STATUTORY INSTRUMENTS

1983 No. 338

PENSIONS

The Contracted-out Employment (Miscellaneous Provisions) Regulations 1983

Made - - - -	*7th March* 1983
Laid before Parliament	*15th March* 1983
Coming into Operation	*5th April* 1983

The Secretary of State for Social Services, in exercise of the powers conferred upon him by sections 41(1A), 44(2), 45(1), 51A(12) and 62(4) of, and paragraphs 5, 6 and 9 of Schedule 2 to, the Social Security Pensions Act 1975(**a**) and sections 21(1) and (2) and 22(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 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 1983 and shall come into operation on 5th April 1983.

(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;

"scheme" means an occupational pension scheme within the meaning of section 66(1) of the Act;

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

Sufficiency of the resources of occupational pension schemes

2. In a case where the Board are unable to be satisfied, for the purposes of subsection (1) of section 41 of the Act, that the resources of a scheme are sufficient for meeting the requirements specified in that subsection but they are satisfied (subject to such conditions as they may impose or otherwise) that the resources of the scheme are sufficient for meeting the requirements specified in paragraph *(a)* (claims in respect of guaranteed minimum pensions) and

(a) 1975 c. 60; subsection (1A) was inserted in section 41 by section 3(6) of the Social Security Act 1980 (c. 30); paragraph 6 of Schedule 2 was amended by section 3(12) of that Act; and section 51A was inserted by section 40 of the Social Security and Housing Benefits Act 1982 (c. 24).

(b) 1977 c. 5; section 21(1) was amended by section 3(4) of the Social Security Act 1980 and Schedule 2, paragraph 3 to the Social Security Act 1981 (c. 33).

paragraph *(c)* (liabilities and expenses on winding up) of the said subsection (1), that subsection shall have effect as if paragraph *(b)* thereof (payments in respect of state scheme premiums) were omitted.

Amendment of the Contracted-out Employment (Notifications, Premium Payment and Miscellaneous Provisions) Regulations 1976

3.—(1) The Contracted-out Employment (Notifications, Premium Payment and Miscellaneous Provisions) Regulations 1976(**a**) shall be amended in accordance with the provisions of this regulation.

(2) For regulation 3 there shall be substituted the following regulation:—

"Liability for payment of state scheme premiums

3.—(1) For the purposes of section 44(2) of the Act (payment of accrued rights premiums and pensioner's rights premiums) the prescribed person is—

(a) the trustees of the scheme; or

(b) in the case of a person to whom sub-paragraphs *(a)*, *(b)* and *(d)*(ii) of regulation 8(5) below apply and for the purpose only of enabling payment of the premium, that person.

(2) For the purposes of sections 42 to 45 of the Act the person to be treated as the employer of an employed earner is—

(a) subject to sub-paragraphs *(b)* to *(f)* below, in the case of an employed earner, including an employed earner such as is mentioned in paragraph 6(2) of Schedule 2 to the Act, any person, government department, public authority or body of persons who, under Part I of the Social Security Act 1975, is, or is to be treated as, the secondary Class 1 contributor in respect of that earner;

(b) in a case where the employer (within the meaning of sub-paragraph *(a)* above) of an employed earner in contracted-out employment is insolvent, the trustees of the scheme by reference to which the earner's employment is contracted-out employment, so however that except in the case of a premium under section 42(3) of the Act the trustees of the scheme shall be liable by virtue of this sub-paragraph only for so much of any state scheme premium as is not recovered from the insolvent employer as a priority debt by virtue of the provisions of paragraph 3 of Schedule 3 to the Act;

(c) in a case where a scheme ceases to be contracted-out, and by virtue of arrangements approved by the Board under section 44(1) of the Act a limited revaluation premium is payable under section 45(1) of the Act, the trustees of that scheme;

(d) in a case where an employed earner's employer (within the meaning of sub-paragraph *(a)* above) dies or otherwise ceases to be his employer and the business is taken over by a new employer and the earner's employment in contracted-out employment is to be treated as continuing under the new employer by virtue of regulation 10(5) of the Contracting-out regulations, that new employer;

(**a**) S.I. 1976/143; relevant amending instruments are S.I. 1978/250, 1981/129.

