

1996 No. 1462

PENSIONS

The Contracting-out (Transfer and Transfer Payment) Regulations 1996

<i>Made - - - -</i>	<i>5th June 1996</i>
<i>Laid before Parliament</i>	<i>11th June 1996</i>
<i>Coming into force</i>	<i>6th April 1997</i>

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The Secretary of State for Social Security, in exercise of the powers conferred on him by sections 12C(1)(a) (a), 20(1), (2) and (3), 181(1)(b) and 182(2) and (3) of the Pension Schemes Act 1993(c) and of all other powers enabling him in that behalf, after agreement with the Occupational Pensions Board that certain proposals within these Regulations need not be referred to them, by this instrument, which otherwise contains regulations made only for the purpose of consolidating regulations revoked by them and regulations made under section 12C(1)(a) of the Pensions Schemes Act 1993 as inserted by section 136 of the Pensions Act 1995(d) and which are made before the end of the period of 6 months beginning with the coming into force of that section(e), hereby makes the following Regulations:

PART I

GENERAL

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Contracting-out (Transfer and Transfer Payment) Regulations 1996 and shall come into force on 6th April 1997.

(2) In these Regulations—

“the 1993 Act” means the Pension Schemes Act 1993;

“accrued rights”, for the purposes of Parts II and IV of these Regulations, has the meaning given to that expression in section 20(6) of the 1993 Act;

▶¹◀

“appropriate policy” means a policy of insurance or an annuity contract such as is described in section 19(4) of the 1993 Act;

¹Defn. of “appropriate personal pension scheme” omitted by reg. 6(2)(a) of S.I. 2011/1245 as from 6.4.12.

(a) Section 12C is inserted by section 136(5) of the Pensions Act 1995 (c. 26).

(b) Section 181(1) is cited because of the meaning there given to the words “prescribed” and “regulations”.

(c) 1993 c. 48.

(d) 1995 c. 26.

(e) See section 185(2) and (6) of the Pension Schemes Act 1993 and section 173(1) and (5) of the Social Security Administration Act 1992 (c. 5), under which the requirement to consult does not apply where regulations are made only for the purpose of consolidating other regulations revoked by them or are made before the end of six months from the coming into force of the enactment under which they are made or where the Occupational Pensions Board agrees that regulations need not be referred to them.

“appropriately secured” has the meaning given to that expression in section 19(3) of the 1993 Act;

►¹“connected employer transfer” and “connected employer transfer payment” mean respectively a transfer of guaranteed minimum pensions from a salary-related contracted-out scheme to a salary-related contracted-out scheme and a transfer payment in respect of section 9(2B) rights from a salary-related contracted-out scheme to a salary-related contracted-out scheme where either—

- (a) the transferring scheme and the receiving scheme relate to persons who are or have been in employment with the same employer; or
- (b) the transferring scheme and the receiving scheme apply to persons who are or have been in employment with different employers, and the earner or person concerned is one of a group of persons in respect of whom transfers or transfer payments are being made from the transferring scheme to the receiving scheme and either—
 - (i) the transfer or transfer payment is a consequence of a financial transaction between the employers, or
 - (ii) each of the employers is one of a group of companies consisting of a holding company and one or more subsidiaries within the meaning of section 1159(1) of the Companies Act 2006 (meaning of “subsidiary” etc),

and, in this definition, “salary-related contracted-out scheme” includes a scheme which was formerly a salary-related contracted-out scheme;◀

“earner” includes an earner who is not in employment at the time of the transfer or transfer payment;

►²◀

“overseas arrangement” means a scheme or arrangement, other than an occupational pension scheme, which—

- (a) has effect, or is capable of having effect, so as to provide benefits on termination of employment or on death or retirement to or in respect of earners; ►²and◀
- (b) ►²◀
- (c) is administered wholly or primarily outside the United Kingdom;

►³“overseas scheme” means—

- (a) an occupational pension scheme which has its main administration outside the ►⁴EEA states◀; or
- (b) a European pensions institution as defined in section 293(8) of the Pensions Act 2004 (functions of Regulator in relation to institutions administered in other member States),

but does not include a salary-related contracted-out scheme nor one in respect of which section 53 of the 1993 Act applies by virtue of section 52(1) of that Act◀; “the principal appointed day” has the meaning given to that expression in section 7(2B) of the 1993 Act(a);

