
 STATUTORY INSTRUMENTS

1976 No. 185

PENSIONS

**The Occupational Pensions Board (Determinations and
Review Procedure) Regulations 1976**

Made - - - - 11th February 1976
Laid before Parliament 19th February 1976
Coming into Operation 11th March 1976

The Secretary of State for Social Services, in exercise of the powers conferred upon her by sections 66(7) and 67(4) of the Social Security Act 1973(a) (as amended by section 65(1) of and Schedule 4 to the Social Security Pensions Act 1975(b)) and section 31(5) and (7) of the Social Security Pensions Act 1975 and of all other powers enabling her in that behalf, after considering the report of the Occupational Pensions Board on the preliminary draft submitted to them and after consultation with the Council on Tribunals as required by sections 66(9) and 67(5) of the said Act of 1973, hereby makes the following regulations:—

Citation, interpretation and commencement

1.—(1) These regulations may be cited as the Occupational Pensions Board (Determinations and Review Procedure) Regulations 1976 and shall come into operation on 11th March 1976.

(2) In these regulations, unless the context otherwise requires—

“the Act” means the Social Security Act 1973;

“administrator”, in relation to an occupational pension scheme, means the person or persons resident in the United Kingdom having the management of the scheme;

“the Board” means the Occupational Pensions Board;

“the 1973 regulations” means the Occupational Pensions Board (Determinations and Review Procedure) Regulations 1973(c);

“the Certification Regulations” means, in the application of these regulations to Great Britain, the Occupational Pension Schemes (Certification of Employments) Regulations 1975(d), and in the application of these regulations to Northern Ireland, the Occupational Pension Schemes (Certification of Employments) Regulations (Northern Ireland) 1976(e);

“employer” has the same meaning as in the Certification Regulations;

“the Northern Ireland Order” means the Social Security Pensions (Northern Ireland) Order 1975(f);

(a) 1973 c. 38.

(c) S.I. 1973/1776 (1973 III, p. 5427).

(e) S.R. 1976/5 (N.I.).

(b) 1975 c. 60.

(d) S.I. 1975/1927 (1975 III, p. 7163).

(f) S.I. 1975/1503 (N.I. 15).

“scheme” means occupational pension scheme;

“trade union recognised to any extent” includes a trade union which is treated as recognised to any extent under section 31(9) of the Social Security Pensions Act 1975 as amended by section 125 of and Schedule 16 to the Employment Protection Act 1975(a);

and other expressions have the same meaning as in the Act.

(3) Any reference in these regulations to any provision made by or contained in any enactment or instrument shall, except in so far as the context otherwise requires, be construed as a reference to that provision as amended or extended by any enactment or instrument and as including a reference to any provision which it re-enacts or replaces, or which may re-enact or replace it, with or without modification.

(4) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889(b) shall apply in relation to this instrument and in relation to the revocation effected by it as if this instrument and the regulations revoked by it were Acts of Parliament and as if the revocation were a repeal.

Determination of question arising on an election with a view to the issue of a contracting-out certificate

2.—(1) Subject to the provisions of this regulation, the Board shall treat an election made with a view to the issue of a contracting-out certificate as an application for the determination of the question whether the employments included in it should be treated as contracted-out employments, and shall allow 14 days to elapse after the date of expiry of the notice (or, if there was more than one such notice, the later or latest notice) of intention to make the election; subject to the provisions of paragraphs (3) and (4) below they shall then determine the question as soon as practicable.

(2) The Board may refuse to give effect to an election made by an employer if they are not satisfied that he has complied with the provisions of regulations 2 to 6 of the Certification Regulations.

(3) The Board, if they think fit, may defer making a determination to enable the election to be further considered in the light of any representations made by or on behalf of persons to whom notice of the election is required to be given by regulation 3 of the Certification Regulations.

(4) The Board may defer making a determination until such documents and information as are mentioned in regulation 6(3) of the Certification Regulations have been supplied.

(5) Where under this regulation the Board determine that an employment should be treated as contracted-out employment they shall issue a contracting-out certificate in accordance with regulation 8 of the Certification Regulations, and inform the Secretary of State or, as the case may be, the Department of Health and Social Services for Northern Ireland, that they have done so.

(6) Where the Board's determination under this regulation does not give effect, or gives only partial effect, to the election, the Board shall notify the employer in writing of the determination and of the reasons for it and shall refer him to the Board's powers of review under section 67 of the Act or, as the

(a) 1975 c. 71.

