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STATUTORY INSTRUMENTS

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**1987 No. 1103**

**PENSIONS**

**The Occupational Pension Schemes (Contracted-out Protected Rights Premiums) 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(1), Sections 44ZA(4), (6), (7), (9) and (13) and 52 of, and paragraph 6 of Schedule 2 to the Social Security Pensions Act 1975(2), 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 Occupational Pension Schemes (Contracted-out Protected Rights Premiums) Regulations 1987 shall come into force on 6th April 1988.

(2) In these Regulations, “the principal Regulations” means the Occupational Pensions Schemes (Contracting-out) Regulations 1984(3).

**Manner of calculation and verification of cash equivalents mentioned in section 44ZA(7) and (9)(a)(i) of the Social Security Pensions Act 1975**

2.—(1) Except in a case to which paragraph (3) below applies. the cash equivalent mentioned in section 44ZA(7) of the Social Security Pensions Act 1975 of protected rights (being those rights under a scheme, which has ceased to be a money purchase contracted-out scheme, whose cash equivalent is to be the amount of a contracted-out protected rights premium) shall be calculated and verified—

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- (1) 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.
- (2) 1975 c. 60. Section 44ZA was inserted by the Social Security Act 1986 (c. 50), section 6 and Schedule 2, paragraph 7. Paragraph 6 of Schedule 2 was amended by the Social Security Act 1980 (c. 30), section 3(12), and is modified by the Personal and Occupational Pension Schemes (Modification of Enactments) Regulations 1987 (S.I. 1987/1116), regulation 5(4).
- (3) S.I. 1984/380; the relevant amending instrument is S.I. 1985/1928

- (a) in such manner as may be approved in particular cases by the trustees or managers of the scheme, and
- (b) by adopting methods consistent with the requirements of Schedule 1 to the Social Security Act 1986 as modified by section 32(2B) of the Social Security Pensions Act 1975(4).

(2) Except in a case to which paragraph (3) below applies, the cash equivalent mentioned in section 44ZA(9)(a)(i) of the Social Security Pensions Act 1975 of a person's rights (being those rights under a scheme, which has ceased to be a money purchase contracted-out scheme, whose cash equivalent is to be used to supplement a contracted-out protected rights premium) shall be calculated and verified in such manner as may be approved in particular cases by the trustees or managers of the scheme.

(3) In a case where the rights under a scheme mentioned in paragraph (1) or (2) above fall, either wholly or in part, to be valued in a manner which involves making estimates of the value of benefits, the cash equivalents of those rights shall be calculated and verified—

- (a) in such manner as may be approved in particular cases by—
  - (i) a Fellow of the Institute of Actuaries, or
  - (ii) a Fellow of the Faculty of Actuaries, or
  - (iii) a person with other actuarial qualifications who is approved by the Secretary of State, at the request of the trustees or managers of the scheme in question, as being a proper person to act for the purposes of these regulations in connection with that scheme,

and in this regulation “actuary” means any person such as is referred to in head (i), (ii) or (iii) of this sub-paragraph; and

- (b) by adopting methods and making assumptions which—
  - (i) if not determined by the trustees or managers of the scheme in question, are notified to them by an actuary, and
  - (ii) are certified by an actuary to the trustees or managers of the scheme as being consistent with “Retirement Benefit Schemes-Transfer Values (GN 11)” published by the Institute of Actuaries and the Faculty of Actuaries and current at the date of the calculation, and, in the case of protected rights, as being consistent with the requirements of Schedule 1 to the Social Security Act 1986 as modified by section 32(2B) of the Social Security Pensions Act 1975.

### **Amendment of regulation 1 of the principal Regulations**

3.—(1) Regulation 1 of the principal Regulations (interpretation) shall be amended in accordance with the following provisions of this regulation.

(2) In paragraph (2), immediately after the definition of “employer” there shall be inserted the following definition—

“qualifying widow or widower” means a widow or widower of the earner who at the date of the earner's death either—

- (a) is aged 45 or over; or
- (b) is entitled to child benefit in respect of a child under 18 who is, or residing with a child under 16 who is—
  - (i) a son or daughter of the widow or widower and the earner, or

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(4) Subsection (2B) was inserted into section 32 by the Social Security Act 1986, section 6 and Schedule 2, paragraph 5.

- (ii) a child in respect of whom the earner immediately before his death, was, or would have been if the child had not been absent from Great Britain, entitled to child benefit, or
- (iii) if the widow or widower and the earner were residing together immediately before the earner's death, a child in respect of whom the widow or widower then was, or would have been if the child had not been absent from Great Britain, entitled to child benefit;

#### **Amendment of regulation 18 of the principal Regulations**

4.—(1) Regulation 18 of the principal Regulations (liability for payment of state scheme premiums) shall be amended in accordance with the following provisions of this regulation.

