Draft Regulations laid before Parliament under section 24 of the Public Service Pensions Act 2013, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2015 No. 000

PUBLIC SERVICE PENSIONS

The Armed Forces Pension (Consequential Provisions) Regulations 2015

Made - - - - ***

Coming into force in accordance with regulation 1

The Secretary of State for Defence makes the following Regulations in exercise of the powers conferred by sections 1(1) and (2)(h), 2(1) and 3(1), (2), (3)(a) and (4) of the Public Service Pensions Act 2013(**a**).

In accordance with section 21 of that Act, the Secretary of State for Defence has consulted the representatives of such persons as appear to the Secretary of State likely to be affected by these Regulations.

In accordance with section 3(5) of that Act, these Regulations are made with the consent of the Treasury.

Pursuant to section 24(1) and (3) of that Act, a draft of this instrument has been laid before, and approved by a resolution of, each House of Parliament.

PART 1

Introductory

Citation, commencement and expiry

1.—(1) These Regulations may be cited as the Armed Forces Pension (Consequential Provisions) Regulations 2015.

(2) With the exception of regulation 10, these Regulations come into force on 1st April 2015.

(3) Regulation 10 comes into force on the same day as paragraph 38 of Schedule 13 to the Pensions Act 2014(**b**) comes into force, and on that day regulation 9 ceases to have effect.

(**a**) 2013 c. 25.
(**b**) 2014 c. 19.

Interpretation

2. In these Regulations—

"the 1993 Act" means the Pension Schemes Act 1993(**a**);

"the 2013 Act" means the Public Service Pensions Act 2013;

"the new scheme" means the scheme established by regulation 2 of the Armed Forces Pension Regulations 2014(**b**); and

"old scheme" means an existing scheme listed in paragraphs 24 to 29 of Schedule 5 to the 2013 Act.

PART 2

Modification of contracting-out provisions

Application of this Part

3. This Part applies where—

(a) an election is made under section 11 (elections as to employments covered by contracting-out certificates) of the 1993 Act(**c**) in relation to persons who become members of the new scheme on or after 1st April 2015 and before 6th April 2016 (whether or not any of those persons are members of an old scheme); and

(b) the new scheme satisfies the requirements of section 9 (requirements for certification of schemes) of the 1993 Act(**d**).

Contracting-out

4.—(1) Part 2 of the Occupational Pension Schemes (Contracting-out) Regulations 1996(**e**) (certification of employments) is modified as follows in its application to the new scheme.

(2) The requirements in regulation 2(1)(a) (making of elections for the issue of contracting-out certificates) and regulations 3 (notices by employers of intended election) to 5 (time for making an election) do not apply.

(3) In regulation 6 (information to be included in an election)—

(a) paragraph (1) is to be read as though, for sub-paragraphs (a) to (f), there were substituted—

"(a) the name by which the new scheme is to be known;

(b) the name by which the old schemes are known; and

(c) any other information necessary to enable the Commissioners for Her Majesty's Revenue and Customs to identify the old schemes."; and

(b) paragraphs (2) and (3) do not apply.

(**a**) 1993 c. 48.

(**b**) S.I. 2014/2336.

(**c**) Section 11 was amended by section 1(1) of, and Schedule 1 to, the Social Security Contributions (Transfer of Functions etc.) Act 1999 (c.2) and by section 1(2)(a) of the Employment Rights (Dispute Resolution) Act 1998 (c.8). It is prospectively repealed by section 24 of, and paragraph 9 of Schedule 13, to the Pensions Act 2014 (c.19).

(**d**) Section 9 was amended by sections 136(3) and 151 of, and Schedule 5 to, the Pensions Act 1995 (c.26); by section 1(1) of, and Schedule 1 to, the Social Security Contributions (Transfer of Functions etc.) Act 1999 (c.2); by section 283 of the Pensions Act 2004 (c.35); by sections 14(4), 15(3) and 27(2) of, and Schedules 4 and 7 to, the Pensions Act 2007 (c.22); and by S.I. 2006/745. It is prospectively repealed by paragraph 9 of Schedule 13 to the Pensions Act 2014 (c.19).

