

1999 No. 3198

PENSIONS

**The Personal and Occupational Pension Schemes
(Miscellaneous Amendments) Regulations 1999**

<i>Made</i>	- - -	<i>30th November 1999</i>
<i>Laid before Parliament</i>		<i>2nd December 1999</i>
<i>Coming into force</i>		<i>30th December 1999</i>

The Secretary of State for Social Security, in exercise of powers conferred by sections 7(2), 9(2B), (2C), (3) and (6)(a), 10(2), 11(5), 12C(1)(a) and (b), 19(4) and (5), 28(2), 113, 168(4), 181, and 182(1) to (3) of the Pension Schemes Act 1993(a) and sections 17(4), 19(4), 21(4), 47(9), 49(1), 50(3), 58(2), 59(1), 67(5), 73(7), 75(10), 87(3), 88(1), 124(1) and 174(1) to (3) of the Pensions Act 1995(b), and of all other powers enabling him in that behalf, having consulted such persons as he considered appropriate(c), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1999 and shall come into force on 30th December 1999.

(2) In these Regulations, “the Disclosure Regulations” means the Occupational Pension Schemes (Disclosure of Information) Regulations 1996(d).

Amendment of the Contracting-out (Transfer and Transfer Payment) Regulations 1996

2. In the Contracting-out (Transfer and Transfer Payment) Regulations 1996(e) in regulation 1(2) (interpretation) in the definition of “section 9(2B) rights”, in paragraph (b)(ii) delete “contracted-out”.

Amendment of the Occupational Pension Schemes (Contracting-out) Regulations 1996

3.—(1) The Occupational Pension Schemes (Contracting-out) Regulations 1996(f) shall have effect with the following amendments.

(2) In regulation 1(2) (interpretation)—

- (a) in the definition of “overseas scheme” after “the United Kingdom” insert “; but does not include a scheme which is contracted-out in the Isle of Man by virtue of satisfying section 9(2) or (3) of the 1993 Act as it has effect in the Isle of Man(g)”;

(a) 1993 c.48; section 9 was amended by sections 136(3) and (4), 151 and 177 of, paragraphs 18, 21 and 24 of Schedule 5 to, and Part III of Schedule 7 to, the Pensions Act 1995 (c.26) and by section 1(1) of, and paragraph 35 of Schedule 1 to, the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2). Section 12C was inserted by section 136(5) of the Pensions Act 1995. Section 181 is cited for the meanings given to “prescribe” and “regulations”.

(b) 1995 c.26; section 124(1) is cited for the meanings given to “prescribed” and “regulations”.

(c) See section 185(1) of the Pension Schemes Act 1993 (as amended by paragraph 46 of Schedule 3, paragraph 80 of Schedule 5, and Part I of Schedule 7, to the Pensions Act 1995) and section 120 of the Pensions Act 1995.

(d) S.I. 1996/1655; regulation 4(2) (relevant to paragraph 26 of Schedule 1) was amended by S.I. 1997/3038.

(e) S.I. 1996/1462; the definition of “section 9(2B) rights” was substituted by S.I. 1997/786.

(f) S.I. 1996/1172; S.I. 1997/786 substituted the definition of “section 9(2B) rights” and amended regulation 48.

(g) See Article 3 of, and the Schedule to, the Pension Schemes Act 1993 (Application) Order 1995, Statutory Document No. 531/95, which applies (with modifications) section 9 of the Pension Schemes Act 1993 (c.48) to the Isle of Man; and see Article 3(1)(b) of, and Schedule 1 to, the Pensions Act 1995 (Application) Order 1997, Statutory Document No. 501/97, which applies to the Isle of Man the amendments to that section 9 in section 136 of the Pensions Act 1995 (c.26).

(b) in the definition of “section 9(2B) rights”, in paragraph (b)(ii) delete “contracted-out”.

(3) In regulation 12 (special provision for holding companies and subsidiaries) in paragraph (2)(c) for “an employer in the scheme which is” substitute “a body corporate which is an employer in the scheme and is”.

(4) In regulation 48 (special provision for overseas schemes) in paragraph (7) for “any members who are resident in Great Britain” substitute “rights which have accrued as a result of contracted-out employment in the scheme in Great Britain”.

