EXPLANATORY MEMORANDUM TO

THE OCCUPATIONAL AND PERSONAL PENSION SCHEMES (AUTOMATIC ENROLMENT) (AMENDMENT) REGULATIONS 2014

2014 No.

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 This instrument amends regulations setting out the practical arrangements associated with automatic enrolment into workplace pensions. In particular it:

- amends the prescribed features of an average salary scheme which would otherwise exclude it from being a qualifying pension scheme; and
- allows all hybrid schemes to phase in contributions in relation to their money purchase benefits under the transitional provisions for money purchase schemes.

2.2 A pension scheme which provides for benefits calculated based on average salary is excluded from being a qualifying scheme if the scheme does not revalue the benefits of members whilst in pensionable service by a minimum rate. Revaluation ensures that individuals' pensions are not eroded by the effects of inflation. This instrument gives schemes greater flexibility in the ways in which they can provide for this minimum level of revaluation and so not be excluded from qualifying.

2.3 An employer which provides a hybrid pension scheme (with both money purchase benefits and defined benefits elements) and which certifies the money purchase benefits in the scheme against one of the alternative sets of requirements is currently unable to phase in employer and total contributions in respect of those money purchase benefits. This instrument makes changes to ensure that an employer providing such a scheme is put on a level footing with one providing a 'pure' money purchase scheme.

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

None.

4. Legislative Context

4.1 The Pensions Act 2008 ('the Act') http://www.dwp.gov.uk/docs/a5-3761.pdf introduces new duties for employers: principally to enrol automatically eligible jobholders into a qualifying workplace pension scheme and to maintain active scheme membership for those already enrolled into a qualifying scheme. A qualifying scheme is one that meets:

- the basic requirements set out in the Act and the supporting regulations; and
- other specified quality requirements, in accordance with scheme type in sections 20-27 of the Act and the supporting regulations.

4.2 The quality requirements for automatic enrolment in relation to a defined benefit scheme with benefits calculated based on average salary are currently satisfied in relation to a jobholder if either that jobholder is in contracted-out employment or if the scheme satisfies the test scheme standard in relation to that jobholder. A jobholder is in contracted out employment if they are contracted-out of the state second pension by reference to their membership of the scheme. The test scheme standard is a hypothetical test scheme against which the benefits of a defined benefits scheme are tested. In addition, under regulation 36 of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 (S.I. 2010/772) ('the Regulations'), (http://www.legislation.gov.uk/ukdsi/2010/9780111490655/contents) the scheme is excluded from being a qualifying scheme unless it provides for accrued benefits to be revalued by at least the minimum rate specified in paragraph (4) of that regulation.

4.3 Section 29 of the Act and the supporting regulations set out the transitional periods for qualifying money purchase schemes (and personal pension schemes) during which contributions are phased in. This also applies to a hybrid scheme in relation to any money purchase benefits that it provides under the scheme. Hybrid schemes that satisfy one of the sets of alternative requirements under section 28 of the Act and Part 7A of the Regulations are currently not able to phase in money purchase contributions during the transitional periods. They are excluded under regulation 32I of the Regulations.

5. Territorial Extent and Application

This instrument applies to Great Britain.

6. European Convention on Human Rights

The Minister for Pensions, Steve Webb MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2014 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 The Government's policy intent is to allow schemes providing average salary benefits to be used as qualifying schemes for the purposes of automatic enrolment. They must, however, provide for the accrued rights to benefits under the scheme to be revalued at, or above, a prescribed minimum rate (set out in regulation 36) at any time when the jobholder's pensionable service is continuing. (Current legislation would prevent a jobholder from being treated less favourably once the jobholder has left pensionable service).

7.2 Revaluation can be achieved either by the scheme providing for guaranteed revaluation or providing revaluation at the Trustees discretion (as long as this is accounted for in the scheme's funding). The current minimum set out in regulation 36 of the Regulations is the increase in Consumer Price Index, Retail Price Index or 2.5 per cent, whichever is lower or the least. The policy intention is to ensure that individuals' pensions keep pace with inflation so it is important that benefits accruing in average salary schemes are increased in service as well as in deferral.

7.3 Schemes that provide revaluation on the exercise of a discretionary power are not excluded from qualifying under regulation 36 if the funding of the scheme assumes that benefits will be revalued by at least the minimum rate and if the funding is provided for in the scheme's statement of funding principles or its equivalent. It is now proposed to extend this flexibility to schemes that revalue benefits on a guaranteed basis, i.e. where revaluation is required in the scheme's rules. This will make sure schemes are treated consistently on this point. Provided that these conditions are satisfied it will also allow schemes that revalue by reference to the increase in earnings, for example, to qualify in addition to those that revalue by price inflation.

7.4 A further amendment ensures that new public service career average schemes will not be excluded from qualifying under regulation 36 provided that they revalue benefits by one of the relevant percentages specified in an HMT order under s9 of the Public Service Pensions Act 2013.

7.5 These amendments reduce the level of prescription about how revaluation in average salary schemes is achieved while ensuring that the benefits of members of these types of schemes remain protected.

7.6 Regulation 32I is being amended so that hybrid schemes which certify the money purchase benefits provided under the scheme against one of the sets of alternative requirements will now, as originally intended, be able to phase in contributions during the transitional periods in relation to any money purchase benefits provided under them to the same extent as qualifying 'pure' money purchase schemes.

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

No further formal consultation has been undertaken beyond that carried out from 30 April to 11 June 2012 regarding average salary schemes. The Government response to that consultation and previous explanatory memorandum made clear that the Government intended to make further changes to regulation 36 so that average salary schemes that revalue by reference to the increase in earnings are not excluded from qualifying if certain conditions are met. The Government also agreed to consider if it was possible to give schemes further flexibility around how to meet the minimum level of revaluation without risk to members' benefits. Options for how to achieve that further flexibility have been explored with the Government Actuaries Department and interested stakeholders. Meetings were also held with interested stakeholders to discuss the technical issues around regulation 32I.
All documents relating to the 2012 average salary scheme consultation are available here: https://www.gov.uk/government/consultations/automatic-enrolment-career-average-schemes-as-qualifying-schemes

9. Guidance

The Department will update the statutory guidance on the certification of defined benefit and hybrid schemes for employers and actuaries and on the certification of money purchase schemes after these regulations are made. The Pensions Regulator produces detailed guidance on all aspects of automatic enrolment and this can be accessed at http://www.thepensionsregulator.gov.uk/automatic-enrolment.aspx.

10. Impact

10.1 These regulations have a zero net impact on business and civil society organisations. The changes being made are minor and will give effect to the Government's original policy intention. Overall the changes merely put schemes back in the position they were intended to be in from the start. The amendments to the Regulations will allow qualifying pension schemes more flexibility about how they meet the minimum quality requirements of the workplace pension reforms. And they will allow employers providing hybrid schemes to phase in contributions during the transitional periods in relation to any money purchase benefits provided under them to the same extent as employers providing pure money purchase schemes as originally intended.

10.2 The impact on the public sector is negligible.

10.3 A full impact assessment has not been published for this instrument.

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11. Regulating small business

The legislation applies to small business in the same way as it does to larger business.

12. Monitoring & review

The effects of the reforms will be fully evaluated against the policy objective of getting more people to save more for retirement. The impact of the reforms on employers and the pensions industry will be assessed to evaluate the extent to which this policy objective is met, whilst minimising burden on employers and maintaining current good pension provision.

13. Contact

Jeremy Over at the Department for Work and Pensions Tel: 01900 828272 or email: Jeremy.over@dwp.gsi.gov.uk can answer any queries regarding the instrument.