

1987 No. 1099

PENSIONS

**The Contracting-out (Transfer) Amendment Regulations
1987**

<i>Made - - - - -</i>	<i>25th June 1987</i>
<i>Laid before Parliament</i>	<i>6th July 1987</i>
<i>Coming into force</i>	
<i>For the purposes of all the regulations to the extent that they relate to money purchase contracted-out schemes</i>	<i>6th April 1988</i>
<i>For all other purposes</i>	<i>27th July 1987</i>

The Secretary of State for Social Services, in exercise of the powers conferred upon him by section 168(1) of, and Schedule 20 to, the Social Security Act 1975 (a) and sections 38(1) to (1C) and 62(4) of the Social Security Pensions Act 1975 (b) and of all other powers enabling him in that behalf, by this instrument, which is made before the end of a period of 12 months from the commencement of the enactment under which it is made, makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Contracting-out (Transfer) Amendment Regulations 1987 and shall come into force—

- (a) for all purposes in relation to money purchase contracted-out schemes on 6th April 1988, and
- (b) for all other purposes on 27th July 1987.

(2) In these Regulations “the principal Regulations” means the Contracting-out (Transfer) Regulations 1985 (c).

Amendment of regulation 1(2) of the principal Regulations

2.—(1) Regulation 1(2) of the principal Regulations (interpretation) shall be amended in accordance with the provisions of paragraphs (2) to (10) of this regulation.

- (2) After the definition of “the Act” there shall be inserted the following definitions—
 - “appropriate personal pension scheme” shall be construed in accordance with Part I of the Social Security Act 1986;
 - “appropriate policy” means a policy of insurance or an annuity contract such as is described in section 52C(4) of the Act;”

(a) 1975 c.14. See definitions of “prescribe” and “regulations” in Schedule 20. Section 168(1) applies, by virtue of section 66(2) of the Social Security Pensions Act 1975 (c.60), to the exercise of certain powers conferred by that Act.
(b) 1975 c.60; section 38(1) was substituted by the Social Security Act 1986 (c.50), section 86 and paragraph 18 of Schedule 10. Section 38(1A) to (1C) was inserted by the Health and Social Security Act 1984 (c.48), section 19.
(c) S.I. 1985/1323, amended by S.I. 1986/317, 1716.

(3) After the definition of "the principal regulations" there shall be inserted the following definition—

" "protected rights" has the meaning given by Schedule 1 to the Social Security Act 1986, or where the rights are under a money purchase contracted-out scheme, or a section 49 money purchase scheme, that Schedule as modified by section 32(2B);".

(4) For the definition of "scheme" there shall be substituted the following definition—
" "scheme" means occupational pension scheme or personal pension scheme;".

(5) After the definition of "scheme" there shall be inserted the following definitions—
" "contracted-out salary related scheme" means an occupational pension scheme which is contracted-out by virtue of section 32(2);
"money purchase contracted-out scheme" has the same meaning as in section 66(1);" (a).

(6) In the definition of "overseas scheme" for "a scheme" there shall be substituted "an occupational pension scheme which is neither one contracted-out by virtue of section 32 nor one which the Board is under a duty to supervise in accordance with section 49, and;"

(7) In the definition of "receiving scheme"—

(a) after "regulation 2" there shall be inserted ", or 2A,";

(b) after "section 44" there shall be inserted ", or to which a transfer payment in respect of rights is made in accordance with regulation 2B".

(8) After the definition of "receiving scheme" there shall be inserted the following definitions—

" "section 49 money purchase scheme" means a scheme which was formerly a money purchase contracted-out scheme and which the Board are under a duty to supervise in accordance with section 49;

"section 49 salary related scheme" means a scheme which was formerly a contracted-out salary related scheme and which the Board are under a duty to supervise in accordance with section 49;"

(9) For the definition of "transferring scheme" there shall be substituted the following definition—

" "transferring scheme" means—

(a) a contracted-out salary related scheme; or

(b) a section 49 salary related scheme,

from which rights are, or liability is, transferred, or from which a transfer payment is made to a receiving scheme;"

(10) After the definition of "transferring scheme" there shall be inserted the following definition—

" "transferring policy" means an appropriate policy from which accrued rights to guaranteed minimum pensions are transferred, or from which a transfer payment is made, to a receiving scheme;"

Amendment of regulation 2 of the principal Regulations and of the heading to that regulation

3.—(1) In the heading to regulation 2 of the principal Regulations (transfers of accrued rights to and liability for payment of guaranteed minimum pensions from contracted-out schemes) for "*contracted-out schemes*" there shall be substituted "**contracted-out salary related schemes and section 49 salary related schemes**".

