STATUTORY INSTRUMENTS

# 1975 No. 2101

# PENSIONS

## The Occupational Pension Schemes (Contracting-out) Regulations 1975

| | | |
|---|---|---|
| *Made* - - - - | - | 11*th December* 1975 |
| *Laid before Parliament* | - | 19*th December* 1975 |
| *Coming into Operation* | - | 9*th January* 1976 |

The Secretary of State for Social Services, in exercise of the powers conferred upon her by sections 32(2)(*b*), 38(1), 39(1) and (4)(*b*), 40(1), (2) and (4), 51 and 52 of, and paragraphs 1, 5, 6(1), 7(2)(*b*) 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 (Contracting-out) Regulations 1975, and shall come into operation on 9th January 1976.

(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;

"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 policy of insurance or annuity contract in accordance with regulation 4 below, 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) below, 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 or (in the event of there being no trustees) the administrator of the scheme;

"scheme" means an occupational pension scheme;

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

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

(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.

*Specific scheme rules about guaranteed minimum pensions*

**2.**—(1) For a scheme to be contracted-out in relation to an earner's employment it must include a specific rule to the effect that if an earner has a guaranteed minimum under section 35 of the Act the weekly rate of his pension under the scheme at pensionable age shall not be less than that guaranteed minimum, and also to the effect that if a male earner has a guaranteed minimum under section 35 of the Act the weekly rate of pension payable to his widow under the scheme shall be not less than half that guaranteed minimum, these rules to be expressed to override all other provisions of the scheme, except any that are in accordance with the provisions of the Act.

(2) In paragraph (1) above " weekly rate " means, in cases where the pension is paid otherwise than at weekly intervals, a rate which is equivalent to the earner's guaranteed minimum having regard to the period in respect of which the pension is paid.

*Derivation of resources of schemes*

**3.** For the purposes of section 40(1)(*b*) of the Act (a scheme can be contracted out only if the derivation of its resources satisfies certain requirements) the following are the prescribed payments:—

(*a*) in the case of a scheme whose members include persons employed by Her Majesty in Her private capacity, payments made by Her Majesty out of Her private resources; and

(*b*) in the case of a scheme relating to persons employed by the Duke of Lancaster or by the Duke of Cornwall, payments made out of the revenues of the Duchy of Lancaster or of the Duchy of Cornwall.

*Means of securing guaranteed minimum pensions*

**4.**—(1) Subject to the provisions of this regulation, for the purposes of section 40(2)(*a*) of the Act (means by which guaranteed minimum pensions are secured), guaranteed minimum pensions under contracted-out schemes shall be secured by one or more of the following means, that is to say, irrevocable trust, policy of insurance or annuity contract which is a trust, policy or contract, as the case may be, established, taken out or entered into by a person resident, or having a place of business, in the United Kingdom, and which satisfies the conditions specified in paragraph (2) of this regulation.

(**a**) 1889 c. 63.

(2) The conditions referred to in the preceding paragraph are—

(*a*) in the case of an irrevocable trust, that the trust is subject to the laws of any part of the United Kingdom;

(*b*) in the case of a policy of insurance or annuity contract, that the policy is taken out, or the contract is entered into, with either—

(i) an insurance company to which Part II of the Insurance Companies Act 1974(**a**) or the Insurance Companies Act (Northern Ireland) 1968(**b**) applies and which is authorised by or under section 3 of the Insurance Companies Act 1974 or section 4 of the Insurance Companies Act (Northern Ireland) 1968 to carry on ordinary long-term insurance business as defined in those Acts, or

(ii) a friendly society enabled under regulations made under section 71(1) of the Social Security Act 1973(**c**) as amended by section 4 of the Social Security Amendment Act 1974(**d**), or under article 67 of the Social Security Pensions (Northern Ireland) Order 1975(**e**) to conduct such business as is described in that section or that article.

(3) Where a scheme is required, under section 63 of and Schedule 16 to the Social Security Act 1973, to preserve short service benefit for an earner (or, where such preservation is not required, but the employer has not elected or is not entitled to elect to pay a contribution equivalent premium under section 42 of the Act), so much of any accrued rights to requisite benefits as represents the earner's or his widow's guaranteed miminum pension may be secured by the purchase of a deferred annuity in favour of the earner and, after his death, his widow, if—

(*a*) the policy of insurance or annuity contract satisfies the provisions of paragraph (2)(*b*)(i) or (ii) above; and

(*b*) the policy of insurance or annuity contract contains, or is endorsed with, terms so as to provide that—

(i) the amount of the annuity is at least equal to the amount of the guaranteed minimum pension which is certified by the Secretary of State as having accrued to the earner at the date of termination of his contracted-out employment and as being prospectively due to him at pensionable age subject to any revaluation or increase under section 21 or, as the case may be, section 35(7) of the Act; and

(ii) the annuity (or such part of it as is related to the earner's guaranteed minimum pension) is (subject to the provisions of regulation 8 below) non-commutable and non-assignable.