Amendment of the Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations 1996

4.—(1) The Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations 1996(a) shall have effect with the following amendments.

(2) In regulation 5(3)(b) (former employers) for “and has been paid before the applicable time;” substitute—

“and—

- (i) has been paid before the applicable time, or
- (ii) if not so paid, was not so paid solely because he was not notified of the debt, and of the amount of it, sufficiently in advance of the applicable time for it to be paid before the applicable time;”.

(3) In regulation 6(2)(b) (ceasing to participate: transitional provision) for “and has been paid before the applicable time;” substitute—

“and—

- (i) has been paid before the applicable time, or
- (ii) if not so paid, was not so paid solely because he was not notified of the debt, and of the amount of it, sufficiently in advance of the applicable time for it to be paid before the applicable time;”.

Amendment of the Occupational Pension Schemes (Disclosure of Information) Regulations 1996

5.—(1) The Disclosure Regulations(b) shall have effect with the following amendments.

(2) In regulation 5(5) (information to be made available to individuals) for “within 9 months of the end of the first scheme year” to the end substitute “within 12 months of the end of each scheme year.”.

(3) In regulation 11(1) (penalties) after “to (12)” insert “, 5(14)”.

(4) In paragraph 26 of Schedule 1—

(a) after “is available” insert “at any time”;

(b) for “in connection with” to the end substitute—

“in connection with any—

- (a) pensions query they may have; or
 - (b) difficulty which they have failed to resolve with the trustees or administrators of the scheme,
- and the address at which OPAS may be contacted.”.

Amendment of the Occupational Pension Schemes (Internal Dispute Resolution Procedures) Regulations 1996

6.—(1) The Occupational Pension Schemes (Internal Dispute Resolution Procedures) Regulations 1996(c) shall have effect with the following amendments.

(2) In regulation 5(2) (notice of a decision)—

(a) after sub-paragraph (c) delete “and”;

(b) after sub-paragraph (d) insert—

“and

(a) S.I. 1996/3128, to which there are amendments not relevant to these Regulations.

(b) S.I. 1996/1655; regulation 4(2) (relevant to paragraph 26 of Schedule 1) was amended by S.I. 1997/3038.

(c) S.I. 1996/1270.

- (e) a statement that OPAS (The Pensions Advisory Service) is available to assist members and beneficiaries of the scheme in connection with any difficulty with the scheme which remains unresolved and the address at which OPAS may be contacted.”.

(3) In regulation 7(2)(d) (notice of decision from trustees or managers)–

- (a) for “difficulties” to “scheme” substitute “any difficulty with the scheme which remains unresolved”;
- (b) for “it” substitute “OPAS”.

Amendment of the Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations 1996

7.—(1) The Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations 1996(a) shall have effect with the following amendments.

(2) In regulation 2(1) (general interpretation) in the definition of “relevant self-administered scheme”–

- (a) in paragraph (b)–
 - (i) for “satisfies paragraph (b)” substitute “satisfies paragraphs (b) and (c)”;
 - (ii) after “Taxes Act” insert “, or”;
- (b) after paragraph (b) insert–
 - “(c) a scheme which satisfies paragraphs (b) and (c) of that definition and, if it satisfied paragraph (a) of that definition, would be a scheme which the Commissioners of Inland Revenue would not have been prohibited from approving under section 591 of the Taxes Act before 7th April 1998(b);”.

(3) In regulation 10(2)(a) (time limits for making alternative arrangements under section 17) for “the alternative arrangements are approved” substitute “the employer gives notice to the trustees under regulation 9(1)(b)(ii) in respect of the approval of the arrangements”.

(4) In regulation 16(2)(a) (time limits for making alternative arrangements under section 19) for “the alternative arrangements are approved” substitute “the employer gives notice to the company under regulation 15(1)(b)(ii) in respect of the approval of the arrangements”.

(5) In Schedule 3 (Modifications of Pensions Act 1995 and these Regulations)–

- (a) in paragraph 2(4) for “regulation 10(2)(b)(i)” substitute “regulation 10(2)(a) and (b)(i)”;
- (b) in paragraph 3(4) for “regulation 16(2)(b)(i)” substitute “regulation 16(2)(a) and (b)(i)”.