(2) Regulation 2 of the principal Regulations shall be amended as follows—

(a) in paragraph (1)—

(i) for "contracted-out scheme" there shall be substituted "contracted-out salary related scheme or a section 49 salary related scheme", and

(a) The definition is inserted in section 66(1) of the Social Security Pensions Act 1975 (c.60) by the Social Security Act 1986 (c.50), section 6 and Schedule 2, paragraph 11(b) from the 6th April 1988 (see the Social Security Act 1986 (Commencement No. 6) Order 1987 (S.I. 1987/543), article 2(3) and Part III of the Schedule.

- (ii) for "in paragraphs (2) to (5)" there shall be substituted "in paragraphs (2) to (5A)";
- (b) in paragraphs (2), (4) and (5), for "another contracted-out scheme" there shall be substituted "a contracted-out salary related scheme or to a section 49 salary related scheme";
- (c) in paragraph (3)—
 - (i) for "to a scheme which is not a contracted-out scheme" there shall be substituted "to an overseas scheme", and
 - (ii) there shall be omitted "in either of the paragraphs";
 and
- (d) after paragraph (5) there shall be inserted the following paragraph—

"(5A) A transfer to a section 49 salary related scheme may be made where it is approved by the Board whether or not subject to conditions;"

Insertion of regulations 2A and 2B into the principal Regulations

4. After regulation 2 of the principal Regulations there shall be inserted the following regulations—

"Transfer of accrued rights to guaranteed minimum pensions from policies of insurance or annuity contracts

2A.—(1) There may be made from an appropriate policy to a contracted-out salary related scheme or to a section 49 salary related scheme a transfer in respect of an earner's accrued rights to guaranteed minimum pensions which are appropriately secured by that policy for the purposes of section 52C, in the circumstances set out in paragraph (2) and subject to the conditions mentioned in paragraphs (3) to (5), and in paragraphs (2) to (5) "a transfer" means a transfer such as is described in this paragraph.

- (2) a transfer may be made—
 - (a) to a contracted-out salary related scheme; or
 - (b) to a section 49 salary related scheme,

where the earner has consented to it in writing and has entered employment with an employer who is, or in the case of a transfer to a section 49 salary related scheme is or was, a contributor to the scheme.

(3) The receiving scheme must not make provision under section 35(7) (exclusion of guaranteed minimum pension from revaluation under section 21), or any analogous provision, in relation to those rights where the effect would be to increase them at a different rate from that at which they would have been increased had the transfer not have taken place.

(4) Subject to paragraph (3), where the earner has not entered employment which is contracted-out by reference to the receiving scheme, then that scheme must provide for pensions to be paid which are of at least equal value to the annuity which would have been payable by the transferring policy, had the transfer not have taken place, in respect of the earner's accrued rights to guaranteed minimum pensions.

(5) A transfer to a section 49 salary related scheme may be made where it is approved by the Board, whether or not subject to conditions.

Transfer payments in respect of accrued rights to guaranteed minimum pensions made from contracted-out salary related schemes, section 49 salary related schemes and policies of insurance or annuity contracts

2B.—(1) There may be made from a contracted-out salary related scheme, a section 49 salary related scheme or an appropriate policy to a money purchase contracted-out scheme, to a section 49 money purchase scheme or to an appropriate personal pension scheme, a transfer payment in respect of the accrued rights of an earner to—

- (a) guaranteed minimum pensions under the transferring scheme; or
- (b) guaranteed minimum pensions which are appropriately secured for the purposes of section 52C under the transferring policy,

in the circumstances and subject to the conditions mentioned in paragraphs (2) to (4), and in those paragraphs a "transfer payment" means a transfer payment such as is described in this paragraph.