(4) The provisions of paragraph (1) of this regulation and of section 40(3) of the act (priority on winding-up) shall not apply to a scheme which is administered wholly or primarily outside the United Kingdom, but such a scheme shall not be capable of being contracted out unless such part of the benefits of the scheme as represents guaranteed minimum pensions is secured in such manner and subject to such conditions as the Board consider to be suitable.

(**a**) 1974 c. 49. (**b**) 1968 c. 6(N.I.). (**c**) 1973 c. 38.
(**d**) 1974 c. 58. (**e**) S.I. 1975/1503 (N.I.15).

*Payment out of surrender values of policies of insurance*

**5.** For the purposes of section 40(4) of the Act a payment out of a sum representing the surrender value of a policy of insurance taken out for the purposes of a contracted-out scheme shall be admissible in relation to the guaranteed minimum pensions payable under the scheme if in all the circumstances the Board are satisfied that such a payment out would not prejudice the payment of those pensions.

*Transfer of accrued rights between schemes*

**6.** For the purposes of section 38(1) of the Act (accrued rights to requisite benefits not to be transferred without member's consent and only to another contracted-out scheme, except where regulations otherwise provide) the prescribed exceptions are—

(*a*) that any part of the earner's accrued rights to requisite benefits which exceeds his or his widow's guaranteed minimum pension may, with his consent, be transferred to any other scheme whether contracted-out or not;

(*b*) that an earner's accrued rights to requisite benefits may be transferred without his consent—

(i) where the transfer of accrued rights to requisite benefits is to another contracted-out scheme which relates to employment with the same employer, or

(ii) where the accrued rights to requisite benefits of all of the members of the scheme, or of a specified group of members (of whom the earner is one) are being transferred to another contracted-out scheme:

Provided that the rights allowed to the earner in the scheme to which the transfer is made are, in the opinion of the trustees or administrator of that scheme, at least equal in value to the rights transferred; and

(*c*) that an earner's accrued rights to requisite benefits may, with his consent, be transferred to a scheme administered wholly or primarily outside the United Kingdom if the Board (whether or not subject to conditions) approve the arrangements made for the transfer.

*Service that does not qualify for requisite benefits*

**7.**—(1) This regulation applies in cases in which any description of benefit under a scheme is subject to a limit (however imposed) operating so as to prevent service beyond a particular length from qualifying for further benefits.

(2) Subject to the following provisions of this regulation, in cases to which this regulation applies the employment of an earner in employed earner's employment shall be treated as contracted-out employment in relation to him notwithstanding that his service in the employment did not, does not or will not (on the assumption that it continues for the appropriate period) qualify him for requisite benefits.

(3) Notwithstanding paragraph (2) above unless the Board are satisfied that the total benefits payable under the scheme on termination of the employment to which the scheme applies include or comprise benefits which are in all respects (as to rate or amount and otherwise) the same as or more favourable than the guaranteed minimum pension to which the earner would be entitled having regard to the aggregate of the periods of service in that employment or in linked qualifying service during which the earner was in contracted-out employment and any periods of service in that employment which would be

contracted-out employment by virtue of paragraph (2) above they may determine that the employment of the earner in employed earner's employment shall not be treated as contracted-out employment in relation to him.

(4) For the purposes of paragraph (3) above " total benefits " may include benefits which have accrued to the earner in respect of service in employment whether or not contracted-out employment and whether with the same or another employer:

Provided that any part of such benefits which are equivalent pension benefits for the purposes of the former legislation shall not be so included.

*Commutation of pension*

**8.**—(1) For the purposes of section 39(1) of the Act (admissible provisions of a scheme relating to commutation), the prescribed circumstances are—

(*a*) that the Board are satisfied that the scheme provides a reasonable basis for ascertaining the sum to be paid on commutation;

(*b*) that a guaranteed minimum pension has become payable; and

(*c*) that the aggregate amount of all benefits currently payable to the earner or, as the case may be, the amount of the pension payable to his widow under all schemes relating to employment with the same employer as the employment in respect of which the guaranteed minimum pension is payable, does not exceed £52 per annum.

