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STATUTORY INSTRUMENTS

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**1996 No. 1977**

**PENSIONS**

**The Occupational Pension Schemes (Mixed  
Benefit Contracted-out Schemes) Regulations 1996**

*Made* - - - - 25th July 1996  
*Coming into force* - - 6th April 1997

Whereas a draft of these Regulations was laid before Parliament in accordance with the provisions of section 175(2) of the Pensions Act 1995<sup>(1)</sup> and approved by resolution of each House of Parliament :

Now therefore, the Secretary of State for Social Security, in exercise of the powers conferred by sections 149 and 174(2) of the Pensions Act 1995, hereby makes the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Mixed Benefit Contracted-out Schemes) Regulations 1996 and shall come into force on 6th April 1997.

(2) In these Regulations—

“the 1993 Act” means the Pension Schemes Act 1993<sup>(2)</sup>;

“the Contracting-out Regulations” means the Occupational Pension Schemes (Contract ing-out) Regulations 1996<sup>(3)</sup>;

“mixed benefit contracted-out scheme” means a scheme which is contracted-out by virtue of its being a relevant scheme;

“principal appointed day” has the same meaning as in section 7(2B) of the 1993 Act<sup>(4)</sup>;

“section 9(2B) rights” has the same meaning as in the Contracting-out Regulations.

(3) An occupational pension scheme to which section 149(1) of the Pensions Act 1995 applies (referred to in these Regulations as “a relevant scheme”) is to be treated for the purposes of these Regulations as if the pensions provided by the scheme falling within paragraph (a) of that subsection, and the pensions provided by the scheme falling within paragraph (b) of that subsection, were provided by separate parts of the scheme; and references in these Regulations to a separate part of such a scheme are to be read accordingly.

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(1) 1995 c. 26.

(2) 1993 c. 48.

(3) S.I.1996/1172.

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

(4) Any reference in these Regulations to the salary-related part or the money purchase part of a relevant scheme is a reference to the separate part providing such pensions as are referred to in paragraphs (a) and (b) respectively of that subsection.

(5) For the purposes of these Regulations a separate part of a relevant scheme is inactive if—

- (a) any member has accrued rights by reference to that part; and
- (b) no further benefits may accrue in respect of any member's service by reference to that part.

### **Parts of a relevant scheme to be treated as separate schemes for contracting-out purposes**

2.—(1) Subject to paragraph (4), if the condition specified in paragraph (2) is satisfied, a relevant scheme is to be treated for the purposes of Part III of the 1993 Act as if the separate parts of the scheme were separate schemes.

(2) The condition referred to in paragraph (1) is that the rules of the relevant scheme are such that a member's service in a single employment at any given time may be qualifying service by reference only to one of the separate parts.

(3) Where one separate part of a relevant scheme has become inactive, it is to continue to be treated as a separate scheme for the purposes of Part III of the 1993 Act, notwithstanding that it has ceased to satisfy subsection (2) or, as the case may be, subsection (3) of section 9 of that Act<sup>(5)</sup>.

(4) Part III of the 1993 Act is to have effect, in relation to the separate parts of a relevant scheme, with the following modifications—

- (a) any reference to a contracting-out certificate is to be read as a reference to a single certificate—
  - (i) relating to both separate parts of the relevant scheme and stating that the relevant scheme is contracted-out by virtue of subsections (2) and (3) of section 9; or
  - (ii) relating, if one of the separate parts is inactive, to the other part of the relevant scheme and stating that the relevant scheme is contracted-out by virtue of subsection (2) or, as the case may be, subsection (3) of section 9,
 and section 12 (determination of basis on which scheme is contracted-out) does not apply;
- (b) any reference in section 11 (elections as to employments covered by contracting-out certificates) to an election is to be read as a reference to an election in relation to the relevant scheme;
- (c) in section 16 (revaluation of earnings factors: early leavers) references to the scheme are to be read as references to the relevant scheme;
- (d) sections 50 to 53, except section 51, (approval of arrangements for, and supervision of, formerly certified schemes)<sup>(6)</sup> are to apply to an inactive part of the relevant scheme as if it were a scheme which had ceased to be certified as a contracted-out scheme;
- (e) in section 55(2) (circumstances in which a contributions equivalent premium is payable) the reference to an occupational scheme is to be read as a reference to the relevant scheme and in sections 56(4), 57(3) and (4), 60(4), 61(1)(b), (8) and (11) references to a scheme are to be read as references to the relevant scheme<sup>(7)</sup>;
- (f) in spite of sub-paragraph (e) above, in section 58(4) (amount of a contributions equivalent premium) the reference to a scheme in relation to an earner's contracted-out employment is to be read as a reference only to the salary-related part of the relevant scheme.

<sup>(5)</sup> Section 9 was amended by section 136(3) and (4) of the Pensions Act 1995.

<sup>(6)</sup> Sections 50, 52 and 53 were amended by Schedule 5 to the Pensions Act 1995.

