schemes to find and appoint an auditor. This is considered necessary because the current requirements create difficulties for large multi-employer schemes. There are only a limited number of firms able to audit schemes of this size, and it will become increasingly difficult for them to satisfy the independence requirements as schemes grow in size following the introduction of automatic enrolment.

4.2 Amendments to the Occupational Pension Schemes (Discharge of Liability) Regulations 1997 (the "Discharge Regulations") will ensure that the policy is clearly reflected in the legislation. This is considered necessary because the current provisions do not ensure, in line with the policy intention, that that trustees can obtain a discharge of their liability to provide pension benefits by purchasing annuities that include an option for a tax-free lump sum on commencement of the pension.

4.3 Amendments to the Transfer of Employment (Pension Protection) Regulations 2005 will ensure that new employers following a business transfer are not required to make higher contributions than an employer might have to pay under the automatic enrolment phasing profile. This is considered necessary in order to prevent the interaction of the TEPP Regulations with the Automatic Enrolment provisions requiring some employers to pay much higher contributions than would be required to comply with their automatic enrolment duties.

4.4 Amendments to the Occupational Pension Schemes (Employer Debt) Regulations 2005 (the "Employer Debt Regulations") will update a cross-reference in the current provisions.

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***

<u>Amendments to the Occupational Pension Schemes (Scheme Administration) Regulations 1996</u>

7.1 Section 47 of the Pensions Act 1995 requires trustees of occupational pension schemes to appoint an auditor unless they are exempt under regulation 3(1) of the Scheme Administration Amendments. Requirements relating to the auditor's appointment are contained in regulation 4 of the Scheme Administration Regulations. Regulation 4(2)(d) of the Scheme Administration Regulations specifies that the auditor must not be prohibited from acting as a statutory auditor under the independence requirements in section 1214 of the Companies Act 2006 *http://www.legislation.gov.uk/ukpga/2006/46/section/1214*). This creates difficulties for large multi-employer schemes. The issue was first raised in the context of NEST (the National Employment Savings Trust), but a number of large trust-based multi-employer schemes have been set up in recent years. There are a limited number of audit firms able to audit schemes of this size, and therefore it will become increasingly difficult for an audit firm to meet the independence requirements as these schemes grow.

7.2 These Regulations amend the current provisions, creating an exemption from regulation 4(2)(d) of the Scheme Administration Regulations for trust-based multi-employer schemes which have at least 500 participating employers.

Amendments to the Occupational Pension Schemes (Discharge of Liability) Regulations 1997

7.3 The policy intention is that trustees should be able to obtain a discharge of their liability to provide pension benefits by purchasing annuities that include an option for a tax-free lump sum on commencement of the pension. However, it has been brought to the Department's attention that the Discharge Regulations no longer include a provision which explicitly describes this policy intent, following omission of the original provisions in 2006, when amendments were made to reflect changes to the tax treatment of pensions. These Regulations amend these provisions to clarify the circumstances in which trustees may obtain a discharge of their liability to provide pension benefits when those benefits have been secured by means of an insurance policy or annuity contract.

Amendments to the Transfer of Employment (Pension Protection) Regulations

7.4 Section 257 of the Pensions Act 2004 defines the qualifying conditions that employees must satisfy to be eligible for employer pension provision following a business transfer. Section 258 of the Pensions Act 2004 provides the options that the transferee employer must offer these employees. These comprise membership of a non-money purchase occupational scheme (Defined Benefit) which must meet either the Reference Scheme Test which sets minimum requirements for schemes contracted out of the State Pension) or such alternative requirements that may be prescribed, or membership of either a money purchase occupational pension scheme (Defined Contribution) or a stakeholder pension scheme where the employer makes relevant contributions.

7.5 The TEPP Regulations prescribe the alternative requirements for a non-money purchase (DB) occupational pension arrangement, and define the meaning of "relevant contributions" for the purposes of section 258 of the Pensions Act 2004. This instrument amends the TEPP Regulations to allow new employers, following a business transfer, to satisfy the provisions by matching the contributions payable by the former employer immediately before the transfer.

