STATUTORY INSTRUMENTS

1977 No. 1188

PENSIONS

The Contracted-out Employment (Miscellaneous Provisions) Regulations 1977

Made - - - -	*18th July* 1977
Laid before Parliament	*26th July* 1977
Coming into Operation	*6th April* 1978

The Secretary of State for Social Services, in exercise of the powers conferred upon him by section 40(2) and (3) of the Social Security Pensions Act 1975**(a)** and sections 21(1) and (2) and 22(9) and (13) of the Social Security (Miscellaneous Provisions) Act 1977**(b)** and of all other powers enabling him in that behalf, after considering the report of the Occupational Pensions Board on the preliminary draft submitted to them, hereby makes the following regulations:—

Citation, interpretation and commencement

1.—(1) These regulations may be cited as the Contracted-out Employment (Miscellaneous Provisions) Regulations 1977 and shall come into operation on 6th April 1978.

(2) In these regulations, unless the context otherwise requires—

"the 1977 Act" means the Social Security (Miscellaneous Provisions) Act 1977;

"the Pensions Act" means the Social Security Pensions Act 1975;

"relevant year", in relation to an earner, means any tax year in his working life (not being earlier than the first tax year for which lower and upper earnings limits are specified under section 1 of the Pensions Act);

"trustees", in relation to a scheme which is not set up or established under a trust, means the administrator of the scheme;

and other expressions have the same meaning as in the Pensions Act.

(3) Any reference in these regulations to any provision made by or contained in any enactment or instrument shall, except in so far as the context otherwise requires, be construed as a reference to that provision as amended or extended by any enactment or instrument and as including a reference to any provision which it re-enacts or replaces, or which may re-enact or replace it, with or without modification.

(4) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889**(c)** shall apply in relation to this instrument and in relation to the revocations effected by it as if this instrument and the regulations revoked by it were Acts of Parliament and as if the revocations were repeals.

(a) 1975 c. 60.
(b) 1977 c. 5.
(c) 1889 c. 63.

Policies of insurance and annuity contracts

2. For the purposes of section 22(9) of the 1977 Act, which makes provisions dependent upon the existence in force of a certificate issued by the Secretary of State stating that in his opinion the payment of a guaranteed minimum pension to which a person is entitled or has accrued rights is secured by means of a policy of insurance or annuity contract which satisfies prescribed conditions, the prescribed conditions are—

(*a*) that the policy is taken out, or the contract entered into, with an insurance company to which Part II of the Insurance Companies Act 1974**(a)** or the Insurance Companies (Northern Ireland) Order 1976**(b)** applies and which is authorised by or under section 3 of that Act or Article 7 of that Order to carry on ordinary long-term insurance business as defined in that Act or that Order; and

(*b*) that the policy or contract contains, or is endorsed with, terms so as to provide—

(i) that the annuity to be paid thereunder to or for the benefit of that person will be at least equal to the guaranteed minimum pension due to him, or, as the case may be, prospectively due to him at pensionable age, subject to any revaluation or increase under section 35(7) of the Pensions Act as amended by section 22(7) of the 1977 Act,

(ii) if that person is a man, that if he dies leaving a widow the annuity to be paid thereunder to her or for her benefit will be at least equal to the guaranteed minimum pension prospectively due to her in the event of her being left as that person's widow,

(iii) that the annuity or annuities (or such part of it or them as relates to the guaranteed minimum pensions of that person and, if he is a man, his widow) is or are (subject to the provisions of section 39(1) of the Pensions Act and regulations from time to time made thereunder**(c)**) non-commutable and non-assignable, and

(iv) that the insurance company assumes an enforceable obligation to pay the guaranteed minimum pensions either to that person and, if appropriate, his widow, or, as the case may be, to trustees of a trust for the benefit of that person and, if appropriate, his widow, under the terms of which the sums paid by the insurance company in respect of those guaranteed minimum pensions can be used for no other purpose.

Modification of section 44(6) *of the Pensions Act*

3. In relation to a scheme which has ceased to be contracted-out and, immediately before it so ceased, contained provisions authorised by section 35(7) of the Pensions Act as amended by section 22(7) of the 1977 Act, section 44(6) of the Pensions Act as amended by section 22(12) of the 1977 Act shall have effect with the modification that, where under the provisions authorised by section 35(7) an earner's earnings factors are determined for the purposes of section 35(2) of the Pensions Act without reference to any order made under section 21 of the Pensions Act, that order shall also be disregarded for the purpose of calculating the costs, referred to in section 44(5)(*a*) and (*b*) of the Pensions Act, of providing guaranteed minimum pensions for or in respect of that earner, so however that those costs shall be calculated on the basis that the

(a) 1974 c. 49. **(b)** S.I. 1976/59 (N.I.3).
(c) *See* regulation 8 of S.I. 1975/2101 (1975 III, p. 7879).

weekly equivalent mentioned in section 35(2) has been increased, in the manner for which the scheme is required to provide by section 35(7), for each relevant year after the year in which the earner's service is terminated except those years (if any) for which his earnings factors are increased by 12 per cent. in accordance with section 44(6).

