STATUTORY INSTRUMENTS

1976 No. 143

PENSIONS

The Contracted-out Employment (Notifications, Premium Payment and Miscellaneous Provisions) Regulations 1976

Made - - - -	*3rd February* 1976
Laid before Parliament	*10th February* 1976
Coming into Operation-	
Regulation 9	*2nd March* 1976
Remainder -	*6th April* 1978

The Secretary of State for Social Services, in exercise of the powers conferred upon her by sections 39(1), 43(4) and (6), 44(2), (3) and (6), 45(1) to (3) and 47(7) and (11) of, and paragraphs 1, 3, 6 and 9 of Schedule 2 to, the Social Security Pensions Act 1975(**a**), and section 166(2)(*b*)(ii) of the Social Security Act 1975(**b**), and of all other powers enabling her in that behalf, hereby makes the following regulations:—

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Contracted-out Employment (Notifications, Premium Payment and Miscellaneous Provisions) Regulations 1976, and shall come into operation in the case of regulation 9 on 2nd March 1976 and in the case of the remainder of the regulations on 6th April 1978.

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

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

"administrator", in relation to an occupational pension scheme, means the person or persons resident in the United Kingdom having the management of the scheme;

"the Board" means the Occupational Pensions Board;

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

"employer" includes a person who, by virtue of regulation 3(2) below, is treated as an employer for the purposes of these regulations;

"responsible paying authority" means—

(*a*) in relation to a public service scheme, the authority responsible for paying the benefits of that scheme;

(*b*) in relation to a scheme, not being a scheme set up or established under an irrevocable trust, where the benefits, or so much of the benefits as represent guaranteed minimum pensions, are secured by means of a

(a) 1975 c. 60. (b) 1975 c. 14. (c) S.I. 1975/2101 (1975 III, p. 7879).

policy of insurance or annuity contract in accordance with regulation 4 of the Contracting-out regulations, the insurance company or friendly society with which the policy of insurance is taken out or the contract entered into;

(*c*) in relation to a deferred annuity under regulation 4(3) of the Contracting-out regulations, the insurance company or friendly society with which the insurance policy is taken out or the contract entered into; and

(*d*) in any other case, the trustees of the scheme;

"scheme" means an occupational pension scheme;

"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 meanings 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 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.

Notifications to the Secretary of State

2.—(1) Whenever an earner's service in contracted-out employment is treated as terminated under the provisions of regulation 10 of the Contracting-out regulations the employer of that earner in that service shall, except where the termination is due to the death of the earner or occurs on a date later than the end of the tax year preceding that in which he attains pensionable age, or where the amount of a contributions equivalent premium in respect of that service would not exceed £5, notify the Secretary of State of that termination.

(2) A notification required to be given under paragraph (1) above may be given at any time within the period of one month before the expected date of termination but if not so given shall be given within 6 months from the date on which the service terminated or, if the Secretary of State is satisfied that the notification could not reasonably have been given within that period, such longer period as he may approve in a particular case or class of case.

(3) A notification required to be given under paragraph (1) above shall be given in writing in such form as the Secretary of State may direct and shall contain such information as the Secretary of State may reasonably require for calculating guaranteed minimum pensions and state scheme premiums and for related purposes.

(a) 1889 c. 63.

(4) In any case where, subsequent to the giving of a notification under paragraph (1) above, a responsible paying authority transfers its responsibility for a guaranteed minimum pension to another responsible paying authority, the responsible paying authority making the transfer shall, within one month from the date of such transfer, notify the Secretary of State in writing of the transfer giving such particulars as the Secretary of State may reasonably require to enable him to identify the new responsible paying authority.

(5) An employer to whom a contracting-out certificate has been issued or the trustees of the scheme to which the certificate relates shall, if required to do so by the Secretary of State, in such manner and at such times as the Secretary of State may reasonably require, furnish to the Secretary of State such information relating to members of the scheme to which the contracting-out certificate relates as he may reasonably require for the purpose of calculating guaranteed minimum pensions and for related purposes.

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 the trustees of the scheme.

(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 (*e*) 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; and

(*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

(a) 1948 c. 38.

the Board under regulation 13(1)(*b*)(ii) of the Occupational Pension Schemes (Certification of Employments) Regulations 1975(**a**) 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.

(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) In the event of a contracted-out scheme ceasing to be contracted-out then 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 whether or not an earner's accrued rights to guaranteed minimum pension or a pensioner's rights to guaranteed minimum pension are subject to approved arrangements as mentioned in that section, and in the event of rights which are so subject ceasing to be so subject the Board shall certify to the Secretary of State 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.