(**e**) S.I. 1996/1172. Part 2 was amended by section 1(2) of, and Schedule 2 to, the Social Security Contributions (Transfer of Functions etc.) Act 1999 (c.2), by section 1(2)(a) of the Employment Rights (Dispute Resolution) Act 1998 (c.8) and by S.I. 1997/786, 2002/681, 2005/3377, 2011/1245, 2011/1246, and 2013/2734. By virtue of section 50(1) of the Commissioners for Revenue and Customs Act 2005 (c.11), references to the Commissioners of Inland Revenue are to be taken as references to the Commissioners for Her Majesty's Revenue and Customs.

PART 3

Modification of early leaver and other provisions

Application of this Part

5. This Part applies where a person (P)—

(a) is a member of an old scheme whether by virtue of pensionable service for that scheme or deemed transfer scheme service under paragraph 2 of Schedule 7 to the 2013 Act (final salary link);

(b) is a member of the new scheme by virtue of pensionable service for the new scheme; and

(c) is a person to whom paragraph 1 or 2 of Schedule 7 to the 2013 Act applies by virtue of that person's pensionable service for the new scheme, and whose final salary falls for the purposes of the old scheme to be determined by reference to that paragraph.

Certification

6.—(1) Section 15A of the 1993 Act(**a**) (reduction of guaranteed minimum in consequence of pension debit) is modified as follows in relation to P.

(2) In the application of that section to the old scheme, the reference in subsection (2) of that section to pensionable service under the scheme is to be taken as a reference to pensionable service either for the old scheme or for the new scheme.

Preservation of benefit

7.—(1) Chapter 1 of Part 4 of the 1993 Act (protection for early leavers: preservation of benefit) is modified as follows in relation to P.

(2) In the application of that Chapter to the old scheme—

(a) in section 70(**b**) (interpretation), in the definitions of "relevant employment" and "long service benefit" a reference to the scheme is to be taken as a reference to either the old scheme or the new scheme;

(b) in section 71(1) (basic principle as to short service benefit)—

(i) the requirement for a scheme to make provision is to be taken as a requirement that either the old scheme or the new scheme must make that provision;

(ii) a reference to a transfer payment to the scheme is to be taken as a reference to a transfer payment either to the old scheme or to the new scheme;

(iii) a reference to termination of P's pensionable service is to be taken as a reference to termination of P's pensionable service in relation to the new scheme;

(iv) a reference to benefit which would have been payable to P under the scheme is to be taken as a reference to benefit which would have been payable to P either under the old scheme or under the new scheme,

and subsequent references in the Chapter to "short service benefit" are to be construed accordingly;

(c) in section 71(5), a reference to termination of P's pensionable service is to be taken as a reference to termination of P's pensionable service in relation to the new scheme;

(d) in section 71(7)(a), the reference to P's pensionable service under the scheme is to be taken as a reference to P's pensionable service either for the old scheme or for the old and new schemes taken together; and

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(**a**) Section 15A was inserted by section 32 of the Welfare Reform and Pensions Act 1999 (c.30).
(**b**) Section 70 was amended by S.I. 2005/2053.

(e) in sections 72(2) (no discrimination between short service and long service beneficiaries), 74(6) and (7) (computation of short service benefit), 75(3) and (4) (credits) and 76(1) and (3) (pension increases), a reference to termination of P's pensionable service is to be taken as a reference to termination of P's pensionable service in relation to the new scheme.

(3) In the application of that Chapter to the new scheme—

(a) in section 70, in the definitions of "relevant employment" and "long service benefit" a reference to the scheme is to be taken as a reference to either the old scheme or the new scheme;

(b) in section 71(1)—

(i) the requirement for a scheme to make provision is to be taken as a requirement that either the old scheme or the new scheme must make that provision;

(ii) a reference to a transfer payment to the scheme is to be taken as a reference to a transfer payment either to the old scheme or to the new scheme;

(iii) a reference to benefit which would have been payable to P under the scheme is to be taken as a reference to benefit which would have been payable to P either under the old scheme or under the new scheme,

and subsequent references in the Chapter to "short service benefit" are to be construed accordingly;

(c) in section 71(7)(a), the reference to P's pensionable service under the scheme is to be taken as a reference to P's pensionable service either for the new scheme or for the old and new schemes taken together; and

(d) in section 74(6), in relation to pensionable service which is terminated, the reference to the beginning of that service is to be taken as a reference to the beginning of pensionable service for the old scheme.