►⁵◀

“salary-related contracted-out scheme” means an occupational pension scheme which is contracted-out by virtue of satisfying section 9(2) of the 1993 Act(b);

“scheme” means an occupational pension scheme or a personal pension scheme;

►⁶“section 9(2B) rights” are—

- (a) rights to the payment of pensions and accrued rights to pensions (other than rights attributable to voluntary contributions) under a scheme contracted-out by virtue of section 9(2B) of the 1993 Act, so far as attributable to an earner’s service in contracted-out employment on or after the principal appointed day; and

¹Defn. of “connected employer transfer” & “connected employer transfer payment” substituted in reg. 1(2) by reg. 4(2) of S.I. 2013/459 as from 6.4.13.

²Defn. of “money purchase contracted-out scheme” omitted & para. (b) to defn. of “overseas arrangement” deleted by reg. 6(2)(a) & (b) of S.I. 2011/1245 as from 6.4.12.

³Defn. of “overseas scheme” substituted by reg. 6(2) of S.I. 2007/814 as from 6.4.07.

⁴Words substituted in defn. of “overseas scheme” by reg. 2 & Sch. to S.I. 2007/3014 as from 26.11.07.

⁵Defn. of “protected rights” omitted by art. 9(2)(a) of S.I. 2011/1246 as from 6.4.12.

⁶Defn. of “section 9(2B) rights” substituted by para. 7(2)(b) of Sch. 1 to reg. 7(2)(b) of S.I. 1997/786 as from 6.4.97.

(a) Section 7(2B) was inserted by section 136(1) of the Pensions Act 1995.

(b) Section 9(2) was amended by section 136(3) of the Pensions Act 1995.

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- (b) where a transfer payment has been made to such a scheme, any rights arising under the scheme as a consequence of that payment which are derived directly or indirectly from—
- (i) such rights as are referred to in sub-paragraph (a) under another scheme contracted-out by virtue of section 9(2B) of that Act; or
 - (ii) protected rights under another occupational pension scheme or under a personal pension scheme attributable to payments or contributions in respect of ►¹◀ employment on or after the principal appointed day►², where that transfer payment was made before the abolition date◄;◄
“trustees”, in relation to a scheme which is not set up or established under a trust, means the managers of the scheme.

¹Words deleted in reg. 1(2) by reg. 2 of S.I. 1999/3198 as from 30.12.99.

²Words inserted in defn. of “section 9(2B) rights” by art. 9(2)(b) of S.I. 2011/1246 as from 6.4.12.

PART II

TRANSFERS OF AND TRANSFER PAYMENTS IN RESPECT OF GUARANTEED MINIMUM PENSIONS

General

2.—(1) A transfer or transfer payment from an occupational pension scheme of or in respect of the accrued rights of an earner to guaranteed minimum pensions may be made in accordance with whichever of regulations 3 to 6 is applicable and no such transfer or transfer payment may otherwise be made from such a scheme.

(2) A transfer or transfer payment from an appropriate policy of or in respect of the accrued rights of an earner to guaranteed minimum pensions which are appropriately secured may be made in accordance with whichever of regulations 3, 5 or 6 is applicable and no such transfer or transfer payment may otherwise be made from such a policy.

(3) A transfer of liability for the payment of guaranteed minimum pensions to or in respect of any person who has become entitled to them may be made from an occupational pension scheme in accordance with whichever of regulations 3 or 4 is applicable and no such transfer may be made otherwise.

(4) In regulations 3 to 6 “transfer” means a transfer, of accrued rights or liability, such as is described in this regulation and “transfer payment” means a payment in respect of accrued rights such as is described in this regulation.

Transfers of guaranteed minimum pensions to salary-related contracted-out schemes

- 3.** A transfer may be made to a salary-related contracted-out scheme if—
- (a) the earner or person concerned consents in writing;
 - (b) in the case of a transfer of the accrued rights of an earner—
 - (i) the earner is employed by an employer who is a contributor to the receiving scheme, or
 - (ii) the earner has previously been a member of the receiving scheme;
 - (c) in the case of a transfer of the accrued rights of an earner who is not in employment which is contracted-out by reference to the receiving scheme, the conditions specified in paragraphs 1 to 4 of Schedule 1 are satisfied, unless the transfer is from an appropriate policy in which case the condition set out in paragraph 5 of Schedule 1 must be satisfied;
 - (d) in the case of a transfer of the accrued rights of an earner from an appropriate policy, the receiving scheme does not make provision under section 16(2) and (3) of the 1993 Act^(a) (revaluation of earnings factors for purposes of section 14; early leavers etc.), or any analogous provision, in relation to the rights transferred 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 taken place; and

^(a) Section 16(3) was amended by paragraph 28 of Schedule 5 to the Pensions Act 1995.