Elections to pay state scheme premiums

4.—(1) An employer's obligation under section 43(4) of the Act (not to discriminate between different earners when making or abstaining from making elections to pay contributions equivalent premiums) shall not apply to—

(*a*) cases where an earner's accrued rights are transferred under section 38 of the Act;

(*b*) married women and widows who, by virtue of regulations made under section 3(2) of the Act, have elected to pay primary Class 1 contributions under the Social Security Act 1975 at a reduced rate;

(*c*) cases where a refund of the earner's contributions to the scheme is precluded to enable the scheme to qualify for the approval of the Commissioners of Inland Revenue for the purposes of Section 208 of the Income and Corporation Taxes Act 1970(**b**) or of Chapter II of Part II of the Finance Act 1970(**c**);

(*d*) cases where, on the death of an earner, his widow becomes entitled to a widow's pension which comprises an amount of pension which has accrued by reference to the earner's service in employment which was not contracted-out employment and a widow's guaranteed minimum pension by reference to the earner's service in contracted-out employment; and

(**a**) S.I. 1975/1927 (1975 III, p. 7163). (**b**) 1970 c. 10. (**c**) 1970 c. 24.

(*e*) cases where the earner has completed less than 5 years' qualifying service for the purposes of Schedule 16 to the Social Security Act 1973(**a**) (preservation) but where, nevertheless, he is entitled under the rules of the scheme to elect, and he has elected, that his accrued rights shall be preserved:

Provided that in respect of any of the classes of case mentioned in this paragraph an employer shall not discriminate between different earners falling within the same class of case.

(2) An election under section 42(2) or (3), or section 44(6) or 45(3) of the 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, and such notification shall be given—

(*a*) in the case of an election under section 42(2) of the Act, within the period beginning one month before the date of termination of the contracted-out employment to which the election relates and ending 6 months after that date;

(*b*) in the case of an election under section 42(3) of the Act, within a period of 6 months from the date of death in respect of which the election is made; and

(*c*) in the case of an election under section 44(6) or 45(3) of the Act, within a period ending 6 months after the date on which the Board certify to the Secretary of State, under regulation 3(4) above, that the earner's accrued rights to guaranteed minimum pension or as the case may be the pensioner's rights to guaranteed minimum pension are not, or, as the case may be, have ceased to be, subject to approved arrangements.

(3) On application being made to him for that purpose the Secretary of State may, in any particular case or class of case, extend the periods mentioned in paragraph (2) above for the making of an election to pay a state scheme premium if it appears to him that the circumstances are such that an election could not reasonably be made within the specified period.

Time for payment of state scheme premiums

5.—(1) Subject to paragraph (3) below any state scheme premium payable under the Act shall be paid on or before whichever is the later of the following days—

(*a*) the day 6 months after the date of termination of contracted-out employment in respect of which the premium is payable; and

(*b*) the day one month after the day on which the Secretary of State sends to the person liable to pay the premium a notice certifying the amount of the premium payable.

(2) On application made to him for that purpose the Secretary of State may, in any particular case or class of case, extend the period within which, under paragraph (1) above, a state scheme premium is required to be paid—

(**a**) 1973 c. 38.

(*a*) by up to 6 months if he is satisfied that the circumstances are such that payment of the premium could not reasonably be required to be made within that period; and

(*b*) by such further period as he considers reasonable if he is satisfied that to require earlier payment of the premium would be prejudicial to the interests of the earner in respect of whom the premium is payable or of the generality of members of the scheme.

(3) 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 accrued rights to guaranteed minimum pension or a pensioner's rights to guaranteed minimum pension under that scheme which are not the subject of approved arrangements under section 44 of the Act or, having been so subject, have ceased to be so subject, 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 not subject to approved arrangements or have ceased to be so subject.

Payment in lieu of benefit and delay in refund for purposes of employer's right of recovery

6.—(1) For the purposes of section 47(10) of the Act (payments in lieu of benefit) a payment in lieu of benefit shall include a payment made or to be made out of the resources of the scheme in or towards the provision of deferred benefits for the earner.

(2) Where on the coming to an end of an employed earner's service in contracted-out employment he (or, by virtue of a connection with him, any other person) is or may be entitled to a refund of any payments made under a contracted-out scheme by or in respect of him towards the provision of benefits under the scheme, the following provisions of this regulation shall apply for the purpose of enabling any right of recovery conferred by section 47 of the Act to be exercised.

(3) Where in such a case a state scheme premium falls to be paid in respect of the earner under the Act, the person liable for the refund shall not, after he has been given such notice for the purpose of this regulation as is hereinafter described (hereafter in this regulation called a "notice of delay"), make the refund in whole or in part until the expiration of the period of delay specified in paragraph (4) of this regulation:

Provided that this paragraph shall not apply to so much, if any, of the refund as exceeds the amount certified by the Secretary of State under section 47(2) of the Act.

(4) The period of delay referred to in paragraph (3) of this regulation shall be the period beginning with the giving of the notice of delay and ending with the expiration of 4 weeks after the payment of the state scheme premium or any part of it, or 4 weeks after the end of the prescribed period for the payment of the state scheme premium, whichever first occurs.

(5) A notice of delay shall be a notice in writing given by the person who is liable for the payment of the state scheme premium (hereafter in this

regulation called "the liable person"), relating either to a particular case or to a class or classes of case and containing the following particulars: —

(*a*) the name of the earner or such particulars as will sufficiently identify the class or classes of cases concerned;

(*b*) such particulars as will sufficiently identify the refund or refunds concerned; and

(*c*) a memorandum in a form approved by the Secretary of State giving brief particulars of the effect of paragraphs (3) and (4) of this regulation.

