STATUTORY INSTRUMENTS

1976 No. 140

PENSIONS

The Occupational Pension Schemes (Preservation of Benefit) Amendment Regulations 1976

Made - - - -	*3rd February* 1976
Laid before Parliament	*10th February* 1976
Coming into Operation	*2nd March* 1976

The Secretary of State for Social Services, in exercise of the powers conferred upon her by paragraphs 9(2), 13(5), 23 and 26 of Schedule 16 to the Social Security Act 1973(**a**) and of all other powers enabling her in that behalf, after considering the report of the Occupational Pensions Board on the preliminary draft submitted to them, hereby makes the following regulations:—

Citation, interpretation and commencement

1.—(1) These regulations, which may be cited as the Occupational Pension Schemes (Preservation of Benefit) Amendment Regulations 1976, shall be read as one with the Occupational Pension Schemes (Preservation of Benefit) Regulations 1973(**b**) (hereinafter called "the principal regulations"), as amended by the Occupational Pension Schemes (Preservation of Benefit) Amendment Regulations 1974(**c**) (hereinafter called "the 1974 regulations"), and shall come into operation on 2nd March 1976.

(2) In these regulations, the expression "the payment of a lump sum by way of a refund of contributions" means the payment of a lump sum to or in respect of a member of a scheme which is made under a provision made by that scheme, the amount of the lump sum being equal to the amount of the member's contributions to one or more schemes in respect of a particular period or periods; and for the purpose of deciding whether these amounts are equal there shall be disregarded any addition made to the latter amount in respect of interest, and any deduction made from it in order to do any or all of the following, namely—

(*a*) to pay taxes arising out of the member's participation in the scheme or schemes to which he contributed;

(*b*) to reflect the cost of life insurance premiums paid or other provision made for benefits payable in the event of the member's death;

(*c*) to provide equivalent pension benefits for the purposes of the former legislation (within the meaning of section 33(5) to (7) of the Social Security Pensions Act 1975(**d**)); and

(**a**) 1973 c. 38.
(**b**) S.I. 1973/1469 (1973 II, p. 4471).
(**c**) S.I. 1974/1324 (1974 II, p. 5023).
(**d**) 1975 c. 60.

(*d*) to pay sums which are payable under section 60(1) of the National Insurance Act 1965(**a**), as continued in force and modified by the National Insurance (Non-participation—Transitional Provisions) Regulations 1974(**b**), to persons liable for payments in lieu of contributions.

(3) In these regulations, the expression "the period in respect of which the contributions were made" means the period or periods in respect of which the contributions referred to in paragraph (2) above were made by the member to the scheme or schemes in question, and any period or periods in respect of which he would have been required to make contributions to that scheme or any of those schemes but for the fact that—

(*a*) his contributions were waived by the trustees or managers of the scheme; or

(*b*) he was excused from making contributions under a specific provision in the rules of the scheme (other than a provision relating to a period at the beginning of a member's pensionable service during which long service benefit does not accrue to him).

Transfer credits to be treated in part as bonus credits in certain cases

2. In cases where a person is a member of 2 or more schemes relating to employment with the same employer or with an employer and his successor or successors, and under the rules of one of those schemes the person is entitled to transfer credits by reference to a transfer to that scheme of his accrued rights from another of those schemes, and the transfer credits are greater in value than those accrued rights, short service benefit shall be computed under paragraph 13(3) of Schedule 16 as if the difference in value between those credits and those rights were a bonus credit awarded on the date when the transfer was made.

Refunds of contributions and extinguishment of benefits

3.—(1) Regulation 6(1) of the principal regulations shall be amended by the substitution, for sub-paragraphs (*c*) and (*d*), of the following, namely—

"(*c*) subject to the provisions of regulation 3(2) of the Occupational Pension Schemes (Preservation of Benefit) Amendment Regulations 1976, the payment, at any time after the termination of the service in relevant employment, of a lump sum (whether or not being or including a payment by way of refund of contributions) in respect of any period of qualifying service before 6th April 1975;

"(*d*) subject to the provisions of regulation 3(2) of the Occupational Pension Schemes (Preservation of Benefit) Amendment Regulations 1976, the payment, at any time after the termination of the service in relevant employment, of a lump sum in respect of any period of qualifying service after 5th April 1975, in the following circumstances, namely—

(i) that a payment under paragraph (1)(*c*) of this regulation is being or has been made to the member in question under the scheme in question,

(**a**) 1965 c. 51.

(**b**) S.I. 1974/2057 (1974 III, p. 8011).

(ii) that if the lump sum in respect of the period after 5th April 1975 is or includes a payment by way of refund of contributions, so also is or does the lump sum in respect of the period before 6th April 1975, and

(iii) that the duration of the period described in paragraph (2), or, as the case may be, the aggregate duration of the periods described in paragraph (3), of this regulation is less than 5 years, so however that for the purposes of this calculation no period shall be counted more than once;".