(2) Where, under paragraph (1) above, a scheme permits an earner to commute benefit in accordance with this regulation it may also permit him to commute any prospective widow's benefit payable under the scheme (provided that the aggregate amount of such benefit prospectively payable under all schemes relating to employment with the same employer as the employment in respect of which the benefit is payable does not exceed £52 per annum) and the value of any such widow's benefit shall not be taken into account for the purpose of the limit of £52 per annum mentioned in the said paragraph.

(3) For the purposes of sub-paragraph (1)(*c*) above, any benefit in lump sum form payable to the earner (but excluding for this purpose any benefit by way of a refund of the earner's contributions to the scheme) shall be treated as the annual amount of benefit in pension form which, in the opinion of the trustees or administrator of the scheme, is its equivalent.

*Suspension and forfeiture of benefit*

**9.**—(1) For the purposes of section 39(4)(*b*) of the Act (suspension and forfeiture of guaranteed minimum pension) the circumstances in which a scheme may provide for an earner's or widow's guaranteed minimum pension to be suspended are—

(*a*) during any period in which the pensioner is, in the opinion of the trustees or administrator of the scheme, unable to act by reason of mental disorder or otherwise, in cases where there is provision in the scheme for sums equivalent to the guaranteed minimum pension to be paid or applied during such period for the maintenance of the pensioner or, at the discretion of the trustees or administrator of the scheme, of the pensioner together with his dependants or of his dependants only, and where, to the extent that such sums are not so applied, they are to be held for the pensioner until he is again able to act or, as the case may be, for his estate;

(*b*) during periods of imprisonment or detention in legal custody of the pensioner, in cases where there is provision in the scheme for sums equivalent to the guaranteed minimum pension to be paid or applied during such periods for the maintenance of such one or more of the pensioner's dependants as the trustees or adminstrator of the scheme may in their discretion determine; and

(*c*) in any case where a guaranteed minimum pension is payable under a scheme during any period when the earner is re-employed by the employer who had previously employed him in contracted-out employment in respect of which the guaranteed minimum pension became payable or in any other employment to which the scheme paying the guaranteed minimum pension applies:

Provided that in such cases the guaranteed minimum pension which becomes payable when the suspension is lifted is increased in accordance with section 35(6) of the Act.

(2) For the purposes of the said section 39(4)(*b*) the circumstances in which schemes may provide for an earner's or widow's guaranteed minimum pension (whether current or prospective) to be forfeited are—

(*a*) where the person entitled to that benefit has been convicted of—

(i) an offence of treason, or

(ii) one or more offences under the Official Secrets Acts 1911-1939 for which he has been sentenced on the same occasion to a term of imprisonment of, or to 2 or more consecutive terms amounting in the aggregate to, at least 10 years;

(*b*) in the case of a widow's guaranteed minimum pension, where the earner by reference to whose contracted-out employment that pension is payable had been convicted of an offence of treason, or had been convicted of offences and had been sentenced to terms of imprisonment as set out in sub-paragraph (*a*)(ii) above;

(*c*) in the case of any payment of guaranteed minimum pension for which a claim has not been made, where a period of at least 6 years has elapsed from the date on which that payment became due; or

(*d*) in the case of any guaranteed minimum pension payable under a scheme for members of Her Majesty's forces, being a scheme for which the Secretary of State is responsible, where the person entitled to that benefit or, as the case may be, the member of such forces has in the opinion of the Secretary of State committed an act which is gravely prejudicial to the defence, security or other interests of the state; and where forfeiture of an earner's guaranteed minimum pension is permitted by this sub-paragraph, the prospective widow's guaranteed minimum pension may also be forfeited.

*Termination of periods of contracted-out employment*

**10.**—(1) Subject to paragraph (2) below, an earner's employment shall be treated as having ceased to be contracted-out employment when any of the following circumstances applies:—

(*a*) the earner's contract of service has expired or been terminated;

(*b*) in the absence of a contract of service, the service itself has ended;

(*c*) cancellation or surrender of the contracting-out certificate by virtue of which his employment was contracted-out employment has taken effect;

(*d*) a variation of the contracting-out certificate by virtue of which his employment was contracted-out employment has taken effect such that the certificate no longer applies to his employment;

(*e*) the earner has ceased to be within the description of earners in relation to which the contracting-out certificate applies or has ceased to be a member of the scheme, except in a case where, within 6 months of the ceasing as aforesaid, or such longer period as the Secretary of State may allow in a particular case, he becomes a member of another contracted-out scheme under the same employer and his accrued rights to requisite benefits are transferred to that scheme;

(*f*) the earner's employer dies or disposes of the whole or part of his business so that the earner ceases to be employed by that employer and the contracted-out employment is not, or cannot be, treated as continuing under the new employer under paragraph (5) below.