- (e) in the case of a transfer of liability for the payment of guaranteed minimum pensions to or in respect of a person who has become entitled to them, the transfer is from a scheme and the conditions set out in paragraphs 6 of Schedule 1 are satisfied.

Connected employer transfers of guaranteed minimum pensions

4. A connected employer transfer may be made ►¹◄ subject to the conditions set out in regulation 3(c) and (e).

¹Words omitted in reg. 4 by reg. 4(3) of S.I. 2013/459 as from 6.4.13.

►²Transfer payments in respect of guaranteed minimum pensions to occupational and personal pension schemes

²Reg. 5 substituted by reg. 6(4) of S.I. 2011/1245 as from 6.4.12.

5. A transfer payment in respect of a guaranteed minimum pension may be made to a scheme which is not a salary-related contracted-out scheme, an overseas scheme or overseas arrangement, if—

- (a) the earner consents in writing;
- (b) the transfer payment (whether or not it forms part of a larger payment in respect of both guaranteed minimum pensions and other rights) is of an amount at least equal to the cash equivalent of the earner's accrued rights to guaranteed minimum pensions, as calculated and verified in a manner consistent with regulations made under section 97 of the 1993 Act (calculation of cash equivalents); and
- (c) the earner has acknowledged in writing to the transferring scheme that the earner has received a statement from the receiving scheme showing the benefits to be awarded in respect of the transfer payment, and that the earner accepts that—
 - (i) the benefits to be provided by the receiving scheme may be in a different form and of a different amount to those which would have been payable by the transferring scheme, and
 - (ii) there is no statutory requirement on the receiving scheme to provide for survivor's benefits out of the transfer payment. ◄

Transfer payments in respect of guaranteed minimum pensions to overseas scheme

6. A transfer payment may be made to an overseas scheme ►³or an overseas arrangement◄ if—

³Words inserted and substituted in reg. 6 by reg. 2(2) of S.I. 2005/555 as from 6.4.05.

- (a) the earner consents in writing;
- (b) the trustees of the transferring scheme have taken reasonable steps to satisfy themselves ►⁴(or, if the transfer payment is from an appropriate policy, the transferring insurance company has taken reasonable steps to satisfy itself)◄ that ►³, where the receiving scheme is an occupational pension scheme, the earner is in employment to which the receiving scheme applies◄;
- (c) the transfer payment (whether or not it forms part of a larger payment in respect of both guaranteed minimum pensions and other rights) is of an amount at least equal to the cash equivalent of the earner's accrued right to guaranteed minimum pensions, as calculated and verified in a manner consistent with regulations made under section 97 of the 1993 Act;
- (d) the earner has acknowledged in writing that he accepts that the scheme ►³or arrangement◄ to which the transfer payment is to be made may not be regulated in any way by the law of the United Kingdom and that as a consequence there may be no obligation under that law on the receiving scheme ►³or arrangement◄ or its trustees or administrators to provide any particular value or benefit in return for the transfer payment; and
- (e) the trustees of the transferring scheme have taken reasonable steps to satisfy themselves ►⁴(or, if the transfer payment is from an appropriate policy, the transferring insurance company has taken reasonable steps to satisfy itself)◄ that the earner has received a statement from the receiving scheme ►³or arrangement◄ showing the benefits to be awarded in respect of the transfer payment and conditions (if any) on which these could be forfeited or withheld.

⁴Regs. 6(b) & (e) amended by para. 7(3) of Sch. 1 to S.I. 1997/786 as from 6.4.97.