Amendments to the Occupational Pension Schemes (Employer Debt) Regulations 2005

7.6 Regulation 5 updates a cross-reference to primary legislation in the Employer Debt Regulations.

- ***Consolidation***

7.7 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.

An explanation as to which instruments are maintained on each site is available [here]

8. Consultation Outcome

TEPP Regulations

8.1 Consultation on the amendments to the TEPP Regulations took place between 25 February 2013 and 5 April 2013[1]. 39 responses were received from individuals, employers, union organisations and pension professionals, and a number of changes to the provisions were made as a result. Many respondents supported the proposal as a measure which would assist sponsoring employers, while some considered that it would reduce the pension protection offered by the 2005 Regulations to some extent. The Government has decided to proceed with the changes, which it considers will mitigate the unintended effects of the interaction of the TEPP Regulations and Automatic Enrolment.

8.2 Consultation on the remaining provisions in these Regulations took place between 29 November 2013 and 10 January 2014. 16 responses were received from individuals, pension professionals and pension schemes.

Scheme Administration Regulations

8.3 The consultation proposed an exemption from regulation 4(2)(d) of the Scheme Administration Regulations for trust-based schemes which have a) at least 500 participating employers, and b) at least two thirds of the participating employers are not associated or connected.

8.4 A large number of respondents stated that the second criterion of the test, that two thirds of the participating employers should not be associated or connected, was unworkable as this would require schemes to gather information that they were not empowered to collect, and would impose significant burdens on schemes wishing to benefit from the exemption. Some respondents also stated that the first criterion of 500 participating employers was too high. However, all our evidence on this issue relates to large multi-employer schemes and the respondents failed to provide us with sufficient evidence as to why the threshold should be lower than 500. The Government has therefore decided to create an exemption from regulation 4(2)(d) of the Scheme Administration Regulations for trust-based multi-employer schemes which have at least 500 participating employers. This will make it easier for these schemes to find and appoint a scheme auditor.

Discharge of Liability Regulations

8.5 The amendment on which views were sought in consultation envisaged that a discharge would only be available to trustees if any option for a pension commencement lump sum included in an insurance policy or annuity contract

[1] https://www.gov.uk/government/consultations/transfer-of-employment-pension-protection-amendment-regulations-2013

was limited to earners who had reached the age of 55. Respondents were supportive of the proposed amendment to clarify the circumstances in which trustees may obtain a discharge of their liability to provide pension benefits when those benefits have been secured by means of an insurance policy or annuity contract. Some respondents also highlighted instances where a pension lump sum may legitimately be taken before age 55. The Government has decided to proceed with the proposed changes, and will remove the reference to age 55 to ensure the Regulations mirror the current rules on pension tax relief.

Employer Debt Regulations

8.6 Respondents were supportive of the proposed amendment to update a cross-reference to primary legislation. The Government has decided to proceed with the proposed amendment.

9. Guidance

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

10. Impact

10.1 The amendment to the Scheme Administration Regulations will result in a small, unquantifiable saving to business, as it will make it easier for large multi-employer schemes to appoint an auditor. The amendments to the TEPP Regulations will provide increased flexibility for new employers by allowing them to match the contributions being paid by the former employer before a transfer. This will reduce the potential cost of pension protection to business. We are unable to quantify the benefits to employers, but we would expect them to be small. None of the other measures will have an impact on business.

10.2 There is unlikely to be any impact on the public sector as a result of these` Regulations.

10.3 Impact assessments (one for the amendments to the TEPP regulations, and one for the other measures in these Regulations) are published on www.legislation.gov.uk

11. Regulating Small Business

11.1 These Regulations do not apply to small business regulation.

12. Monitoring & Review

12.1 No formal monitoring and review arrangements are planned for the amendments to the TEPP Regulations, but any reported impact will be analysed and considered on an ongoing basis. The impact of the other measures introduced by these Regulations will be reviewed in 2018.

13. Contact

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