(e) in a case where a holding company within the meaning of section 154 of the Companies Act 1948(**a**) or a company which is treated by the Board under regulation 13(1)*(b)*(ii) of the Occupational Pension Schemes (Certification of Employments) Regulations 1975(**b**) as a holding company, has made an election to contract-out in respect of earners employed by one or more subsidiary companies of that company, that holding company or, as the case may be, that company which is treated as a holding company; and

(f) in a case where section 45(1) of the Act as modified by regulation 8B*(e)* of these regulations applies, the employer of the earner in the employment by reference to the scheme from which the earner's accrued rights to requisite benefits have been transferred.

(3) Where the amount of a state scheme premium payable under the Act does not exceed £5 the person who would otherwise be liable to pay that premium shall not be so liable, but may nevertheless choose to pay it; and if any such premium is not paid, then for the purpose of extinguishing the earner's entitlement to the guaranteed minimum pension to which the premium relates the premium shall be treated as if it had been paid.

(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(**c**) 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.

(5) Any liability for the payment of a state scheme premium which is, by any provisions of these regulations, imposed on the trustees of a scheme shall be a liability to make that payment out of the resources of the scheme."

(3) For regulation 7 there shall be substituted the following regulation:—

"Alternative to limited revaluation premium

7.—(1) For the purposes of section 45(1)*(b)* of the Act (exclusion from

(**a**) 1948 c.38.
(**b**) S.I. 1975/1927, to which there are amendments not relevant to these Regulations.
(**c**) 1977 c.5.

liability to pay a limited revaluation premium), where a scheme provides, under section 35(7) of the Act, for the earnings factors of an earner whose service in contracted-out employment by reference to the scheme is terminated before he attains pensionable age to be determined without reference to any order that comes into force under section 21 of the Act after the relevant year in which his service is terminated, then, subject to the following provisions of this regulation, there shall be no liability to pay a limited revaluation premium in respect of such an earner if the provisions made by the scheme under section 35(7) of the Act conform with the following additional requirement, namely that the rate of increase specified by the scheme for the purposes of the said section 35(7) is at least 8½ per cent. compound for each relevant year after the year in which the earner's service is terminated, notwithstanding that the amount by which an earnings factor for that year equal to that weekly equivalent would be increased by the last order that comes into force under section 21 of the Act before the end of the final relevant year is less than the amount produced by that rate.

(2) Paragraph (1) above applies only so as to permit the same such provision to be made for all members of the scheme, so however that separate provision may be made for members as regards their accrued rights transferred in accordance with section 38(1) of the Act.

(3) In a case to which regulation 8B of these regulations applies, where a scheme provides under section 35(7) of the Act for earnings factors of an earner whose accrued rights to requisite benefits including such rights derived from linked qualifying service have been transferred under section 38(1) of the Act from another scheme to be determined without reference to any order that comes into force under section 21 of the Act after the relevant year in which his service in the contracted-out employment to which that other scheme related was terminated, there shall be no liability to pay a limited revaluation premium in respect of such an earner if the provisions made by the scheme under section 35(7) of the Act conform with the following additional requirement, namely that the rate of increase specified by the scheme for the purposes of the said section 35(7) is at least 8½ per cent. compound for each relevant year—

(a) after the year in which that service was terminated, in any case where such earnings factors or weekly equivalent have previously fallen to be determined by reference to orders under section 21 of the Act, or

(b) from and including the year in which that service was terminated, in any other case,

notwithstanding that the amount by which an earnings factor for any such relevant year equal to that weekly equivalent would be increased by the last order that comes into force under section 21 of the Act before the end of the final relevant year is less than the amount produced by that rate."

(4) For regulation 8 there shall be substituted the following regulations:—

"Miscellaneous provisions affecting state scheme premiums and guaranteed minimum pension rights

8.—(1) Subject to paragraphs (2) and (3) below, where—

(a) an employer has elected to pay a contributions equivalent premium under section 42(2) or (3) of the Act, or

(b) an accrued rights premium or a pensioner's rights premium is payable under section 44(2) of the Act pursuant to certification by the Board to the Secretary of State under regulation 3(4) of these regulations,

the premium shall, for the purpose of extinguishing the earner's accrued rights to or, as the case may be, pensioner's rights to guaranteed minimum pensions under a scheme, be treated as having been paid, or paid in part in a case to which either paragraphs (5) and (6) or (7) of this regulation apply, on the date on which the earner ceased to be in contracted-out employment by reference to that scheme or, where the premium is an accrued rights premium or a pensioner's rights premium, on the date on which that scheme ceased to be contracted-out or on any date certified by the Board under sub-paragraph *(c)* of the said regulation 3(4) in relation to those rights, whichever is the later.

