
STATUTORY INSTRUMENTS

2002 No. 681

The Occupational and Personal Pension Schemes (Contracting-out) (Miscellaneous Amendments) Regulations 2002

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

2.—(1) The Occupational Pension Schemes (Contracting-out) Regulations 1996(1) shall be amended in accordance with the following paragraphs of this regulation.

(2) In regulation 3 (notices by employers of intended election for issue of contracting-out certificate), in paragraph (2)—

- (a) sub-paragraph (c) shall be omitted; and
- (b) in sub-paragraph (g)—
 - (i) after head (i) there shall be inserted the word “and”, and
 - (ii) head (iii) shall be omitted.

(3) In regulation 6 (information to be included in an election), in paragraph (2), sub-paragraphs (e) and (f) shall be omitted.

(4) In regulation 9 (making of elections by employers for variation or surrender of contracting-out certificates) for paragraph (1) there shall be substituted the following paragraph:—

“(1) Subject to the provisions of paragraphs (2), (3) and (7) and regulation 10, an election with a view to the variation or surrender of a contracting-out certificate—

- (a) may be made only after notices of intention have been given in accordance with paragraphs (4) and (5); and
- (b) shall be made in writing to the Inland Revenue.”.

(5) In regulation 16 (requirement to confirm relevant requirements are satisfied), in paragraph (1) for the words “written confirmation and such” there shall be substituted the words “such written confirmation and any”.

(6) In regulation 18 (requirement as to resources of schemes), in paragraph (2), after the word “apply” (in the second place that word appears) there shall be inserted the words “or to any scheme in respect of which any Minister of the Crown has given a guarantee, or made any other arrangements, for the purpose of securing that the assets of the scheme are sufficient to meet its liabilities”.

(7) For regulation 19 (lump sum benefits and salary related contracted-out schemes) there shall be substituted the following regulation:—

“Lump sum benefits and salary related contracted-out schemes

19. A salary related contracted-out scheme may not provide for the payment of a lump sum instead of a pension except—

- (a) in accordance with—

- (i) regulation 20 (trivial commutation of benefits derived from section 9(2B) rights), or
 - (ii) regulation 60 (trivial commutation of guaranteed minimum pension); or
 - (b) to the extent permitted—
 - (i) in the case of a scheme which is exempt approved within the meaning of section 592(1) of the Taxes Act⁽²⁾ or a scheme in such respect of which an application for such approval has not yet been determined, under the rules of that scheme in accordance with that approval, or
 - (ii) in the case of a scheme which is a relevant statutory scheme within the meaning of section 611A of the Taxes Act⁽³⁾, under the regulations or rules governing that scheme as a relevant statutory scheme.”.
 - (8) In regulation 20 (trivial commutation of benefits derived from section 9(2B) rights)—
 - (a) the words from “For the purposes” to “commutation” shall be numbered as paragraph (1) of that regulation; and
 - (b) after that paragraph there shall be inserted the following paragraphs:—
 - “(2) The condition specified in paragraph (1)(a) shall not apply where—
 - (a) the scheme is being wound up; or
 - (b) where the earner is a member of more than one scheme relating to the same employment, both or all of those schemes are being wound up;
- but paragraph (3) shall apply instead.
- (3) Where this paragraph applies, the aggregate amount of benefit which has accrued to the earner at the date of winding up shall be treated for the purposes of paragraph (1) (b) as the amount of all benefits payable to him under the scheme.”.
- (9) After regulation 20 there shall be inserted the following new regulation:—

“Suspension of section 9(2B) rights

20A.—(1) In so far as a person’s accrued rights under an occupational pension scheme are section 9(2B) rights, the circumstances specified in paragraph (2) are prescribed for the purposes of subsection (6) of section 92 of the 1995 Act (circumstances in which subsection (1) of that section does not prevent forfeiture of rights under an occupational pension scheme).

- (2) The circumstances referred to in paragraph (1) are that—
 - (a) the person entitled to payments giving effect to those rights is, in the opinion of the trustees of the scheme, unable to act by reason of mental disorder; and
 - (b) there is provision in the scheme which requires that, while the person is so unable to act, sums equivalent to those payments—
 - (i) must, except in so far as such sums are not, in the opinion of the trustees, required for the maintenance of the pensioner, be paid or applied for his maintenance,
 - (ii) may, in so far as such sums are not, in the opinion of the trustees, required for the maintenance of the pensioner, be paid or applied for the maintenance of any dependants of the pensioner,

(2) See the Income and Corporation Taxes Act 1988 (c. 1).