(2) The payment of a lump sum by way of a refund of contributions shall be a prescribed alternative to the following descriptions of short service benefit (and no others), namely—

(*a*) short service benefit (excluding any transfer credits or bonus credits) in respect of the period in respect of which the contributions were made;

(*b*) short service benefit consisting of bonus credits which were awarded by reference to the period in respect of which the contributions were made;

(*c*) short service benefit consisting of bonus credits which were awarded by reference to any period of service which was not pensionable service in relation to any scheme applying to employment with either—

(i) the same employer as the one to whose employment of the person in question the scheme under whose provisions the lump sum is paid applies, or

(ii) his predecessor,

but only to the extent that, applying the assumptions mentioned in paragraph 13(3) of Schedule 16, the credits accrued during the period in respect of which the contributions were made;

(*d*) in a case where the period of service the termination of which gave rise to the payment of the lump sum included a waiting period within the meaning of regulation 4 of the 1974 regulations, short service benefit which is deemed in accordance with the said regulation 4 to accrue over, or short service benefit which consists of bonus credits awarded by reference to, the whole, or part or parts, of the waiting period, but only if—

(i) the total duration of the waiting period is less than 5 years,

(ii) during the period or periods over which that short service benefit was so deemed to accrue or (as the case may be) by reference to which it was awarded, any member of the scheme in question to whom long service benefit was (apart from the said regulation 4) accruing was required to contribute to it, except in the circumstances referred to in regulation 1(3)(*a*) and (*b*) above, and

(iii) the lump sum is by way of a refund of all the member's contributions (and for the purpose of deciding whether it is or not there shall be disregarded any such addition or deduction as is mentioned in regulation 1(2) above) in respect of the period of service the termination of which gave rise to the payment of the lump sum; and

(*e*) short service benefit consisting of transfer credits, where and to the extent that, in the opinion of the trustees or managers of the scheme under whose provisions the lump sum is paid—

(i) the member is entitled to that benefit by virtue of having been entitled to benefit under another scheme (whether or not the scheme from which the member's accrued rights were transferred into the scheme under whose provisions the lump sum is paid), and

(ii) a lump sum by way of a refund of contributions, if it had been paid under the provisions of that other scheme, would have been a prescribed alternative under the foregoing provisions of this paragraph to the benefit to which he was entitled under that other scheme (assuming, if it is not so, that that benefit was short service benefit).

Special provision for schemes to which no contributions are made by a particular member

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

(*a*) a person is a member of 2 or more schemes relating to the same employment;

(*b*) payment of a lump sum by way of a refund of contributions made to one of the schemes (referred to in paragraph (2) below as "the contributory scheme") is made as an alternative to the provision of short service benefit; and

(*c*) that person has made no contributions to the other schemes, or to at least one of the others if there are more than one (the scheme or schemes to which he has made no contributions being referred to in paragraph (2) below as "the non-contributory scheme").

(2) In a case to which this regulation applies, the preservation requirements shall apply subject to the exception that there need not be provided for that person—

(*a*) short service benefit of any of the descriptions specified in sub-paragraphs (*a*) to (*c*) of regulation 3(2) above; or

(*b*) short service benefit in respect of any period or periods which was, or were, in relation to that person and his membership of the contributory scheme, a waiting period or part or parts thereof within the meaning of regulation 4 of the 1974 regulations, but only if the conditions specified in regulation 3(2)(*d*) above are fulfilled,

under the non-contributory scheme, or short service benefit under any scheme to the extent that it would consist of transfer credits allowed, in the opinion of the trustees or managers of the latter scheme, by reference to that person's rights under the non-contributory scheme to short service benefit of the descriptions specified in sub-paragraphs (*a*) and (*b*) above.

(3) For paragraph (3)(*a*) of regulation 6 of the principal regulations there shall be substituted the following, namely—

"(*a*) any period before 6th April 1975 during which the member in question was in qualifying service relevant to another non-centralised scheme (not being a scheme which, by virtue of regulation 4(2) of the Occupational Pension Schemes (Preservation of Benefit) Amendment Regulations 1976, was not required to provide short service benefit for or in respect of that member in respect of that period) which

applied to the same employment as the scheme in question, no payment being or having been made under paragraph (1)(*c*) of this regulation under that scheme in respect of that service; and".

Bonus credits to be extinguished in certain cases of refunds

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

(*a*) a person is a member of 2 or more schemes relating to the same employment; and

(*b*) payment of a lump sum by way of a refund of contributions is made under a provision of one of the schemes as an alternative to the provision of short service benefit.

(2) In a case to which this regulation applies, the preservation requirements shall apply subject to the exception that the other scheme or schemes need not provide for the inclusion in short service benefit of any bonus credits to which that person has become entitled to the extent that those credits were awarded by reference to any period of service which coincided with the whole or any part of—

(*a*) the period in respect of which the contributions were made; and

(*b*) if the conditions specified in regulation 3(2)(*d*) above are fulfilled, a period which was, in relation to that person and his membership of the scheme under the provisions of which the lump sum is paid, a waiting period within the meaning of regulation 4 of the 1974 regulations.

Barbara Castle,

Secretary of State for Social Services.

3rd February 1976.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations make special provision regarding entitlement to, and computation of, short service benefit (within the meaning of Schedule 16 to the Social Security Act 1973).

Regulation 2 deals with certain cases where a person's accrued rights to retirement benefits have been transferred from one scheme to another, both schemes relating to employment with the same employer or with an employer and his successor; and Regulations 3, 4 and 5 deal with cases where a lump sum is paid to or in respect of a scheme member by way of a refund of his contributions.

The report of the Occupational Pensions Board on the preliminary draft of these regulations, dated 6th November 1975, is contained in House of Commons Paper No. 156 (Session 1975–76) published by Her Majesty's Stationery Office.

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