
STATUTORY INSTRUMENTS

1991 No. 167

PENSIONS

**The Occupational Pension Schemes
(Preservation of Benefit) Regulations 1991**

<i>Made</i>	- - - -	<i>1st February 1991</i>
<i>Laid before Parliament</i>		<i>7th February 1991</i>
<i>Coming into force</i>	- -	<i>28th February 1991</i>

The Secretary of State for Social Security, in exercise of the powers conferred by sections 51(5) and (10), 64(1A), 96(1) and (2) and 99(1) and (3) of, and paragraphs 5(1), 6(5), 9(1), (2) and (3), 12(2), 13(5), 15(4) and 20 to 26 of Schedule 16 to, the Social Security Act 1973(1), section 6(4) of the National Insurance Act 1974(2), sections 166(1) to (3A) and 168(1) of, and Schedule 20 to, the Social Security Act 1975(3) and sections 52C(5), 56P, 62(4) and 66(2) and (3) of, and paragraphs 14(3) and 20 of Schedule 1A to, the Social Security Pensions Act 1975(4), 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(5), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991.

(2) These Regulations come into force on 28th February 1991.

(3) In these Regulations, “Schedule 16” means Schedule 16 to the Social Security Act 1973 (requirements as to preservation of benefit under occupational pension schemes).

-
- (1) 1973 c. 38. Section 51(5) was amended by Schedule 5 to the Social Security Pensions Act 1975 (c. 60). See the definition of “prescribed” in section 99(1) and the explanation of “regulations” in section 99(3). Schedule 16 has been amended by subsequent Social Security Acts and modified by the Personal and Occupational Pension Schemes (Modification of Enactments) Regulations 1987 (S.I.1987/1116).
- (2) 1974 c. 14.
- (3) 1975 c. 14. See definitions of “prescribe” and “regulations” in Schedule 20. Sections 166(1) to (3A) and 168(1) apply, 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.
- (4) 1975 c. 60. Section 56P was inserted by section 11 of the Social Security Act 1986 (c. 50). Schedule 1A was inserted by paragraph 3 of Schedule I to the Social Security Act 1985 (c. 53). The only relevant amendment to Schedule 1A was made by paragraph 30(d)(iii) of Schedule 10 to the Social Security Act 1986 which substituted a new paragraph 14(3)(b).
- (5) See section 68(1) of the Social Security Act 1973 and section 61(2) of the Social Security Pensions Act 1975.

Meaning of “employer”

2.—(1) This regulation applies for the purposes of Part II of the Social Security Act 1973 (occupational pension schemes).

(2) In relation to an employed earner, “employer” means the secondary contributor in relation to any payment of earnings in respect of the employment concerned.

(3) In relation to a self-employed earner, “employer” means any other person, government department, public authority or body of persons who has made, or is to make, payments to the scheme in respect of the earner.

(4) In this regulation, “employed earner” and “self-employed earner” mean the same as in section 2 of the Social Security Act 1975 (categories of earners) and “secondary contributor” means the same as in section 4 of that Act (Class 1 contributions-incidence).

Meaning of “member” and “prospective member”

3.—(1) This regulation applies for all the purposes of Part II of the Social Security Act 1973.

(2) Any earners who are, or have been, in pensionable service under an occupational pension scheme are to be regarded as members of the scheme.

(3) There are to be regarded as prospective members of an occupational pension scheme—

- (a) any earners who are able, at their own option, to become members of the scheme, and
- (b) any earners who will become so able, if they continue in the same employment for a sufficiently long time and their contracts of service and the scheme rules remain unaltered during that time.

Benefits included in supplementary credits

4.—(1) For the purposes of paragraph 5(1)(c) of Schedule 16, in the circumstances set out in paragraph (2) below, “supplementary credits” include any increase of benefit or additional benefit that is of an amount, or at a rate, unrelated to length of pensionable service or to the number or amount of contributions paid by or for the member.

(2) The circumstances referred to in paragraph (1) are that the member becomes entitled to the increase of benefit or additional benefit in consequence of a provision made by or under the scheme after he becomes a member of it and before his pensionable service terminates.

Short service benefit in lump sum form

5.—(1) For the purposes of paragraph 6(5) of Schedule 16, a scheme may provide for payment of short service benefit in the form of a lump sum before normal pension age in the circumstances described in any of paragraphs (2) to (4) of this regulation or any other circumstances where the Occupational Pensions Board consider it reasonable.

(2) The circumstances described in this paragraph are that the member’s earning capacity is destroyed or seriously impaired by physical or mental infirmity.

(3) The circumstances described in this paragraph are that the member has become incapable of following his normal employment because of physical or mental infirmity.

(4) The circumstances described in this paragraph are that the member has attained age 50 or is within 10 years of normal pension age.

