

1987 No. 1101

PENSIONS

The Money Purchase Contracted-out Schemes  
Regulations 1987

<i>Made</i> - - - -	<i>25th June 1987</i>
<i>Laid before Parliament</i>	<i>6th July 1987</i>
<i>Coming into force</i> -	<i>6th April 1988</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), sections 30(1C) and 32(2D) of the Social Security Pensions Act 1975(b), and sections 2 and 84(1) of the Social Security Act 1986(c) and paragraphs 3 and 6 of Schedule 1 to that Act as modified by section 32(2B) of the Social Security Pensions Act 1975, and of all other powers enabling him in that behalf, by this instrument, which is made before the end of a period of 12 months from the commencement of the enactments under which it is made, makes the following Regulations:-

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Money Purchase Contracted-out Schemes Regulations 1987 and shall come into force on 6th April 1988.

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

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

“the 1986 Act” means the Social Security Act 1986;

“earnings period” has the same meaning as in the Social Security (Contributions) Regulations 1979(d);

“emoluments” means so much of a person’s remuneration or profit derived from employed earner’s employment as constitutes earnings for the purposes of the Social Security Act 1975(a);

“Friendly Society” means a Friendly Society registered under section 7(1)(a) of the Friendly Societies Act 1974(e), or, as the case may be, under section 1(1)(a) of the Friendly Societies Act (Northern Ireland) 1970(f);

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(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. Sections 30(1C) and 32(2B) and (2D) were inserted by the Social Security Act 1986 (c.50), section 6 and Schedule 2, paragraphs 4 and 5.

(c) 1986 c.50. See definitions of “prescribed” and “regulations” in section 84(1).

(d) S.I. 1979/591; the relevant amending instruments are S.I. 1980/1975, 1983/10, 1984/77.

(e) 1974 c.46.

(f) 1970 c.31 (N.I.).

“futures” has the meaning assigned to that word by paragraph 8 of Schedule 1 to the Financial Services Act 1986(a);

“government, local authority or public authority” means—

- (a) the government of any member State;
- (b) a local authority in any member State; or
- (c) any international organisation the members of which comprise any member States;

“income tax month” means the period beginning on the 6th day of any calendar month and ending on the 5th day of the following calendar month;

“investment trust company” means a company which has been approved for the purposes of section 359 of the Income and Corporation Taxes Act 1970(b);

“issuer”, in relation to any securities, has the meaning assigned to that word by section 142(7) of the Financial Services Act 1986;

“options” has the meaning assigned to that word by paragraph 7 of Schedule 1 to the Financial Services Act 1986;

“recognised Stock Exchange” has the meaning assigned to that expression by paragraph 13 of Schedule 13 to the Insurance Companies Regulations 1981(c);

“scheme” means occupational pension scheme;

“securities”—

- (a) in relation to any government, local authority or public authority, means any investment which would fall within paragraph 3 of Schedule 1 to the Financial Services Act 1986 if “government, local authority or public authority” had the same meaning in that paragraph as in these Regulations; and
- (b) otherwise means any investment falling within paragraph 1, 2, 4 or 5 of that Schedule;

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

and other expressions have the same meaning as in the 1975 Act.

(3) In these Regulations, unless the context otherwise requires, any reference—

- (a) to a numbered regulation is to the regulation in these Regulations bearing that number;
- (b) in a regulation to a numbered paragraph is to the paragraph of that regulation bearing that number;
- (c) in a paragraph to a lettered sub-paragraph is to the sub-paragraph of that paragraph bearing that letter.

### Permitted investments

2.—(1) For the purposes of section 32(2A) of the 1975 Act(d) (occupational pension scheme may be contracted-out if among other things the requirements imposed by or by virtue of Schedule 1 to the 1986 Act modified under section 32(2B) of the 1975 Act are satisfied in its case) and of paragraphs 3 and 6 of Schedule 1 to the 1986 Act (schemes to comply with prescribed requirements as regards the investment of their resources, and such other requirements as may be prescribed), the prescribed requirements in relation to an occupational pension scheme are those specified in paragraphs (2) and (3).

