
STATUTORY INSTRUMENTS

1997 No. 785

PENSIONS

**The Occupational Pension Schemes (Assignment,
Forfeiture, Bankruptcy etc.) Regulations 1997**

<i>Made</i>	- - - -	<i>11th March 1997</i>
<i>Laid before Parliament</i>		<i>14th March 1997</i>
<i>Coming into force</i>	- -	<i>6th April 1997</i>

The Secretary of State for Social Security, in exercise of the powers conferred on him by sections 91(5), 92(3) and (6), 94(1), 124(1) and 174(2) and (3) of the Pensions Act 1995^{M1}, and of all other powers enabling him in that behalf, by this instrument, after consultation with such persons as he considered appropriate^{M2}, hereby makes the following regulations:

Modifications etc. (not altering text)

C1 Instrument applied in part by [The Stakeholder Pension Schemes Regulations 2000 \(S.I. 2000/1403\)](#), reg. 1(2), **Sch. 2**

Marginal Citations

M1 1995 c. 26. Section 124(1) is cited because of the meaning ascribed to "prescribed" and "regulations".
M2 See section 120(1) of the Pensions Act 1995.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997 and shall come into force on 6th April 1997.

(2) In these Regulations—

"the 1995 Act" means the Pensions Act 1995;

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...

"Armed Forces Pension Scheme" means the schemes under which pensions are payable by virtue of the Naval and Marine Pay and Pensions Act 1865^{M3}, Air Force (Constitution) Act 1917^{M4} or Army Pensions Warrant 1977^{M5}[^{F2}or section 1(1) of the Armed Forces (Pensions and Compensation) Act 2004];

“associated” has the same meaning as in section 435 of the Insolvency Act 1986^{M6} or section 74 of the bankruptcy (Scotland) Act 1985^{M7}; and

[^{F3}“normal minimum pension age” has the meaning given by section 279(1) of the Finance Act 2004;]

“public service pension scheme” has the same meaning as in section 1 of the Pension Schemes Act 1993^{M8} but does not include an Armed Forces Pension Scheme.

[^{F3}“registered scheme” means—

- (a) a scheme registered under section 153 of the Finance Act 2004;
 - (b) a scheme which was formerly registered under section 153 of that Act; or
 - (c) a scheme which was formerly approved under section 590 or 591 of the Income and Corporation Taxes Act 1988 immediately before 6th April 2006.]
- (3) In these Regulations, unless the context otherwise requires, a reference—
- (a) to a numbered regulation is to the regulation bearing that number in these Regulations;
 - (b) in a regulation to a numbered paragraph is to the paragraph bearing that number in that regulation;
 - (c) in a paragraph to a lettered sub-paragraph is to the sub-paragraph in that paragraph bearing that letter.

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| <p>F1 Words in reg. 1(2) omitted (6.4.2006) by virtue of Taxation of Pension Schemes (Consequential Amendments of Occupational and Personal Pension Schemes Legislation) Order 2006 (S.I. 2006/744), arts. 1, 14(2)(a)</p> <p>F2 Words in reg. 1(2) inserted (6.4.2005) by Armed Forces Pension Scheme Order 2005 (S.I. 2005/438), arts. 1, 4(2)</p> <p>F3 Words in reg. 1(2) inserted (6.4.2006) by Taxation of Pension Schemes (Consequential Amendments of Occupational and Personal Pension Schemes Legislation) Order 2006 (S.I. 2006/744), arts. 1, 14(2)(b)</p> |
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Marginal Citations

- M3** 1865 c. 73.
M4 1917 c. 51.
M5 Dated 17th June 1977.
M6 1986 c. 45.
M7 1985 c. 66.
M8 1993 c. 48.