(2) A transfer payment may be made to a money purchase contracted-out scheme—

- (a) in the circumstances described in paragraphs 1 and 2 of Schedule 1A; and
- (b) on the conditions specified in paragraphs 1 and 2 of Schedule 2A.

(3) A transfer payment may be made to a section 49 money purchase scheme—

- (a) in the circumstances described in paragraphs 1 and 3 of Schedule 1A; and
- (b) on the conditions specified in paragraphs 1, 2 and 3 of Schedule 2A.

(4) A transfer payment may be made to an appropriate personal pension scheme—

- (a) in the circumstances described in paragraph 1 of Schedule 1A; and
- (b) on the conditions specified in paragraphs 1 and 2 of Schedule 2A.

(5) References in Schedules 1A and 2A to "the earner" are references to the earner referred to in paragraph (1)."

Amendment of regulation 3 of the principal Regulations

5. Regulation 3 of the principal Regulations shall be amended as follows—

- (a) for "a formerly contracted-out scheme" there shall be substituted, "a formerly contracted-out salary related scheme";
- (b) on the first occasion on which it appears, and in paragraph (d), for "a contracted-out scheme" there shall be substituted "a contracted-out salary related scheme or a section 49 salary related scheme"; and
- (c) in paragraphs (b) and (c), for "to a contracted-out scheme" there shall be substituted "to a contracted-out salary related scheme or to a section 49 salary related scheme".

Insertion of regulation 3A into the principal Regulations

6. After regulation 3 of the principal Regulations, there shall be inserted the following regulation—

"Modifications of Part III of the Act on transfers from policies of insurance or annuity contracts

3A. Where a transfer in respect of an earner's accrued rights to guaranteed minimum pensions has taken place from an appropriate policy in accordance with regulation 2A, Part III of the Act shall have effect subject to the following modifications—

- (a) where the earner has entered employment which is contracted-out by reference to the receiving scheme, the modifications of section 35(1) and (8) specified in paragraphs 2 and 3 of Schedule 3A;
- (b) where the earner has entered employment which is not contracted-out by reference to the receiving scheme, the modifications of sections 26(2), 35(8), 38(3) and 48 specified in paragraphs 1, 3, 4 and 5 of Schedule 3A."

Amendment of the headings to Part I and Part II of Schedule 1 to the principal Regulations

7. The headings to Part I and II of Schedule 1 to the principal Regulations (circumstances in which a transfer may be made under regulation 2) shall be amended as follows—

- (a) in the heading to Part I, for "ANOTHER CONTRACTED-OUT SCHEME" there shall be substituted "A CONTRACTED-OUT SALARY RELATED SCHEME OR A SECTION 49 SALARY RELATED SCHEME"; and
- (b) in the heading to Part II, for "A SCHEME WHICH IS NOT A CONTRACTED-OUT SCHEME" there shall be substituted "AN OVERSEAS SCHEME".

Amendment of Schedule 1 to the principal Regulations

8. In paragraph 4 of Schedule 1 to the principal Regulations (circumstances in which a transfer may be made under regulation 2), there shall be omitted "the receiving scheme is an overseas scheme".

Insertion of Schedule 1A into the principal Regulations

9. After Schedule 1 of the principal Regulations there shall be inserted the following Schedule—

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SCHEDULE 1A **Regulation 2B**

**CIRCUMSTANCES IN WHICH A TRANSFER PAYMENT MAY BE
MADE UNDER REGULATION 2B**

1. The earner consents to the transfer payment being made.
2. The earner has entered employment with an employer who is a contributor to the receiving scheme.
3. The earner has entered employment with an employer who is or was a contributor to the receiving scheme.”.

Insertion of Schedule 2A into the principal Regulations

10. After Schedule 2 of the principal Regulations there shall be inserted the following Schedule—

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SCHEDULE 2A **Regulation 2B**

**CONDITIONS ON WHICH A TRANSFER PAYMENT MAY BE MADE
UNDER REGULATION 2B**

1. The transferring scheme or the transferring policy makes a transfer payment (whether or not it forms part of a larger payment in respect of both guaranteed minimum pensions and other accrued rights) of an amount at least equal to the cash value of the earner's accrued rights to guaranteed minimum pensions, as calculated and verified in a manner consistent with Regulations made under paragraph 14 of Schedule 1A to the Act.
2. The receiving scheme makes provision that the transfer payment will be applied so as to provide money purchase benefits for or in respect of the earner under the scheme.
3. The transfer payment is approved by the Board whether or not subject to conditions.”.