Means of assuring short service benefit

6.—(1) For the purposes of paragraph 9(1) of Schedule 16, short service benefit that is not payable directly out of the resources of the scheme may be assured to the member by means of a transaction to which section 52C of the Social Security Pensions Act 1975(6) (extinguishment of liability of scheme for pensions secured by insurance policies or annuity contracts) applies, and which satisfies the requirements of paragraph (2) of this regulation.

(2) A transaction satisfies the requirements of this paragraph if—

- (a) it results in the member’s short service benefit being secured by one or more policies of insurance or annuity contracts that are appropriate for the purposes of section 52C of the Social Security Pensions Act 1975; and
- (b) the member will be able to assign or surrender the insurance policies or annuity contracts on the conditions set out in regulation 2 of the Occupational Pension Schemes (Discharge of Liability) Regulations 1985(7) (conditions on which policies of insurance and annuity contracts may be assigned or surrendered).

(3) For the purposes of paragraph (2) of this regulation, a policy of insurance or annuity contract which is taken out or entered into with an authorised friendly society, but which otherwise satisfies the conditions for being “appropriate” for the purposes of section 52C of the Social Security Pensions Act 1975, is to be treated as if it were appropriate for the purposes of that section.

(4) In this regulation—

“friendly society” means a friendly society registered under—

- (a) section 7(1)(a) of the Friendly Societies Act 1974(8) (societies which may be registered); or
- (b) section 1(1)(a) of the Friendly Societies Act (Northern Ireland) 1970(9) (societies which may be registered); and

“authorised friendly society” means a friendly society—

- (a) which is an authorised person, as defined in section 207(1) of the Financial Services Act 1986(10) (interpretation), and
- (b) which is authorised under either regulation 5 or regulation 6 of the Friendly Societies (Long Term Insurance Business) Regulations 1987(11) (authorisation of existing and new societies) to carry on long term business as defined in those Regulations.

Alternatives to short service benefit

7.—(1) For the purposes of paragraph 9(2) of Schedule 16, a scheme may, instead of providing short service benefit, provide any of the alternatives to short service benefit described in regulations 8 to 10 below.

(2) The alternatives described in regulations 8 to 10 may be provided by way of complete or partial substitute for short service benefit, but (except in the cases specifically referred to) only with the member’s consent.

(3) In addition to the alternatives to short service benefit described in regulations 8 to 10, the scheme may provide any other alternative to short service benefit that is consistent with paragraph

(6) 1975 c. 60. Section 52C was inserted by paragraph 2 of Schedule 1 to the Social Security Act 1985 (c. 53) and has been amended by paragraph 26 of Schedule 10 to the Social Security Act 1986 (c. 50). See also section 9(4)(h) of the Social Security Act 1986 and paragraph 14 of Schedule 6 to the Social Security Act 1989 (c. 24) which affect the construction of section 52C.

(7) S.I. 1985/1929; the relevant amending instruments are S.I. 1986/2171, 1987/1114 and 1988/1016.

(8) 1974 c. 46.

(9) 1970 c. 31 (N.I.).

(10) 1986 c. 60.

(11) S.I. 1987/2132.

9(4) of Schedule 16 and is, in the Occupational Pensions Board's opinion, a suitable means of maintaining the provision of benefits in relation to a particular scheme or category of schemes.

(4) Any alternative provided by virtue of paragraph (3) may be provided by way of complete or partial substitute for short service benefit, but (except in any case where the Occupational Pensions Board consider it reasonable) only with the member's consent.

Early retirement or deferred retirement

8.—(1) The scheme may provide benefits that are different from those required to constitute short service benefit as regards amount, recipient and the time at which they are payable. The benefits must, however, include a benefit that is payable to the member.

(2) The member's benefit must not be payable before normal pension age except in the circumstances referred to in regulation 5.

(3) Benefits consisting of, or including, a benefit that becomes payable to the member before normal pension age may be provided without the member's consent where—

- (a) the member's earning capacity is destroyed or seriously impaired by physical or mental infirmity, and
- (b) in the opinion of the trustees or managers of the scheme, the member is incapable of deciding whether it is in his interests to consent.

(4) Any scheme rule that allows the alternative described in this regulation must require the trustees or managers of the scheme to be reasonably satisfied that, when the member's benefit becomes payable, the total value of the benefits to be provided under this regulation is at least equal to the amount described in regulation 11.

Bought out benefits

9.—(1) The scheme may provide for benefits different from those required to constitute short service benefit to be appropriately secured by a transaction to which section 52C of the Social Security Pensions Act 1975 applies (extinguishment of liability of scheme for pensions secured by insurance policies or annuity contracts).

(2) Any scheme rule that allows the alternative described in this regulation must require the trustees or managers of the scheme to be reasonably satisfied that, except where paragraph (3) below applies, the payment made to the insurance company is at least equal to the amount described in regulation 11.

(3) The exception to paragraph (2) is where the member is requiring the trustees or managers to provide the alternative by exercising a right to a cash equivalent, as described in Part II of Schedule 1A to the Social Security Pensions Act 1975(12) (transfer values).