Revaluation of preserved benefit

8.—(1) Chapter 2 of Part 4 of the 1993 Act (protection for early leavers: revaluation of accrued benefits) is modified as follows.

(2) In the application of Chapter 2 for the purpose of revaluing benefit payable to or in respect of P under the old scheme—

(a) in section 83(1)(a)(ii)(**a**) (scope of Chapter 2), the reference to the date on which P's pensionable service ends is to be taken as a reference to the date on which P's pensionable service ends in relation to the new scheme; and

(b) subsequent references in that Chapter to "the termination date" and the "pre-pension period" are to be construed accordingly.

Protection of increases in guaranteed minimum pensions

9.—(1) Chapter 3 of Part 4 of the 1993 Act (protection for early leavers: protection of increases in guaranteed minimum pensions ("anti-franking")) is modified as follows.

(2) In the application of that Chapter to P as a member of the old scheme—

(a) in section 87(1)(a)(i)(**b**) (general protection principle), the reference to the time when P ceases to be in contracted-out employment by reference to a scheme is to be taken as a reference to the time when P ceases to be in employment which is contracted-out by reference to the new scheme; and

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(**a**) Section 83 was amended by section 84(1) of, and paragraphs 28 and 31 of Schedule 12 to, the Welfare Reform and Pensions Act 1999 (c.30). It was amended further in relation to the definition of "normal pension age" by section 27 of, and paragraphs 18 and 20 of Schedule 8 to, the Public Service Pensions Act 2013 (c.25).

(**b**) Section 87 was amended by section 15(3)(a) of, and paragraphs 1 and 28 of Schedule 4 to, the Pensions Act 2007 (c. 22). It is prospectively amended by section 24 of, and paragraph 38 of Schedule 13 to, the Pensions Act 2014 (c.19).

(b) subsequent references to "the cessation date" are to be construed accordingly.

Protection of increases in guaranteed minimum pensions after abolition of contracting-out

10.—(1) Chapter 3 of Part 4 of the 1993 Act (protection for early leavers: protection of increases in guaranteed minimum pensions ("anti-franking")) is modified as follows.

(2) In the application of that Chapter to P as a member of the old scheme—

(a) in section 87(1)(a)(i) (general protection principle), the reference to the time when P ceases to be in pensionable service under a scheme that was, before the second abolition date, a salary-related contracted-out scheme is to be taken as a reference to the time when P ceases to be in pensionable service in relation to the new scheme; and

(b) subsequent references to "the cessation date" are to be construed accordingly.

Transfer values

11.—(1) Chapter 4 of Part 4 of the 1993 Act (protection for early leavers: transfer values) is modified as follows.

(2) In the application of that Chapter to P as a member of the old scheme, in—

(a) section 93(1)(a)(**a**) (scope of Chapter 4),

(b) section 97(3)(a) (calculation of cash equivalents), and

(c) section 98(1A) and (3)(**b**) (variation and loss of rights under section 94),

a reference to termination of P's pensionable service is to be taken as a reference to termination of P's pensionable service in relation to the new scheme.

Transfer values regulations

12.—(1) The Occupational Pension Schemes (Transfer Values) Regulations 1996(**c**) are modified as follows.

(2) In the application of regulation 3 of those Regulations (rules on continuation in employment after termination of pensionable service) to P as a member of the old scheme—

(a) in paragraph (1), a reference to employment to which a scheme applies is to be taken as a reference to employment to which the new scheme applies;

(b) in paragraph (1)(a), a reference to P's pensionable service terminating at P's request is to be taken as a reference to P's pensionable service in relation to the new scheme so terminating; and

(c) in paragraph (1)(b)(i), a reference to P's pensionable service continuing until the guarantee date is to be taken as a reference to P's pensionable service in relation to the new scheme so continuing.

(3) In the application of regulation 4 of those Regulations (right to further cash equivalent on termination of employment to which the scheme applies) to P as a member of the old scheme, in paragraphs (1), (2), (3)(a) and (4) a reference to termination of P's employment is to be taken as a reference to termination of P's employment to which the new scheme applies.

