

1985 No. 1323

PENSIONS

The Contracting-out (Transfer) Regulations 1985

Made - - - - - 20th August 1985
Laid before Parliament 2nd September 1985
Coming into Operation 23rd September 1985

The Secretary of State for Social Services, in exercise of the powers conferred upon him by section 99(1) and (3) of, and paragraph 9(3) of Schedule 16 to, the Social Security Act 1973(a), section 168(1) of, and Schedule 20 to, the Social Security Act 1975(b), sections 32(2)(a), 38(1) to (1C), 44(1A) and (1B), 45(1)(b) and 62(4) of, and paragraphs 1, 6 and 9 of Schedule 2 to, the Social Security Pensions Act 1975(c), and sections 21(2), 22(13) and 24(1) of the Social Security (Miscellaneous Provisions) Act 1977(d), and of all other powers enabling him in that behalf, after considering the report of the Occupational Pensions Board on the proposals submitted to them(e), hereby makes the following regulations:—

Citation, commencement and interpretation

1.— (1) These regulations may be cited as the Contracting-out (Transfer) Regulations 1985 and shall come into operation on 23rd September 1985.

(2) In these regulations—

“the Act” means the Social Security Pensions Act 1975;

“the Board” means the Occupational Pensions Board;

“the principal regulations” means the Occupational Pension Schemes (Contracting-out) Regulations 1984(f);

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

(a) 1973 c.38. See definition of “prescribed” in section 99(1) and explanation of the meaning of “regulations” in section 99(3).

(b) 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.

(c) 1975 c.60; section 38(1) was substituted, and sections 38(1A) to (1C) and 44(1A) and (1B) were inserted, by section 19 of the Health and Social Security Act 1984 (c.48).

(d) 1977 c.5; section 22(13) was amended by the Social Security Act 1980 (c.30), section 20 and Schedule 4, paragraph 12.

(e) See section 68(1) and (2) of the Social Security Act 1973 (c.38) and section 61(2) and (3) of the Social Security Pensions Act 1975; sections 68(1) and 61(2) are amended in ways not relevant to these regulations.

(f) S.I. 1984/380.

“overseas scheme” means a scheme which is administered wholly or primarily outside the United Kingdom;

“receiving scheme” means a scheme to which rights are, or liability is, transferred in accordance with regulation 2 or in accordance with arrangements approved under section 44;

“transferring scheme” means a scheme from which rights are, or liability is, transferred to a receiving scheme;

“trustees”, in relation to a scheme which is not set up or established under a trust, means the administrator of the scheme;

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

(3) Except in so far as the context otherwise requires, any reference—

- (a) in these regulations to a numbered section is to the section of the Act bearing that number;
- (b) in these regulations to a numbered regulation or Schedule is to the regulation in or Schedule to these regulations bearing that number;
- (c) in a regulation or Schedule to a numbered paragraph is to the paragraph in that regulation or Schedule bearing that number.

Transfers of accrued rights to and liability for payment of requisite benefits from contracted-out schemes

2.— (1) There may be transferred from a contracted-out scheme to another scheme—

- (a) the accrued rights of an earner (including, except where the context otherwise requires, an earner who is not in employment at the time of the transfer) to the requisite benefits under the former scheme; or
- (b) the liability for the payment of such benefits to or in respect of any person who has become entitled to them,

in the circumstances and subject to the conditions mentioned in paragraphs (2) to (5), and in those paragraphs “a transfer” means a transfer such as is described in this paragraph.

(2) A transfer may be made to another contracted-out scheme in the circumstances specified in either of the paragraphs in Part I of Schedule 1.

(3) A transfer may be made to a scheme which is not a contracted-out scheme in the circumstances described in either of the paragraphs in Part II of Schedule 1.

(4) A transfer to another contracted-out scheme, insofar as it is a transfer of the accrued rights to guaranteed minimum pensions of an earner who has not entered employment which is contracted-out by reference to the receiving scheme, may be made to that scheme only on the conditions specified in Part I of Schedule 2.

(5) A transfer to another contracted-out scheme, insofar as it is a transfer of the liability for the payment of a guaranteed minimum pension to or in respect of a person who has become entitled to it, may be made only on the condition specified in Part II of Schedule 2.