(4) A scheme may allow the alternative described in this regulation to be provided without the member's consent where—

- (a) the member will be able to assign or surrender the insurance policy or annuity contract on the conditions set out in regulation 2 of the Occupational Pension Schemes (Discharge of Liability) Regulations 1985(13) (conditions on which policies of insurance and annuity contracts may be assigned or surrendered); and
- (b) the requirements of paragraph (5) are satisfied.

(5) The requirements of this paragraph are that—

(12) 1975 c. 60. Schedule 1A was inserted by paragraph 3 of Schedule 1 to the Social Security Act 1985 (c. 53). It has been amended by subsequent Social Security Acts and modified by the Personal and Occupational Pension Schemes (Modification of Enactments) Regulations 1987 (S.I. 1987/1116).

(13) S.I. 1985/1929; the relevant amending instruments are S.I. 1986/2171, 1987/1114 and 1988/1016.

- (a) the scheme is being wound up; or
 - (b) the member has less than “5 years' qualifying service” (as defined in paragraph 7 of Schedule 16 immediately before the coming into force of section 10 of the Social Security Act 1986⁽¹⁴⁾ (changes to preservation requirements)) and the requirements of paragraph (6) are satisfied; or
 - (c) the Occupational Pensions Board consider that, in the circumstances, it is reasonable for the scheme to provide the alternative without the member's consent and the requirements of paragraph (6) are satisfied.
- (6) The requirements of this paragraph are that all the conditions set out in subparagraphs (a) to (d) are satisfied, namely—
- (a) the member's rights under the scheme do not include “protected rights”, as defined in section 66 of the Social Security Pensions Act 1975⁽¹⁵⁾ (interpretation);
 - (b) the insurance policy is taken out or the annuity contract entered into more than 12 months after the member's pensionable service terminates;
 - (c) the trustees or managers of the scheme give the member at least 30 days' written notice of their intention to take out the insurance policy or enter into the annuity contract unless the member exercises a right to a cash equivalent, as described in Part II of Schedule 1A to the Social Security Pensions Act 1975 (the notice being sent to the member at his last known address or delivered to the member personally); and
 - (d) when the trustees or managers of the scheme agree with the insurance company to take out the insurance policy or enter into the annuity contract, there is no outstanding application by the member for a cash equivalent.
- (7) For the purposes of this regulation, “appropriately secured” means the same as in section 52C of the Social Security Pensions Act 1975 except that a policy of insurance or annuity contract which is taken out or entered into with an “authorised friendly society” (as defined for the purposes of regulation 6), but which otherwise satisfies the conditions for being “appropriate” for the purposes of section 52C, is to be treated as if it were appropriate for the purposes of that section.

Money purchase benefits

10.—(1) The scheme may provide money purchase benefits instead of all or any of the benefits that constitute short service benefit.

(2) Any scheme rule that allows this alternative must require the trustees or managers of the scheme to be reasonably satisfied that the amount allocated to provide money purchase benefits in respect of the member is at least equal to the amount described in regulation 11. The scheme rule must also require the trustees or managers of the scheme to calculate the money purchase benefits, when they become payable, either on the basis of actuarial advice or in accordance with the terms of an insurance policy or annuity contract in which the amount allocated to provide the benefits is invested.

Value of alternatives to short service benefit

11.—(1) The amount referred to in regulations 8, 9, and 10 is an amount equal to the value of the benefits (or, where the alternative is provided by way of partial substitute for short service benefit, the relevant part of the benefits) that have accrued to or in respect of the member under the applicable rules.

⁽¹⁴⁾ 1986 c. 50. Section 10 came into force on 6th April 1988.

⁽¹⁵⁾ 1975 c. 60. The definition of “protected rights” was inserted by paragraph 11 of Schedule 2 to the Social Security Act 1986 (c. 50).

(2) For the purposes of this regulation, “the applicable rules” means the same as in paragraph 12(2) of Schedule 1A to the Social Security Pensions Act 1975 (revaluation of pensions and transfer values).

Transfer of member’s accrued rights without consent

12.—(1) For the purposes of paragraph 9(3) of Schedule 16, a scheme may provide for the member’s accrued rights to be transferred to another occupational pension scheme (as described in paragraph 9(2)(a) of Schedule 16) without the member’s consent where—

- (a) the scheme is being wound up and the transfer is to another scheme that applies to employment with the same employer; or
- (b) the conditions set out in paragraphs (2) and (3) of this regulation are satisfied.

(2) The condition set out in this paragraph is that the rights of a group of members are being transferred from the transferring scheme to the receiving scheme and—

- (a) the transferring scheme and the receiving scheme apply to employment with the same employer, or
- (b) the transferring scheme and the receiving scheme apply to employment with different employers and the transfer is a consequence of a financial transaction between the employers, or
- (c) the transferring scheme and the receiving scheme apply to employment with different employers and the employers are treated as connected for the purposes of section 51A of the Social Security Pensions Act 1975(16) (refusal and cancellation of contracting-out certificates).