(2) In such cases as are specified in paragraph (3) below, an earner's employment shall not be treated as having ceased to be contracted-out employment by reason only of the circumstances mentioned in paragraph (1)(*a*) and (*b*) above where the service in question is one (other than the last) of a series of employments to all of which the same scheme applies.

(3) The cases mentioned in paragraph (2) above are—

(*a*) where all the employments are with the same employer in cases where—

(i) no state scheme premium has been paid in respect of the employment first mentioned in paragraph (2) above or any that has been paid has been refunded, and

(ii) 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

(*b*) where a woman has a right to return to work under section 48(1) of the Employment Protection Act 1975(**a**) (right to return to work following pregnancy or confinement) and does in fact return to work pursuant to that right.

(4) The total period of contracted-out employment which consists of a series of employments to which paragraph (2) above applies shall not include any intervals between employments in the series.

(5) In cases where an earner's employer dies or otherwise ceases to be the employer in relation to the earner's contracted-out employment and his business is taken over by a new employer the earner's service in contracted-out employment under the old employer may be treated as continuing under the new employer if—

(*a*) the earner's service after the change of employer continues to qualify him for requisite benefits under the contracted-out scheme by virtue of which he qualified for such benefits before the change, or if his service does not so qualify him the earner is nevertheless to be treated as being in contracted-out employment by virtue of the provisions of regulation 7 above;

(*b*) the new employer accepts responsibility for any contributions to the scheme and any state scheme premiums which are outstanding in respect of the scheme at the time of the change;

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

(*c*) the new employer notifies the Board of the change within one month of its taking place or such longer period as the Board may consider reasonable in the particular case and provides the Board or the Secretary of State with such documents and information as they may reasonably require; and

(*d*) in all the circumstances the Board consent to the employment being so treated.

(6) For the purposes of this regulation a company which is a holding company within the meaning of section 154 of the Companies Act 1948(**a**), or 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, and which has made an election to contract out in respect of earners employed by one or more subsidiary companies of that company shall be treated as the employer of those earners.

*Provision of information about guaranteed minimum pensions*

**11.**—(1) The prescribed persons to whom, under section 51 of the Act, the Secretary of State may furnish information as to the amount of guaranteed minimum pension to which it appears to him a person is immediately or prospectively entitled under a scheme or as to any other matter required for calculating that amount, are (in addition to the persons mentioned in that section)—

(*a*) the earner or widow to whom the information relates;

(*b*) the employer in relation to the contracted-out employment of an earner to whom the information relates;

(*c*) independent trade unions recognised to any extent for the purpose of collective bargaining in respect of earners who are members of the scheme; and

(*d*) the responsible paying authority.

(2) Paragraph (1)(*c*) of this regulation has effect subject to the condition that the information to be furnished is either—

(*a*) as to the total amount of the guaranteed minimum pensions to which it appears to the Secretary of State that all persons immediately or prospectively entitled under the scheme are so entitled; or

(*b*) to be furnished with the written consent of the earner or widow to whom the information relates.

(3) In paragraph (1)(*c*) above " 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.

*Barbara Castle*,
Secretary of State for Social Services.

11th December 1975.

(**a**) 1948 c. 38.

(**b**) S.I. 1975/1927 (1975 III, p. 7163).

## EXPLANATORY NOTE

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

These Regulations contain provisions relating to the contracting-out of occupational pension schemes, in relation to an earner's employment, under Part III of the Social Security Pensions Act 1975.

The principal matters dealt with are the means of securing guaranteed minimum pensions (regulation 4), the payment out of the surrender value of insurance policies (regulation 5), the transfer of accrued rights between schemes (regulation 6), service which does not qualify for requisite benefits under the Act (regulation 7), the commutation, suspension and forfeiture of benefits (regulations 8 and 9), the circumstances in which service is contracted-out employment is, or is not, to be treated as having terminated (regulation 10) and the provision by the Secretary of State of information about guaranteed minimum pensions (regulation 11).

SI 1975/2101
ISBN 0-11-052101-3