Cash transfers and contribution refunds

13.—(1) Chapter 5 of Part 4 of the 1993 Act(**d**) (protection for early leavers: cash transfers and contribution refunds) is modified as follows.

(**a**) Section 93(1)(a) was substituted by section 152(2) of the Pensions Act 1995 (c.26).
(**b**) Section 98(1A) was inserted by, and section 98(3) amended by, section 173 of, and paragraph 5 of Schedule 6 to, the Pensions Act 1995 (c.26).
(**c**) S.I. 1996/1847.
(**d**) Chapter 5 was inserted by section 264 of the Pensions Act 2004 (c.35).

(2) In the application of that Chapter to P as a member of the old scheme—

(a) in section 101AA(1)(a) and (b) (scope of Chapter 5), a reference to termination of P's pensionable service is to be taken as a reference to termination of P's pensionable service in relation to the new scheme;

(b) in section 101AA(2), a reference in the opening words and in paragraph (a) to P's pensionable service under the scheme is to be taken as a reference to P's pensionable service either for the old scheme or for the old and new schemes taken together; and

(c) in sections 101AB(1) and (3) (right to cash transfer sum and contribution refund), 101AC(1) and (2)(a) (notification of right to cash transfer sum or contribution refund) and 101AI(7) (rights under section 101AB: definition of "reply date"), a reference to termination of P's pensionable service is to be taken as a reference to termination of P's pensionable service in relation to the new scheme.

(3) In the application of that Chapter to P as a member of the new scheme, in section 101AA(2) a reference in the opening words and in paragraph (a) to P's pensionable service under the scheme is to be taken as a reference to P's pensionable service either for the new scheme or for the old and new schemes taken together.

PART 4

Modification of tax regime

Lifetime allowance charge

14.—(1) This regulation applies to a person (P) who—

(a) is a member of an old scheme whether by virtue of pensionable service for that scheme or deemed transfer scheme service under paragraph 2 of Schedule 7 to the 2013 Act (final salary link);

(b) is a member of the new scheme by virtue of pensionable service for the new scheme;

(c) is being paid an ill-health pension under regulation 51, 52 or 56 of the Armed Forces Pension Regulations 2014; and

(d) has an ill-health pension paid from the new scheme reduced as a consequence of P becoming entitled to payment of a scheme pension (within the meaning of paragraph 2 of Schedule 28 to the Finance Act 2004(**a**)) under the old scheme.

(2) Section 216 of the Finance Act 2004(**b**) (benefit crystallisation events and amounts crystallised) is modified in its application to P as specified in paragraph (3).

(3) The payment of any scheme pension from the old scheme to P is treated as if it was not a benefit crystallisation event within the meaning of section 216 of the Finance Act 2004.

Annual allowance charge

15.—(1) This regulation applies to a person (P) who—

(a) is a member of an old scheme whether by virtue of pensionable service for that scheme or deemed transfer scheme service under paragraph 2 of Schedule 7 to the 2013 Act;

(b) is a member of the new scheme by virtue of pensionable service for the new scheme; and

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(**a**) 2004 c. 12. Paragraph 2 was amended by sections 101 and 104 of, and Schedules 10 and 11 to, the Finance Act 2005 (c.7); by section 161 of, and Schedule 23 to, the Finance Act 2006 (c.25); by section 70 of, and Schedule 20 to, the Finance Act 2007 (c.11); by section 51 of the Finance Act 2013 (c.29); and by S.I. 2007/493.

(**b**) Section 216 was amended by section 101 of, and paragraphs 1 and 31 of Schedule 10 to, the Finance Act 2005 (c.7); section 161 of, and paragraphs 1 and 30 of Schedule 23 to, the Finance Act 2006 (c.25); by section 92 of, and paragraphs 4 and 5 of Schedule 29 to, the Finance Act 2008 (c.9); and by section 65 of, and paragraphs 62 and 73 of Schedule 16 to, the Finance Act 2011 (c.11).

(c) becomes entitled to payment of an ill-health pension under regulation 51, 52 or 56 of the Armed Forces Pension Regulations 2014.

(2) Section 234 of the Finance Act 2004(**a**) (defined benefits arrangements) is modified in its application to P as specified in paragraph (3).