PART III

TRANSFERS OF LIABILITY IN RESPECT OF
SECTION 9(2B) RIGHTS**General****7.—(1)** A transfer of liability—

- (a) from a salary-related contracted-out scheme (or a scheme which was formerly a salary-related contracted-out scheme) ¹ of the accrued section 9(2B) rights of an earner; or
- (b) from a salary-related contracted-out scheme (or a scheme which was formerly a salary-related contracted-out scheme) for the payment to or in respect of a person who has become entitled to them of pensions under that scheme deriving from section 9(2B) rights

¹Words deleted from reg. 7(1)(a) by para. 7(4) of Sch. 1 to S.I. 1997/786 as from 6.4.97.

may be made in accordance with arrangements which satisfy paragraph (2) and no such transfer may be made otherwise.

(2) The arrangements referred to in paragraph (1) must result in there being made—

- (a) in the case of a transfer referred to in paragraph (1)(a), a transfer payment to the receiving scheme or overseas arrangement, in accordance with whichever of regulations 8 to 11 is applicable, of at least the cash equivalent of the accrued section 9(2B) rights in respect of which the transfer is being made, as calculated and verified in a manner consistent with regulations made under section 97 of the 1993 Act; and
- (b) in the case of a transfer referred to in paragraph (1)(b), a connected employer transfer payment ² in accordance with regulation 9.

²Words in reg. 7(2)(b) & 9 omitted by reg. 4(3) of S.I. 2013/459 as from 6.4.13.

(3) In this regulation and regulations 8 to 11 “transfer payment” means a payment to effect a transfer of liability such as is referred to in paragraph (1).

Transfer payments to salary-related contracted-out schemes in respect of section 9(2B) rights

8. A transfer payment in respect of an earner’s accrued section 9(2B) rights may be made to a salary-related contracted-out scheme if—

- (a) the earner consents in writing;
- (b) the earner—
 - (i) is employed by an employer who is a contributor to the receiving scheme. or
 - (ii) has previously been a member of the receiving scheme; and
- (c) the transfer payment is applied to provide rights for the earner or person concerned which, had they accrued in the receiving scheme, would be provided in accordance with the rules of the receiving scheme relating to earners who are in employment which is contracted-out in relation to the receiving scheme or have been in employment which was so contracted-out ³ on or after the principal appointed day.◀

³Words inserted into reg. 8(c) by para. 7(5) of Sch. 1 to S.I. 1997/786 as from 6.4.97.

Connected employer transfer payments

9. A connected employer transfer payment may be made ² subject to—

- (a) the condition set out in regulation 8(c); and
- (b) the condition set out in regulation 12(3) of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991(a) (requirement for actuarial certificate).

(a) S.I. 1991/167. The relevant amending instrument is S.I. 1993/1822.

►¹Transfer payments to occupational and person pension schemes in respect of section 9(2B) rights

¹Reg. 10 substituted by reg. 6(4) of S.I. 2011/1245 as from 6.4.12.

10. A transfer payment in respect of an earner's accrued section 9(2B) rights may be made to a scheme which is not a salary-related contracted-out scheme, an overseas scheme or overseas arrangement, if—

- (a) the earner consents in writing; and
- (b) the earner has acknowledged in writing to the transferring scheme that the earner has received a statement from the receiving scheme showing the benefits to be awarded in respect of the transfer payment, and that the earner accepts that—
 - (i) the benefits to be provided by the receiving scheme may be in a different form and of a different amount to those which would have been payable by the transferring scheme, and
 - (ii) there is no statutory requirement on the receiving scheme to provide for survivor's benefits out of the transfer payment. ◀

Transfer payments to overseas schemes or arrangements in respect of section 9(2B) rights

11. A transfer payment in respect of an earner's accrued section 9(2B) rights may be made to an overseas scheme or overseas arrangement if—

- (a) the earner consents in writing;
- (b) the trustees of the transferring scheme have taken reasonable steps to satisfy themselves that ►²◀, where the receiving scheme is an occupational pension scheme, ►²the earner◀ has entered employment to which the receiving scheme applies;
- (c) the earner has acknowledged in writing that he accepts that the scheme or arrangement to which the transfer payment is to be made may not be regulated in any way by the law of the United Kingdom and that as a consequence there may be no obligation under that law on the receiving scheme or arrangement or its trustees or administrators to provide any particular value or benefit in return for the transfer payment; and
- (d) the trustees of the transferring scheme have taken reasonable steps to satisfy themselves that the earner has received a statement from the receiving scheme or arrangement showing the benefits to be awarded in respect of the transfer payment and the conditions (if any) on which these could be forfeited or withheld.