(2) The rules of the scheme shall require that the resources of the scheme are not invested in any investments other than those specified in the Schedule to these Regulations.

(3) The rules of the scheme shall require the trustees of the scheme to take all reasonable steps to ensure that—

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(a) 1986 c.60.

(b) 1970 c.10; section 359 was amended by the Finance Act 1972 (c.41), section 93(6).

(c) S.I. 1981/1654; the relevant amending instruments are S.I. 1982/675, 1985/1419.

(d) Section 32(2A) was inserted by the Social Security Act 1986 (c.50), section 6 and Schedule 2, paragraph 5.

- (a) in relation to the investments specified in paragraphs 5 to 8 of the Schedule, there is not, at any one time, invested in the securities of any one issuer—
  - (i) more than 5% of the value of the resources of the scheme, or
  - (ii) more than 10% of that value, where the total of the investments in the securities of any one issuer of more than 5% of that value does not exceed 40% of that value;
- (b) not more than 50% of the value of the resources of the scheme is invested, at any one time, in investments specified in paragraph 6 of the Schedule;
- (c) not more than 35% of the value of the resources of the scheme is invested, at any one time, in investments of the kinds specified in paragraphs 7 and 8 (read together) of the Schedule;
- (d) the aggregate, at any one time, of—
  - (i) any sum lent to a person or body associated with the scheme out of the resources of the scheme,
  - (ii) any part of the resources of the scheme invested in a person or body or land associated with the scheme, and
  - (iii) any part of the resources of the scheme invested in any one or more of the investments specified in paragraphs 8 to 10 of the Schedule,
 does not exceed 10% of the value of the resources of the scheme;
- (e) not more than 40% of the value of the resources of the scheme is invested, at any one time, in securities issued by any one investment trust company; and
- (f) not more than 25% of the value of the resources of the scheme is invested at any one time in land.

#### **Deduction of minimum payments from earnings**

3.—(1) Every employer, on making during any tax year to any earner any payment of emoluments in respect of which minimum payments are payable, may deduct minimum payments in accordance with this regulation.

(2) An employer shall not be entitled to recover any minimum payments paid or to be paid by him on behalf of any earner otherwise than by deduction in accordance with this regulation.

(3) Subject to the provisions of paragraph (4), on making any payment of emoluments to the earner the employer may deduct from those emoluments an amount which bears the same ratio to the amount of the minimum payments relating to those emoluments as A does to A plus B, where—

- (a) A is the first percentage mentioned in section 30(1A)(a) of the 1975 Act (a); and
- (b) B is the first percentage mentioned in section 30(1A)(b) of that Act.

(4) Where 2 or more payments of emoluments fall to be aggregated under or by virtue of paragraph 1(1) of Schedule 1 to the Social Security Act 1975, the employer may deduct the amount of the minimum payments based thereon which are payable by the earner either wholly from one such payment or partly from one and partly from the other or any one or more of the others.

(5) In the circumstances specified in paragraph (6), if the employer on making any payment of emoluments to an earner does not deduct therefrom the full amount of minimum payments which by virtue of these regulations he is entitled to deduct, he may recover the amount so underdeducted by deduction from any subsequent payment of emoluments to that earner during the same tax year, so however that any amount deducted under this paragraph may be in addition to but shall not exceed any amount deducted from the same payment of emoluments under paragraph (3) or (4).

(6) Paragraph (5) applies only where—

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(a) Section 30(1A) was inserted by the Social Security Act 1986 (c.50), section 6 and Schedule 2, paragraph 4.