(2) Where a premium has been treated as paid under paragraph (1) above, the effect of that paragraph shall, except as provided in paragraph (4) below, be disregarded if—

(a) the Board subsequently approve arrangements for the preservation or transfer of the earner's accrued rights to or, as the case may be, pensioner's rights to guaranteed minimum pensions, or

(b) the person who is liable to pay that premium fails to do so within the period prescribed by regulation 5(1) of these regulations or such longer period as the Secretary of State may allow under regulation 5(2) of these regulations.

(3) Where by virtue of the operation of paragraphs (1) and (2) above in relation to a person entitled to a benefit specified in section 29(1)*(a)* of the Act an amount of such benefit, as certified by the Secretary of State, was paid to that person which would not otherwise have been paid—

(a) the Secretary of State shall be entitled to recover that amount from the scheme and any amount so recovered shall be paid into the National Insurance Fund, and

(b) the sums payable under the scheme to that person may be reduced by the amount so recovered by the Secretary of State.

(4) Paragraph (2)*(b)* above shall not apply where the Secretary of State is satisfied that the failure to pay was not with the consent or connivance of, or attributable to any negligence on the part of, the person in respect of whom the premium is payable, and—

(a) where, subject to paragraphs (5) and (6) below, the scheme, being a scheme which is or has been contracted-out, is being or has been wound up; or

(b) where:—

(i) a person, having elected to pay a contributions equivalent premium, has been sent a notice certifying that an increased amount of that premium is payable, and

(ii) the said increased amount either does not exceed £5 or, if it exceeds £5, remains unpaid to an extent not exceeding any such part of the increased amount as that person may be entitled to

recover by virtue of section 47 of the Act (deduction of premium from refund of contributions).

(5) In the case of a person—

(a) whose accrued rights to, or whose rights to receive, guaranteed minimum pension under a contracted-out scheme have been secured wholly or, to the extent of the scheme's resources, in part by an insurance policy or annuity contract which meets the approval of the Board or the conditions prescribed in regulation 2 of the Contracted-out Employment (Miscellaneous Provisions) Regulations 1977(**a**), and

(b) in respect of whom a state scheme premium has become payable by reason of:—

(i) the withdrawal by the Board of their approval of, or their inability to give their approval to, arrangements for the preservation or transfer of that person's said rights in pursuance of section 44 of the Act, or

(ii) the cancellation by the Secretary of State of his certificate under section 22(10) of the Social Security (Miscellaneous Provisions) Act 1977(**b**), and either

(c) whose said rights cannot be extinguished by payment of that premium for the reason that the resources of the said scheme, being a scheme which is being or has been wound up, are insufficient to meet the cost of that premium, or

(d) to whom, or for whose benefit, the Policyholders Protection Board, under the provisions of the Policyholders Protection Act 1975(**c**), have, where the said scheme has been wound up:—

(i) secured a substituted policy of insurance or annuity contract, or

(ii) paid a cash sum in lieu of the benefits previously secured as specified in sub-paragraph *(a)* above,

the said premium shall be treated as paid under paragraph (1) above only in accordance with the provisions of paragraph (6) below.

(6) In a case to which paragraph (5) above applies, where the Secretary of State is satisfied that:—

(a) the amount of benefit secured as in sub-paragraph *(a)* or *(d)*(i) of that paragraph is less than the amount of the guaranteed minimum pension to which the relevant person is, or will be, entitled, or

(b) the amount of the cash sum referred to in sub-paragraph *(d)*(ii) of that paragraph is less than the amount of the premium payable,

such part of the premium as represents, in the opinion of the Secretary of State, the difference in either case between the lesser and greater amounts shall be treated as having been paid.

(7) Where a person in respect of whom a premium is payable is a person to whom regulation 3(1)*(b)* of these regulations applies and that person pays

(**a**) S.I. 1977/1188, to which there are amendments not relevant to these Regulations.
(**b**) 1977 c.5; section 22(10) was amended by section 3(7) of the Social Security Act 1980 (c. 30).
(**c**) 1975 c.75.

part only of that premium, such part of the said premium shall be treated as having been paid under paragraph (1) above.