(6) References in Schedules 1 and 2 to “the earner” and “person concerned” are respectively references to the earner referred to in paragraph (1)(a) and the person referred to in paragraph (1)(b).

Modifications of Part III of the Act on transfers from contracted-out and formerly contracted-out schemes

3. Where a transfer referred to in this regulation has taken place from a contracted-out scheme in accordance with regulation 2, or from a formerly contracted-out scheme in accordance with arrangements approved under section 44, Part III of the Act shall have effect subject to the following modifications—

- (a) where the transfer was of the accrued rights to guaranteed minimum pensions of an earner who had entered employment which was contracted-out by reference to the receiving scheme, the modifications of section 35(1) and (8) specified in paragraphs 3 and 4 of Schedule 3;
- (b) in the case of any other transfer to a contracted-out scheme of the accrued rights of an earner to guaranteed minimum pensions, the modifications of sections 26(2), 35(8), 38(3), 45, 46 and 48 specified in paragraphs 1 and 4 to 8 of Schedule 3;
- (c) in the case of any transfer to a contracted-out scheme of the liability for payment of a guaranteed minimum pension to or in respect of a person who had become entitled to it, the modifications of sections 26(2), 38(3) and 48 specified in paragraphs 1, 5 and 8 of Schedule 3;
- (d) in the case of any transfer to an overseas scheme (not being a contracted-out scheme) of accrued rights to, or the liability for payment of, guaranteed minimum pensions, the modifications of sections 29, 45 and 46 specified in paragraphs 2, 6 and 7 of Schedule 3.

Amendments and revocations of regulations

4.— (1) The principal regulations shall be amended in accordance with the provisions of paragraphs (2) to (5).

(2) Regulation 44(c) is hereby revoked.

(3) The words “or regulations made thereunder” shall be added immediately after the words “section 38” or “section 38(1)” (as the case may be) at each place where they occur in regulations 22(4) and (5)(b), 24(3)(d) and (4), 36(3)(a)(iii), 37(2)(d), 44(b) and (e)(i), 45(a) and 49(1).

(4) In regulation 45(c), for the words “section 38(2)” there shall be substituted the words “section 35(1) as modified by paragraph 3 of Schedule 3 to the Contracting-out (Transfer) Regulations 1985”.

(5) In regulation 46—

- (a) in the heading and in paragraph (2), for “33, 34 and 36 to 39” there shall be substituted “33, 34, 36, 37 and 39”;
- (b) in paragraph (2)(b), for “33, 36, 38 or 39” there shall be substituted “33, 36 or 39”.

(6) In regulation 12(4)(b)(i) of the Occupational Pension Schemes (Preserva-

tion of Benefit) Regulations 1984(a), for the words “regulation 32(b) of the Occupational Pension Schemes (Contracting-out) Regulations 1984” there shall be substituted the words “regulations made under section 38 of the Pensions Act”.

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

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

20th August 1985.

(a) S.I. 1984/614.

Regulation 2

SCHEDULE 1

PART I

CIRCUMSTANCES IN WHICH A TRANSFER MAY BE MADE UNDER REGULATION 2
TO ANOTHER CONTRACTED-OUT SCHEME

1. The earner or person concerned consents to the transfer, and, if the transfer is of the accrued rights of an earner, the earner has entered employment with an employer who is a contributor to the receiving scheme.

2. The rights allowed in the receiving scheme to the earner or person concerned are, in the opinion of the trustees of the transferring scheme, at least equal in value to the rights transferred and either—

- (a) the 2 schemes apply to employment with the same employer, or
- (b) the 2 schemes apply to employment with different employers, the earner or person concerned is one of a group of persons in respect of whom transfers are being made from the transferring scheme to the receiving scheme, and either—
 - (i) the transfer is a consequence of a financial transaction between the employers, or
 - (ii) the employers are companies or partnerships bearing a relationship to each other such as is described in any of sub-paragraphs (a) to (f) of regulation 42(2) (“connected employers”) of the principal regulations.