Commutation of a pension under an occupational pension scheme

2.—[^{F4}(1) For the purposes of section 91(5)(c)(ii) and (iii) of the 1995 Act (inalienability of occupational pension does not apply to commutation in prescribed circumstances) the prescribed circumstances are where—

- (a) any amount payable as a lump sum to—
 - (i) the earner is permitted by the lump sum rule in section 166 of the Finance Act 2004 and qualifies as a trivial commutation lump sum for the purposes of paragraph 7 of Part 1 of Schedule 29 to that Act; or
 - (ii) the earner’s widow, widower or surviving civil partner is permitted by the lump sum death benefit rule in section 168 of that Act and qualifies as a trivial commutation

lump sum death benefit for the purposes of paragraph 20 of Part 2 of Schedule 29 to that Act; or

- [^{F5}(iii) the earner or the earner’s widow, widower or surviving civil partner is a payment—
 - (aa) by a registered pension scheme (within the meaning given in section 150(2) of the Finance Act 2004 (meaning of “pension scheme”)); and
 - (bb) that is described in Part 2 of the Registered Pension Schemes (Authorised Payments) Regulations 2009; or]

- (b) the scheme is being wound up and the aggregate amount of all benefits payable as a lump sum to—
 - (i) the earner is permitted by the lump sum rule in section 166 of that Act and qualifies as a winding-up lump sum for the purposes of paragraph 10 of Part 1 of Schedule 29 to that Act; or
 - (ii) the earner’s widow, widower or surviving civil partner is permitted by the lump sum death benefit rule in section 168 of that Act and qualifies as a winding-up lump sum death benefit for the purposes of paragraph 21 of Part 2 of Schedule 29 to that Act.]

[^{F6}(1A) There are also prescribed for the purposes of section 91(5)(c)(iii) of the 1995 Act the circumstances where—

- (a) the rights of the member consist only of rights derived from equivalent pension benefits under Part III of the National Insurance Act 1965; and
- (b) either—
 - (i) the member has consented to the commutation; or
 - (ii) he has not consented but the conditions in paragraph (4) are satisfied.]

[^{F7}(1B) There are also prescribed for the purposes of—

- (a) section 91(5)(c)(ii) of the 1995 Act the circumstances where the payment of a lump sum to a person is permitted in accordance with any of paragraphs (a) to (e) of the lump sum death benefit rule in section 168 of the Finance Act 2004 (lump sum death benefit rule);
- (b) section 91(5)(c)(iii) of the 1995 Act the circumstances where a person has reached normal minimum pension age but has not retired [^{F8}for the purposes of subsection (5)(c)(i) of that section, and] the payment of a lump sum to the person is permitted in accordance with paragraph (a) [^{F9}, (ba)]or (g) of the lump sum rule in section 166 of the Finance Act 2004 (lump sum rule).]

^{F10}(2)

(3) For the purposes of [^{F11}paragraph (1)(b)] an occupational pension scheme shall be treated as being wound up when any of the circumstances referred to in [^{F12}section 124(3A) and (3B) of the 1995 Act apply (but subject to section 124(3C) and (3E)].

[^{F13}(4) For the purposes of paragraph (1A)(b)(ii), the conditions are that—

- (a) the trustees or managers of the scheme have sent to the member’s last known address written notice of their intention to commute his rights derived from equivalent pension benefits under Part III of the National Insurance Act 1965; and
- (b) no response has been received from the member before the end of the period of two months beginning with the date on which the notice was sent.]

F4 Reg. 2(1) substituted (6.4.2006) by [Taxation of Pension Schemes \(Consequential Amendments of Occupational and Personal Pension Schemes Legislation\) Order 2006 \(S.I. 2006/744\)](#), arts. 1, **14(3)(a)**