(8) Where part of the premium falls to be treated as having been paid under paragraph (1) above—

(a) sections 43(7) and 44(9) of the Act shall be modified so as to have effect as if there were inserted, in each case, at the end thereof the words "and payment of part of a premium in either case or of a premium calculated in accordance with section 44(5)*(a)* or *(b)* of this Act as modified by regulation 8(8)*(b)*(iii) or (iv) respectively of the Contracted-out Employment (Notifications, Premium Payment and Miscellaneous Provisions) Regulations 1976 shall operate to extinguish such part of those rights or, as the case may be, accrued rights to guaranteed minimum pension as corresponds, in the opinion of the Secretary of State, to such part of the premium or such premium"; and

(b) in a case to which sub-paragraphs *(a)*, *(b)* and *(c)* of paragraph (5) above apply, section 44 of the Act shall be modified so as to have effect as if:—

(i) in subsections (1)*(a)* and (1)*(b)* of that section there were inserted, in each case, after the words "guaranteed minimum pensions" the words "or part thereof",

(ii) in subsections (2)*(a)* and (2)*(b)* of that section there were inserted, in each case, after the words "are not" the words, "or are in part only",

(iii) in subsection (5)*(a)* of that section there were inserted immediately after the words "the scheme" the words "to the extent that such rights are not subject to approved arrangements", and

(iv) in subsection (5)*(b)* of that section there were inserted immediately after the words "his widow" the words "to the extent that such pension is not provided under approved arrangements".

(9) For the purposes of paragraphs (4) and (5)*(c)* 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.

Re-allocation and refund of state scheme premiums

8A.—(1) Where a state scheme premium is wrongly paid, or paid as to the wrong amount, the Secretary of State may treat all or part of that premium as paid (wholly or in part) in discharge of a liability for another premium or (where the premium was paid by the employer within the meaning of regulation 3(2)*(a)* above) for contributions under Part I of the Social Security Act 1975.

(2) Where a state scheme premium has been paid in connection with an earner's accrued rights to guaranteed minimum pension derived from a period of service in contracted-out employment and another such premium subsequently becomes payable in connection with such rights of his derived from the same period or a period inclusive of it, the Secretary of State may treat all or part of the first premium as paid (wholly or in part) in discharge of a liability for the second premium.

(3) Subject to paragraphs (1) and (2) above and (4) below the Secretary of State shall refund a state scheme premium if—

(a) that premium was paid in error; or

(b) he is satisfied that the employment to which the premium relates will be linked with another employment in the circumstances set out in regulation 10(2) and (3) of the Contracting-out regulations or in the circumstances set out in regulation 2(1) of the Contracted-out Employment (Miscellaneous Provisions) Regulations 1978(**a**); or

(c) he is satisfied that the earner in respect of whom the premium was paid has entered into employment which is contracted-out employment by reference to the same contracted-out scheme as that by which the employment to which the premium relates was contracted-out employment, and that for the purpose of calculating the earner's accrued rights under the scheme the 2 employments will be linked; or

(d) he is satisfied that a transfer of the earner's accrued rights will be made in accordance with section 38 of the Act, except in the case of a limited revaluation premium where those accrued rights are being or will be revalued under the provisions of section 35(7) of the Act as modified by regulation 8B*(b)* below by the scheme to which they have been or are to be transferred; or

(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,

and where a premium is refunded under the provisions of this paragraph the earner's accrued rights under the scheme, which were extinguished by payment of the premium, shall be restored.

(4) Where a state scheme premium being a limited revaluation premium has been paid and a transfer under section 38(1) of the Act of the accrued rights of the earner in respect of whom that premium was paid is made thereafter in circumstances conforming with those specified in regulation 8C*(f)* below, the Secretary of State shall repay the amount of the premium so paid to the trustees of the contracted-out scheme to which those accrued rights have been transferred.

(5) A refund under paragraph (3) above or a repayment under paragraph (4) above shall be made only if an application is made in writing, in such form as the Secretary of State may reasonably require for the purpose.

(6) In paragraph (3) above "error" means, and means only, an error which—

(a) is made at the time of the payment, and

(b) relates to some present or past matter.

(a) S.I. 1978/250.

(7) Where an earner has been employed concurrently in 2 or more contracted-out employments, on the termination of one or more of which one or more contributions equivalent premiums are paid the amount, or the aggregate amount, of which has the effect that the National Insurance Fund has gained in all, by reference to the employment or employments in respect of which the premium or premiums have been paid, a greater amount than it would have gained from Class 1 contributions under the Social Security Act 1975 if the employment or employments had not been contracted-out, there shall be paid out of the National Insurance Fund to the earner (or his estate) an amount equal to that amount which bears the same proportion to the amount of the excess as the reduction, under section 27(2) of the Act, in the normal percentage of primary Class 1 contributions bears to the total reduction under that sub-section in the total normal percentage of Class 1 contributions.