(3) The condition set out in this paragraph is that an actuary certifies to the trustees or managers of the transferring scheme that the transfer credits to be acquired for the members under the receiving scheme are at least equal in value to the rights to be transferred.

(4) When calculating the value of any rights for the purposes of this regulation, the actuary must comply with the requirements of sub-paragraphs (a) and (b), namely—

- (a) the actuary must value all benefits that have accrued to or in respect of the members under the applicable rules and, for members in service at the date of transfer, the value of those benefits must be based on pensionable service in the transferring scheme up to that date and projected final pensionable earnings; and
- (b) where it is the established custom for additional benefits to be awarded from the transferring scheme at the discretion of the trustees or the employer, the actuary must take into account the value of any such additional benefits as will accrue to the members in question if the custom continues unaltered.

(5) In this regulation—

“actuary” means a Fellow of the Institute of Actuaries, a Fellow of the Faculty of Actuaries, or 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, as being a proper person to act for the purposes of this regulation in connection with the scheme; and

“the applicable rules” means the same as in paragraph 12(2) of Schedule 1A to the Social Security Pensions Act 1975.

(16) 1975 c. 60. See section 51A(12) and regulation 42 of the Occupational Pension Schemes (Contracting-out) Regulations 1984 (S.I. 1984/380). Section 51A was inserted by section 40 of the Social Security and Housing Benefits Act 1982 (c. 24).

Benefits attributable to waiting periods

13.—(1) This regulation applies where—

- (a) an earner in relevant employment is required to complete a period of service (“waiting period”) before joining the scheme, and
- (b) if the earner joins the scheme, a specific part of long service benefit will, in the Occupational Pensions Board’s opinion, be attributable to the waiting period.

(2) Where this regulation applies, the preservation requirements are modified so that—

- (a) the waiting period is treated as pensionable service,
- (b) the earner is treated as a member during that period, and
- (c) the part of long service benefit that will, in the Occupational Pensions Board’s opinion, be attributable to the waiting period is treated as accruing at such a rate as to accrue in full over the whole of the waiting period.

(3) This paragraph applies where the rate at which long service benefit is treated as accruing during the waiting period is lower than the rate at which the rest of long service benefit accrues. In such circumstances short service benefit must be computed on the basis of uniform accrual (in accordance with paragraph 11 of Schedule 16) except that the scheme may provide for short service benefit to be computed on the same basis as long service benefit (in accordance with paragraph 10(1) of Schedule 16) where the Occupational Pensions Board consider it is reasonable to do so.

Computation of benefit-money purchase benefits

14.—(1) This regulation applies to “money purchase benefits”, as defined in section 66 of the Social Security Pensions Act 1975(17) (interpretation).

(2) This paragraph applies where long service benefit is related to bonuses which have been declared at, or before, the time when the member attains normal pension age. In such circumstances short service benefit that is computed on the same basis as long service benefit (in accordance with paragraph 10(1) of Schedule 16) must be correspondingly related to bonuses which have been declared at, or before, the time when the member’s pensionable service terminates.

(3) This paragraph applies where long service benefit is related to the value of securities at, or in a specified period before, the time when the member attains normal pension age. In such circumstances short service benefit that is computed on the same basis as long service benefit (in accordance with paragraph 10(1) of Schedule 16) must be correspondingly related to the value of securities at, or in the same period before, the time when the member’s pensionable service terminates. But, if the trustees or managers of the scheme so decide before, or not more than one month after, the member’s pensionable service terminates, short service benefit may be correspondingly related to the value of securities at, or in the same period before, the time when the benefit becomes payable.

(4) This paragraph applies where the rate at which long service benefit accrues increases after a certain age or length of service (for example, because the employer contributes more to the scheme in respect of older members). In such circumstances short service benefit must be computed on the basis of uniform accrual (in accordance with paragraph 11 of Schedule 16) except that the scheme may provide for short service benefit to be computed on the same basis as long service benefit (in accordance with paragraph 10(1) of Schedule 16) where the Occupational Pensions Board consider it is reasonable to do so.

(17) 1975 c. 60. The definition of “money purchase benefits” was inserted by paragraph 11 of Schedule 2 to the Social Security Act 1986 (c. 50).

Computation of benefit-earnings related benefits

15. Where long service benefit is related to a member's earnings during a specified period and the member's pensionable service is less than that period, the scheme must provide for short service benefit to be correspondingly related to the member's earnings during the whole of the member's pensionable service.

Computation of benefit-uniform accrual

16.—(1) This regulation applies where short service benefit is computed on the basis of uniform accrual, in accordance with paragraph 11 of Schedule 16.