²Words deleted and substituted in reg. 11(b) by reg. 2(3) of S.I. 2005/555 as from 6.4.05.

PART IV

MODIFICATION OF PART III OF THE 1993 ACT

Modifications of Part III of the 1993 Act on transfers of and transfer payments in respect of guaranteed minimum pensions from occupational pension schemes

12. Where a transfer to a salary-related contracted-out scheme, or a transfer payment to an overseas scheme, has taken place from an occupational pension scheme in accordance with regulations 3, 4, or 6 (or with regulation 2 of the Contracting-out (Transfer) Regulations 1985(a)), the 1993 Act shall have effect subject to the following modifications—

- (a) where the transfer was of the accrued rights to guaranteed minimum pensions of an earner who was in employment which was contracted-out by reference to the receiving scheme, the modification of section 14(1)(b) (earner's guaranteed minimum) specified in paragraph 3 of Schedule 2;

(a) S.I. 1985/1323, amended by S.I. 1986/317, S.I. 1986/1716, S.I. 1987/1099, S.I. 1987/1114, S.I. 1988/475 and S.I. 1994/1062.

(b) Section 14 was amended by paragraph 27 of Schedule 5 to the Pensions Act 1995.

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- (b) in the case of any other transfer of the accrued rights of an earner to guaranteed minimum pensions, the modifications of section 8(2)(a) (meaning of “guaranteed minimum pension”), 20(6) (transfer of accrued rights: meaning of “accrued rights”) and 159(b) (inalienability of guaranteed minimum pension and protected rights payments) specified in paragraphs 1, 4 and 5 of Schedule 2;
- (c) in the case of any transfer of the liability for payment of guaranteed minimum pensions to or in respect of a person who had become entitled to them, the modifications of sections 8(2) and 159 specified in paragraphs 1 and 5 of Schedule 2;
- (d) in the case of any transfer payment to an overseas scheme in respect of the accrued rights of an earner to guaranteed minimum pensions, the modification of section 46(c) (effect of entitlement to guaranteed minimum pensions on payment of social security benefit) specified in paragraph 2 of Schedule 2.

Modifications of Part III of the 1993 Act on transfers from policies of insurance or annuity contracts

13. Where a transfer to a salary-related contracted-out scheme, or a transfer payment to an overseas scheme, in respect of an earner’s accrued rights to guaranteed minimum pensions has taken place from an appropriate policy in accordance with regulation 3 or 6 (or with regulation 2A of the Contracting-out (Transfer) Regulations 1985), the 1993 Act shall have effect subject to the following modifications—

- (a) where the earner was in employment which was contracted-out by reference to the receiving scheme, the modification of section 14(1) specified in paragraph 7 of Schedule 2;
- (b) where the earner was in employment which was not contracted-out by reference to the receiving scheme, the modifications of sections 8(2), 20(6) and 159 specified in ►paragraphs 5, 6 and 8◄ of schedule 2;
- (c) in the case of any transfer payment to an overseas scheme, the modification of section 46 specified in paragraph 2 of Schedule 2.

¹Words substituted in reg. 13(b) by reg. 7(6) of S.I. 1997/786 as from 6.4.97.

²Reg. 13A added by reg. 7(7) of S.I. 1997/786 as from 6.4.97.

►²Modification of section 12C of the 1993 Act where transfer payments are made to salary-related contracted-out schemes

13A. In section 12C of the 1993 Act any reference to the liability for, or rights to, pensions so far as attributable to service on or after the principal appointed day shall include any liability or rights arising under the scheme as a consequence of a transfer payment which are derived directly or indirectly from—

- (a) an earner’s service in contracted-out employment on or after the principal appointed day under another scheme contracted-out by virtue of section 9(2B) of the 1993 Act; or
- (b) protected rights under another occupational pension scheme or under a personal pension scheme attributable to payments or contributions in respect of employment on or after the principal appointed day►³, where that transfer payment was made before the abolition date◄◄.

³Words in reg. 13A(b) inserted by art. 9(3) of S.I. 2011/1246 as from 6.4.12.

PART V

REVOCATIONS AND TRANSITIONAL PROVISIONS

Revocations and transitional provisions

14.—(1) Subject to paragraphs (2) and (3) and to Schedule 4, the regulations listed in column 2 of Schedule 3 (some of which are spent) are revoked to the extent specified in column 3 of that Schedule.