Modification of sections 35(5), (7) and (8), 44 and 45 of the Act where regulation 8C applies

8B. In such a case as is specified in regulation 8C below—

(a) section 35(5) of the Act shall be modified so as to have effect as if there were inserted at the end thereof the words "or, in respect of the earner's earnings factor or the weekly equivalent mentioned in subsection (2) above for any relevant year in a period of linked qualifying service, alternatively shall be taken to be that factor or weekly equivalent as increased in accordance with the provisions of the scheme under regulations made under section 45(1) below", and

(b) section 35(7) of the Act shall be modified so as to have effect as if, where earnings factors of an earner whose accrued rights to requisite benefits, including such rights derived from linked qualifying service, have been transferred under section 38(1) of the Act to another contracted-out scheme, the said subsection (7) permitted that scheme to provide for those earnings factors to be determined for the purposes of subsection (2) of the said section 35 without reference to any order coming into force under section 21 of the Act—

(i) after the relevant year in which his service in the contracted-out employment, by reference to the scheme from which those rights were transferred, was terminated where such earnings factors have previously fallen to be determined by reference to orders under the said section 21, or

(ii) in and after the relevant year in which that service was terminated in any other case,

and sub-paragraphs *(a)* and *(b)* of the said subsection (7) had effect accordingly, save, in a case to which sub-paragraph (ii) above applies, for treating the reference to the amount of the increase in the said sub-paragraph *(b)* as a reference to the amount by which the earnings factors relevant to the weekly equivalent would be increased, and

(c) section 35(8) of the Act shall be modified so as to have effect as if there were added at the end of that subsection the words, "so however that separate provision may be made for members as regards their accrued rights transferred in accordance with section 38(1) below", and

(d) section 44(6)*(a)*(a) of the Act shall be modified so as to have effect as if the requirement to disregard certain orders made under section 21 of the Act applied only to earnings factors arising from the earner's service in the employment by reference to which the scheme ceasing to be contracted-out was contracted-out, including linked qualifying service the earnings factors relating to which are being increased by reference to orders made under the said section 21, and

(e) section 45 of the Act shall be modified so as to have effect as if:—

(i) the application of subsection (1) were extended to include cases where an earner's accrued rights to requisite benefits have been transferred under section 38(1) of the Act to another contracted-out scheme, and

(ii) in such cases the requirement that the earner's employer shall pay a limited revaluation premium in respect of the earner were a requirement that the said premium shall be paid by the employer of the earner in the employment by reference to the scheme from which such a transfer of accrued rights as is referred to in sub-paragraph (i) above has been made unless, pursuant to arrangements made by that employer, the said premium is paid by the trustees of the scheme to which the said accrued rights have been transferred, and

(iii) the application of subsection (3) were extended to include the cases specified in sub-paragraph (i) above, and

(iv) in paragraph *(a)* of subsection (3) the requirement to disregard certain orders made under section 21 of the Act applied only to earnings factors arising from the earner's service in the employment by reference to which the scheme ceasing to be contracted-out was contracted-out, including linked qualifying service the earnings factors relating to which are being increased by reference to orders made under the said section 21.

Circumstances in which the modifications to the Act set out in regulation 8B apply

8C. The case referred to in regulation 8B above is where following the termination of an earner's service in contracted-out employment by reference to a scheme the following conditions are satisfied, namely—

(a) a transfer under section 38(1) of the Act of the earner's accrued rights to requisite benefits under that scheme (hereafter in this regulation referred to as the "transferring scheme") to another contracted-out scheme (hereafter in this regulation referred to as the "receiving scheme") is made, or if already begun is completed, on or after 5th April 1983, and

(b) the said earner commences or has commenced employment which is contracted-out by reference to the receiving scheme, and

(c) by virtue of section 38(2) of the Act the calculation, under the provisions of the receiving scheme, of the earner's guaranteed minimum pension for the purposes of section 35(2) of the Act falls to

(a) Subsection (6) was substituted by section 3(8) of the Social Security Act 1980 (c.30).

include earnings factors, or the weekly equivalent derived therefrom, arising out of contracted-out employment in any period of linked qualifying service which was contracted-out employment by reference to the transferring scheme, and either