Amendment of the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996

8.—(1) The Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996(c) shall have effect with the following amendments.

(2) In regulation 16(2) (periods covered by schedules of contributions) after “effective date” insert “, or the date on which the rates of contributions shown in the schedule are certified.”.

(3) In regulation 23 (failure to pay contributions due under schedule of contributions)–

- (a) in paragraph (1)(a) before “must be given to the Authority” insert “subject to paragraph (1A),”;
- (b) after paragraph (1) insert–
 - “(1A) No notice need be given under paragraph (1)(a) if–
 - (a) payment has been made before the end of the period of 10 days beginning with the due date; and
 - (b) the default is only the first or second such default in the period of twelve months ending on and including the due date.”;

(c) in paragraph (3) for “for the purposes of paragraphs (1) and (2)” substitute “for the purposes of paragraphs (1) to (2)”.

(a) S.I. 1996/1216; the relevant amending instrument is S.I. 1997/786.

(b) 7th April 1998 is the date of commencement of the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Small Self-administered Schemes) (Amendment) Regulations 1998, S.I. 1998/728, which amended S.I. 1991/1614, and of the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Excepted Provisions) Regulations 1998, S.I. 1998/729.

(c) S.I. 1996/1536, to which there are amendments not relevant to these Regulations.

Amendment of the Occupational Pension Schemes (Modification of Schemes) Regulations 1996

9.—(1) The Occupational Pension Schemes (Modification of Schemes) Regulations 1996(a) shall have effect with the following amendments.

(2) In regulation 1(2) (interpretation)—

- (a) before the definition of “the 1995 Act” insert ““the 1993 Act” means the Pension Schemes Act 1993(b);”;
- (b) in the definition of “public service pension scheme” for “the Pension Schemes Act 1993” substitute “the 1993 Act”.

(3) For regulation 6 (exemption from the restriction on powers to modify schemes) substitute—

“**6.**—(1) For the purposes of section 67(5) of the 1995 Act (restriction on the power to modify does not apply to the exercise of a power in a prescribed manner) the prescribed manners are—

- (a) subject to paragraph (2), any alteration to scheme rules to provide, or make further or different provision, for an entitlement or accrued right to a pension under an occupational pension scheme—
 - (i) to be assigned, commuted or surrendered,
 - (ii) to be charged or to have a lien exercised in respect of it,
 - (iii) to have a set-off exercised in respect of it,
 - (iv) to be forfeited;
- (b) any alteration to scheme rules to provide, or make further or different provision, under section 73(2)(a)(i), by virtue of section 73(4)(b), of the 1993 Act for a transfer of accrued rights, where the alteration results in a provision which is expressed in the scheme rules to be conditional upon compliance with regulation 12 of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991(c) (transfer of member’s accrued rights without consent);
- (c) in the case of a trust scheme, any alteration to scheme rules, or (for the avoidance of doubt) to practice under the scheme, or to both, to provide for the revaluation of earnings factors for the purposes of section 14(2) of the 1993 Act (earner’s guaranteed minimum) in accordance with section 16(1) or (2) of that Act;
- (d) an amendment to scheme rules where the amendment is one that the Inland Revenue requires so that the scheme continues to be approved under section 590 or 591 of the Income and Corporation Taxes Act 1988(d) (conditions for approval of retirement benefit schemes and discretionary approval);
- (e) in the case of an occupational pension scheme which is not a trust scheme, the exercise of the power by the managers with the member’s consent, except in relation to alterations for the purposes mentioned in sub-paragraphs (a) and (b).

(2) An alteration does not fall within paragraph (1)(a) if the transaction provided for (or any part of it) is prohibited by, or by regulations under(e), any of sections 91 to 94 of the 1995 Act or any other enactment, or by any other rule of law.”.

Amendment of the Occupational Pension Schemes (Scheme Administration) Regulations 1996

10.—(1) The Occupational Pension Schemes (Scheme Administration) Regulations 1996(f) shall have effect with the following amendments.

