STATUTORY INSTRUMENTS

1973 No. 1498

PENSIONS

The Occupational Pension Schemes (Certification of Employments) Regulations 1973

Made - - - -	*28th August* 1973
Laid before Parliament	*5th September* 1973
Coming into Operation	*26th September* 1973

The Secretary of State for Social Services in exercise of his powers under sections 52(1), (2) and (7), 66(7)(*a*) and 91(3) of, and paragraphs 6, 7 and 8 of Schedule 15 to, the Social Security Act 1973**(a)** and of all other powers enabling him in that behalf, hereby makes the following regulations:—

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Occupational Pension Schemes (Certification of Employments) Regulations 1973 and shall come into operation on 26th September 1973.

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

"the Act" means the Social Security Act 1973;

"the Board" means the Occupational Pensions Board;

"employer" includes a person who, by virtue of regulations **(b)** made under section 51(5) of the Act, is treated as an employer for the purposes of Part II of the Act;

"scheme" means occupational pension scheme;

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

(3) Except in so far as the context otherwise requires any reference in these regulations to any enactment shall be construed as a reference to that enactment as amended, extended, or re-enacted by any other enactment.

(4) Any document required or authorised to be sent to an employer under the provisions of these regulations shall be deemed to have been sent if it was sent by registered post or by recorded delivery service to the employer's usual or last known address or to the address of the principal place at which any employment to which the document relates is last known to have been carried on.

(5) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889**(c)** 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.

(a) 1973 c. 38.
(b) *See* S.I. 1973/1469 (1973 II, p. 4471).
(c) 1889 c. 63.

Making of elections for the issue of recognition certificates

2.—(1) Every election with a view to the issue of a certificate that employment is recognised pensionable employment (a recognition certificate) shall be made—

(*a*) only after notices of intention to make an election have been given by the employer in accordance with regulation 3 below;

(*b*) within the period after the expiry of those notices which is specified in regulation 4 below; and

(*c*) in writing to the Board;

and shall include the particulars specified in regulation 5 below.

(2) For the purposes of section 52(2) of the Act (election by employer for inclusion of employment in recognition certificate) the prescribed restrictions shall be that the election may not be limited to earners of a particular age or ages if the Board consider such limitation to be unreasonable.

Notices by employers of intended election

3.—(1) Notices of intention to make an election shall be given by the employer, in the manner specified in paragraph (3) below, to—

(*a*) the earners in respect of whose employment the election is proposed to be made;

(*b*) the trustees (if any) and the person or persons having the management of the scheme to which the election is to relate; and

(*c*) where there is a policy of insurance or annuity contract in respect of the minimum benefits to be payable under the scheme, the insurance company or friendly society concerned.

(2) Notices given under this regulation shall—

(*a*) specify the scheme and the employments concerned and, if the election is not intended to be in relation to all earners in those employments, the categories or descriptions of the earners to be affected;

(*b*) specify the date from which it is intended that the recognition certificate shall have effect;

(*c*) give a description of the minimum benefits payable under the scheme to the earners to be covered by the election;

(*d*) specify the date of expiry of the notice which shall be at least 2 months after the date on which the notice is given or such shorter period as the Board may allow having regard to the adequacy of any consultations that have taken place between the employer and the earners concerned or organisations representing them;

(*e*) specify by description or otherwise a person or persons to whom representations may be made with respect to the matters included in the notice by the persons to whom the notice is given or by organisations representing them; and

(*f*) contain a statement that—

(i) such representations may also be made to the Board,

(ii) the Board cannot, until at least 14 days after the expiry of the notice, determine whether to treat the employments concerned as recognised pensionable employments, and

(iii) the Board have power to defer their determination beyond that time to enable the election to be further considered in the light of represent-

ations made by persons to whom the notice is given or by organisations representing them.

(3) A notice under this regulation shall be given—

(*a*) to any earner concerned by—

(i) sending or delivering it in writing to him, or

(ii) exhibiting it conspicuously at the place of work or employment so that it may be read conveniently by him and by drawing his attention to it in writing, or

(iii) giving it in such other manner as the Board may consider to be reasonable in the circumstances of the case;

(*b*) to any person to whom notice is required to be given by paragraph (1)(*b*) or (*c*) above, by sending or delivering it to him in writing.