(d) the receiving scheme provides for the said earnings factors or weekly equivalent derived therefrom to be increased at the rate by which they, or it, fell to be increased under the provisions of the transferring scheme or would have fallen to be increased under the provisions of that scheme relating to an earner whose service in contracted-out employment by reference to the scheme is terminated before he attains pensionable age, or

(e) if the provisions of the transferring scheme referred to in paragraph *(d)* above provided for the said earnings factors to be increased by reference to orders under section 21 of the Act, the receiving scheme provides for those earnings factors or weekly equivalent derived therefrom to be increased in accordance with the provisions of section 35(7) of, or of regulations made under section 45(1) of, the Act, or

(f) if the transferring scheme provided for the said earnings factors or weekly equivalent derived therefrom to be increased in accordance with the provisions of either section 35(7) of, or of regulations made under section 45(1) of, the Act, the receiving scheme includes provision for the said earnings factors to be increased by reference to orders under section 21 of the Act from the date of termination of the earner's service in the period of contracted-out employment from which such earnings factors arose, or

(g) if a transfer of the earner's accrued rights to the receiving scheme is not one to which the preceding paragraph applies and those rights were previously being increased at a rate calculated by reference to orders under section 21 of the Act, the receiving scheme includes provision for the said earnings factors or weekly equivalent derived therefrom to be increased at a rate calculated otherwise than by reference to orders under section 21 of the Act."

Amendment of the Occupational Pension Schemes (Contracting-out) Regulations 1975

4. Regulation 10 of the Occupational Pension Schemes (Contracting-out) Regulations 1975(**a**) (termination of periods of contracted-out employment) shall be amended by substituting for sub-paragraph *(a)* of paragraph (3) the following sub-paragraph:—

"*(a)* where all the employments are with the same employer and, in respect of the employment first mentioned in paragraph (2) above—

(i) no state scheme premium has been paid or any that has been paid has been refunded,

(ii) the calculation of the earner's guaranteed minimum pension arising out of his service in that employment is not subject to any provision of the scheme prescribed by regulations made under section 45(1)*(b)* of the Act, and

(**a**) S.I. 1975/2101, to which there are amendments not relevant to these Regulations.

(iii) the earner's accrued rights to the requisite benefits under the scheme arising out of his service in that employment, have not been transferred in accordance with the provisions of the scheme under section 38(1) of the Act,

and any interval between one employment in the series and the next is no longer than 6 months or such longer period as the Secretary of State may allow in a particular case; and".

Amendment of the Contracted-out Employment (Miscellaneous Provisions) Regulations 1977

5.—(1) The Contracted-out Employment (Miscellaneous Provisions) Regulations 1977(**a**) shall be amended in accordance with the provisions of this regulation.

(2) In regulation 3 there shall be inserted at the beginning of the regulation the words "Subject to the provisions of regulation 4A of these regulations,".

(3) In regulation 4 there shall be inserted at the beginning of the regulation the words "Subject to the provisions of regulation 4A of these regulations,".

(4) There shall be inserted after regulation 4 the following regulation:—

"Additional modifications relating to increases of earnings factors by 12 per cent.

4A.—(1) Subject to the provisions of paragraph (2) below, so far as relates to any case where an earner's accrued rights to requisite benefits are or have been transferred under section 38(1) of the Pensions Act to another contracted-out scheme, references in regulations 3 and 4*(b)* of these regulations to an increase of 12 per cent. of an earner's earnings factor for any year shall be construed as references only to the increase of earnings factors arising from the earner's service in the employment by reference to which the scheme ceasing to be contracted-out was contracted-out.

(2) For the purposes of paragraph (1) above any service of the earner which is linked qualifying service shall only be included in that service where the earnings factors to which it relates are being increased by reference to orders under section 21 of the Pensions Act.".

(5) In regulation 5—

(a) there shall be added at the end of paragraph (3) the words "and the same employer is the earner's employer in relation to both the first and second schemes or the employers in relation to those schemes are connected employers", and

(b) there shall be added after paragraph (3) the following paragraph:—

"(4) In paragraph (3) of this regulation "connected employers" means employers who would fall within any of the cases prescribed by the Occupational Pension Schemes (Connected Employers) Regulations

(**a**) S.I. 1977/1188, to which there are amendments not relevant to these Regulations.

