STATUTORY INSTRUMENTS

1978 No. 250

PENSIONS

The Contracted-out Employment (Miscellaneous Provisions) Regulations 1978

Made - - - -	*23rd February* 1978
Laid before Parliament	*3rd March* 1978
Coming into Operation	*6th April* 1978

The Secretary of State for Social Services, in exercise of the powers conferred upon him by sections 40(3), 43(4), 44(3) and 45(1) and (2) of, and paragraphs 1 and 6 of Schedule 2 to, the Social Security Pensions Act 1975(**a**) and of all other powers enabling him in that behalf, after considering the report of the Occupational Pensions Board on the draft submitted to them, hereby makes the following regulations: —

Citation, commencement and interpretation

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

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

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

"the Board" means the Occupational Pensions Board;

"the Certification Regulations" means the Occupational Pension Schemes (Certification of Employments) Regulations 1975(**b**);

"the Contracting-out Regulations" means the Occupational Pension Schemes (Contracting-out) Regulations 1975(**c**);

"the Miscellaneous Provisions Regulations" means the Contracted-out Employment (Miscellaneous Provisions) Regulations 1977(**d**);

"the Premium Payment Regulations" means the Contracted-out Employment (Notifications, Premium Payment and Miscellaneous Provisions) Regulations 1976(**e**);

and other expressions have the same meaning as in the 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**) 1975 c. 60. (**b**) S.I. 1975/1927. (**c**) S.I. 1975/2101.
(**d**) S.I. 1977/1188. (**e**) S.I. 1976/143.

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(a) shall apply for the purposes of the interpretation of these regulations as they apply for the purposes of the interpretation of an Act of Parliament.

Termination of contracted-out employment in certain cases

2.—(1) Where, within 6 months (or such longer period as the Secretary of State may allow) of the happening of one of the following events, namely—

(*a*) the expiry or termination of an earner's contract of service in contracted-out employment with an employer; or

(*b*) in the absence of a contract of service, the ending of service in such employment,

the earner is employed by another employer in employment which is contracted-out by reference to the same scheme as the first employment, the earner's service in the first employment shall, notwithstanding the provisions of regulation 10 of the Contracting-out Regulations, be treated, for the purposes of sections 35(7) (exclusion of guaranteed minimum pension from revaluation under section 21 of the Act) and 42(1) (premium on termination of contracted-out employment) of the Act, as not having terminated.

Provided that this paragraph shall not apply—

(i) unless the scheme is one for which there is a common fund;

(ii) where a state scheme premium has been paid in respect of the first employment and has not been refunded.

(2) Where an earner ceases to be liable for Class 1 contributions under the Social Security Act 1975(b) in respect of any contracted-out employment because he is employed outside Great Britain and where, and for so long as, service in the employment outside Great Britain continues to qualify him for benefits under the scheme by reference to which his employment was contracted-out employment, the earner's service in that employment shall, notwithstanding the provisions of regulation 10 of the Contracting-out Regulations, be treated, for the purposes of sections 35(7) and 42(1) of the Act, as not having terminated.

(3) In this regulation the expression "common fund" means a fund into which all contributions, however derived, are paid, and to the whole of which recourse may be had to meet any liabilities of the scheme for the payment of benefit.

(4) The total period of contracted-out employment where there is a series of employments to which paragraph (1) above applies shall not include any intervals between employments in the series.

Amendments of the Premium Payment Regulations

3.—(1) The Premium Payment Regulations shall be amended in accordance with the provisions of this regulation.

(2) The following paragraph shall be substituted for paragraph (4) of regulation 3, namely—

(a) 1889 c. 63. (b) 1975 c. 14.

"(4) For the purposes of section 44 (accrued rights premiums and pensioner's rights premiums) and section 45 (limited revaluation premiums) of the Act the Board shall certify to the Secretary of State—

(*a*) in the event of a contracted-out scheme ceasing to be contracted-out, whether or not an earner's accrued rights to or a pensioner's rights to guaranteed minimum pension (not being a pension which is the subject of a certificate issued by the Secretary of State under section 22(9) of the Social Security (Miscellaneous Provisions) Act 1977(**a**) and still in force) are subject to approved arrangements as mentioned in the said section 44;

(*b*) in the event of a contracted-out scheme ceasing to be contracted-out and in the event thereafter of the withdrawal of such a certificate issued by the Secretary of State as aforesaid, whether or not the accrued rights or rights to the guaranteed minimum pension which was the subject of the certificate are subject to approved arrangements as mentioned in the said section 44; and

(*c*) in the event of rights which are subject to approved arrangements as mentioned in the said section 44 ceasing to be so subject, the date on which those rights ceased to be so subject."

(3) In regulation 4(1)(*e*) there shall be inserted, after the word "earner", the words "is under the age of 26 or".

(4) In regulation 4(2)(*b*) the word "and" shall be omitted.

(5) In regulation 4(2)(*c*) the words "or 45(3)" shall be omitted.