PART II

CIRCUMSTANCES IN WHICH A TRANSFER MAY BE MADE UNDER REGULATION 2
TO A SCHEME WHICH IS NOT A CONTRACTED-OUT SCHEME

3. The earner or person concerned consents to the transfer, and the transfer is only of accrued rights to, or the liability for the payment of, the whole or part of the excess of the requisite benefits of the earner or person concerned over his or his widow’s guaranteed minimum pension.

4. The earner or person concerned consents to the transfer, the receiving scheme is an overseas scheme, the earner or person concerned has entered employment to which the receiving scheme applies, that employment is outside the United Kingdom, and the transfer is approved by the Board, whether or not subject to conditions.

SCHEDULE 2

Regulation 2

PART I

CONDITIONS SUBJECT TO WHICH A TRANSFER MAY BE MADE UNDER
REGULATION 2 OF THE ACCRUED RIGHTS TO GUARANTEED MINIMUM
PENSIONS OF AN EARNER WHO HAS NOT ENTERED EMPLOYMENT WHICH IS
CONTRACTED-OUT BY REFERENCE TO THE RECEIVING SCHEME

1. Subject to paragraphs 2 to 4, the receiving scheme must in respect of the rights transferred—

- (a) provide for pensions payable at the rates at which guaranteed minimum pensions would have been payable by the transferring scheme if the transfer had not taken place; and
- (b) contain the same provision for commencement and continuation of payment of those pensions, and (if any) for commutation, suspension and forfeiture as for guaranteed minimum pensions provided by the receiving scheme in accordance with sections 33 and 36.

2. Subject to paragraphs 3 and 4, the arrangements for the transfer (in this Schedule called “the arrangements”) must contain provision that the earner’s earnings factors which are attributable to any particular period of service, or the weekly equivalent derived therefrom, will be increased at the same rate under the receiving scheme as that at which they or it would have fallen to be increased under the transferring scheme if—

- (a) his service in contracted-out employment by reference to the transferring scheme had been terminated; but
- (b) the transfer had not taken place.

3. If the weekly equivalent derived from the earnings factors which are attributable to any particular period of service were not, before the transfer, affected by a provision made, or a provision analogous to one made, under section 35(7), the arrangements may contain a provision analogous to one made under section 35(7) in relation to it.

4. If the weekly equivalent derived from the earnings factors which are attributable to any particular period of service were, before the transfer, affected by a provision made, or a provision analogous to one made, under section 35(7), the arrangements may contain a provision that those earnings factors will be increased under the receiving scheme at the same rate as that at which they would have fallen to be increased if—

- (a) there had never been a provision made, or a provision analogous to one made; or
- (b) in the case only of the first transfer of the rights in question, a different provision had been made,

under section 35(7) relating to that weekly equivalent.

PART II

CONDITION SUBJECT TO WHICH A TRANSFER MAY BE MADE UNDER
REGULATION 2 OF THE LIABILITY FOR THE PAYMENT OF A GUARANTEED
MINIMUM PENSION TO OR IN RESPECT OF A PERSON WHO HAS BECOME
ENTITLED TO IT

5. The date of commencement of the pension the liability for which is transferred—

- (a) if payable to the person who has become entitled to it, must be the date from which liability for payment is assumed by the receiving scheme; and
- (b) if payable to his widow, must be the same as it would have been under the provisions of the transferring scheme, and

the receiving scheme must contain the same provision (if any) for suspension and forfeiture of that pension as for guaranteed minimum pensions provided by the receiving scheme in accordance with section 33 or (as the case may be) 36.

Regulation 3

SCHEDULE 3

MODIFICATIONS OF PROVISIONS OF PART III OF THE ACT, APPLYING IN CASES
SPECIFIED IN REGULATION 3

1. Section 26(2) shall have effect as if—

- (a) after the words “sections 33 and 36 below” there were inserted the words “or with arrangements approved by the Occupational Pensions Board under section 44 below, or in compliance with the condition set out in paragraph 1 or 5 (as the case may be) of Schedule 2 to the Contracting-out (Transfer) Regulations 1985”; and
- (b) at the end there were added the words “or, as the case may be, of those arrangements or that condition”.