(2) Where a transfer such as in mentioned in regulation 12 has taken place in accordance with regulation 2 of the Contracting-out (Transfer) Regulations 1985, then paragraph 6 of Schedule 3 to those Regulations (as in force immediately before these Regulations came into force) shall continue to have effect in relation to any state scheme premium which has been paid before the principal appointed day or is payable immediately before that day.

- (a) Section 8 was amended by section 136(2) of and paragraph 23 of Schedule 5 to the Pensions Act 1995.
- (b) Section 159 was amended by paragraph 41 of Schedule 3 to the Pensions Act 1995.
- (c) Section 46 was amended by paragraph 44 of Schedule 5 to the Pensions Act 1995.

(3) Where an application under section 95 of the 1993 Act (ways of taking right to cash equivalent) has been made before the principal appointed day, for the purposes of dealing with that application regulations 2 to 11 of these Regulations shall not apply and regulations 1, 2, 2A and 2B of the Contracting-out (Transfer) Regulations 1985 (as in force immediately before these Regulations came into force) shall continue to apply subject to the modifications set out in Schedule 4.

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

5th June 1996

Oliver Heald
Parliamentary Under-Secretary of State,
Department of Social Security

SCHEDULE 1

FURTHER CONDITIONS FOR TRANSFERS OF GUARANTEED
MINIMUM PENSIONS

PART I

FURTHER CONDITIONS FOR TRANSFER TO A SALARY-RELATED CONTRACTED-OUT SCHEME OF ACCRUED RIGHTS TO GUARANTEED MINIMUM PENSIONS WHERE EMPLOYEE IS NOT IN EMPLOYMENT WHICH IS CONTRACTED-OUT BY REFERENCE TO THE RECEIVING SCHEME

1. Subject to paragraphs 2 to 4, the receiving scheme must in respect of the rights transferred—

- (a) provide for pensions payable at the rates at which guaranteed minimum pensions would have been payable by the transferring scheme if the transfer had not taken place; and
- (b) contain the same provision for commencement and continuation of payment of those pensions and (if any) for commutation, suspension and forfeiture as for guaranteed minimum pensions provided by the receiving scheme in accordance with sections 13(a) and 17(b) of the 1993 Act.

2. Subject to paragraphs 3 and 4, the arrangements for the transfer (in this Schedule called “the arrangements”) must contain provision that the earner’s factors which are attributable to any particular period of service, or the weekly equivalent derived therefrom, will be increased at the same rate under the receiving scheme as that at which they or it would have fallen to be increased under the transferring scheme if—

- (a) his service in contracted-out employment by reference to the transferring scheme had been terminated; but
- (b) the transfer had not taken place.

3. If the weekly equivalent derived from the earnings factors which are attributable to any particular period of service was not, before the transfer, affected by a provision made, or a provision analogous to one made, under section 16(2) and (3) of the 1993 Act, the arrangements may contain a provision analogous to one made under section 16(2) and (3) in relation to it.

4. If the weekly equivalent derived from the earnings factors which are attributable to any particular period of service was, before the transfer, affected by a provision made, or a provision analogous to one made, under section 16(2) and (3) of the 1993 Act, the arrangements may contain a provision that those earnings factors will be increased under the receiving scheme at the same rate as that at which they would have fallen to be increased if—

- (a) there had never been a provision made, or a provision analogous to one made; or
- (b) in the case only of the first transfer of the rights in question, a different provision had been made

under section 16(2) and (3) relating to that weekly equivalent.

PART II

FURTHER CONDITIONS FOR TRANSFER FROM AN APPROPRIATE POLICY TO A SALARY-RELATED CONTRACTED-OUT SCHEME OF ACCRUED RIGHTS TO GUARANTEED MINIMUM PENSIONS WHERE EMPLOYEE DOES NOT ENTER EMPLOYMENT WHICH IS CONTRACTED-OUT BY REFERENCE TO THE RECEIVING SCHEME

5. The receiving 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 taken place, in respect of the earner’s accrued rights to guaranteed minimum pensions.

(a) Section 13 was amended by paragraph 26 of Schedule 5 to the Pensions Act 1995.