(b) 1889 c. 63.

case may be, Article 62 of the Northern Ireland Order; and the employer shall give notice of the determination and the Board's reasons for it, in the manner mentioned in regulation 3(3) of the Certification Regulations, to—

- (a) those earners whose employment will be contracted-out as a result of the determination but would not have been if the determination had given full effect to the election;
- (b) those earners whose employment will not be contracted-out as a result of the determination but would have been if the determination had given full effect to the election;
- (c) the trustees (if any) and administrator of the scheme to which the election related;
- (d) where there is a policy of insurance or annuity contract as a means of securing the guaranteed minimum pensions to be payable under the scheme, the insurance company or friendly society concerned; and
- (e) all independent trade unions recognised to any extent for the purpose of collective bargaining in relation to the earners mentioned in this paragraph.

Determination of question arising on an election with a view to the variation or surrender of a contracting-out certificate

3.—(1) Subject to the provisions of this regulation, the Board shall treat an election made with a view to the variation or surrender of a contracting-out certificate as an application for the determination of the question whether the employments concerned should be treated or, as the case may be, cease to be treated as contracted-out employments; subject to the provisions of paragraphs (3) and (4) below they shall determine the question as soon as practicable, but not (except in a case where the Board have under paragraph (1) of regulation 10 of the Certification Regulations approved the making of the election without compliance with paragraphs (1)(a) and (b) and (2) to (5) of that regulation) before 14 days have elapsed after the date of expiry of the notice (or, if there was more than one such notice, the later or latest notice) of intention to make the election.

(2) The Board may refuse to give effect to an election made by an employer if they are not satisfied that he has complied with the provisions of paragraphs (1) to (5) of regulation 10 of the Certification Regulations, except in a case where the Board have under paragraph (1) of that regulation approved the making of the election without such compliance.

(3) The Board, if they think fit, may defer making a determination to enable the election to be further considered in the light of any representations made by or on behalf of persons to whom notice of the election is required to be given by regulation 10(2) of the Certification Regulations.

(4) The Board may defer making a determination until such documents and information as are mentioned in regulation 10(6) of the Certification Regulations have been supplied.

(5) When the Board have made a determination under paragraph (1) above, they shall vary or accept the surrender of the certificate if such action would give effect to their determination, and inform the Secretary of State or, as the case may be, the Department of Health and Social Services for Northern Ireland, that they have done so.

(6) The variation or surrender of a certificate under paragraph (5) above shall have effect from such date as the Board may specify, which may, where the Board consider it appropriate, be earlier than the date of the determination, but not earlier than the date from which the certificate had effect.

(7) Where the Board have made a determination under paragraph (1) above and it does not give effect, or gives only partial effect, to the application, the Board shall notify the employer in writing of the determination and of the reasons for it and shall refer him to the Board's powers of review under section 67 of the Act or, as the case may be, Article 62 of the Northern Ireland Order; and the employer shall give notice of the determination and the Board's reasons for it, in the manner mentioned in regulation 3(3) of the Certification Regulations, to—

- (a) those earners whose employment will be contracted-out as a result of the determination but would not have been if the determination had given full effect to the election;
- (b) those earners whose employment will not be contracted-out as a result of the determination but would have been if the determination had given full effect to the election;
- (c) the trustees (if any) and administrator of the scheme to which the election related;
- (d) where there is a policy of insurance or annuity contract as a means of securing the guaranteed minimum pensions to be payable under the scheme, the insurance company or friendly society concerned; and
- (e) all independent trade unions recognised to any extent for the purpose of collective bargaining in relation to the earners mentioned in this paragraph.

Other circumstances in which the Board may vary or cancel a contracting-out certificate

4.—(1) Where the Board have reason to suppose that any employment to which a contracting-out certificate applies should not continue to be contracted-out employment and the employer has not shown to the satisfaction of the Board that it should so continue, the Board may determine that the employment should not continue to be treated as contracted-out employment; where they so determine, they shall cancel or, as the case may be, vary the certificate with effect from such date as they may specify (subject to paragraph (2) below); the Board shall notify the employer in writing of their determination and of the reasons for it and shall refer him to the Board's powers of review under section 67 of the Act or, as the case may be, Article 62 of the Northern Ireland Order, and shall also notify the Secretary of State or, as the case may be, the Department of Health and Social Services for Northern Ireland, of their determination.

(2) The date from which the cancellation or variation is to have effect may not be earlier than the date of the cancellation or variation, as the case may be, except in a case where the Board consider that the resources of the scheme have not been maintained at a sufficient level for meeting all claims in respect of guaranteed minimum pensions so far as falling to be met out of those resources, in which case the date may be the latest date on which in the opinion of the Board those resources were maintained at such a sufficient level.