<sup>(7)</sup> Sections 55, 56, 58, 60 and 61 were amended by Schedule 5 to the Pensions Act 1995.

(5) For the purposes of any regulations made under Part III of the 1993 Act, a relevant scheme is also to be treated as if the separate parts of the scheme were separate schemes, subject to the modifications to that Part provided for in paragraph (4) above and any modifications to such regulations provided for in regulations 3 and 4 below.

### **Modification of the Contracting-out Regulations**

**3.—**(1) The Contracting-out Regulations are to be modified in relation to the separate parts of a relevant scheme in accordance with the following provisions of this regulation.

(2) In regulation 3 of those Regulations (notices by employers of intended election), in the case of an election with a view to the issue of a contracting-out certificate in respect of a relevant scheme, there is to be a further requirement that the notice referred to in that regulation must state that the employment would be contracted-out by reference to a mixed benefit contracted-out scheme and explain—

- (a) in a case where all the earners in the employment fall only in one separate part, how benefits would accrue to an earner under that part if the employment were contracted-out; and
- (b) in any other case, by reference to each separate part, how benefits would accrue to an earner if the employment were contracted-out,

and paragraph (2)(g)(i) of that regulation does not apply.

(3) In regulation 6 of those Regulations (information to be included in an election), in a case referred to in paragraph (2) above—

- (a) there is to be added to the particulars specified in paragraph (1) of that regulation (particulars to be included in an election) a statement as to whether all the earners in each employment may fall in either of the separate parts and, if not, the categories of earner which fall only in the salary-related part or, as the case may be, only in the money purchase part;
- (b) the requirements to provide the confirmation and evidence referred to in paragraphs (3) and (4) of that regulation are to apply in relation to each separate part.

(4) In regulation 9 of those Regulations (elections for the variation or surrender of contracting-out certificates)—

- (a) in the case of an election with a view to the variation of a contracting-out certificate in the event of a scheme becoming a relevant scheme, the further requirement referred to in paragraph (2) above is to apply in relation to the notice referred to in paragraphs (4) and (5) of that regulation; and
- (b) in the case of an election with a view to the variation of a contracting-out certificate in the event of a scheme becoming a relevant scheme or one separate part of a relevant scheme becoming inactive, paragraph (3) of that regulation does not apply.

(5) Regulation 10 (special provision with regard to elections for the issue, variation or surrender of certificates where the employment remains contracted-out) does not apply in the case of an election made in the event of a scheme becoming a relevant scheme or one separate part of a relevant scheme becoming inactive.

(6) In regulation 16 of those Regulations (requirement to confirm relevant requirements satisfied) the requirement to provide confirmation or evidence in accordance with that regulation is to be read as a requirement to provide such confirmation or evidence—

- (a) as to the matters referred to in paragraph (1)(a) of that regulation in respect of the salary-related part (if it is not inactive) and as to the matters referred to in paragraph (1)(b) of that regulation in respect of the money purchase part (if it is not inactive); and

- (b) if either of those separate parts is inactive, as to the matters referred to in paragraph (1)(c) or, as the case may be, (d) of that regulation, as if that separate part were a scheme which had ceased to be contracted-out.

(7) Part III of those Regulations (salary-related contracted-out schemes) is to have effect only in relation to the salary-related part of the relevant scheme save that, in regulation 18, the references to the scheme (apart from the first) are to be read as references to the relevant scheme.

(8) Part IV of those Regulations (money purchase contracted-out schemes) is to have effect only in relation to the money purchase part of the relevant scheme.

(9) Part V of those Regulations (further requirements (all schemes) and overseas schemes) is to have effect in relation to each separate part of the relevant scheme save that, in regulation 44, there shall be added a further requirement that, in a case where—

- (a) a transfer payment is made in respect of a guaranteed minimum pension, section 9(2B) rights or protected rights between the separate parts of the relevant scheme, or
- (b) there is a change in relation to any member so that service which qualified for benefits under one separate part of the relevant scheme becomes service which qualifies for benefits under the other separate part and, in relation to the first-mentioned part, that member has accrued rights to a guaranteed minimum pension or protected rights which have accrued in respect of service before the principal appointed day,

the trustees or managers must, within 5 weeks of the date of the transfer payment or of the change, notify the Secretary of State of its occurrence, giving such particulars as the Secretary of State may reasonably require.

(10) In regulation 49 of those Regulations (insolvent schemes)—

- (a) subject to sub-paragraphs (b) and (c) below, the references to a scheme in that regulation are to be read as references to the relevant scheme;
- (b) the condition in paragraph (3)(a) of that regulation (requirement, in the case of a money purchase contracted-out scheme, for a determination by the Compensation Board) is to apply only in relation to the money purchase part of the relevant scheme and where—
  - (i) there has been no determination such as is mentioned in that paragraph; or
  - (ii) there has been such a determination but, in the opinion of the Secretary of State, it is not attributable to the money purchase part,
    - paragraph (1) of that regulation is to apply only in relation to any rights which a member has in the salary-related part;
- (c) in paragraph (4)(a)(ii) of that regulation the reference to a money purchase scheme is to be read as a reference to the money purchase part of the relevant scheme.

