
 S T A T U T O R Y I N S T R U M E N T S

1984 No. 1921

PENSIONS

**The Contracting-out (Protection of Pensions)
Regulations 1984**

<i>Made</i>	- - - - -	<i>7th December 1984</i>
<i>Laid before Parliament</i>		<i>11th December 1984</i>
<i>Coming into Operation</i>		<i>1st January 1985</i>

The Secretary of State for Social Services, in exercise of the powers conferred upon him by section 168(1) of, and Schedule 20 to, the Social Security Act 1975(a) and sections 41C(7) and 66(3) and (4) of the Social Security Pensions Act 1975(b), and of all other powers enabling him in that behalf, by this instrument, which contains only provisions consequential on Schedule 6 to the Health and Social Security Act 1984(c) and regulations made under section 41C of the Social Security Pensions Act 1975, makes the following regulations:—

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Contracting-out (Protection of Pensions) Regulations 1984 and shall come into operation on 1st January 1985.

(2) In these regulations—

“the Act” means the Social Security Pensions Act 1975 and references to sections are to sections of that Act (d);

“the Board” means the Occupational Pensions Board;

“relevant employment”, in relation to a scheme, means any employment with an employer who contributes or is liable to contribute to the resources of the scheme, or with any successor to such an employer;

“scheme” means an occupational pension scheme as defined in section 66(1);

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

(a) 1975 c. 14. See definitions of “prescribe” and “regulations” in Schedule 20. Section 168(1) applies, by virtue of section 66(2) of the Social Security Pensions Act 1975 (c. 60), to the exercise of certain powers conferred by that Act.

(b) 1975 c. 60; section 41C was inserted by section 20 of, and Schedule 6 to, the Health and Social Security Act 1984 (c. 48).

(c) 1984 c. 48.

(d) Sections 41A to 41E were inserted into the Act by section 20 of, and Schedule 6 to, the Health and Social Security Act 1984.

(3) Except so far as the context otherwise requires, any reference in these regulations to a numbered regulation is to the regulation in these regulations bearing that number.

Schemes which provide benefit equal to or larger than short service benefit for certain members before normal pension age

2. In a case where—

(a) under the provisions of a scheme a benefit equal to or larger than that which would be required to constitute short service benefit may be paid earlier than at normal pension age to or in respect of a member who has left relevant employment; and

(b) such a benefit is payable earlier than at normal pension age to such a member at his request or by his consent,

sections 41A and 41B shall not apply to any pension payable under that scheme to or in respect of that member.

Limitation of increases in certain cases

3.—(1) This regulation applies to cases to which regulation 2 does not apply and in which short service benefit falls to be paid, by virtue of regulation 26 of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1984(a), at a higher rate than that which would apply apart from that regulation; and the difference between the 2 rates is referred to in this regulation as “the regulation 26 increase”.

(2) In a case where the excess mentioned in section 41A(1)(c) and (ii) is equal to or less than the regulation 26 increase, section 41A shall not apply.

(3) In a case where the excess mentioned in section 41A(1)(c) and (ii) is greater than the regulation 26 increase, section 41A shall be so modified as to have effect as if subsection (1)(ii) of that section referred to the difference between the excess mentioned in subsection (1)(c) and the regulation 26 increase.

Widows of persons granted alternatives to short service benefit

4. In a case where a member of a scheme is provided with an alternative to short service benefit by virtue of paragraph 9(2)(b) of Schedule 16 to the Social Security Act 1973(b) but his widow is provided with short service benefit, section 41B shall not apply to the pension payable to that widow.

Pensions reduced on attainment of pensionable age by the beneficiary

5. Subject to regulations 2 and 3, in a case where—

(a) a scheme makes provision for pensions to be payable to persons before they attain pensionable age;

(b) its provision for pensions payable to persons on or after attaining that age is made by virtue of paragraph (b), or the words following paragraph (b), in section 34(9); and

(c) those provisions may have the effect that the pension payable to a particular person is reduced on or after his attainment of pensionable age,

section 41A(1) shall be so modified as to operate without prejudice to those provisions.

(a) S.I. 1984/614.

(b) 1973 c. 38.

Schemes with alternative methods of calculation of pensions

6.—(1) Subject to regulations 2 and 3, in a case where a scheme provides for the annual rate of an earner's pension to be whichever is the greater of the following rates, namely—

- (a) a rate which is related to the earner's average annual salary or final salary (as the case may be) in the manner specified in section 34; and
- (b) some other rate which is not directly related to the salaries mentioned in section 34,

and the rate referred to in sub-paragraph (b) of this paragraph is the greater, section 41A(3) shall be so modified as to require the relevant sum to be ascertained as if the rate referred to in sub-paragraph (a) of this paragraph were the annual rate of the earner's pension.

(2) Subject to regulations 2 and 4, in a case where a scheme provides for the annual rate of a widow's pension to be whichever is the greater of the following rates, namely—

- (a) a rate which is related to the earner's average annual salary or final salary (as the case may be) in the manner specified in sections 36 and 37; and
- (b) some other rate which is not directly related to the salaries mentioned in sections 36 and 37,

and the rate referred to in sub-paragraph (b) of this paragraph is the greater, section 41B(3) shall be so modified as to require the relevant sum to be ascertained as if the rate referred to in sub-paragraph (a) of this paragraph were the annual rate of the widow's pension.