(6) After regulation 4(2)(*c*) there shall be inserted the word "and" and the following sub-paragraph, namely—

"(*d*) in the case of an election under section 45(3) of the Act, within a period ending 6 months after the date on which the Board certify to the Secretary of State that the earner's accrued rights to guaranteed minimum pension are subject to approved arrangements."

(7) In regulation 5(3) the first "which" shall be omitted.

(8) After regulation 5(3), there shall be inserted the following paragraph, namely—

"(4) In cases where a state scheme premium has become payable by reason of the fact that a contracted-out scheme has ceased to be contracted-out and an earner's rights to guaranteed minimum pension are the subject of approved arrangements under section 44 of the Act, references in paragraph (1)(*a*) above to the date of termination of contracted-out employment shall be read as references to the date on which the Board certify under regulation 3(4) above that the earner's rights are subject to such approved arrangements."

(9) In regulation 7(1), for the words "the scheme's normal pension age" there shall be substituted the words "pensionable age".

(10) There shall be inserted after regulation 8(1) the following paragraph, namely—

(**a**) 1977 c. 5.

"(1A) For the purposes of paragraph (1) above a scheme shall be treated as if it is being wound up at any time when there is in force an order of the Board under section 49(6) of the Act requiring or directing that the scheme be wound up."

(11) In regulation 8(3) (*b*) there shall be inserted after the words "contracting-out regulations" the words "or in the circumstances set out in regulation 2(1) of the Contracted-out Employment (Miscellaneous Provisions) Regulations 1978(**a**)".

(12) In regulation 8(3) after sub-paragraph (*d*) there shall be inserted the word "or" and the following new sub-paragraph, namely—

"(*e*) the premium being a contributions equivalent premium, the scheme is one under which a member may qualify for benefits either by virtue of service in employed earner's employment or as a self-employed earner for the purposes of the Social Security Act 1975 or both, and he is satisfied that the earner in respect of whom the premium was paid has completed a period of membership of the scheme as a self-employed earner which, when aggregated with his service in employed earner's employment, amounts to not less than 5 years,".

Amendment of the Contracting-out Regulations

4. Regulation 10(1)(*e*) of the Contracting-out Regulations shall be amended by leaving out all the words after the word "case" where it appears for the second time and substituting therefor the following, namely—

"he again comes within the description of earners in relation to which the said contracting-out certificate applies or he becomes a member in contracted-out employment of another contracted-out scheme under the same employer to which his accrued rights to requisite benefits are transferred."

Amendment of the Certification Regulations

5. The Certification Regulations shall be amended by inserting at the end of the definition of "trade union recognised to any extent" the following, namely—

"or under Article 33(9) of the Social Security Pensions (Northern Ireland) Order 1975(**b**)".

Amendment of the Miscellaneous Provisions Regulations

6. In regulation 6 of the Miscellaneous Provisions Regulations (priorities on winding-up of a scheme)—

(*a*) the word "only" shall be omitted;

(*b*) the following paragraph shall be added—

"(2) An occupational pension scheme (not being a public service scheme) which contains provision for the payment of pensions or other benefits to dependants of members shall be exempt from the requirements

(**a**) S.I. 1978/250. (**b**) S.I. 1975/1503 (N.I. 15).

of section 40(3) of the Pensions Act (as amended by section 22(8) of the 1977 Act) (priorities on winding-up) to the following extent, 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 any dependant of a deceased member will be entitled under the scheme on the death of the widow or widower or other dependant of such member."

Signed by authority of the Secretary of State for Social Services.

Stanley Orme,
Minister for Social Security,
Department of Health and
Social Security.

23rd February 1978.

EXPLANATORY NOTE

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

These Regulations make miscellaneous provisions in connection with the contracting-out of occupational pension schemes.

They provide that, in particular cases and for the purposes only of sections 35(7) (exclusion of guaranteed minimum pensions from revaluation under section 21) and 42(1) (premiums on termination of contracted-out employment) of the Social Security Pensions Act 1975 (hereafter called the Act), contracted-out employment is to be treated as not having terminated.

They amend the Contracted-out Employment (Notifications, Premium Payment and Miscellaneous Provisions) Regulations 1976, the Occupational Pension Schemes (Contracting-out) Regulations 1975, and the Occupational Pension Schemes (Certification of Employments) Regulations 1975 to take account of the passing of the Social Security (Miscellaneous Provisions) Act 1977 and to make minor corrections.

They also amend the Contracted-out Employment (Miscellaneous Provisions) Regulations 1977 so as to provide that schemes other than public service pension schemes which provide for the payment of pensions or other benefits to dependants of members shall be exempt from the requirements of section 40(3) of the Act (as amended by section 22(8) of the Social Security (Miscellaneous Provisions) Act 1977) (priorities on winding-up) to the extent that they need not give priority to the liabilities specified in section 40(3) over liabilities in respect of pensions or other benefits payable under the scheme to dependants of a deceased member on the death of the widow or widower or other dependant of that member.

The report of the Occupational Pensions Board on the draft of these regulations, dated 2nd February 1978, is contained in House of Commons Paper No. 260 (Session 1977-78) published by Her Majesty's Stationery Office.

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