(3) Section 611A was inserted by paragraph 15 of Schedule 6 to the Finance Act 1989 (c. 26) and amended by paragraph 5 of Schedule 5 to the Finance Act 1999 (c. 16).

- (iii) must, in so far as such sums are not, in the opinion of the trustees, required for the maintenance of the pensioner or of any dependant of his, be held by the trustees for the pensioner until he is again able to act or, if he should die before that happens, for his estate.”.
- (10) In regulation 23 (requirements for meeting the statutory standard)—
- (a) after paragraph (e) the word “and” shall be omitted; and
 - (b) after paragraph (f) there shall be added the words
“and
 - (g) must take no account of any provision made by the scheme for the suspension, in the circumstances specified in regulation 20A(2), of benefits derived from section 9(2B) rights.”.
- (11) In regulation 31 (deduction of minimum payments from earnings)—
- (a) in paragraph (1) for the word “Every” there shall be substituted the words “Subject to paragraph (3A), every”;
 - (b) in paragraph (3) for the words “paragraph (4)” there shall be substituted the words “paragraphs (3A) and (4)”;
 - (c) after paragraph (3) there shall be inserted the following paragraph:—
“(3A) Where the payment of emoluments in respect of which minimum payments are payable does not exceed the amount which is for the time being specified in regulations under section 5 of the Contributions and Benefits Act (earnings limits and thresholds for Class 1 contributions)(4) as the primary threshold for the purposes of that Act (or the amount which is, in relation to that payment of emoluments, the amount prescribed under that section as the equivalent of that threshold) no amount shall be deducted from those emoluments under this regulation.”.
- (12) In regulation 51 (election to pay a contributions equivalent premium)—
- (a) for paragraph (1) there shall be substituted the following paragraphs:—

“Contributions equivalent premiums

51.—(1) For the purposes of section 55(2) of the 1993 Act (which requires the prescribed person to pay a contributions equivalent premium in the case mentioned in section 55(2B) of that Act and otherwise enables him to elect to pay such a premium on termination of contracted-out employment)(5) the prescribed person is the trustees of the scheme.

(1A) Section 55(2B) of the 1993 Act (by virtue of which a contributions equivalent premium must be paid in any case where the earner has no accrued right to benefit under the scheme)(6) does not apply if paragraph (1B) or (1C) applies.

(1B) This paragraph applies where—

- (a) the earner’s service in the employment ceases on the earner’s death; and
- (b) the earner leaves a surviving spouse who is not entitled to any of the following benefits—

(4) 1992 c. 4; section 5 was substituted by paragraph 1 of Schedule 9 to the Welfare Reform and Pensions Act 1999 (c. 2) (“the 1999 Act”).

(5) Subsection (2) was substituted by section 141 of the 1995 Act and amended by section 18 of, and paragraph 7(1)(a) of Schedule 2 to, the 1999 Act.

(6) Subsection (2B) was inserted by paragraph 7(1)(c) of Schedule 2 to the 1999 Act.

- (i) a widowed mother’s allowance under section 37 of the Contributions and Benefits Act,
- (ii) a widow’s pension under section 38 of that Act,
- (iii) a widowed parent’s allowance under section 39A(7) of that Act, or
- (iv) a bereavement allowance under section 39B(8) of that Act.

(1C) This paragraph applies where the earner is a woman who has made, or is treated as having made, an election under regulations made under section 19(4) of the Contributions and Benefits Act, which has not been revoked, that her liability in respect of primary Class 1 contributions shall be at a reduced rate.”;

(b) in paragraph (2)—

- (i) in sub-paragraph (a) the words “under section 20 (transfer of accrued rights) or” shall be omitted,
- (ii) for sub-paragraph (b) there shall be substituted—
 - “(b) cases where paragraph (1C) applies;”, and
- (iii) for sub-paragraph (e) there shall be substituted—
 - “(e) cases where any liability to provide pensions to an earner has been discharged in accordance with regulations under section 12C of the 1993 Act(9);”, and

(c) after paragraph (2) of that regulation there shall be inserted—

“(2A) Where a contributions equivalent premium is required to be paid in respect of an earner by virtue of section 55(2) of the 1993 Act, the trustees of the scheme must notify the Inland Revenue of that fact in such form as the Inland Revenue may reasonably require for the purpose of identifying the earner.