(6) Every liable person who has given a notice of delay shall from time to time inform any person to whom he has given that notice of the ending of the period of delay in relation to any refund affected by the notice.

Alternative to limited revaluation premium

7.—(1) For the purposes of section 45(1)(*b*) of the Act (exclusion from 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 the scheme's normal pension 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 $8\frac{1}{2}$ 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 any order or orders that come 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.

(3) Regulation 8(7) of these regulations applies for the purposes of this regulation as it applies for the purposes of section 35(7) of the Act.

Miscellaneous provisions

8.—(1) Where a contracted-out scheme is being wound up and the person who is liable to pay an accrued rights premium or a pensioner's rights premium fails to pay that premium within the period prescribed by regulation 5(1) above, or such longer period as the Secretary of State may allow under regulation 5(2) above, then, if 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, that premium shall, for the purpose of extinguishing the earner's or pensioner's accrued rights to guaranteed minimum pension under the scheme, be treated as having been paid within the prescribed period.

(2) 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.

(3) Subject to paragraph (2) above 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

(*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,

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

(5) 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.

(6) 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.

(7) Where, under section 38 of the Act, a transfer of an earner's accrued rights under a contracted-out scheme is made, or is to be made, to another

contracted-out scheme the earner's service in contracted-out employment by reference to the first mentioned scheme shall, for the purposes of section 35(7) of the Act (exclusion of guaranteed minimum pension from full revaluation) be treated as not having terminated, notwithstanding that, by virtue of the provisions of regulation 10 of the Contracting-out regulations, it is otherwise treated as having terminated.

Amendment of the Contracting-out regulations

9.—(1) The Contracting-out regulations shall be amended in accordance with the following provisions of this regulation.

(2) Regulation 8 of the Contracting-out regulations shall be amended by adding at the end the following new paragraph—

"(4) The condition in paragraph (1)(*b*) above shall not apply in cases where the scheme is being wound up or an earner retires before the age of 65 if a man or 60 if a woman and if a premium under section 42 (contributions equivalent), section 44 (accrued rights) or section 45 (limited revaluation) of the Act has been paid, or is treated under regulation 3(3) of the Contracted-out Employment (Notifications, Premium Payment and Miscellaneous Provisions) Regulations 1976 as having been paid, or where provision has been made under regulation 7 of those regulations, provided that—

(*a*) for the purpose of paragraph (1)(*c*) above the aggregate amount of benefit which has accrued to the earner at the date of winding up or, as the case may be, of his retirement, increased, where appropriate, in accordance with section 35(7) of the Act or in accordance with provision made under regulation 7 of the Contracted-out Employment (Notifications, Premium Payment and Miscellaneous Provisions) Regulations 1976, in either case to the amount that would have been payable at pensionable age, shall be treated as the amount of benefit currently payable to him under the scheme;

(*b*) in the case of early retirement commutation is not permitted before the date on which the pension would otherwise become payable; and

(*c*) in cases where the earner is a member of more than one scheme relating to the same employment all those schemes are being wound up or, as the case may be, he is treated by all those schemes as having retired and, in each case, all those schemes have paid a contributions equivalent premium, accrued rights premium or a limited revaluation premium, or have made provision under regulation 7 of the Contracted-out Employment (Notifications, Premium Payment and Miscellaneous Provisions) Regulations 1976."

(3) Regulation 10 of the Contracting-out regulations shall be amended as follows: —

(*a*) in the first line of paragraph (1) for "paragraph" substitute "paragraphs", and after "(2)" insert "and (7)";

(*b*) at the end add the following new paragraph—

"(7) In cases where an earner is employed concurrently in 2 or more contracted-out employments by reference to the same scheme and with the same employer his employment in any one of those employments

shall not be treated as having terminated by reason only of the circumstances mentioned in paragraph (1)(*a*) and (*b*) above until both or all such employments are treated as having so terminated."

Barbara Castle,
Secretary of State for Social Services.

3rd February 1976.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations contain provisions relating to the giving to the Secretary of State of notification of various matters connected with contracted-out employment under the Social Security Pensions Act 1975; liability for, and payment of, state scheme premiums, and miscellaneous matters arising, under that Act. These regulations also amend the Occupational Pension Schemes (Contracting-out) Regulations 1975.

Regulation 2 contains provisions as to the circumstances, time and manner in or within which a notification of termination of contracted-out employment is to be given. Regulation 3 relates to liability for payment of state scheme premiums. Regulation 4 relates to the making of elections to pay state scheme premiums. Regulation 5 prescribes the period within which a state scheme premium must be paid. Regulation 6 contains provisions as to payments in lieu of benefit and to delay in making refunds for the purposes of an employer's right of recovery under the Act. Regulation 7 provides an alternative to limited revaluation premiums under section 45 of the Act. Regulation 8 contains miscellaneous provisions and regulation 9 amends the Occupational Pension Schemes (Contracting-out) Regulations 1975.

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