(2) Where this regulation applies long service benefit at the time when the member's pensionable service terminates is to be calculated on the assumption that the member's earnings would have remained constant from the time when pensionable service terminates until normal pension age.

(3) For the purpose of computing a member's short service benefit, the trustees or managers of the scheme may make such assumptions as the Occupational Pensions Board consider reasonable as to—

- (a) the level at which the member's earnings would have remained constant,
- (b) the dates on which bonuses would have been declared and the rates of those bonuses, and
- (c) the value of, and the rate of interest on, securities.

Computation of benefit-rounding

17.—(1) For the purpose of computing short service benefit on the basis of uniform accrual (in accordance with paragraph 11 of Schedule 16), a scheme may provide for both the periods mentioned in that paragraph (the period of pensionable service and the period from the beginning of that service to the time when the member would attain normal pension age) to be calculated to the nearest, next highest, or next lowest whole month.

(2) For the purpose of calculating the proportion of purchased credits that must be included in short service benefit (in accordance with paragraph 13(2) of Schedule 16), a scheme may provide for both the periods mentioned in paragraph 13(2)(b) (the period between the time when the first payment became due and the termination of the member's pensionable service, and the whole period over which payment was to be made) to be calculated to the nearest, next highest, or next lowest whole month.

(3) For the purpose of calculating the proportion of bonus credits, or credits for which payment is to be made by deduction from some benefit, that must be included in short service benefit (in accordance with paragraph 13(3) of Schedule 16), a scheme may provide for both the periods described in paragraph (4) to be calculated to the nearest, next highest, or next lowest whole month. Where applicable, the scheme must make the same provision for the purpose of calculating the amount of any relevant deduction.

(4) The periods referred to in paragraph (3) are—

- (a) the period over which, on the assumption referred to in paragraph 13(3)(a) of Schedule 16, the credits would have accrued in full, and
- (b) the period between the time when any credit was awarded and the termination of the member's pensionable service.

(5) Where a scheme provides for rounding as described in this regulation, it must provide for both the periods referred to in each paragraph to be rounded in the same way.

Commutation of benefit

18.—(1) For the purposes of paragraph 15(4) of Schedule 16, the circumstances in which short service benefit and benefits or rights alternative to short service benefit may be commuted are the circumstances described in this regulation or any other circumstances that the Occupational Pensions Board consider suitable.

(2) A scheme may allow a member to commute any benefit that has become payable.

(3) The benefit for a member may be commuted if it is trivial and—

(a) the benefit has become payable, or

(b) the scheme is being wound up.

(4) The benefit for a member's widow or widower or dependant may be commuted if it is trivial and—

(a) it has become payable, or

(b) the member's benefit is being commuted under paragraph (3) because it is trivial.

(5) For the purposes of this regulation, a person's benefit is "trivial" only if the total value of all that person's benefits from occupational pension schemes, in respect of the member's employment with the same employer as the employment in respect of which the "trivial" benefit is payable, is (in the opinion of the trustees or managers of the scheme in question) less than the value of a pension of £260 a year.

Widows, widowers and dependants

19. This regulation applies to schemes that provide long service benefit payable to a person other than the member only if the person is married to, or dependent on, the member when the member reaches normal pension age. These schemes are required to provide short service benefit payable to the person concerned only if the person was also married to, or (as the case may be) dependent on, the member when the member's pensionable service terminated.

Deductions from short service benefit

20.—(1) This regulation applies where a scheme provides that, in computing the amount of long service benefit payable to any person, a deduction will be made, either to take account of benefits payable to that person under the Social Security Act 1975(**18**) or otherwise.

(2) Where this regulation applies, the scheme may provide for a corresponding deduction from short service benefit. The basis for calculating the amount of the deduction from short service benefit must be approved as reasonable by the Occupational Pensions Board.

(3) This regulation does not apply to any deduction from short service benefit that is permissible in accordance with paragraph 18 of Schedule 16.

Breaks in pensionable service

21.—(1) In the case of a member whose pensionable service has been broken, the preservation requirements are modified as described in this regulation. For this purpose, a member's pensionable service is broken if, after it terminates, the member returns to pensionable service under the same scheme.

(2) If paragraph (3) applies to the break and the member's pensionable service is again terminated before normal pension age, the period of pensionable service previously terminated, and any linked qualifying service in relation to that period, must count towards the 2 years' qualifying service

whether or not it counts towards qualification for long service benefit. Paragraph 7(2) of Schedule 16 is modified accordingly.

(3) This paragraph applies to the break in pensionable service if one or more of the following conditions is satisfied—

- (a) the break does not exceed one month;
- (b) the break corresponds to the member’s absence from work wholly or partly because of pregnancy or confinement, the member returns to work after the break in exercise of a right under section 45(1) of the Employment Protection (Consolidation) Act 1978⁽¹⁹⁾ (right to return to work) and the member returns to pensionable service no later than one month after returning to work;
- (c) the break corresponds to the member’s absence from work in furtherance of a “trade dispute”, as defined in section 19(2)(b) of the Social Security Act 1975⁽²⁰⁾ (loss of employment due to stoppage of work).