- (a) the underdeduction occurred by reason of an error made by the employer in good faith; or
- (b) the emoluments in respect of which the underdeduction occurred are deemed to be earnings by virtue of regulations made under section 18 of the Social Security (Miscellaneous Provisions) Act 1977(a); or
- (c) the underdeduction occurred as a result of the variation of the contracting-out certificate issued in respect of the employment in respect of which the payment of emoluments is made; or
- (d) the emoluments in respect of which the underdeduction occurred are, by virtue of regulation 17B of the Social Security (Contributions) Regulations 1979(b), not paid through the secondary contributor in relation to the employment.

**Minimum payments to be made by employers to trustees**

4.—(1) For the purposes of section 30(1) and (1A) of the 1975 Act, the employer of an earner whose employment is contracted-out by reference to a money purchase contracted-out scheme shall, subject to paragraph (2), make to the trustees of that scheme any minimum payments which fall to be made by him, other than amounts deductible by virtue of regulation 3(4) which he did not deduct, within 14 days of the end of the income tax month in which there arose the liability for Class 1 contributions in respect of the earnings to which those minimum payments relate.

(2) An employer shall for the purposes of paragraph (1) be deemed to have deducted from the last of any number of payments of emoluments which fall to be aggregated under or by virtue of paragraph 1(1) of Schedule 1 to the Social Security Act 1975(c) the amount of minimum payments deductible from those payments which he did not deduct from the earlier payments.

(3) Subject to paragraph (4), if the employer has paid to the trustees on account of minimum payments an amount which he was not liable so to pay, the amounts which he is liable so to pay subsequently, in respect of other payments of emoluments made by him during the same tax year, shall be reduced by the amount so overpaid, so however that if there was a corresponding overdeduction from any payment of emoluments to an earner the provisions of this paragraph shall apply only in so far as the employer has reimbursed the earner therefor.

(4) Paragraph (3) applies only where the overdeduction occurred by reason of an error made by the employer in good faith.

**Calculation of minimum payments**

5.—(1) Subject to the provisions of paragraphs (3) and (4), minimum payments shall be calculated in accordance with section 30(1A) and (1B) of the 1975 Act, so however that each such calculation shall be to the nearest penny and any amount of half a penny or less shall be disregarded.

(2) In the alternative, but subject to the provisions of paragraphs (3) to (5), minimum payments may be calculated in accordance with a scale prepared for that purpose by the Secretary of State.

(3) Where the amount of the earnings to which the scale is to be applied does not appear in the scale, the amount of the minimum payments shall be calculated by reference to the next smaller amount of earnings in the appropriate column in the scale.

(4) Where the scale would, but for the period to which it relates, be appropriate and the earnings period in question is a multiple of the period in the scale, the scale shall be applied by dividing the earnings in question so as to obtain the equivalent earnings for the period to which the scale relates and by multiplying the amount of minimum payments shown in the scale as appropriate to those equivalent earnings by the same factor as the earnings were divided.

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(a) 1977 c.5. Section 18 is amended by the Social Security Act 1986 (c.50), section 86(1) and Schedule 10, paragraph 74, and partially repealed by section 86(2) of and Schedule 11 to that Act. *See the Social Security (Contributions) (Employment Protection) Regulations 1977 (S.I. 1977/622).*

(b) S.I. 1979/591; the relevant amending instrument is S.I. 1983/395.

(c) 1975 c.14.

(5) Unless the Secretary of State agrees to the contrary, all the minimum payments to be made in a tax year in respect of the earnings paid to or for the benefit of an earner in respect of his employed earner's employment or, where he has more than one such employment and the earnings therefrom are aggregated under paragraph 1(1) of Schedule 1 to the Social Security Act 1975, in respect of those employments, shall be calculated either in accordance with paragraph (1) or in accordance with paragraph (2) but not partly in accordance with one and partly in accordance with the other of those paragraphs.

#### **Circumstances in which schemes may change mode of contracting-out**

6.—(1) A scheme which has been contracted-out by virtue of section 32(2) of the 1975 Act may become contracted-out by virtue of section 32(2A) of that Act only if its trustees have been discharged of all liability to provide guaranteed minimum pensions.