(2) After paragraph (1) there shall be inserted the following paragraph—

“**1ZA)** For the purposes of section 44ZA(6) (payment of contracted-out protected rights premiums) the prescribed person is—

- (a) in a case where regulation 23A(7)(a) and (c) applies, the person to whom the cash sum mentioned in regulation 23A(7)(c) has been paid; and
- (b) in any other case, the trustees of the scheme.”

(3) After paragraph (2) there shall be inserted the following paragraph—

“**2A)** A contracted-out protected rights premium shall not be payable—

- (a) in a case where the protected rights in question are in respect of an earner who has died and either—
  - (i) the earner is not survived by a qualifying widow or widower, or
  - (ii) the earner is survived by a qualifying widower, and the earner or the widower or both were under pensionable age when the earner died;
- (b) in a case where the person in respect of whom it otherwise would be payable is not treated, under section 4 of the Social Security Act 1986 or under section 29(2) or (2A) of the Act, as entitled to any guaranteed minimum pension which derives from the minimum contributions, minimum payments, or transfer payment or payments from which the protected rights in question derive, or is treated as entitled to such a guaranteed minimum pension at a nil rate.”

#### **Amendment of regulation 20 of the principal Regulations**

5.—(1) Regulation 20 of the principal Regulations (time for payment of state scheme premiums) shall be amended in accordance with the following provisions of this regulation.

(2) In sub-paragraph (b) of paragraph (1), at the end there shall be inserted “or, in the case of a contracted-out protected rights premium, certifying that the premium is payable”.

(3) After paragraph (3) there shall be inserted the following paragraph—

“**3A)** In cases where a state scheme premium has become payable by reason of the fact that a contracted-out scheme has ceased to be contracted-out and a person's protected rights are not the subject of approved arrangements under section 44ZA or, having been so subject, have ceased to be so subject, references in paragraph (1)(a) to the date of termination of contracted-out employment shall be read as references to the date on which the Board certify under regulation 18(4) that the protected rights in question are not subject to approved arrangements or have ceased to be so subject.”

(4) After paragraph (4) there shall be inserted the following paragraph—

“**4A)** In cases where a state scheme premium has become payable by reason of the fact that a contracted-out scheme has ceased to be contracted-out and a person’s protected rights are, in part only, subject to approved arrangements under section 44ZA, references in paragraph (1)(a) to the date of termination of contracted-out employment shall be read as references to the date on which the Board certify under regulation 18(4) that the protected rights in question are, in part only, subject to approved arrangements.”

### **Addition of regulation 23A to the principal Regulations**

**6.** After regulation 23 of the principal Regulations there shall be inserted the following regulation—

#### **“Miscellaneous provisions affecting contracted-out protected rights premiums**

**23A.**—(1) Subject to paragraphs (3) and (4), where a contracted-out protected rights premium is payable under section 44ZA(4) pursuant to certification by the Board to the Secretary of State under regulation 18(4), the premium shall, for the purpose of extinguishing protected rights and reducing any guaranteed minimum pension to which a person is treated as being entitled, be treated as having been paid, or paid in part in a case to which either paragraphs (6) to (8) apply or paragraph (9) applies, on the date specified in paragraph (2).

(2) The date mentioned in paragraph (1) is whichever is the later of—

- (a) the date on which the scheme ceased to be contracted-out; and
- (b) any date certified by the Board under regulation 18(4)(c) in relation to the rights mentioned in paragraph (1).

(3) Where a contracted-out protected rights premium has been treated as paid under paragraph (1), the effect of that paragraph shall, except as provided in paragraph (5), be disregarded if—

- (a) the Board subsequently approve arrangements for the preservation or transfer of the protected rights, or
- (b) the person who is liable to pay the premium fails to do so within the period prescribed by regulation 20(1) or such longer period as the Secretary of State may allow under regulation 20(2).

(4) Where by virtue of the operation of paragraphs (1) and (3) in relation to a person entitled to a benefit specified in section 29(1)(a) an amount of that benefit, as certified by the Secretary of State, was paid to that person which would not otherwise have been paid—

- (a) the Secretary of State shall be entitled to recover that amount from the scheme and any amount so recovered shall be paid into the National Insurance Fund; and
- (b) the sums payable under the scheme to that person may be reduced by the amount so recovered by the Secretary of State.

(5) Paragraph (3)(b) shall not apply where the Secretary of State is satisfied that the failure to pay was not with the consent or connivance of, or attributable to any negligence on the part of, the person in respect of whom the premium is payable, and where, subject to paragraphs (6) and (8), the scheme, being a scheme which is or has been contracted-out, is being or has been wound up.