(2B) Such a notification must be given—

- (a) where the earner has ceased to serve in employment which is contracted-out employment by reference to the scheme because it is wound up, within two years of the cessation of the scheme; and
- (b) where the earner has so ceased for any other reason mentioned in section 55(2A) of the 1993 Act(10) within the period beginning one month before and ending six months after the date on which the person so ceases.

(2C) The Inland Revenue may in any particular case or class of cases extend the period applicable under paragraph (2B) if it appears to them that the notification could not reasonably have been given within that period.”.

(13) In regulation 52(1) (time for payment of contributions equivalent premiums) after the words “the trustees”, in the first place they occur, the words “are required or” shall be inserted.

(14) In regulation 60 (trivial commutation of guaranteed minimum pensions), in paragraph (4)(11)—

- (a) after the words “under Part VI” there shall be inserted the words “or the scheme has made the provisions mentioned in section 16(2) and (3) of the 1993 Act”;
- (b) in sub-paragraph (a) for the words “or in either case” there shall be substituted the words “or, in a case where that section 16(2) and (3) applies;”, and

(7) Section 39A was inserted by section 55 of the 1999 Act.

(8) Section 39B was inserted by section 55 of the 1999 Act.

(9) Section 12C was inserted by section 136(5) of the 1995 Act.

(10) Section 55(2A) was inserted by section 141(1) of the 1995 Act.

(11) Regulation 60(4) was amended by S.I. 1997/786.

- (c) in sub-paragraph (c) after the word “premium” there shall be inserted the words “or have made the provisions mentioned in section 16(2) and (3) of the 1993 Act”.
- (15) In regulation 61 (suspension and forfeiture of guaranteed minimum pension), in paragraph (1)(a)—
- (a) The words “or otherwise” shall be omitted; and
 - (b) for the words from “for sums equivalent” to the end of the sub-paragraph there shall be substituted the words
 - “which requires that, in those circumstances, sums equivalent to the guaranteed minimum pension—
 - (i) must, except in so far as such sums are not, in the opinion of the trustees, required for the maintenance of the pensioner, be paid or applied for his maintenance,
 - (ii) may, in so far as such sums are not, in the opinion of the trustees, required for the maintenance of the pensioner, be paid or applied for the maintenance of any dependants of the pensioner,
 - (iii) must, in so far as such sums are not, in the opinion of the trustees, required for the maintenance of the pensioner or of any dependant of his, be held by the trustees for the pensioner until he is again able to act or, if he should die before that happens, for his estate;”.
- (16) In regulation 62(2) (fixed rate revaluations for early leavers' guaranteed minimum pensions—prescribed increase)—
- (a) in sub-paragraph (d) for the words “, 6.25 per cent. compound.” there shall be substituted the words “but before 6th April 2002, 6.25 per cent. compound;”;
 - (b) after that sub-paragraph there shall be inserted the following sub-paragraph:—
 - “(e) where that period of service terminates on or after 6th April 2002, 4.5 per cent. compound.”.
- (17) In regulation 63 (provision of information about guaranteed minimum pensions)—
- (a) in paragraph (1) for the words from “The prescribed” to “that section)” there shall be substituted the following words:—
 - “As respects any occupational pension scheme, the persons prescribed for the purposes of section 156(2) of the 1993 Act (additional persons to whom information may be provided for the purpose of enabling them to comply with obligations under Part III of that Act)(12) are”;
 - (b) in paragraph (2) after sub-paragraph (a), but before the word “or” there shall be inserted—
 - “(aa) whether the scheme is liable in respect of section 9(2B) rights, protected rights or safeguarded rights;”.
- (18) In regulation 72 (transitional requirements as to sufficiency of resources of salary related schemes)—
- (a) in paragraph (1)—
 - (i) the words “of ten years” shall be omitted, and
 - (ii) for the words from “or such longer” to “class of case” there shall be substituted the words “and ending with the date of first certification”;
 - (b) after paragraph (1) there shall be inserted the following paragraph:—

(12) 1993 c. 48; section 156 was substituted by paragraph 9 of Schedule 5 to the Child Support, Pensions and Social Security Act 2000 (c. 19).

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“(1A) In paragraph (1) above, the date of first certification means the first occasion on which the actuary to the scheme certifies the rates of contributions shown in a schedule of contributions for the scheme for the purposes of section 58 of the 1995 Act (schedules of contributions).”; and

- (c) in paragraph (6) after the word “apply” (in the second place where that word appears) there shall be added the words “, or to any scheme in respect of which any Minister of the Crown has given a guarantee, or made any other arrangements, for the purposes of securing that the assets of the scheme are sufficient to meet its liabilities.”.