Modification of section 21(1) *of the* 1977 *Act*

4. In relation to a scheme which has ceased to be contracted-out and, immediately before it so ceased, contained provisions authorised by section 35(7) of the Pensions Act as amended by section 22(7) of the 1977 Act, section 21(1) of the 1977 Act shall be so modified as to provide that, in the case of an earner whose service in contracted-out employment by reference to the scheme is terminated before he attains pensionable age—

(*a*) if it is so terminated before the period of 5 years ending with the tax year in which the scheme ceases to be contracted-out, the provision for taking his earnings factor for any relevant year to be that factor as increased by 12 per cent. for some or all of those tax years shall not apply; and

(*b*) if it is so terminated within that period of 5 years and unless an election is made as provided in section 21(1), the provision for taking his earnings factor for any relevant year to be that factor as increased by 12 per cent. for some or all of those tax years shall apply, so however that his weekly equivalent shall not be increased, pursuant to any provision required by section 35(7), for the years for which that factor is taken to be that factor as increased by 12 per cent.

Miscellaneous provisions affecting section 21 *of the* 1977 *Act*

5.—(1) For the purposes of section 21 of the 1977 Act the prescribed person is the trustees of the scheme.

(2) An election under section 21 of the 1977 Act shall be notified to the Secretary of State in writing in such form as the Secretary of State may reasonably require for the purpose of identifying the earner to whom the election relates.

(3) Section 21 of the 1977 Act shall not apply where the arrangements approved by the Occupational Pensions Board in respect of an earner's accrued rights to guaranteed minimum pensions under the scheme which is ceasing to be contracted-out consist of or include the transfer of those rights to another contracted-out scheme.

Priorities on the winding-up of a scheme

6. An occupational pension scheme (not being a public service scheme) which contains provision for the payment of pensions or other benefits (not being pensions or other benefits payable by reason of a death) to persons who have not attained normal pension age shall be exempt from the requirements of section 40(3) of the Pensions Act (as amended by section 22(8) of the 1977 Act) to the following extent only, namely that it shall not be required to accord priority on a winding-up to the liabilities specified in paragraphs (*a*) to (*d*) of the said section 40(3) over liabilities of the scheme in respect of pensions and other benefits to which the widow or widower or any dependant of a person who is already entitled to payment of a pension or benefit under the scheme but has not attained normal pension age will be entitled on that person's death.

Revocations

7. Regulation 4(3) of the Occupational Pension Schemes (Contracting-out) Regulations 1975**(a)**, sub-paragraph (*c*) in the definition of "responsible paying authority" in regulation 1(2) of those regulations, and sub-paragraph (*c*) in the definition of "responsible paying authority" in regulation 1(2) of the Contracted-out Employment (Notifications, Premium Payment and Miscellaneous Provisions) Regulations 1976**(b)**, are hereby revoked.

David Ennals,
Secretary of State for Social Services.

18th July 1977.

EXPLANATORY NOTE

(*This Note is not part of the Regulations.*)

These Regulations make miscellaneous provisions regarding the contracting-out of occupational pension schemes pursuant to Part III of the Social Security Pensions Act 1975 ("the Pensions Act") as amended by the Social Security (Miscellaneous Provisions) Act 1977.

Regulation 2 sets out the conditions which a policy of insurance or annuity contract must satisfy in order that a Secretary of State's certificate may be issued under section 22(9) of the 1977 Act, thereby bringing about a relaxation of some of the requirements of sections 41 and 44 of the Pensions Act. This regulation supersedes regulation 4(3) of the Occupational Pension Schemes (Contracting-out) Regulations 1975, which is revoked by regulation 7.

Regulation 3 modifies the provisions of section 44(6) of the Pensions Act as amended by section 22(12) of the 1977 Act (which provides for state scheme premiums to be calculated as if earnings factors were increased for certain years by 12 per cent. instead of in accordance with orders made under section 21 of the Pensions Act) as they apply to schemes which contain special provisions authorised under section 35(7) of the Pensions Act as amended by section 22(7) of the 1977 Act, for the calculation of guaranteed minimum pensions of earners whose service in contracted-out employment by reference to the scheme is terminated before they reach pensionable age.

Regulation 4 modifies the provisions of section 21(1) of the 1977 Act (which provides for guaranteed minimum pensions, in the case of schemes which cease to be contracted-out, to be calculated as if earnings factors were increased for certain years by 12 per cent.) as they apply to schemes containing provisions authorised by section 35(7) of the Pensions Act.

Regulation 5 makes ancillary provisions for the purposes of section 21 of the 1977 Act, and provides that it shall not apply in cases where accrued rights to guaranteed minimum pensions are transferred from one contracted-out scheme to another.

(a) S.I. 1975/2101 (1975 III, p. 7879). **(b)** S.I. 1976/143 (1976 I, p. 411).

Regulation 6 provides a limited exemption for certain schemes from the requirements of section 40(3) of the Pensions Act (which relate to priorities among liabilities on the winding-up of a scheme).

The report of the Occupational Pensions Board on the preliminary draft of these regulations, dated 20th June 1977, is contained in House of Commons Paper No. 513 (Session 1976/77) published by Her Majesty's Stationery Office.

SI 1977/1188
ISBN 0-11-071188-2