(4) If paragraph (5) applies to the break and the member’s pensionable service is again terminated before normal pension age, the scheme must provide for the member to be entitled to short service benefit in respect of pensionable service after the break whether or not the conditions described in paragraph 6(1) of Schedule 16 are satisfied. Paragraph 6(1) of Schedule 16 is modified accordingly.

(5) This paragraph applies to the break in pensionable service if the member became entitled to short service benefit when his pensionable service previously terminated. This paragraph does not apply, however, if all the member’s accrued rights in respect of the period before the break have been—

- (a) transferred to another scheme as described in paragraph 9(2) of Schedule 16;
- (b) “appropriately secured” by a transaction to which section 52C of the Social Security Pensions Act 1975 applies (extinguishment of liability of scheme for pensions secured by insurance policies or annuity contracts); or
- (c) extinguished by payment of a state scheme premium under the Social Security Pensions Act 1975⁽²¹⁾ or by payment of a lump sum.

(6) A scheme may provide that, when the member returns to pensionable service under the scheme, the member’s pensionable service before and after the break be treated as continuous so that the whole period qualifies the member for long service benefit under the scheme. The scheme will not then be required to provide short service benefit in respect of the period before the break.

(7) For the purposes of this regulation, “appropriately secured” means the same as in section 52C of the Social Security Pensions Act 1975 except that a policy of insurance or annuity contract which is taken out or entered into with an “authorised friendly society” (as defined for the purposes of regulation 6), but which otherwise satisfies the conditions for being “appropriate” for the purposes of section 52C, is to be treated as if it were appropriate for the purposes of that section.

Postponement or suspension of benefit

22.—(1) The preservation requirements are modified as described in this regulation where—

- (a) a scheme provides for payment of long service benefit to be postponed, or suspended, for any period after normal pension age during which the member is in service in relevant employment (whether or not that service qualifies the member for additional benefits under the scheme); and

⁽¹⁹⁾ 1978 c. 44.

⁽²⁰⁾ 1975 c. 14.

⁽²¹⁾ 1975 c. 60. See sections 42 to 47.

(b) a member continues in, or returns to, service in relevant employment after becoming entitled to short service benefit under the scheme.

(2) The scheme may provide for payment of short service benefit to be postponed, or suspended, for any period after normal pension age during which the member is in service in relevant employment. Paragraph 6(2) of Schedule 16 is modified accordingly.

Refunds of additional voluntary contributions

23.—(1) This regulation applies where a scheme provides for the payment by members of voluntary contributions.

(2) Where this regulation applies the preservation requirements are modified so that the scheme may be treated as conforming with those requirements even though the provisions of Part III of Schedule 6 to the Finance Act 1989⁽²²⁾ (which provides for the return of surplus additional voluntary contributions to members) apply to the scheme.

(3) If the provisions of Part III of Schedule 6 to the Finance Act 1989 would not otherwise apply to the scheme, the preservation requirements are modified so that the scheme may provide for those provisions to be treated as applying to the scheme.

Schemes funded by level annual premiums

24.—(1) This regulation applies in the case of a member of a scheme that satisfies all the requirements of paragraph (3) below whose pensionable service under that scheme began before 6th April 1975.

(2) In this regulation—

“policy” means a policy of insurance or an annuity contract; and

“premium” means any payment made in consideration for the assurance of the benefit under a policy.

(3) The requirements of this paragraph are that—

(a) the scheme was in existence on 6th April 1974 and has not, in the Occupational Pensions Board’s opinion, been materially altered since that date;

(b) the benefit for each member under the scheme is related to the member’s earnings at a specified time, or over a specified period not exceeding 5 years;

(c) the benefit for each member is secured by one or more policies;

(d) each policy provides separate assurance in respect of each member and the proceeds of the policy are to go to that member, at least to the extent that they are not greater than the benefits to which the member is entitled at normal pension age; and

(e) a premium is payable under each policy at least once a year and the yearly rate of the premium does not change during the member’s pensionable service, except as a result of the declaration of a bonus or a change in the premium rate of the insurer.

(4) Where this regulation applies, if the member becomes entitled to short service benefit under the scheme, the short service benefit must be the greater of the amounts described below, namely—

(a) the total benefit payable to, or in respect of, the member, under the policy, on the basis that no further premiums are to fall due after the date on which the member’s pensionable service is terminated; and

(b) the appropriate proportion of the benefits (excluding any bonuses) that would have been payable under the policy to, or in respect of, the member if the member had continued in

(22) 1989 c. 26.

pensionable service until normal pension age, plus any bonuses declared in respect of the policy before the date on which the member's pensionable service actually terminated.

