STATUTORY INSTRUMENTS

1973 No. 1784

PENSIONS

The Occupational Pension Schemes (Preservation of Benefit) (No. 2) Regulations 1973

Made - - -	*26th October* 1973
Laid before Parliament	*5th November* 1973
Coming into Operation	*6th April* 1975

The Secretary of State for Social Services, in exercise of his powers under paragraphs 20, 21 and 26 of Schedule 16 to the Social Security Act 1973(**a**), and of all other powers enabling him in that behalf, hereby makes the following regulations:—

Citation, interpretation and commencement

1. These regulations, which may be cited as the Occupational Pension Schemes (Preservation of Benefit) (No. 2) Regulations 1973, shall be read as one with the Occupational Pension Schemes (Preservation of Benefit) Regulations 1973(**b**) (hereinafter called "the principal regulations") and shall come into operation on 6th April 1975.

Value of benefits to compare reasonably with contributions

2.—(1) In a case such as is described in paragraph (2) of this regulation, the preservation requirements shall apply with the modification described in paragraph (3) of this regulation.

(2) The case mentioned in paragraph (1) of this regulation is a case where—

(*a*) a member of a scheme is liable under its terms to contribute towards the provision of any of its benefits; and

(*b*) the scheme does not increase the short service benefit payable to or in respect of the member between the date on which his service in relevant employment is terminated and the date as from which the benefit becomes payable either—

(i) at a rate of not less than 3 per cent a year compound, or

(ii) in such a manner that the Board are satisfied that, taking one year with another, any person who may become entitled to payment of the benefit is likely to be protected to the same extent as he would have been if it had been increased at a rate of not less than 3 per cent a year compound, or

(iii) at a rate which appears to the Board to correspond with that adopted in relation to official pensions under section 2 of the Pen-

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

sions (Increase) Act 1971(a) (increase by reference to rise in cost of living); and

(*c*) the scheme does not give the member an option to receive either—

(i) such lump sums as are mentioned in regulation 6(1)(*c*) and (*d*), or

(ii) such lump sums as are mentioned in regulation 6(1)(*e*)(i) and (ii),

of the principal regulations.

(3) The modification of the preservation requirements mentioned in paragraph (1) of this regulation is that when the member becomes entitled to short service benefit the value of at least one of the benefits specified in paragraph (4) of this regulation must, to the reasonable satisfaction of the trustees or managers of the scheme, exceed or compare reasonably with the amount contributed by him, in accordance with the terms of the scheme, towards the provision of benefits (less any amount so contributed which has been refunded to him.

(4) The benefits mentioned in paragraph (3) of this regulation are—

(*a*) the short service benefit provided by the scheme for the member; and

(*b*) an alternative to short service benefit provided by the scheme as mentioned in regulation 6(1)(*a*), (*b*), (*e*) or (*f*) of the principal regulations and available to the member.

(5) In a case such as is described in paragraph (2) of this regulation, the scheme is not to be treated as conforming with the preservation requirements unless it contains an express rule giving effect to (but not necessarily in the words of) paragraphs (3) and (4) of this regulation.

Application of preservation requirements to schemes with an overseas element

3.—(1) This regulation applies to any scheme which has any overseas element, that is to say, a scheme established, or relating to employment, or with parties domiciled, resident or carrying on business, in any part of the world outside the United Kingdom, or otherwise not confined in its operation to the United Kingdom.

(2) In the case of a scheme to which this regulation applies, Part I of Schedule 16 shall be so modified that the preservation requirements do not apply to that scheme unless—

(*a*) at least one of its members is employed in the United Kingdom in employment to which the scheme relates; and

(*b*) either the scheme is established in the United Kingdom or it has a representative appointed to carry out the functions of a trustee or manager in the United Kingdom.