- F5** Reg. 2(1)(a)(iii) inserted (1.12.2009) by Occupational and Personal Pension Schemes (Authorised Payments) Amendment Regulations 2009 (S.I. 2009/2930), regs. 1, **7**
- F6** Reg. 2(1A) substituted (6.4.2006) by Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2006 (S.I. 2006/778), regs. 1(1)(b), **6(2)(a)**
- F7** Reg. 2(1B) inserted (6.4.2006) by Taxation of Pension Schemes (Consequential Amendments of Occupational and Personal Pension Schemes Legislation) Order 2006 (S.I. 2006/744), arts. 1, **14(3)(b)**
- F8** Words in reg. 2(1B)(b) substituted (6.4.2016) by The Pension Protection Fund and Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2016 (S.I. 2016/294), regs. 1, **3**
- F9** Word in reg. 2(1B)(b) inserted (6.4.2015) by The Occupational Pension Schemes (Consequential and Miscellaneous Amendments) Regulations 2015 (S.I. 2015/493), regs. 1, **4**
- F10** Reg. 2(2) omitted (6.4.2006) by virtue of Taxation of Pension Schemes (Consequential Amendments of Occupational and Personal Pension Schemes Legislation) Order 2006 (S.I. 2006/744), arts. 1, **14(3)(c)**
- F11** Words in reg. 2(3) substituted (6.4.2006) by Taxation of Pension Schemes (Consequential Amendments of Occupational and Personal Pension Schemes Legislation) Order 2006 (S.I. 2006/744), arts. 1, **14(3)(d)**
- F12** Words in reg. 2(3) substituted (6.4.2005) by Occupational Pension Schemes (Winding Up etc.) Regulations 2005 (S.I. 2005/706), reg. 1(2), **Sch. para. 12**
- F13** Reg. 2(4) added (6.4.2006) by Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2006 (S.I. 2006/778), regs. 1(1)(b), **6(2)(b)**

Charge or lien on or set-off against transfer credits

3. For the purposes of section 91(5)(d) of the 1995 Act (charge or a lien or set-off against transfer credits by employer) the prescribed transfer credits are those transfer credits attributable to employment with the same employer or an associated employer and the benefits of which could have been charged or a lien or set-off exercised in respect of such benefits under the occupational pension scheme from which the transfer was made.

Charge or lien on or set-off against an occupational pension

4. For the purposes of section 91(5)(e) of the 1995 Act (charge or lien or set-off against entitlement or accrued right to a pension for the purpose of discharging some monetary obligation to the scheme) the prescribed circumstance is where a monetary obligation arises out of a breach of trust by the person in question and the court has relieved him wholly or partly from personal liability under section 61 of the Trustee Act 1925^{M9} or section 32 of the Trusts (Scotland) Act 1921^{M10}.

Marginal Citations

- M9** 1925 c. 19.
- M10** 1921 c. 58.

Payability of pension where forfeiture occurs

5. For the purposes of section 92(3)(d) of the 1995 Act (class of persons to whom a forfeited pension may be paid) the prescribed class is any person (other than a person mentioned in section 92(3)(a) to (c)) to whom, under the rules of the scheme, the pension was or could have been paid.

Forfeiture of occupational pension

6.—(1) For the purposes of section 92(6) of the 1995 Act (a pension under an occupational pension scheme cannot be forfeited except in prescribed circumstances) the prescribed circumstances are where—

- (a) a pension is payable to a member's [^{F14}widow, widower or surviving civil partner], dependant or any other person who is nominated under the scheme rules by the member and that person is convicted of the offence of murder or manslaughter of that member or any other offence of which unlawful killing of that member is an element;
- (b) a person in respect of whom a pension is or would have been payable has caused a monetary loss to the scheme as a result of—
 - (i) a criminal, negligent or fraudulent act or omission by him, or
 - (ii) in the case of a trust scheme of which the person is a trustee, a breach of trust by him;
- (c) in the case of a public service pension scheme—
 - (i) the member is convicted of an offence committed in connection with his service as a public servant, and
 - (ii) a Minister of the Crown certifies that the commission of that offence has been gravely injurious to the interests of the State or is liable to lead to serious loss of confidence in the public service;
- (d) in the case of the Armed Forces Pension Scheme—
 - (i) the member is convicted of an offence committed in connection with his service as a member of the Armed Forces, and
 - (ii) the Secretary of State considers that offence to have been gravely injurious to the defence, security or other interests of the State.

(2) For the purposes of paragraph (1)(a) unlawful killing shall include the case of a person who has unlawfully aided, abetted, counselled or procured the death of a person.

(3) A person's entitlement or accrued right to a pension may be forfeited under paragraph (1)(b) to the extent only that it does not exceed the amount of the monetary loss to the scheme, or (if less) the value of the person's entitlement or accrued right under the scheme.