Time for making an election

4. An election may be made only after the date of expiry of the notice given in accordance with the provisions of regulation 3 above and within 3 months of that date but nothing in this regulation shall prevent an election being made after the giving of further notices which comply with the requirements of that regulation.

Information to be included in an election

5. Every election shall include the following particulars—

(*a*) the name and address of the employer;

(*b*) the name by which the scheme to which the election relates is known;

(*c*) a description of the employments to which the recognition certificate is intended to relate and if the recognition certificate is not intended to be in relation to all earners in those employments, the categories or descriptions of the earners intended to be included in the recognition certificate;

(*d*) the date from which it is desired that the recognition certificate shall have effect;

(*e*) the names and addresses of the trustees (if any) and of the person or persons having the management of the scheme to which the election relates;

(*f*) the persons to whom and the methods by which notices under regulation 3 of these regulations were given; and

(*g*) the method of calculating the minimum benefits to be provided by the scheme to which the election relates.

Amendment of election

6. An employer may amend his election at any time before the issue of a recognition certificate but the Board may require the employer to give notice of the amendment in such manner and to such persons as the Board may consider necessary in the circumstances of any particular case.

Determination of questions arising on an election

7.—(1) The Board shall treat an election as an application for the determination of the question whether the employments included in it should be treated as recognised pensionable employments and shall allow 14 days to elapse after the date of expiry of the notices given under regulation 3 above; subject to the

provisions of paragraphs (3) and (4) below they shall then proceed to determine the question as soon as practicable.

(2) Where an employer has made an election and the requirements of regulations 2 to 6 above are not satisfied, the Board may treat it as valid if they think that it should be so treated.

(3) The Board, if they think fit, may defer making a determination to enable the election to be further considered in the light of any representations made by persons to whom notice of the election is required to be given by regulation 3 above or by organisations representing any such persons.

(4) Every employer who makes an election shall supply such documents and further information, and shall supply them in such manner and at such times, as the Board may reasonably require for the purpose of a determination under paragraph (1) above; and the Board may defer making the determination until such documents and further information have been supplied.

(5) Where under this regulation the Board determine that an employment should be treated as recognised pensionable employment they shall issue a recognition certificate in accordance with regulation 8 below.

(6) Where the Board's determination under this regulation does not give full effect to the election, the Board shall notify the employer in writing of the determination and of the reasons for it and shall refer him to the Board's powers of review under section 67 of the Act.

Issue of recognition certificates

8.—(1) Subject to the provisions of this regulation, on a determination that an employment should be treated, either in relation to all earners in it or in relation to any specified category or description of earners, as recognised pensionable employment, the Board shall issue and send to the employer concerned a recognition certificate which shall be retained by him so long as it remains effective.

(2) The recognition certificate shall specify—

(*a*) the name and address of the employer;

(*b*) the name of the scheme;

(*c*) the employments to which the certificate relates or, if the recognition certificate does not relate to all earners in those employments, the categories or descriptions of the earners to whom it relates; and

(*d*) the date from which the certificate is to have effect.

Revocation of an election

9.—(1) Where a recognition certificate has been issued to an employer, he may revoke the relevant election in respect of all earners covered by the certificate by giving notice to the Board in writing.

(2) On receipt of a notice of revocation under paragraph (1) above, the Board shall cancel the recognition certificate and may require the employer to give notice of the revocation in such manner and to such persons as they consider appropriate in the circumstances of the case; and they may require any such notice to include such particulars (including particulars of the consequences of the revocation) as they consider appropriate.

Variation of a recognition certificate on application by the employer

10.—(1) Where an employer applies to the Board for the variation of a recognition certificate, the Board shall treat the application as raising a question whether the employment or employments concerned should be treated or, as the case may be, cease to be treated as recognised pensionable employment or employments.

