STATUTORY INSTRUMENTS

1975 No. 1927

PENSIONS

The Occupational Pension Schemes (Certification of Employments) Regulations 1975

Made - - - -	*25th November* 1975
Laid before Parliament	*2nd December* 1975
Coming into Operation	*23rd December* 1975

The Secretary of State for Social Services, in exercise of powers conferred upon her by sections 30(4), 31(1), (4), (5) and (7) and 66(3) and (4) of, and paragraphs 2, 7 and 9 of Schedule 2 to, the Social Security Pensions Act 1975**(a)** 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 Occupational Pension Schemes (Certification of Employments) Regulations 1975, and shall come into operation on 23rd December 1975.

(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;

"employer" includes a person who, by virtue of paragraphs (4) and (5) and regulations 13 to 15 below, is treated as an employer for the purposes of these regulations;

"scheme" means an occupational pension scheme;

"trade union recognised to any extent" includes a trade union which is treated as recognised to any extent under section 31(9) of the Act as amended by section 125 of and Schedule 16 to the Employment Protection Act 1975**(b)**;

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

(a) 1975 c. 60. **(b)** 1975 c. 71.

(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) For the purpose of these regulations, any person, government department, public authority or body of persons who, under Part I of the Social Security Act 1975**(a)** is, or is to be treated as, the secondary Class 1 contributor shall be treated as the employer of the earner in respect of whom the Class 1 contributions are payable.

(5) For the purpose of these regulations and without prejudice to paragraph (4) above, there shall be treated as the employer of a self-employed earner to whom a scheme applies any person (other than that self-employed earner), government department, public authority or body of persons who makes or is to make payments towards the resources of the scheme in respect of that self-employed earner (either under actual or contingent legal obligation or in the exercise of power conferred, or duty imposed, on a Minister of the Crown, government department or any other person, being a power or duty which extends to the disbursement or allocation of public money).

(6) For the purpose of these regulations, any person is to be regarded as a member of a scheme during a period when his service in relevant employment is such that at the time when it is given it either—

(*a*) qualifies him for benefits (in the form of a pension or otherwise, payable on the termination of his service or on his retirement or his death) under the scheme which in the opinion of the Board are referable to that period; or

(*b*) is certain so to qualify him subsequently if it continues for a sufficiently long time and the rules of the scheme and the terms of his contract of service remain unaltered during that time.

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

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

Making of elections for the issue of contracting-out certificates

2.—(1) Every election with a view to the issue of a certificate that employment is contracted-out employment (a contracting-out certificate) shall be made—

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

(*a*) only after notices to make such 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 5 below; and

(*c*) in writing to the Board;

and shall include the particulars specified in regulation 6 below.

(2) In a case where it is possible for some of the earners in an employment who are members of a scheme to be unable to complete 5 years' service in that employment as members of that scheme before reaching the normal pension age of that scheme, the employer of those earners may elect that that employment shall be contracted-out by reference to that scheme in relation only to those earners whose length of service (consisting of service in that employment as a member of that scheme, or linked qualifying service in relation to such service, or both) is as great as, or greater than, a minimum length of service (not exceeding 5 years) specified in the rules of the scheme, and to those earners who can (so far as is known when the contracting-out certificate is issued, or if later in the case of a particular earner, when he enters the employment) complete such a minimum length of service before reaching the normal pension age of the scheme.

Notices by employers of intended election

3.—(1) Notices of intention to make an election such as is mentioned in regulation 2 above 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, including those (if any) in relation to whom the employer is not electing that the employment shall be treated as contracted-out;

(*b*) the trustees (if any) and administrator of the scheme to which the election is to relate;

(*c*) where there is a policy of insurance or annuity contract as a means of securing the guaranteed minimum pensions to be payable under the scheme, the insurance company or friendly society concerned; and

(*d*) all independent trade unions recognised to any extent for the purpose of collective bargaining in relation to the earners 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 so affected;

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

(*c*) give a description (which may be a description by reference to another document) of the benefits payable under the scheme to, and the contributions (if any) payable to the scheme by, the earners to be covered by the election, and of the changes (if any) which would be made to those benefits and contributions if the employment were contracted-out;

(*d*) specify the date of expiry of the notice which shall be at least 3 months (subject to paragraph (4) below) after the date on which the notice is given;

(*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 or on behalf of the persons to whom the notice is given;