(2) A scheme which has been contracted-out by virtue of section 32(2A) of that Act may become contracted-out by virtue of section 32(2) of that Act only if its trustees have been discharged of all liability to give effect to protected rights.

Signed by authority of the Secretary of State for Social Services

*Nicholas Scott*  
Minister of State,

25th June 1987

Department of Health and Social Security

## **SCHEDULE**

### **Regulation 2**

1. Insurance policies, or annuity contracts, or both, which are—
  - (a) issued by either—
    - (i) a person or body (not being a Friendly Society) which is authorised by virtue of Chapter III of Part I of the Financial Services Act 1986; or
    - (ii) a Friendly Society which is so authorised and has disclosed in its audited accounts a contributions income of not less than £300,000 in the year 1986 and not less than £400,000 in the year 1987;and which are—
  - (b) issued under, or in connection with, arrangements which do not permit the trustees of the scheme to direct the way in which the investment of premiums paid or payable to the person or body, specified in sub-paragraphs (a)(i) or (ii), in respect of those policies or contracts, shall be made.
2. The units of any unit trust scheme which has been authorised under section 78(1) of, or by virtue of paragraph 9 of Schedule 15 to, the Financial Services Act 1986.
3. Securities issued by any government, local authority or public authority.
4. An interest-bearing account with—
  - (a) a building society as defined in the Building Societies Act 1986(a); or
  - (b) a bank recognised under the Banking Act 1979(b); or
  - (c) a deposit taker licensed under the Banking Act 1979.
5. Securities listed on a recognised Stock Exchange in a member State, other than those mentioned in paragraphs 3 and 11 of this Schedule.
6. Securities listed on a recognised Stock Exchange in any country other than a member State.
7. Securities which are not listed on a recognised Stock Exchange but which are traded in a second tier market of a recognised Stock Exchange in a member State.

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(a) 1986 c.53.  
(b) 1979 c.37.

8. Securities which are neither listed on a recognised Stock Exchange nor traded in a second tier market in a member State.
  9. The units of any collective investment scheme not authorised under section 78(1) of, or by virtue of paragraph 9 of Schedule 15 to, the Financial Services Act 1986.
  10. Futures and options.
  11. The securities of any investment trust companies.
  12. Land.
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### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are all made under section 30(1C) or 32(2D) of the Social Security Pensions Act 1975 ("the 1975 Act") or paragraph 3 or 6 of Schedule 1 to the Social Security Act 1986 ("the 1986 Act"), as modified by section 32(2B) of the 1975 Act, and are made before the end of the period of 12 months from the commencement of those provisions. Consequently, by virtue of section 61(5) of the 1986 Act, the provisions of section 61(2) and (3) of the 1975 Act (as amended by section 86(1) of, and paragraph 94 of Schedule 10 to, the 1986 Act), which require reference to the Occupational Pensions Board of, and a report by the Board on, proposals to make regulations for certain purposes of both Acts do not apply to them.

Section 6 of the 1986 Act, with Schedule 2, introduces the concept of the money purchase contracted-out occupational pension scheme. Regulation 2, with the Schedule, makes provision about the way in which the resources of the scheme must be invested if it is to be a money purchase contracted-out scheme.

For a money purchase scheme to be contracted-out, it is necessary that "minimum payments" should be made to it. Regulations 3, 4 and 5 provide for the calculation of minimum payments; that they should be made by employers to the trustees or managers of schemes; and that parts of them may be deducted by employers from payments of emoluments.

Section 32(2D) of the 1975 Act (inserted by paragraph 5(b) of Schedule 2 to the 1986 Act) provides that a scheme which has been contracted-out by virtue of one of subsections (2) and (2A) of section 32 (schemes which are not, and schemes which are, money purchase contracted-out schemes respectively) may not become contracted-out by virtue of the other, except in prescribed circumstances. Regulation 6 provides that it may do so only if its trustees or managers have been discharged of all their liability, accrued before the change, to provide guaranteed minimum pensions or to give effect to protected rights, as the case may be.

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