(b) Section 17 was amended by paragraph 29 of Schedule 5 to the Pensions Act 1995.

PART III

FURTHER CONDITIONS FOR TRANSFER OF LIABILITY FOR THE PAYMENT
OF A GUARANTEED MINIMUM PENSION TO OR IN RESPECT OF A PERSON
WHO HAS BECOME ENTITLED TO IT

6. The date of commencement of the pension the liability for which is transferred—
- (a) if payable to the person who has become entitled to it, must be the date from which liability for payment is assumed by the receiving scheme; and
 - (b) if payable to ►the widow, widower or surviving civil partner of that person◄, must be the same as it would have been under the provisions of the transferring scheme

Words substituted in para. 6(b) by para. 25 of Sch. 2 to S.I. 2005/2050 as from 5.12.05.

and the receiving scheme must contain the same provision (if any) for suspension and forfeiture of that person as for guaranteed minimum pensions provided by the receiving scheme in accordance with section 13 or (as the case may be) 17 of the 1993 Act.

SCHEDULE 2

Regulations 12 and 13

MODIFICATIONS OF PART III OF THE 1993 ACT

►1. Section 8(2) shall have effect as if for the definition of “guaranteed minimum pension” there were substituted—

Para. 1 substituted by reg. 7(8)(a) of S.I. 1997/786 as from 6.4.97.

“guaranteed minimum pension” means any pension which is provided by an occupational pension scheme—

- (a) in accordance with the requirements of sections 13 and 17, or
- (b) in compliance with the condition set out in paragraph 1 or 6 of Schedule 1 to the Contracting-out (Transfer and Transfer Payment) Regulations 1996 (or, as the case may be, in paragraph 1 or 5 of Schedule 2 to the Contracting-out (Transfer) Regulations 1985),

to the extent to which its weekly rate is equal to the earner’s or, as the case may be the earner’s widow’s or widower’s guaranteed minimum, as determined for the purposes of those sections or, as the case may be, conditions◄.

2. Section 46 shall have effect as if the reference in subsection (1)(b) to one or more guaranteed minimum pensions included the guaranteed minimum pensions which would have been payable if they had been preserved in and paid by the transferring scheme or policy.

3. Section 14(1) shall have effect as if the reference to employment which is contracted-out by reference to the scheme included a reference to employment in any period of linked qualifying service which was contracted-out by reference to the transferring scheme.

4. Section 20(6) shall have effect as if after the words “sections 13 and 17” there were inserted the words ►or in compliance with the condition set out in◄ paragraph 6 of Schedule 1 to the Contracting-out (Transfer and Transfer Payment) Regulations 1996 (or, as the case may be ►in paragraph 5◄, of Schedule 2 to the Contracting-out (Transfer) Regulations 1985) or in compliance with the condition set out in paragraph 1 of Schedule 1 to the Contracting-out (Transfer and Transfer Payment) Regulations 1996 (or, as the case may be, in paragraph 1 of Schedule 2 to the Contracting-out (Transfer) Regulations 1985)”.

Words in para. 4 substituted by reg. 7(8)(b) of S.I. 1997/786 as from 6.4.97.

5. Section 159 shall have effect as if subsections (1)(b) and (3) were omitted.

6. ►Section 8(2) shall have effect as if the definition of “guaranteed minimum pension” there were substituted—

Para. 6 substituted by reg. 7(8)(c) of S.I. 1997/786 as from 6.4.97.

“guaranteed minimum pension” means any pension which is provided by an occupational pension scheme—

- (a) in accordance with the requirements of sections 13 and 17, or
- (b) in compliance with the condition set out in paragraph 5 of Schedule 1 to the Contracting-out (Transfer and Transfer Payment) Regulations 1996 (or, as the case may be, in regulation 2A(4) of the Contracting-out (Transfer) Regulations 1985),

to the extent to which its weekly rate is equal to the earner's or, as the case may be, the earner's widow's or widower's guaranteed minimum, as determined for the purposes of those sections or, as the case may be, condition 4.

7. Section 14(1) shall have effect as if the reference to employment which is contracted-out by reference to the scheme included a reference to employment in any period of linked qualifying service which was contracted-out by reference to the transferring scheme.