Widows' pensions increased during early widowhood

7. Subject to regulations 2 and 4, in a case where, apart from the provisions of section 41B, the weekly rate of the pension of a deceased earner's widow is increased for a period ending not later than the later of the following dates, namely—

- (a) the date 6 months later than the date of the earner's death; and
- (b) the date 10 years later than the date on which the earner's pension became payable,

subsection (3) of section 41B shall have effect as if that increase were excluded from the weekly rate referred to in that subsection.

Benefit analogous to short service benefit

8. Subject to regulations 2 and 3, in a case where a scheme contains rules under which there may be provided benefit to which section 41A(3)(b) applies but which is not short service benefit, section 41C(3) shall be so modified as to have effect as if the definition of "protected provision" included any provision the inclusion of which in a scheme would be by virtue of one or more of the provisions of Schedule 16 to the Social Security Act 1973 which are mentioned in section 41C(3)(a)(i) if that benefit were short service benefit.

Transfers agreed but not implemented before 1st January 1985

9. In a case where an enforceable agreement for the transfer from one scheme to another of accrued rights to or the liability for the payment of benefits was entered into before 1st January 1985 (whether or not subject to further agreement about the rates of benefits to be paid to or in respect of individuals) but the transfer becomes or became effective on or after that date, sections 41A(6) (subject to regulations 2 and 3) and 41B(5) (subject to regulations 2 and 4) shall be modified so as to have effect as if the references to any transfer before the commencement of the section included a reference to that transfer.

Meaning of expressions "member", "prospective member" and "employer" in relation to a scheme

10.—(1) The following provisions of this regulation shall apply for the purposes of section 41E.

(2) Any person is to be regarded as a member of a scheme if he is or has been a person whose service in relevant employment is or was such that at the time it is or was given it either—

- (a) qualifies or qualified him for benefits under the scheme; or
- (b) is or was certain so to qualify him subsequently if it continues or continued for a sufficiently long time and the rules of the scheme and the terms of his contract of service remain or remained unaltered during that time,

or if she is the widow of such a person.

(3) There are to be regarded as prospective members of a scheme any persons in relevant employment who are not members but—

- (a) who, by virtue of the terms of their contracts of service, are able to become members at their own option or the option of any other person; or
- (b) who, by virtue of the terms of their contracts of service, will become so able, if their service in relevant employment continues for a sufficiently long time and the terms of their contracts of service remain unaltered during that time; or
- (c) who, by virtue of the rules of the scheme or the terms of their contracts of service, will become members in any event, if their service in relevant employment continues for a sufficiently long time and the rules of the scheme or, as the case may be, the terms of their contracts of service remain unaltered during that time.

(4) Any person, government department, public authority or body of persons who under the Social Security Act 1975(a) is, or is to be treated as, the secondary Class 1 contributor shall be treated as the employer of the earner in respect of whom the Class 1 contributions are payable.

(a) 1975 c. 14.

(5) Without prejudice to paragraph (4) of this regulation, there shall be treated as the employer of a self-employed earner to whom a scheme applies any person (other than that self-employed earner), government department, public authority or body of persons who makes or is to make payments towards the resources of that scheme in respect of that self-employed earner (either under actual or contingent legal obligation or in the exercise of a power conferred, or duty imposed, on a Minister of the Crown, government department or any other person, being a power or duty which extends to the disbursement or allocation of public money).

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

Tony Newton,
Minister of State,
Department of Health and Social Security.

7th December 1984.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These regulations are all either made under section 41C of the Social Security Pensions Act 1975 or consequential on Schedule 6 to the Health and Social Security Act 1984, and are made before the expiry of the period of 6 months beginning with the commencement (on 1st January 1985) of that Schedule. Consequently, by virtue of section 22(4)(d) of the Health and Social Security Act 1984, the provisions of section 61(2) and (3) of the Social Security Pensions Act 1975 (which require reference to the Occupational Pensions Board of, and a report by the Board on, proposals to make regulations for certain purposes of that Act) do not apply to them.

The regulations make miscellaneous modifications of sections 41A, 41B and 41C (protection of pensions) of the Social Security Pensions Act 1975 and define "member", "prospective member" and "employer" in relation to an occupational pension scheme for the purposes of section 41E. Sections 41A to 41E were inserted into the Social Security Pensions Act 1975 by section 20 of, and Schedule 6 to, the Health and Social Security Act 1984.

The modifications of sections 41A to 41C relate to cases of schemes which provide benefit equal to or larger than short service benefit for certain members before normal pension age; cases where short service benefit is required to be increased in order to compare reasonably with contributions paid; cases where a scheme member is provided with an alternative to short service benefit but his widow is not; cases where an occupational pension is reduced on the beneficiary's attaining pensionable age for the purposes of the state scheme; cases where there are alternative methods of calculation of pensions; cases where a widow's pension is increased during early widowhood; cases where schemes provide benefit analogous to short service benefit for persons who do not qualify, on grounds of age or length of service, for short service benefit; and cases where a transfer of accrued rights from one scheme to another was agreed but not implemented before 1st January 1985.

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