(*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 issue a certificate,

(iii) the Board have power to defer their determination beyond that time to enable the election to be further considered in the light of representations made by or on behalf of the persons to whom the notice is given,

(iv) the Board have power to refuse to give effect to an election if they are not satisfied that the employer has undertaken consultations about the matters covered by the notice with all independent trade unions recognised to any extent for the purpose of collective bargaining in relation to the earners concerned; and

(*g*) explain (whether or not by reference to another document) how, if the employment were contracted-out, the additional components of retirement pensions and widows' benefits payable to or in respect of the earners in that employment under the Social Security Act 1975, and the rates at which contributions payable by those earners under Part I of that Act, would be affected.

(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 other person or body, by sending or delivering it to that person or body in writing.

(4) A notice may specify an earlier date of expiry than the date 3 months after that on which the notice is given, in a case where—

(*a*) the employer has applied in writing to the Board, before giving the notice, for permission to serve a notice specifying that earlier date; and

(*b*) the Board have given that permission, having satisfied themselves—

(i) that it is reasonable to do so, and

(ii) that all independent trade unions (if any) recognised to any extent for the purpose of collective bargaining in relation to the earners concerned have assented to that earlier date.

Consultations with independent trade unions

4.—(1) An employer who has given such a notice as is mentioned in regulation 3 above shall undertake consultations, if he has not already done so, about the matters covered by the notice with all independent trade unions recognised to any extent for the purpose of collective bargaining in relation to the earners concerned.

(2) Any question whether an organisation is an independent trade union recognised to any extent for the purpose of collective bargaining in relation to earners may be referred by the employer of those earners, or by the organisation, to a tribunal established under secton 12 of the Industrial Training Act 1964**(a)**.

(3) Any question whether an employer has complied with the requirements as to consultation of paragraph (1) above may be referred by the employer, or by an independent trade union recognised to any extent for the purpose of collective bargaining in relation to the earners concerned, to a tribunal established under section 12 of the Industrial Training Act 1964.

Time for making an election

5. An election may be made only after the date of the expiry of the notice given in accordance with the provisions of regulation 3 above and within 3 months of that date (or such longer period as the Board may in their discretion allow), so however that nothing in this regulation shall prevent an election from being made after the giving of further notices which comply with the requirements of that regulation.

Information to be included in an election

6.—(1) 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 contracting-out certificate is intended to relate and, if the 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 certificate;

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

(*e*) the names and addresses of the trustees (if any) and administrator of the scheme to which the election relates; and

(*f*) the persons or bodies to whom notices were given under regulation 3(1)(*b*), (*c*) and (*d*) above.

(2) Every election shall be accompanied by—

(*a*) a copy of the instruments or agreements comprising the scheme (except where the Board in their discretion dispense with this requirement);

(*b*) a copy of the notice of the intention to make that election given to the earners under regulation 3(1)(*a*) above; and

(*c*) a statement of how that notice was given.

(a) 1964 c. 16.

(3) Every employer who makes an election shall supply such other documents and information, and shall supply them in such manner and at such times, as the Board may reasonably require.

Amendment of election

7. An employer may amend his election at any time before the issue of a contracting-out certificate if the Board consider that it is reasonable to allow him to do so and if the amendment does not alter the categories or descriptions of the earners to which the election relates.

Issue of contracting-out certificates

8.—(1) Subject to the provisions of this regulation, when the Board have determined 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 contracted-out employment, they shall issue and send to the employer concerned a contracting-out certificate.

(2) The contracting-out certificate shall specify—

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

(*b*) the name of the scheme by reference to which that employment is to be so treated;

(*c*) the employments to which the certificate relates or, if the contracting-out 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, which may, where the Board consider it appropriate, be earlier than the date on which the certificate is issued, so however that it shall not be earlier than 6th April 1978.

Determination of questions

9. Any question—

(*a*) whether an employment is to be treated as contracted-out employment;

(*b*) as to the persons in relation to whom an employment is to be so treated; or

(*c*) as to the period for which an employment is to be so treated,

shall be determined by the Board.