F14 Words in reg. 6(1)(a) substituted (5.12.2005) by [The Civil Partnership \(Pensions, Social Security and Child Support\) \(Consequential, etc. Provisions\) Order 2005 \(S.I. 2005/2877\)](#), art. 1, [Sch. 2 para. 7\(3\)](#) (with art. 3)

Modification of section 91 of the 1995 Act in respect of public service pension schemes and the Armed Forces Pension Scheme

7. Section 91(5)(d) of the 1995 Act shall have effect in its application to public service pension schemes and the Armed Forces Pension Scheme with the omission of the words "and arising out of a criminal, negligent or fraudulent act or omission by him".

Exemptions from the inalienability and forfeiture provisions

8.—(1) If a scheme is one the trustees of which have made ^{F15}...a loan in respect of which the conditions of regulation 6(8) of the Occupational Pension Schemes (Investment) Regulations 1996 ^{M11} are met (investments to which the restrictions do not apply), [^{F16}section 91(1)] of the 1995 Act shall not apply to the extent that it would [^{F17}prevent enforcement of the security referred to in subparagraph (b) of that regulation 6(8).]

[^{F18}(1A) If a scheme is one the trustees of which have given or wish to give security in respect of which the conditions of regulation 6(8A) of the Occupational Pension Schemes (Investment) Regulations 1996 are met (investments to which restrictions do not apply), section 91(1) of the 1995 Act shall not apply to the extent that it would prevent that security being given or enforced.]

(2) Section 91(1)(a) of the 1995 Act shall not apply to that part of an occupational pension scheme under which there is an entitlement or an accrued right to a lump sum retirement benefit and the Inland Revenue have granted a concession, in accordance with a statement issued on 11th October 1996 ^{M12}, to a member in respect of that lump sum retirement benefit.

(3) Subject to paragraph (4), section 91(2) of the 1995 Act shall not apply in relation to schemes which are not [^{F19}registered] schemes.

(4) Paragraph (3) shall not apply to public service pension schemes and the Armed Forces Pension Scheme.

(5) Section 92(4)(a) of the 1995 Act (forfeiture) shall not apply in relation to public service pension schemes.

[^{F20}(6) Section 91(1)(a) of the 1995 Act (inalienability of occupational pension) shall not apply to a scheme to the extent that it would prevent the making of any arrangement to effect a surrender of excess rights, at the option of the person in question, for the purposes of paragraph 12 of Schedule 36 to the Finance Act 2004 (pension schemes etc : transitional provisions and savings).]

[^{F21}(7) Section 91(1)(a) of the 1995 Act (inalienability of occupational pension) does not apply to a scheme where —

- (a) the scheme administrator satisfies any part of a person’s liability to the annual allowance charge under section 237A of the Finance Act 2004 (liability of individual) at the request of that person, to the extent that it would prevent an adjustment to that person’s benefits under the scheme as a consequence of the scheme administrator satisfying that liability, or
- (b) the scheme administrator satisfies a liability under section 237B of the Finance Act 2004 (liability of scheme administrator) in respect of a person, to the extent that it would prevent a consequential adjustment to that person’s benefits under the scheme under section 237E(1) of that Act (consequential benefit adjustments to be reasonable etc).]

[^{F22}(7A) Section 91(1)(c) of the 1995 Act (inalienability of occupational pension) does not apply to a scheme or a section of a scheme which is a collective money purchase scheme for the purposes of Part 1 of the Pension Schemes Act 2021 and which is pursuing continuity option 1 within the meaning of sections 34 and 36 of that Act, to the extent that it would prevent a reduction to the quantification of the value of a beneficiary’s accrued rights to benefits under the scheme to take account of any periodic income received by that beneficiary in accordance with Schedule 6 (continuity option 1: transfer out and winding up) to the Occupational Pension Schemes (Collective Money Purchase Schemes) Regulations 2022.]

[^{F21}(8) In paragraph (7)—

“annual allowance charge” has the meaning given in section 227(1) of the Finance Act 2004 (annual allowance charge), and

“scheme administrator” has the meaning given in section 270 of the Finance Act 2004 (meaning of “scheme administrator”).]

[^{F23}(9) In paragraph (7A), “periodic income” has the meaning given by paragraph 1(1) of Schedule 6 to the Occupational Pension Schemes (Collective Money Purchase Schemes) Regulations 2022.]