(3) In any case where the Board have cancelled or varied a certificate under the provisions of paragraph (1) above they may require the employer to give notice of the cancellation or variation, in the manner mentioned in regulation 3(3) of the Certification Regulations, to—

- (a) the earners in relation to whom the employment was contracted-out by virtue of the certificate immediately before its cancellation or variation;

- (b) the trustees (if any) and administrator of the scheme by reference to which the employment was contracted-out immediately before the cancellation or variation of the certificate; and
- (c) the persons or bodies mentioned in regulation 3(1)(c) and (d) of the Certification Regulations,

and they may require any such notice to include such particulars (including particulars of the consequences of the cancellation or variation) as they may consider appropriate.

Amendments of the 1973 regulations

5.—(1) The 1973 regulations shall be amended as mentioned in the following paragraphs of this regulation.

(2) In regulation 1(2), for the definition of “referred question” there shall be substituted the following definition, namely—

“‘referred question’ means a question referred to the Board under section 55(4) or 60(2) of the Social Security Pensions Act 1975 or under Article 57(4) or 70(2) of the Social Security Pensions (Northern Ireland) Order 1975(a)”;

and there shall be inserted after it the following definition, namely—

“‘referring authority’, in relation to a question referred to the Board under section 55(4) of that Act or Article 57(4) of that Order, means the court, the tribunal or the Industrial Arbitration Board (as the case may be) before which the proceedings were held in which the question arose; in relation to a question referred to the Board under section 60(2) of that Act, means the Secretary of State; and in relation to a question referred to the Board under Article 70(2) of that Order, means the Department of Health and Social Services for Northern Ireland”.

(3) Regulation 2 shall be amended by—

- (a) the insertion, after the word “Act” in paragraph (1), of the words “or Article 62(2) of the Social Security Pensions (Northern Ireland) Order 1975”; and
- (b) the substitution, for the words “Secretary of State” in paragraph (6), of the words “referring authority”.

(4) Regulation 5 shall be amended by—

- (a) the omission of the words “by the Secretary of State” from the heading;
- (b) the substitution, for the words “the Secretary of State” in paragraph (1), of the words “a referring authority”;
- (c) the addition, at the end of paragraph (2), of the words “and before determining any question referred under section 55(4) of the Social Security Pensions Act 1975 or Article 57(4) of the Social Security Pensions (Northern Ireland) Order 1975 they shall also notify in writing the trustees or managers of the scheme concerned”; and
- (d) the substitution, for the words “the Secretary of State” in paragraph (3), of the words “the referring authority”, and the addition, at the end of that paragraph, of the words “or, as the case may be, Article 62 of the Social Security Pensions (Northern Ireland) Order 1975”.

(a) S.I. 1975/1503 (N.I. 15).

- (5) Regulation 7 shall be amended by—
- (a) the omission, from paragraph (1), of the words “51 to”, and the substitution for the words “Schedules 15 and 16 to, the Act,” in that paragraph, of the following words, namely—
 - “Schedule 16 to, the Act, Part III and sections 53 to 56 of, and Schedule 2 to, the Social Security Pensions Act 1975, and Part IV and Articles 55 to 59 and 62 of, and Schedules 2 and 3 to, the Social Security Pensions (Northern Ireland) Order 1975,”; and
 - (b) the addition, after the word “Act” in paragraph (2), of the words “or Article 62 of the Social Security Pensions (Northern Ireland) Order 1975”.

Revocation

6. The Occupational Pension Schemes (Certification of Employments) Regulations 1973(a), so far as they are still in force, are hereby revoked.

Northern Ireland

7. Regulations 2(2), 3(2) and (6) and 4(2) above shall not apply to Northern Ireland.

Barbara Castle,

Secretary of State for Social Services.

11th February 1976.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations make provision for the determination by the Occupational Pensions Board of questions whether employments should be treated as contracted-out employments or whether contracting-out certificates should be varied, surrendered or cancelled; and for the procedure on such determinations.

These Regulations also modify the Occupational Pensions Board (Determinations and Review Procedure) Regulations 1973 in such a way as to extend their application to the determination of questions referred to the Board by a court or tribunal or by the Industrial Arbitration Board under section 55(4) of the Social Security Pensions Act 1975 or Article 57(4) of the Social Security Pensions (Northern Ireland) Order 1975, by the Secretary of State under section 60(2) of that Act, or by the Department of Health and Social Services for Northern Ireland under Article 70(2) of that Order; and as to extend the Board's power to require the production of documents and the furnishing of information to cases where the Board are exercising their functions under that Act or that Order.

The report of the Occupational Pensions Board on the preliminary draft of these regulations, dated 17th December 1975, is contained in House of Commons Paper No. 180 (Session 1975-76) published by Her Majesty's Stationery Office.

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