(2) For regulation 5(10) (manner and terms of appointment and removal of professional advisers) substitute—

-
- (a) S.I. 1996/2517, to which there are amendments not relevant to these Regulations.
 - (b) 1993 c.48.
 - (c) S.I. 1991/167; relevant amending instruments are S.I.’s 1992/1531, 1993/1822, 1994/1062, 1995/3067, 1996/2131, 1997/786, 1999/2543.
 - (d) 1988 c.1.
 - (e) See the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997, S.I. 1997/785. S.I. 1999/1849 amended regulation 8(1) and inserted regulation 8(1A).
 - (f) S.I. 1996/1715, to which there are amendments not relevant to these Regulations.

- “(10) Where a statement or declaration is made in accordance with paragraph (4) or (7), the trustees or managers shall–
- (a) furnish the remaining auditor or actuary to the scheme with a copy of the statement or declaration no later than 14 days after the trustees or managers receive it; and
 - (b) furnish the succeeding auditor or actuary with a copy of the statement or declaration–
 - (i) no later than 14 days after the date on which the trustees or managers receive it; or
 - (ii) no later than the date of the succeeding auditor’s or actuary’s appointment, whichever is the later.”.
- (3) In regulation 11 (exemption from the requirement for money to be kept by the trustees)–
- (a) in paragraph (1)(a)–
 - (i) for “a separate” substitute “an”;
 - (ii) after “that person” insert “and separate from one held by or on behalf of the employer as employer”;
 - (b) in paragraph (1)(b) for “a separate account” to the end substitute–
 - “an account–
 - (i) kept by them at any of the institutions specified in paragraphs 1 to 6 of Schedule 2 to the Banking Act 1987(a);
 - (ii) separate from one held by or on behalf of the employer as employer; and
 - (iii) in which the money received by them is to be held.”.
- (4) In regulation 19(1) (requirements which a payment schedule must satisfy) in subparagraph (a)–
- (a) after “amounts” insert “prescribed in regulation 18”;
 - (b) after “year;” insert “and”.
- (5) In regulation 21 (circumstances where notice of non-payment of any amount payable to a scheme need not be given) insert the following paragraph–
- “(3) Notice need not be given under regulation 20(a) if–
- (a) payment has been made no later than 10 days after the due date; and
 - (b) the default is only the first or second such default in the period of 12 months ending on and including the due date.”.

Amendment of the Occupational Pension Schemes (Winding Up) Regulations 1996

11. In regulation 3 of the Occupational Pension Schemes (Winding Up) Regulations 1996(b) (modifications of s.73(3))–

- (a) in paragraph (1)(c) for “modification” substitute “modifications”;
- (b) for paragraph (7) substitute–
 - “(7) In–
 - (a) section 73(3)(d) after “paragraphs” insert “(aa),”; and
 - (b) the words following section 73(3)(d) for “paragraphs (b) to (d)” substitute “paragraphs (aa) to (d)”.

Amendment of the Personal and Occupational Pension Schemes (Protected Rights) Regulations 1996

12. In the Personal and Occupational Pension Schemes (Protected Rights) Regulations 1996(c) in regulation 1(2) (interpretation) in the definition of “section 9(2B) rights”, in paragraph (b)(ii) delete “contracted-out”.

(a) 1987 c.22; paragraph 6 was amended by section 120(2) of, and Part I of Schedule 22 to, the Friendly Societies Act 1992 (c.40).

(b) S.I. 1996/3126, to which there are amendments not relevant to these Regulations.

(c) S.I. 1996/1537; the definition of “section 9(2B) rights” was substituted by S.I. 1997/786.

Amendment of the Protected Rights (Transfer Payment) Regulations 1996

13. In the Protected Rights (Transfer Payment) Regulations 1996^(a) in regulation 1(2) (interpretation) in the definition of “section 9(2B) rights”, in paragraph (b)(ii) delete “contracted-out”.

Amendment of the Occupational Pension Schemes (Discharge of Liability) Regulations 1997

14.—(1) The Occupational Pension Schemes (Discharge of Liability) Regulations 1997^(b) shall have effect with the following amendments.