(5) For the purposes of paragraph (4)(b) of this regulation, the "appropriate proportion" means the proportion that the number of premiums that have fallen due in respect of each policy bears to the number of premiums that would have been payable if the member had continued in pensionable service under the scheme until normal pension age.

Schemes with an overseas element

25.—(1) This regulation applies to schemes with an overseas element, that is to say, schemes established, or relating to employment, or with parties domiciled, resident or carrying on business, in any part of the world outside the United Kingdom, or otherwise not confined in their operation to the United Kingdom.

(2) Part I of Schedule 16 is modified in relation to a scheme with an overseas element, so that the preservation requirements apply to the scheme only if the scheme is established in the United Kingdom or has an appointed representative in the United Kingdom.

(3) In the case of a scheme with any overseas element to which the preservation requirements apply, paragraph 6(1) of Schedule 16 is modified so that the scheme is required to provide short service benefit only for those members whose pensionable service terminates while they are in employment in the United Kingdom.

(4) For the purposes of this regulation—

- (a) a scheme has an appointed representative in the United Kingdom if there is a person resident in the United Kingdom who is appointed for tax purposes in relation to the scheme or who performs one or more functions that, in the Occupational Pensions Board's opinion, would normally be performed by a trustee or manager of the scheme;
- (b) a member's employment outside the United Kingdom is to be treated as employment in the United Kingdom if the most recent payment of earnings in respect of that employment gave rise to liability for primary Class 1 contributions, or would have done so had the level of earnings not been below the lower earnings limit; and
- (c) "Class 1 contributions" means the same as in section 1(2) of the Social Security Act 1975⁽²³⁾ (outline of contributory system) and "lower earnings limit" means the same as in section 4(1) of that Act (Class 1 contributions-incidence).

Transfers to overseas schemes

26.—(1) In this regulation, "overseas scheme" means an occupational pension scheme or a personal pension scheme that is administered primarily or wholly outside the United Kingdom.

(2) A member's accrued rights may be transferred to an overseas scheme only if—

- (a) the overseas scheme is approved by the Occupational Pensions Board for the purposes of this regulation; and
- (b) any conditions imposed by the Occupational Pensions Board are satisfied.

(3) For the purposes of this regulation, "personal pension scheme" includes a personal pension scheme within the meaning of Chapter IV of Part XIV of the Income and Corporation Taxes Act 1988⁽²⁴⁾ (personal pension schemes) which is approved by the Commissioners of Inland Revenue under that Chapter, but which is neither a personal pension scheme within the meaning of the Social Security Act 1986 nor a contract or a scheme approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988 (retirement annuities).

⁽²³⁾ 1975 c. 14.

⁽²⁴⁾ 1988 c. 1.

Specific provisions to be included in scheme rules

27.—(1) Except where paragraph (2) applies, a scheme is not to be treated as conforming with the preservation requirements unless it contains express rules to the effect (but not necessarily in the words) of the following provisions of Schedule 16, to the extent that they apply to the scheme concerned, namely—

- (a) paragraph 6(1) (members who must be entitled to short service benefit);
- (b) paragraph 6(2) and (3) (age or time at which short service benefit must be made payable);
- (c) paragraphs 10 to 12 (computation of benefit);
- (d) paragraph 13 (supplementary credits to be included in short service benefit); and
- (e) paragraph 14 (pension increases).

(2) A scheme that is constituted or amended by an interim trust deed or other interim instrument or agreement may be treated by the Occupational Pensions Board as satisfying the preservation requirements if both the following conditions are satisfied, namely—

- (a) the instrument or agreement constituting or amending the scheme requires the trustees or managers of the scheme to operate it in accordance with the preservation requirements; and
- (b) the Occupational Pensions Board is satisfied that adequate steps have been taken to notify members and prospective members of the scheme of the general effect of the definitive provisions of the scheme that will give effect to the provisions of Schedule 16 referred to in paragraph (1) above.

Related amendments to other Regulations

28. The Regulations mentioned in Schedule 1 are amended as described in that Schedule.

Revocations

29. The Regulations specified in column 1 of Schedule 2 are revoked to the extent specified in column 2 of that Schedule.

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

1st February 1991

Nicholas Scott
Minister of State,
Department of Social Security

SCHEDULE 1

Regulation 28

RELATED AMENDMENTS OF OTHER REGULATIONS

Amendment of the Occupational Pension Schemes (Discharge of Liability) Regulations 1985

1. Regulation 5 of the Occupational Pension Schemes (Discharge of Liability) Regulations 1985⁽²⁵⁾ (further condition on which liability may be discharged) is replaced with the following—

“Conditions referred to in section 52C(5)(c)(ii)

5.—(1) The conditions referred to in section 52C(5)(c)(ii) (further conditions on which liability may be discharged) are that the requirements of one or more of paragraphs (2) to (5) are satisfied.