(11) Part VII of those Regulations (guaranteed minimum pensions) is to have effect only in relation to the salary-related part of the relevant scheme.

(12) The provision in regulation 70(1) of those Regulations for the continuation of a contracting-out certificate issued before the principal appointed day is to apply in the case of a relevant scheme which was a salary-related contracted-out scheme immediately before that day, save that the relevant scheme must satisfy the requirements of both subsection (2) and (3) of section 9 of the 1993 Act during the period referred to in that regulation.

(13) Regulation 71 of those Regulations (elections for replacement certificates by salary-related contracted-out schemes during transitional period) is also to apply during the period referred to in that regulation in the case of an election made with a view to a scheme which is contracted-out under section 9(2) of the 1993 Act becoming a mixed benefit contracted-out scheme.

(14) In regulation 72 of those Regulations (transitional requirements as to sufficiency of resources of salary-related schemes) references to the resources and liabilities of a scheme are to be read as references to the resources and liabilities of the relevant scheme.

**Transfer of guaranteed minimum pensions, section 9(2B) rights and protected rights between parts of a relevant scheme**

4.—(1) The following regulations are to be modified in relation to the separate parts of a relevant scheme in accordance with paragraph (2) below—

- (a) The Contracting-out (Transfer and Transfer Payment) Regulations 1996<sup>(8)</sup>;
- (b) The Protected Rights (Transfer Payment) Regulations 1996<sup>(9)</sup>.

(2) In a case where a transfer payment in respect of an earner's protected rights, accrued rights to a guaranteed minimum pension or accrued section 9(2B) rights is between the separate parts of the relevant scheme, there is to be added to any requirements which, by virtue of those Regulations, must be satisfied before a transfer payment may be made, the following further requirements—

- (a) that the cash equivalent of—
  - (i) those rights; or
  - (ii) where the transfer payment forms part of a larger payment giving effect to those and other rights, all the rights to which the payment is to give effect, has been calculated in a manner consistent with section 97 of the 1993 Act<sup>(10)</sup>, as at a date which is not more than 3 months before the date on which the payment is made;
- (b) the earner has been notified in writing of the amount of that cash equivalent; and
- (c) in a case where the transfer payment is in respect of guaranteed minimum pensions or section 9(2B) rights, that amount has not been reduced since he was so notified.

**Transitional arrangements for the certification of relevant schemes which were formerly contracted-out money purchase schemes**

5. In the case of a scheme which, immediately before 6th April 1997 or at any time during the period beginning with that day and ending on 5th April 1998, is a money purchase contracted-out scheme, any variation or issue of a contracting-out certificate in the event of that scheme becoming a relevant scheme may not have effect before that period has expired.

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

Department of Social Security  
25th July 1996

*Oliver Heald*  
Parliamentary Under-Secretary of State,

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<sup>(8)</sup> S.I. 1996/1462.

<sup>(9)</sup> S.I. 1996/1461.

<sup>(10)</sup> Section 97 was amended by Schedule 6 to the Pensions Act 1995.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations enable certain schemes which provide both salary-related and money purchase benefits to be contracted-out under Part III of the Pension Schemes Act 1993 after 6th April 1997.

Regulation 1 provides for citation, commencement and interpretation. In particular it provides for a scheme to which section 149 of the Pensions Act 1995 applies, being a scheme which provides both such pensions as would satisfy section 9(2) of the Pension Schemes Act 1993 and such pensions as would satisfy section 9(3) of that Act (“a relevant scheme”), to be treated as if those pensions were provided by separate parts of the scheme.

Regulation 2 provides for a relevant scheme to be treated, for the purposes of Part III of the Pension Schemes Act 1993, as if the separate parts of the scheme were separate schemes. It also modifies some provisions in Part III of that Act and provides for the separate parts of a relevant scheme to be treated as though they were separate schemes for the purposes of any regulations made under that Part.

Regulation 3 modifies the Occupational Pension Schemes (Contracting-out) Regulations 1996 in relation to the separate parts of a relevant scheme.

Regulation 4 modifies the Contracting-out (Transfer and Transfer Payment) Regulations 1996 and the Protected Rights (Transfer Payment) Regulations 1996 by providing for further requirements in a case where a transfer payment is between the separate parts of a relevant scheme.

Regulation 5 is a transitional provision relating to the variation or issue of a contracting-out certificate in respect of a relevant scheme which has previously been contracted-out under section 9(3) of the Pensions Schemes Act 1993.

An assessment of the compliance costs 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, Adelphi, 1—11 John Adam Street, London WC2N 6HT.