Making of elections by employers for the variation or surrender of contracting-out certificates

10.—(1) Every election with a view to the variation or surrender of a contracting-out certificate shall be made—

(*a*) only after notices of intention to make such an election have been given by the employer in accordance with paragraphs (2) and (3) below;

(*b*) within the period after the expiry of those notices which is specified in paragraph (5) below; and

(*c*) in writing to the Board,

so however that in such cases as the Board may approve, where a proposed variation would not alter the categories or descriptions of the earners affected by the certificate, or the benefits provided by, or the contributions (if any) payable by those earners to, the relevant scheme, an election with a view to the variation of a certificate may be made without compliance with paragraphs (1)(*a*) and (*b*) and (2) to (5) of this regulation.

(2) Notices of intention to make an election such as is mentioned in paragraph (1) above shall be given to the persons and bodies referred to in regulation 3(1)(*a*) to (*d*) above in the manner mentioned in regulation 3(3) above.

(3) Notices given under this regulation shall—

(*a*) specify the scheme and the employments concerned and, if the intention does not relate 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 variation or surrender is to have effect;

(*c*) specify the date of expiry of the notice, which shall be at least 3 months after the date on which the notice is given or such shorter period as the Board may allow in a case where the employer has made application as mentioned in regulation 3(4)(*a*) above and the Board have satisfied themselves as mentioned in regulation 3(4)(*b*) above;

(*d*) 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 or on behalf of the persons to whom the notice is given; and

(*e*) 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 allow the variation or accept the surrender of the certificate,

(iii) the Board have power to defer their determination beyond that time to enable the election to be further considered in the light of representations made by or on behalf of persons to whom the notice is given, and

(iv) the Board have power to refuse to give effect to an election if they are not satisfied that the employer has undertaken consultations about the matters covered by the notice with all independent trade unions recognised to any extent for the purpose of collective bargaining in relation to the earners concerned;

(*f*) explain (whether or not by reference to another document) how, if the proposed variation or surrender took place, the additional components of retirement pensions and widows' benefits payable to or in respect of the earners concerned under the Social Security Act 1975**(a)**, and the rates at which contributions payable by those earners under Part I of that Act, would be affected; and

(a) 1975 c. 14.

(*g*) describe (whether or not by reference to another document) any changes which would be made to the benefits provided under, and the contributions (if any) payable by earners concerned to, the scheme concerned if the proposed variation or surrender took place.

(4) An employer who has given such a notice as is mentioned in this regulation shall undertake consultations, if he has not already done so, about the matters covered by the notice with all independent trade unions recognised to any extent for the purpose of collective bargaining in relation to the earners concerned; and any question whether an employer has complied with this requirement may be referred to a tribunal established under section 12 of the Industrial Training Act 1964**(a)**.

(5) An election under this regulation may be made only after the date of the expiry of the notice given in accordance with paragraphs (2) and (3) above and within 3 months of that date (or such longer period as the Board may in their discretion allow), so however that nothing in this paragraph shall prevent an election from being made after the giving of further notices which comply with the requirements of this regulation.

(6) Every employer who makes an election 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.

(7) An employer may amend his election under this regulation at any time before the variation or surrender of the certificate if the Board consider that it is reasonable to allow him to do so and if the amendment does not alter the categories or descriptions of the earners affected by the certificate.

Special circumstances in which the Board may determine earners to have been in contracted-out employment

11. Where an earner has been employed in an employment during a period during which that employment was contracted-out but was not (apart from this regulation) contracted-out in relation to him, and the Board are satisfied—

(*a*) that it was not contracted-out in relation to him solely because he was not during that period a member of the relevant scheme; and

(*b*) that he was not during that period a member of that scheme solely because of inadvertence,

they may determine that that earner was in contracted-out employment by reference to that scheme during that period.

Employers not intending to elect for the issue of contracting-out certificates for some or any employments to which a scheme relates

12.—(1) Where a scheme (being neither a scheme under which benefits have ceased to accrue nor a scheme which does not provide benefit in the form of pensions) applies, or where it is proposed that a scheme (providing benefit in the form of pensions) should apply, to any employment, and the employer of the earners in that employment intends to abstain from making an election with a view to the issue of a contracting-out certificate that that employment is contracted-out employment by reference to that scheme, the employer shall, within 3

(a) 1964 c. 16.

months of the setting up of the scheme or before 7th December 1977 (whichever is the later), give notice of his intention so to abstain, in the manner mentioned in regulation 3(3) above, to—

(*a*) the earners in that employment;

(*b*) the trustees (if any) and administrator of the scheme; and

(*c*) the persons or bodies mentioned in regulation 3(1)(*c*) and (*d*) above.