- F15** Words in reg. 8(1) deleted (9.8.1999) by The Occupational Pension Schemes (Investment, and Assignment, Forfeiture, Bankruptcy etc.) Amendment Regulations 1999 (S.I. 1999/1849), regs. 1(a), **3(2)(a)**
- F16** Words in reg. 8(1) substituted (9.8.1999) by The Occupational Pension Schemes (Investment, and Assignment, Forfeiture, Bankruptcy etc.) Amendment Regulations 1999 (S.I. 1999/1849), regs. 1(a), **3(2)(b)**
- F17** Words in reg. 8(1) substituted (9.8.1999) by The Occupational Pension Schemes (Investment, and Assignment, Forfeiture, Bankruptcy etc.) Amendment Regulations 1999 (S.I. 1999/1849), regs. 1(a), **3(2)(c)**
- F18** Reg. 8(1A) inserted (9.8.1999) by The Occupational Pension Schemes (Investment, and Assignment, Forfeiture, Bankruptcy etc.) Amendment Regulations 1999 (S.I. 1999/1849), regs. 1(a), **3(3)**
- F19** Word in reg. 8(3) substituted (6.4.2006) by Taxation of Pension Schemes (Consequential Amendments of Occupational and Personal Pension Schemes Legislation) Order 2006 (S.I. 2006/744), arts. 1, **14(4)(a)**
- F20** Reg. 8(6) added (6.4.2006) by Taxation of Pension Schemes (Consequential Amendments of Occupational and Personal Pension Schemes Legislation) Order 2006 (S.I. 2006/744), arts. 1, **14(4)(b)**
- F21** Reg. 8(7)(8) inserted (11.8.2011) by The Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) (Amendment) Regulations 2011 (S.I. 2011/1801), regs. 1, **2**
- F22** Reg. 8(7A) inserted (1.8.2022) by The Occupational Pension Schemes (Collective Money Purchase Schemes) (Modifications and Consequential and Miscellaneous Amendments) Regulations 2022 (S.I. 2022/337), regs. 1(3), **5(2)(a)**
- F23** Reg. 8(9) inserted (1.8.2022) by The Occupational Pension Schemes (Collective Money Purchase Schemes) (Modifications and Consequential and Miscellaneous Amendments) Regulations 2022 (S.I. 2022/337), regs. 1(3), **5(2)(b)**

Marginal Citations

M11 S.I. 1996/3127.

M12 A copy of the statement can be obtained from Inland Revenue Information Centre, South West Wing, Bush House, Strand, London WC2B 4RD.

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

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

Changes to legislation: *There are currently no known outstanding effects for the The Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997. (See end of Document for details)*

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997 ("the Regulations") are the first Regulations to be made under sections 91 to 94 of the Pensions Act 1995 (c.26).

Regulation 1 deals with citation, commencement and interpretation.

Regulation 2 prescribes the circumstances where an occupational pension may be commuted.

Regulation 3 prescribes the type of transfer credit which may be included in a charge or lien on, or set-off in respect of, a monetary obligation due to an employer.

Regulation 4 prescribes the circumstances where a pension may not be charged or a lien exercised or a set-off exercised in respect of it, for the purpose of discharging some monetary obligation to the scheme.

Regulation 5 prescribes the class of persons to whom a forfeited pension may be paid.

Regulation 6 prescribes the circumstances where a pension under an occupational pension scheme can be forfeited.

Regulation 7 modifies section 91(5)(d) of the Pensions Act 1995 (charge or lien or set-off against entitlement in respect of a monetary obligation due to the employer) in respect of public service pension schemes and the Armed Forces Pension Scheme.

Regulation 8 provides for certain schemes to be exempt from the inalienability and forfeiture provisions.

An assessment of the compliance cost for employers of the measures arising from the Pensions Act 1995, including regulations, has been placed in the libraries of both Houses of Parliament. Copies can be obtained by post from the Department of Social Security, Occupational Pensions Security, Adelphi, 1-11 John Adam Street, London WC2 6HT.

Changes to legislation:

There are currently no known outstanding effects for the The Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997.