2. Section 29 shall have effect as if the reference in subsection (1)(b) to one or more guaranteed minimum pensions included the guaranteed minimum pensions which would have been payable if they had been preserved in and paid by the transferring scheme but (where the transfer is of the accrued rights of an earner who has not attained pensionable age) if the earnings factors of the earner concerned or the weekly equivalent derived therefrom nevertheless fell to be increased under provisions contained in the arrangements for the transfer, to the exclusion of any other provisions.

3. Section 35(1) shall have effect as if the reference to contracted-out employment by reference to the scheme included a reference to employment in any period of linked qualifying service which was contracted-out employment by reference to the transferring scheme.

4. Section 35(8) shall have effect as if there were added, at the end, the words “so however that separate provision may be made for members as regards their accrued rights transferred in accordance with regulations made under section 38(1) below”.

5. Section 38(3) shall have effect as if, in the definition of “accrued rights”, after the words “sections 33 and 36 above” there were inserted the words “or with arrangements approved by the Occupational Pensions Board under section 44 below, or in compliance with the condition set out in paragraph 1 or 5 (as the case may be) of Schedule 2 to the Contracting-out (Transfer) Regulations 1985”.

6. Section 45 shall have effect as if—

- (a) the application of subsections (1) and (3) were extended to include cases where an earner’s accrued rights to guaranteed minimum pensions have been transferred in accordance with regulation 2 or in accordance with arrangements approved by the Board under section 44 before the earner has attained pensionable age, whether or not the transferring scheme is ceasing to be contracted-out;
- (b) the references in subsections (1) and (2) to provisions included in the scheme by virtue of section 35(7) were references to provisions, included in the arrangements for the transfer by virtue of paragraph 2 or 3 of Schedule 2, which are analogous to provisions made under section 35(7);
- (c) the reference in subsection (1) to such additional requirements as may be prescribed were a reference to the requirement set out in regulation 22(3) of the principal regulations with the substitution, for the words “by the scheme”, of the words “in the arrangements for the transfer”;
- (d) the reference in subsection (1) to the earner’s employer were a reference to the trustees of the receiving scheme (where agreement to that effect has been reached between the trustees of the transferring scheme and the trustees of the receiving scheme) or to the trustees of the transferring scheme (in the absence of such an agreement); and
- (e) the requirement in paragraphs (a) and (b) of subsection (3)(a) applied only to earnings factors which are not affected by a provision made under section 35(7), or by a provision, made by virtue of paragraph 3 of Schedule 2, which is analogous to a provision made under section 35(7).

7. Section 46, insofar as it relates to section 45, shall have effect in relation to section 45 as modified by paragraph 6.

8. Section 48 shall have effect as if there were omitted—

- (a) in subsection (1), the words “ and the person’s entitlement is in respect of his or another person’s service in employment which was contracted-out by reference to that scheme”;
- (b) subsection (2).

(a) Section 45(3) was amended by the Social Security Act 1980 (c.30), section 3(9).

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations make provision, by regulation 2 and Schedule 1, for the circumstances in which, and, by regulation 2 and Schedule 2, for the conditions subject to which, an earner's accrued rights to the requisite benefits under a contracted-out occupational pension scheme, or the liability for the payment of such benefits to or in respect of any person who has become entitled to them, may be transferred from one scheme to another; and make provision, by regulation 3 and Schedule 3, for Part III of the Social Security Pensions Act 1975 to have effect subject to modifications where such a transfer has been made, or where arrangements have been approved by the Occupational Pensions Board, under section 44 of that Act, for the transfer of accrued rights to, and liability for the payment of, guaranteed minimum pensions under an occupational pension scheme in the event of its ceasing to be contracted-out.

The provisions of the regulations mentioned above are made in exercise of the powers conferred by sections 38(1) and 44(1A) of the Social Security Pensions Act 1975 as substituted or inserted by section 19 of the Health and Social Security Act 1984, and by virtue of sections 38(1C) and 44(1B) they apply to transfers whenever made and arrangements whenever approved.

Regulation 4 makes consequential amendments of existing regulations.

The report of the Occupational Pensions Board on the draft of these regulations, dated 6th June 1985, is contained in Command Paper (Cmnd. 9613) published by Her Majesty's Stationery Office.

SI 1985/1323
ISBN 0-11-057323-4



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