(3) In the case of a scheme to which this regulation applies and in respect of which conditions (*a*) and (*b*) in paragraph (2) of this regulation are fulfilled, paragraph 6(1) of Schedule 16 shall be so modified that the scheme must provide short service benefit only where a member's service in relevant employment is terminated before normal pension age and, when it is terminated -

(*a*) he has attained the age of 26;

(*b*) he has at least 5 years' qualifying service; and

(*c*) either that employment is in the United Kingdom, or, if it is not, the most recent payment of earnings to him in respect of it gave rise to

(a) 1971 c. 56.

liability for primary Class 1 contributions or would have done so had the level of his earnings not been below the lower earnings limit.

Transfers of accrued rights to schemes overseas

4. A scheme may, instead of providing short service benefit, provide for a transfer of accrued rights (such as is mentioned in paragraph 9(2)(*a*) of Schedule 16) to another scheme which is administered primarily or wholly outside the United Kingdom only if that other scheme is one which is approved (whether or not subject to conditions) for the purpose of this regulation by the Board.

Modification of preservation requirements for schemes funded by level annual premiums

5.—(1) In the case of a scheme which on 6th April 1974 is of the description set out in paragraph (4) of this regulation and has not, in the opinion of the Board, been materially altered since that date, the preservation requirements shall apply subject to the modification set out in paragraph (5) of this regulation.

(2) In the following paragraphs of this regulation the word "policy" means a policy of insurance or an annuity contract, so however that any increase in the benefit assured is to be deemed to have been effected by a separate policy of insurance or annuity contract, as the case may be; and the word "premium" includes any payment analogous to a premium made or to be made in relation to any means of assuring benefit as a consideration for the assurance of that benefit.

(3) For the purposes of paragraph (1) of this regulation, where the evidence of the existence of a scheme on 6th April 1974 consists of or includes the payment of a premium, the Board shall not be required to treat that scheme as materially altered by reason only of its being set out in a written document after that date.

(4) A scheme is of the description mentioned in paragraph (1) of this regulation if—

(*a*) the benefit it provides for each member is related to his earnings at a specified time or over a specified period not being longer than 5 years;

(*b*) the benefit is assured by means of one or more policies;

(*c*) each policy provides in respect of each member separate assurance, the proceeds of which are to go to that member at least to the extent that they are not greater than the benefits to which he is entitled at normal pension age; and

(*d*) the premium payable under each policy in respect of each member is payable at least annually, and the amount of it (expressed as an annual rate) remains unchanged except in consequence of—

(i) the declaration of a bonus, or

(ii) a change in the premium rate of the insurer.

(5) The modification of the preservation requirements referred to in paragraph (1) of this regulation is that the short service benefit provided by the scheme for or in respect of each member who is in qualifying service in relation to that scheme before 6th April 1975 shall not be required to exceed whichever is the greater of—

(*a*) the total benefit payable to or in respect of that member, in accord-

ance with the terms of the policy or policies, on the basis that no further premiums are to fall due after the date on which his service in relevant employment is terminated; and

(*b*) the aggregate of—

(i) the benefits which respectively bear the same ratio to the benefits (excluding any bonuses) which would have been payable to or in respect of him in accordance with the terms of each policy if his service in relevant employment had been terminated when he attained normal pension age, as the number of premiums which have fallen due in respect of each policy does to the number of premiums which would have fallen due if that service had been terminated when he attained that age, and

(ii) any bonuses declared before that service was terminated.

Two schemes applying to the same employment

6. In cases where the rules of a scheme or the terms of a member's contract of service provide that on attaining a specified age or length of service he must become a member of another scheme in addition to or instead of the first scheme, the preservation requirements shall be modified so that for the purposes of computing the benefit payable to or in respect of that member the 2 schemes are treated as one scheme with a normal pension age of whichever is the lower of the normal pension ages of the 2 schemes.

Keith Joseph,
Secretary of State for Social Services.

26th October 1973.

EXPLANATORY NOTE

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

These Regulations make miscellaneous modifications of the preservation requirements set out in Schedule 16 to the Social Security Act 1973: Regulation 2 with regard to relationship between the value of contributions and the value of benefits; Regulations 3 and 4 with regard to schemes with an overseas element; Regulation 5 with regard to schemes funded by level annual premiums; and Regulation 6 as regards the computation of benefit in certain cases where 2 schemes apply to the same employment.

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