8. Section 20(6) shall have effect as if after the words "sections 13 and 17" there were inserted the words "or in compliance with the condition set out in paragraph 5 of Schedule 1 to the Contracting-out (Transfer and Transfer Payment) Regulations 1996 (or, as the case may be, in regulation 2A(4) of the Contracting-out (Transfer) Regulations 1985)".

Para. 9 deleted by reg.
7(8)(d) of S.I. 1997/786
as from 6.4.97.

9. ▶◀

SCHEDULE 3

Regulation 14

REVOCATIONS

Column 1 <i>Statutory Instrument</i>	Column 2 <i>Statutory Instrument</i>	Column 3 <i>Provision Revoked</i>
S.I. 1985/1323	The Contracting-out (Transfer) Regulations 1985	The whole of the Regulations
S.I. 1986/317	The Occupational Pension Schemes (Contracting-out) Amendment Regulations 1986	Regulation 3
S.I. 1986/1716	The Contracting-out (Requisite Benefits—Consequential Provisions) Regulations 1986	Regulation 5(2)
S.I. 1987/1099	The Contracting-out (Transfer) Amendment Regulations 1987	The whole of the Regulations
S.I. 1987/1114	The Personal and Occupational Pension Schemes (Consequential Provisions) Regulations 1987	Regulation 6
S.I. 1988/475	The Contracting-out (Miscellaneous Amendments) Regulations 1988	Regulation 4
S.I. 1994/1062	The Occupational and Personal Pension Schemes (Consequential Amendments) Regulations 1994	Schedule 2, paragraph 5

SCHEDULE 4

Regulation 14

TRANSITIONAL PROVISIONS

In a case as is mentioned in regulation 14(3), the Contracting-out (Transfer) Regulations 1985 are modified as follows:

- (a) all references to the Occupational Pensions Board are replaced by references to the Secretary of State;
- (b) the definition of “overseas scheme” is replaced by the definition of “overseas scheme” in these Regulations; and
- (c) the definition of “section 53 money purchase scheme” is replaced by the definition “section 53 money purchase scheme” means a scheme which was formerly a money purchase contracted-out scheme and in respect of which section 53 applies” and the definition of “section 53 salary related scheme” is replaced by the definition “ “section 53 salary related scheme” means a scheme which was formerly a salary related contracted-out scheme and in respect of which section 53 applies”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations replace the Contracting-out (Transfer) Regulations 1985 which are now (subject to transitional provisions) revoked. The Regulations supplement changes introduced by the Pensions Act 1995 to Part III of the Pensions Schemes Act 1993. They also consolidate and amend those provisions of the 1985 Regulations which remain relevant. The regulations made by virtue of section 12C of the 1993 Act as inserted by section 136 of the 1995 Act are made within six months of that provision coming into force and as a consequence there is no requirement to consult. As regards those regulations which are neither made only for the purpose of consolidation nor under the 1995 Act, the Occupational Pensions Board has agreed that proposals to make such regulations need not be referred to them.

Part I of the Regulations contains general provisions relating to citation, commencement and interpretation.

Part II of the Regulations makes provision for the circumstances in which and the conditions subject to which a transfer of or transfer payment in respect of an earner's accrued rights to guaranteed minimum pensions (or the liability for the payment of guaranteed minimum pensions in respect of which entitlement has already arisen) may be made from one pension scheme to another or from an insurance policy or annuity contract to a pension scheme.

Part III of the Regulations makes provision for the circumstances in which and the conditions subject to which a transfer of liability may be made from a pension scheme or from an insurance policy or annuity contract to a pension scheme or arrangement in respect of rights to pensions which have accrued on or after the principal appointed day under a scheme contracted-out by virtue of section 9(2B) of the 1993 Act.

Part IV of the Regulations modifies Part III of the 1993 Act where a transfer or transfer payment has been made under Part I of the Regulations to a scheme which is contracted-out under section 9(2) of that Act (a salary-related contracted-out scheme) so as to ensure that the receiving scheme provides guaranteed minimum pensions in consequence of the transfer or transfer payment.

Part V of the Regulations contains revocations and transitional provisions.

An assessment of the compliance cost for employers of the measures arising from the Pensions Act 1995, including these Regulations, has been placed in the libraries of both Houses of Parliament. Copies can be obtained by post from the Department of Social Security, Private Pensions Directorate, 11th Floor, The Adelphi, 1-11 John Adam Street, London, WC2N 6HT.