(2) In any case to which the preceding paragraph applies, the Board may require the employer to give notice of the application in such manner and to such persons as they consider appropriate in the circumstances of the case, and may require the notice to include such particulars (including particulars of the consequences of the variation) as they consider appropriate.

(3) Where notice is required to be given under the preceding paragraph, the employer shall give to the earners concerned, or to organisations representing them, such opportunity to make representations about the subject-matter of the notice as the Board may consider reasonable.

(4) Every employer who makes an application under this regulation shall supply such documents and information, and shall supply them in such manner and at such times, as the Board may reasonably require for the purposes of making a determination under this regulation.

(5) When the requirements (if any) under paragraphs (2) to (4) above have been complied with, or the Board consider it appropriate to treat them as having been complied with, they shall proceed to determine the question whether the employment or employments concerned should be treated or, as the case may be, cease to be treated as recognised pensionable employment or employments and they shall vary the certificate if such variation would give effect to their determination.

(6) Where the Board have made a determination under the preceding paragraph and it does not give full effect to the application, the Board shall notify the employer in writing of the determination and of the reasons for it and shall refer him to the Board's powers of review under section 67 of the Act.

Other circumstances in which the Board may vary or cancel a recognition certificate

11.—(1) Where the Board have reason to suppose that any employment to which a recognition certificate applies should not continue to be recognised pensionable employment and the employer has not shown to the satisfaction of the Board that it should so continue, the Board may determine that the employment should not continue to be treated as recognised pensionable employment; where they so determine, they shall cancel or, as the case may be, vary the certificate; the Board shall notify the employer in writing of their determination and of the reasons for it and shall refer him to the Board's power of review under section 67 of the Act.

(2) In any case where the Board have cancelled or varied a certificate under the provisions of the preceding paragraph they may require the employer to give notice of the cancellation or variation in such manner and to such persons as they may consider appropriate in the circumstances of the case; and they may require any such notice to include such particulars (including particulars of the consequences of the cancellation or variation) as they may consider appropriate.

Notifications relating to liability for reserve scheme contributions

12.—(1) An employer who—

(*a*) gives notice in accordance with regulation 3 above of his intention to make an election and does not propose that the election should include

all the earners in his employment who are qualifying for benefit under the scheme by reference to which the election is proposed to be made, shall at the same time as he gives the notice of intended election give notice in accordance with paragraph (2) below to those earners in his employment who are so qualifying but who are not to be included in the election;

(*b*) has been notified by the Board that they have determined not to issue a recognition certificate in respect of some or all of the persons to whom an election related, shall thereupon give notice in accordance with paragraph (2) below to those earners who in consequence of the determination will not be in recognised pensionable employment;

(*c*) has not by 6th January 1975 given notice under regulation 3 or sub-paragraph (*a*) or (*b*) above to all earners employed by him shall thereupon give notice in accordance with paragraph (2) below to those earners in his employ who are not so covered.

(2) Any notice required by paragraph (1) above shall be—

(*a*) to the effect that employees in respect of whose employment on or after 6th April 1975 a recognition certificate is not in force will be liable for reserve scheme contributions in respect of earnings from that employment;

(*b*) given either—

(i) in a manner which complies with regulation 3(3)(*a*)(i) or (ii) above, or

(ii) in a case where the Board approve the use of some other manner under regulation 3(3)(*a*)(iii) above in respect of other earners employed by the same employer, in that other manner provided that it is a manner which is at least as effective in relation to the earners to whom the notice is given as the manner specified in regulation 3(3)(*a*)(ii) above;

and the employer shall give to the earners concerned, or to organisations representing them, such opportunity to make representations to the employer as may be reasonable in the circumstances of the case about the subject-matter of the notice and for this purpose shall specify, by description or otherwise, a person or persons to whom such representations may be made.

Keith Joseph,
Secretary of State for Social Services.

28th August 1973.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations provide the procedure relating to elections to be made by employers for employment to be recognised pensionable employment under the Social Security Act 1973 and for the issue of recognition certificates by the Occupational Pensions Board.

Provision is made for the cancellation and variation of certificates and for the giving of notices to employees.

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