(2) In regulation 1(2) (interpretation) in the definition of “the 1995 Act” for “Pension” substitute “Pensions”.

(3) In regulation 4(1)(b) (conditions on which policies of insurance and annuity contracts may be commuted) for “, and the earner—” to the end substitute—

“, and the earner—

(i) has attained the age of 50, or

(ii) is suffering from an incapacity or serious ill-health prior to normal pension age, and the commutation would not prevent approval of the scheme under section 591 of the Income and Corporation Taxes Act 1988^(c) (discretionary approval), or continuing approval of the scheme under section 590 (conditions for approval of retirement benefit schemes) or 591 of that Act.”.

(4) For regulation 11(5) substitute—

“(5) For the purposes of paragraph 3(d)—

“incapacity” means physical or mental deterioration which is sufficiently serious to prevent a person from following his normal employment or which seriously impairs his earning capacity;

“serious ill-health” has the same meaning as in regulation 4(4).”.

Transitional provision

15.—(1) Nothing in regulation 5, or in the Disclosure Regulations as amended by regulation 5(4), shall require the information specified in paragraph 26 of Schedule 1 to those Regulations as amended by regulation 5(4) to be supplied to a person or trade union if the condition in paragraph (2) is met.

(2) The condition referred to in paragraph (1) is that, at the date of commencement of these Regulations, the information specified in that paragraph 26 as in force immediately prior to commencement of these Regulations has already been supplied to that person or trade union in compliance with regulation 4 or 8, as the case may be, of the Disclosure Regulations in relation to the event or circumstances which would, apart from this regulation, give rise to a requirement for such compliance.

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

30th November 1999

Jeff Rooker
Minister of State,
Department of Social Security

^(a) S.I. 1996/1461; the definition of “section 9(2B) rights” was substituted by S.I. 1997/786.

^(b) S.I. 1997/784.

^(c) 1988 c.1.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend a number of sets of regulations related to the Pension Schemes Act 1993 and the Pensions Act 1995.

Regulation 1 relates to citation, commencement and interpretation.

Regulations 2 to 14 contain miscellaneous amendments to the following sets of regulations, the–

- Contracting-out (Transfer and Transfer Payment) Regulations 1996
- Occupational Pension Schemes (Contracting-out) Regulations 1996
- Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations 1996
- Occupational Pension Schemes (Disclosure of Information) Regulations 1996 (“the Disclosure Regulations”)
- Occupational Pension Schemes (Internal Dispute Resolution Procedures) Regulations 1996
- Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations 1996
- Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996
- Occupational Pension Schemes (Modification of Schemes) Regulations 1996
- Occupational Pension Schemes (Scheme Administration) Regulations 1996
- Occupational Pension Schemes (Winding Up) Regulations 1996
- Personal and Occupational Pension Schemes (Protected Rights) Regulations 1996
- Protected Rights (Transfer Payment) Regulations 1996
- Occupational Pension Schemes (Discharge of Liability) Regulations 1997

Regulations 2 to 14 include amendments which–

- clarify the position of schemes contracted-out in the Isle of Man within the UK contracting-out regime;
- clarify the definition of “section 9(2B) rights”;
- provide for an additional case where, even if a debt (which arose when they ceased to be employers in relation to the scheme) is unpaid, former employers of a multi-employer scheme are not liable for debts arising at a later applicable time. This will apply where the sole reason the debt was not paid is that the employer was not informed of it in time;
- require complainants to be reminded of the existence of OPAS (the Pensions Advisory Service) earlier in the complaints procedure;
- extend the exemption to section 67 of the Pensions Act 1995;
- allow some flexibility in reporting to the Occupational Pensions Regulatory Authority late payment of contributions;

Regulation 15 is a transitional provision to ensure that the amendment in regulation 5(4) does not result in schemes having to comply afresh with regulation 4 or 8 of the Disclosure Regulations simply due to that amendment.

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PENSIONS

**The Personal and Occupational Pension Schemes
(Miscellaneous Amendments) Regulations 1999**

£2.00

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under the authority and superintendence of Carol Tullo,
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WO 5810 12/99 ON (MFK)