1982(a) as cases in which employers are to be treated as connected for the purposes of section 51A of the Pensions Act, disregarding the provisions of those regulations as to the times at which employers are to be so treated.".

Amendment of the Contracted-out Employment (Miscellanous Provisions) Regulations 1978

6. Regulation 2 of the Contracted-out Employment (Miscellaneous Provisions) Regulations 1978(b) (termination of contracted-out employment in certain cases) shall be amended by inserting after sub-paragraph (ii) of the proviso to paragraph (1) the following sub-paragraphs:—

"(iii) where and for so long as provisions made by the scheme in conformity with the requirement specified in regulation 7(1) of the Contracted-out Employment (Notifications, Premium Payment and Miscellaneous Provisions) Regulations 1976 apply to the calculation of the earner's guaranteed minimum pension arising out of his service in the first employment, or

(iv) where the earner's accrued rights to the requisite benefits under the scheme arising out of his service in the first employment, have been transferred in accordance with the provisions of the scheme under section 38(1) of the Act.".

Amendment of the Occupational Pension Schemes (Connected Employers) Regulations 1982

7. In regulation 1(2) of the Occupational Pension Schemes (Connected Employers) Regulations 1982 (meaning of the expression "company") there shall be substituted for the words from "registered under" to the end the words "within the meaning of section 455(1) of the Companies Act 1948(c) (hereinafter referred to as "the 1948 Act") or a body corporate to which, by virtue of section 435 of that Act, any provision of that Act applies.".

Norman Fowler,
Secretary of State for Social Services.

7th March 1983.

(a) S.I. 1982/1032.
(b) S.I. 1978/250.
(c) 1948 c.38.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations make miscellaneous provisions in connection with contracted-out occupational pension schemes ("schemes") particularly by way of relaxation of existing provisions of the Social Security Pensions Act 1975 ("the Act") concerning schemes' resources and the revaluation of earner's accrued pension rights arising on the transfer of those rights to another such scheme.

Regulation 2 enables the Occupational Pensions Board to allow a scheme to be or continue to be contracted-out where it does not fulfil one of the three requirements as to adequacy of resources laid down by section 41(1) of the Act, namely the ability to meet the total contingent liability for state scheme premiums ("premiums"). Regulation 3 further amends the Contracted-out Employment (Notifications, Premium Payment and Miscellaneous Provisions) Regulations 1976 by substituting expanded and altered regulations 3, 7, 8, 8A, 8B and 8C, (which last four regulations together replace the existing regulation 8), of those Regulations. The substituted regulations extend the circumstances in which premiums are to be treated as paid and enable the Secretary of State to recover from schemes overpayments of additional components of State retirement pension resulting from failure to pay such premiums after they have been treated as paid in such cases. They modify the provisions of sections 35(5), (7) and (8), 44(6) and 45 of the Act relating to the calculation and revaluation of earners' guaranteed minimum pensions. They also enable a contracted-out scheme to which an earner's accrued rights to benefit are transferred under the provisions of section 38 of the Act from another such scheme to choose, within the limits prescribed, which of the three possible methods of revaluation (under section 21 of the Act, limited rate under section 35(7) of the Act or fixed rate of at least $8\frac{1}{2}\%$) to apply.

Regulation 4 amends regulation 10 of the Occupational Pension Schemes (Contracting-out) Regulations 1975 so as to further restrict the circumstances in which one of a series of employments is excepted from being treated, under that regulation, as having ceased to be contracted-out. Regulation 5 makes amendments to the Contracted-out Employment (Miscellaneous Provisions) Regulations 1977 consequential on other amendments introduced by these Regulations; in particular so as to permit, except in certain special cases, the substitution of 12% increases in relation to earnings factors where arrangements approved by the Occupational Pensions Board on cessation of contracting-out consist of the transfer of an earner's accrued rights to guaranteed minimum pensions to another contracted-out scheme. Regulation 6 amends regulation 2 of the Contracted-out Employment (Miscellaneous Provisions) Regulations 1978 to make provision, parallel to that made by regulation 4 of these Regulations, in relation to schemes for which there is a common fund.

Regulation 7 makes a minor clarificatory amendment to the definition of "company" in the Occupational Pension Schemes (Connected Employers) Regulations 1982.

The report of the Occupational Pensions Board on the preliminary draft of these regulations, dated 16th March 1982, is contained in a Command Paper (Cmnd. 8827) published by Her Majesty's Stationery Office.

SI 1983/338
ISBN 0-11-036338-8