Amendment of Schedule 3 to the principal Regulations

11. In paragraph 6(a) of Schedule 3 to the principal Regulations (modifications of provisions of Part III of the Act, applying in cases specified in regulation 3), after "the transferring scheme is ceasing" there shall be inserted "or has ceased".

Insertion of Schedule 3A into the principal Regulations

12. After Schedule 3 of the principal Regulations there shall be inserted the following Schedule—

“

SCHEDULE 3A

Regulation 3A

MODIFICATIONS OF PROVISIONS OF PART III OF THE ACT, APPLYING IN CASES SPECIFIED IN REGULATION 3A

1. Section 26(2) shall have effect as if—
 - (a) after the words “sections 33 and 36 below” there were inserted the words “or in compliance with the condition set out in regulation 2A(4) of the Contracting-out (Transfer) Regulations 1985”; and
 - (b) at the end there were added the words “or of that condition”.
2. Section 35(1) shall have effect as if the reference to contracted-out employment by reference to the scheme included a reference to employment which falls to be treated as linked qualifying service by reason of section 43(2A)(a)(ii).
3. Section 35(8) shall have effect as if there were added, at the end, the words “so however that separate provision may be made for a member as regards those of his accrued rights transferred in accordance with regulation 2A of the Contracting-out (Transfer) Regulations 1985.”.
4. Section 38(3) shall have effect as if, in the definition of “accrued rights”, after the words “sections 33 and 36 above”, there were inserted the words “or in compliance with the condition set out in regulation 2A(4) of the Contracting-out (Transfer) Regulations 1985”.
5. Section 48 shall have effect as if there were omitted—
 - (a) In subsection (1), the words “and the person’s entitlement is in respect of his or another person’s service in employment which was contracted-out by reference to that scheme”; and
 - (b) subsection (2).”.

Signed by authority of the Secretary of State for Social Services.

25th June 1987

Nicholas Scott
Minister of State,
Department of Health and Social Security

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are all made under section 38(1) of the Social Security Pensions Act 1975 ("the 1975 Act") inserted by the Social Security Act 1986 ("the 1986 Act"), before the end of a period of 12 months from the commencement of the relevant provision as inserted. Consequently, by virtue of section 61(5) of the 1986 Act, the provisions of section 61(2) and (3) of the 1975 Act (as amended by section 86(1) of, and paragraph 94 of Schedule 10 to, the 1986 Act), which require reference to the Occupational Pensions Board ("the Board") of, and a report by the Board on, proposals to make regulations for certain purposes of both Acts, do not apply to them.

They amend the Contracting-out (Transfer) Regulations 1985 ("the principal Regulations").

Regulations 3, 5 and 11 amend regulations 2 and 3 of, and Schedule 3 to, the principal Regulations so as to provide that salary related occupational pension schemes which retain responsibility for accrued rights to guaranteed minimum pensions after ceasing to be contracted-out, and consequently remain under the supervision on the Board, may make to, or receive from, other salary related occupational pension schemes a transfer of accrued rights to guaranteed minimum pensions or the liability for payment of them. Regulations 7 and 8 make minor and consequential amendments to the principal Regulations for the same purposes.

Regulation 4 inserts regulation 2A into the principal Regulations so as to make provision for the circumstances in which, and the condition subject to which, a transfer of an earner's rights to guaranteed minimum pensions may be made from a policy of insurance or annuity contract to a salary related occupational pension scheme. (Consequential modifications to Part III of the 1975 Act are made by the insertion into the principal Regulations of regulation 3A and Schedule 3A by regulations 6 and 12 respectively).

Regulation 4 also inserts regulation 2B, and regulations 9 and 10 respectively insert Schedules 1A and 2A, into the principal Regulations so as to make provision for the circumstances in which, and the conditions subject to which, a transfer payment may be made in respect of an earner's rights to guaranteed minimum pensions by a salary related occupational pension scheme, or from a policy of insurance or annuity contract, to a money purchase occupational pension scheme or an appropriate personal pension scheme.

The remaining amendments made by these Regulations are minor or consequential.