(6) In a case where the circumstances specified in paragraph (7)(a) and either (b) or (c) obtain, the contracted-out protected rights premium in question shall be treated as paid under paragraph (1) only in accordance with the provisions of paragraph (8).

(7) The circumstances mentioned in paragraph (6) are that—

- (a) a contracted-out protected rights premium has become payable in respect of that person by reason of the withdrawal by the Board of their approval of, or their inability to give their approval to, arrangements for the preservation or transfer of the protected rights in question under section 44ZA;
  - (b) the scheme is being or has been wound up, its resources are insufficient to meet the cost of that premium, and the Board are satisfied that no arrangements have been made to meet that cost, or, as the case may be, such part of that cost as cannot be met from the resources of the scheme;
  - (c) the scheme has been wound up and a cash sum in lieu of the protected rights in question has been paid to or for the benefit of the person concerned.
- (8) In a case to which paragraph (6) applies, where the Secretary of State is satisfied that the part of the premium that the resources of the scheme are sufficient to meet or the amount of the cash sum referred to in paragraph (7)(c) is less than the value of the protected rights in question, such part of the contracted-out protected rights premium as represents, in the opinion of the Secretary of State, the difference between the lesser and greater amounts shall be treated as having been paid.
- (9) Where a person in respect of whom a contracted-out protected rights premium is payable is a person to whom regulation 18(1ZA)(a) applies and that person pays part only of the premium, that part of the premium shall be treated as having been paid under paragraph (1).
- (10) Where part of a contracted-out protected rights premium is treated as having been paid under paragraph (1)—
- (a) section 44ZA(8) shall be modified so as to have effect as if there were inserted at the end thereof the words and payment of part of the premium shall operate to extinguish such part of those rights as corresponds, in the opinion of the Secretary of State, to that part of the premium and section 44ZA(9)(a) shall have effect as if there were substituted for the words “the premium” the words “that part of the premium which has been paid”; and
  - (b) in a case to which paragraph (6) applies, section 44ZA shall be modified so as to have effect as if—
    - (i) in subsection (1) there were inserted after the words “protected rights” the words “or part thereof”,
    - (ii) in each of paragraphs (a) and (b) of subsection (4) there were inserted after the words “are not” the words “Or are in part only”, and
    - (iii) in subsection (7) there were inserted after the words “in question” the words “to the extent that those rights are not subject to approved arrangements”.

### **Addition of regulation 26A to the principal Regulations**

7. After regulation 26 of the principal Regulations, there shall be inserted the following regulation—

#### **“Prescribed person and prescribed periods for the purposes of section 44ZA(9)(a)**

**26A.** For the purposes of section 44ZA(9)(a)—

- (a) the prescribed person is the Secretary of State; and
- (b) the prescribed period—
  - (i) for the purpose of giving notice to the Secretary of State,

- (ii) for the purpose of the payment referred to in section 44ZA(9)(a)(i), and (iii) for the purpose of the payment referred to in section 44ZA(9)(a)(ii), is the period allowed for the payment of the premium under paragraphs (1) and (2) to (4) of regulation 20.”

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

25th June 1987

*Nicholas Scott*  
Minister of State,  
Department of Health and Social Security

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## EXPLANATORY NOTE

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

These Regulations are all made under provisions of the Social Security Act 1986 (“the 1986 Act”), or provisions of the Social Security Pensions Act 1975 (“the 1975 Act”) inserted by or modified under the 1986 Act, before the end of a period of 12 months from the commencement of the relevant sections of the 1986 Act. 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.

The amendments made to the 1975 Act by Schedule 2 to the 1986 Act introduced into the 1975 Act the concept of the “money purchase contracted-out scheme”. When such a scheme ceases to be a contracted-out scheme, a “contracted-out protected rights premium” may become payable under section 44ZA of the 1975 Act in respect of each person in the categories described in subsection (4) of that section.

Under subsection (7) of that section, the amount of a contracted-out protected rights premium is the cash equivalent of the protected rights of the person concerned, calculated and verified in the prescribed manner.

Regulation 2 provides for the manner in which protected rights, and other rights under the scheme, are to be calculated and verified.

Regulations 3 to 7 make various amendments, in order to deal with the case of contracted-out protected rights premiums, to the Occupational Pension Schemes (Contracting-out) Regulations 1984, and in particular to regulations 18 (liability for payment of state scheme premiums), 20 (time for payment of premiums) and 23 (treating premiums as paid).

The publication “Retirement Benefit Schemes-Transfer Values (GN 11)” referred to in regulation 2(3)(b)(ii), may be obtained from the Institute of Actuaries, Staple Inn Hall, High Holborn, London W.C. 1N 7QJ, and from the Faculty of Actuaries, 23 St. Andrew Square, Edinburgh EH2 1AQ.