(3) When calculating the closing value of P's rights under the new scheme for the pension input period during which P becomes entitled to payment of an ill-health pension under regulation 51, 52 or 56 of the Armed Forces Pension Regulations 2014, payment of scheme pension that represents pensionable service for the old scheme is not to be counted as part of the closing value.

PART 5

Modification of short service benefit provisions

Short service benefit

16.—(1) This regulation applies to a person (P)—

(a) who is a deferred member of the new scheme;

(b) who is entitled to benefits under the new scheme; and

(c) whose–

(i) entitlement to benefits under the new scheme is determined by, or

(ii) benefits under the new scheme are computed by reference to,

P's deferred pension age rather than P's normal pension age.

(2) For the purposes of the requirements in sections 71, 72, 74 and 75 of the 1993 Act(**b**) and in any subordinate legislation made under Chapter 1 of Part 4 of that Act, as they apply in relation to P, any difference–

(a) between P's entitlement to benefits under the new scheme and any active member's entitlement to benefits under the new scheme, or

(b) between the computation of P's benefits under the new scheme and any computation of benefits of an active member under the new scheme,

is ignored.

Signed

Name
Minister of State
Ministry of Defence

Date

We consent

Name
Name
Two of the Lords Commissioners of Her Majesty's Treasury

Date

(**a**) Section 234 was amended by section 66 of, and paragraphs 1, 10 and 27 of Schedule 17 to, the Finance Act 2011 (c.11).
(**b**) 1993 c. 48. Section 71 was amended by section 263(1) of the Pensions Act 2004 (c.35) and by section 27 of, and paragraphs 18 and 19 of Schedule 8 to, the Public Service Pensions Act 2013 (c.25). Section 72 was amended by section 263(2) of the Pensions Act 2004.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make consequential provision in relation to public service pensions for the armed forces.

Under the Public Service Pensions Act 2013 (c.25) ("the 2013 Act"), certain current members of public service pension schemes are to join new pension schemes ("new schemes") as active members, whilst retaining certain benefits in their existing pension schemes ("old schemes").

Part 2 of these Regulations modifies the effect of provisions relating to contracting-out of the additional state pension under the Pension Schemes Act 1993 (c.48) ("the 1993 Act") for members joining or transferring to a new scheme during the period from 1st April 2015 to 5th April 2016 inclusive. Certain procedural requirements in the Occupational Pension Schemes (Contracting-out) Regulations 1996 (S.I. 1996/1172) are disapplied to an election to contract-out the new scheme.

Part 3 modifies the effect of other provisions of the 1993 Act, in their application to certain persons who join the new scheme while remaining non-accruing members of the old scheme. Those members are to be treated as if they are in ongoing pensionable service for one scheme, not two. Section 15A of the 1993 Act is modified in relation to pension debits. Part 4 of the 1993 Act concerns members of occupational pension schemes who leave before retirement age. The non-accruing members of the old scheme are to be treated as if their old scheme service does not terminate, nor their contracted-out employment cease, when they join the new scheme; only when they leave the new scheme. The modifications apply for the purposes of preserved benefit (Chapter 1 of Part 4); revaluing benefits (Chapter 2); protecting increases in guaranteed minimum pensions (Chapter 3); and cash equivalent values and contribution refunds (Chapters 4 and 5). Specified provisions in the Occupational Pension Schemes (Transfer Values) Regulations 1996 (S.I. 1996/1847), which were made under Chapter 4 of Part 4 of the 1993 Act, are also modified.

Part 4 modifies the effect of the pensions tax regime contained in the Finance Act 2004 (c.12) upon the ill-health pension provision in the new scheme. It provides that any element of an ill-health pension relating to pensionable service for the old scheme will not fall to be calculated against the member's annual tax allowance, and that any pension in the old scheme that subsequently falls to be paid to a member who has taken ill-health retirement will not fall to be calculated against the member's lifetime tax allowance.

Part 5 resolves a tension between the short service benefit provisions contained in the 1993 Act and the requirement of section 10 of the 2013 Act that a deferred member of the new scheme has a different pension age (set at state pension age) than an active member (set at 60).

An impact assessment has not been produced for this instrument as no impact on the costs of business or the voluntary sector is foreseen.

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