(2) Notices given under this regulation shall—

(*a*) describe (whether or not by reference to another document) any changes which it is intended to make to the benefits provided by, and the contributions (if any) payable by the earners in that employment to, the scheme as a result of its not being contracted-out;

(*b*) describe (whether or not by reference to another document) the additional components of retirement pensions and widows' benefits which will be payable to or in respect of the earners in that employment under the Social Security Act 1975, and the rates at which contributions will be payable by those earners under Part I of that Act, if the employment is not contracted-out; and

(*c*) 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 or on behalf of the persons to whom the notice is given.

(3) An employer who has given or intends to give such a notice as is mentioned in this regulation shall undertake consultations about the matters covered by the notice with all independent trade unions recognised to any extent for the purpose of collective bargaining in relation to the earners concerned; and any question whether an employer has complied with this requirement may be referred to a tribunal established under section 12 of the Industrial Training Act 1964.

Special provision for holding companies and subsidiaries

13.—(1) This regulation applies to cases where—

(*a*) earners employed in employments under different employers qualify by virtue of their respective service in those employments for the benefits of the same scheme; and

(*b*) each of those employers is either—

(i) one of a group of companies consisting of a holding company and one or more subsidiaries within the meaning of section 154 of the Companies Act 1948**(a)**, or

(ii) one of a group of companies whose financial arrangements for the scheme are such that the Board consider it appropriate to treat the group as consisting of a holding company and one or more subsidiaries for the purpose of this regulation;

and in this regulation the expressions "holding company" and "subsidiary" include a company which is so treated by the Board as a holding company or, as the case may be, its subsidiary.

(a) 1948 c. 38.

(2) In a case to which this regulation applies, any notice which is required or authorised to be given under these regulations shall be treated as properly given if given by the holding company on behalf of any of its subsidiaries, and where this is done the holding company shall, subject to paragraphs (3) and (4) below, be treated as the employer of the earners for the purposes of section 31 of the Act and of regulations made thereunder.

(3) The duty of an employer to undertake the consultations mentioned in regulations 3(2)(*f*)(iv), 4, 10(3)(*e*)(iv) and (4) and 12(3) above shall be carried out by each subsidiary in respect of the earners employed by it, unless all the independent trade unions recognised to any extent for the purpose of collective bargaining in relation to those earners have signified in writing to the holding company that they agree that those consultations may be conducted on the subsidiary's behalf by the holding company.

(4) The Board may refuse to give effect to an election made by a holding company if they are not satisfied either that each subsidiary has undertaken those consultations in respect of the earners employed by it, or that the holding company has undertaken them with the agreement of those trade unions.

Special provision for public service pension schemes

14.—(1) This regulation applies to cases where earners employed in employments under different employers qualify by virtue of their respective service in those employments for the benefits of the same public service pension scheme.

(2) In a case to which this regulation applies, any notice which is required or authorised to be given under these regulations shall be treated as properly given if given either by the Secretary of State or by the Minister of the Crown having responsibility for the scheme, and where this is done the Secretary of State or that Minister, as the case may be, shall be treated as the employer of the earners for the purposes of section 31 of the Act and of regulations made thereunder.

Special provision for holders of full-time judicial office

15. In respect of earners who are holders of full-time judicial office, any notice which is required or authorised to be given under these regulations shall be treated as properly given if given either by the Lord Chancellor or by the Secretary of State, and where this is done the Lord Chancellor or the Secretary of State, as the case may be, shall be treated as the employer of the earners for the purposes of section 31 of the Act and of regulations made thereunder.

Further information and change of circumstances

16. An employer to whom a contracting-out certificate has been issued shall, in such manner and at such times as the Board may reasonably require, furnish to the Board such reports, accounts and other documents and information relating to the scheme to which the certificate relates as the Board may reasonably require, and, in particular, shall notify the Board of any such change of circumstances affecting the scheme as they may have required him to notify as soon as practicable after its occurrence.

Barbara Castle,
Secretary of State for Social Services.

25th November 1975.

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 contracted-out employment under the Social Security Pensions Act 1975, for the giving of notices to employees and trade unions representing them, and for the issue of contracting-out certificates by the Occupational Pensions Board.

SI 1975/1927
ISBN 0-11-051927-2