(2) The requirements of this paragraph are satisfied if—

- (a) the earner is dead and benefit is payable to a person other than his widow, and
- (b) the arrangement for securing the benefit by means of the policy or contract was made at the written request of the person entitled to it, or with the consent of that person given in writing in the form set out in the Schedule to these Regulations.

(3) The requirements of this paragraph are satisfied if the benefit is provided as an alternative to short service benefit by virtue of a provision that conforms with the requirements of regulation 9(4) of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 (bought out benefits without consent).

(4) The requirements of this paragraph are satisfied if—

- (a) the scheme is being wound up, and
- (b) the member will be able to assign or surrender the policy of insurance or annuity contract on the conditions set out in regulation 2.

(5) The requirements of this paragraph are satisfied if all the conditions set out in sub-paragraphs (a) to (c) are satisfied, namely—

- (a) the earner died with less than “5 years' qualifying service”, as defined in paragraph 7 of Schedule 16 to the Social Security Act 1973 immediately before section 10 of the Social Security Act 1986 came into force;
- (b) the benefit concerned includes a guaranteed minimum pension that is payable to the earner's widow or widower; and
- (c) the trustees or managers of the scheme give the widow or widower at least 30 days' written notice of their intention to take out the insurance policy or enter into the annuity contract. The notice must be sent to the widow or widower at her or his last known address or delivered to the widow or widower personally.”.

Amendments of the Occupational Pension Schemes (Transfer Values) Regulations 1985

2.—(1) The Occupational Pension Schemes (Transfer Values) Regulations 1985⁽²⁶⁾ are amended as described in sub-paragraphs (2) to (4).

(2) In regulation 4 (increases and reductions of cash equivalents), paragraph (5B) is replaced with the following—

⁽²⁵⁾ S.I. 1985/1929; the relevant amending instruments are S.I. 1987/1106, 1987/1114, 1988/474 and 476.

⁽²⁶⁾ S.I. 1985/1931; the relevant amending instrument is S.I. 1988/476.

“(5B) Where a member’s benefits have been “appropriately secured” by a transaction to which section 52C applies (extinguishment of liability of scheme for pensions secured by insurance policies or annuity contracts), the cash equivalent in respect of that member shall be reduced to nil.

(5C) For the purposes of paragraph (5B) of this regulation, “appropriately secured” means the same as in section 52C except that a policy of insurance or annuity contract which is taken out or entered into with an “authorised friendly society” (as defined for the purposes of regulation 6 of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991—means of assuring short service benefit), but which otherwise satisfies the conditions for being “appropriate” for the purposes of section 52C, is to be treated as if it were appropriate for the purposes of that section.”.

(3) Regulation 6 is replaced with the following—

“Member’s accrued rights transferred without consent

6.—(1) This regulation applies where—

- (a) a member of a scheme has acquired a right to a cash equivalent but has not exercised the option conferred by paragraph 13(2); and
- (b) the member’s accrued rights are transferred to another scheme without the member’s consent.

(2) Where this regulation applies, Schedule 1A shall have effect as if the member’s right to the cash equivalent of the transferred benefits existed in relation to the receiving scheme instead of the transferring scheme.”.

(4) Regulation 7 is replaced with the following—

“Schemes with an overseas element

7.—(1) This regulation applies to schemes with any overseas element, as described in paragraph 21 of Schedule 16 to the Social Security Act 1973(27) (requirements as to preservation of benefit under occupational pension schemes).

(2) Where this regulation applies Schedule 1A is modified so that Part II (transfer values) applies to schemes with any overseas element only to the extent that the preservation requirements apply to the scheme.”.

Amendment of the Occupational Pension Schemes (Disclosure of Information) Regulations 1986

3. Regulation 1(2) of the Occupational Pension Schemes (Disclosure of Information) Regulations 1986(28) (interpretation) is amended by replacing the words “regulation 2(4) and (5) of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1984” in the definition of “employer” with the words “regulation 2 of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991”.

Amendment of the Occupational Pension Schemes (Auditors) Regulations 1987

4. Regulation 1(2) of the Occupational Pension Schemes (Auditors) Regulations 1987(29) (interpretation) is amended by replacing the words “regulation 2(4) and (5) of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1984” in the definition of “employer” with

(27) 1973 c. 38.

(28) S.I. 1986/1046.

(29) S.I. 1987/1102.

Status: This is the original version (as it was originally made).

the words “regulation 2 of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991”.

Amendments of the Occupational Pension Schemes (Qualifying Service-Consequential and Other Provisions) Regulations 1987

5.—(1) Regulation 6 of the Occupational Pension Schemes (Qualifying Service Consequential and Other Provisions) Regulations 1987(30) (purpose for which the Occupational Pensions Board may modify occupational pension schemes) is amended as described in sub-paragraphs (2) and (3).

(2) Paragraph (a) is replaced with the following—

“(a) to provide the alternative to short service benefit described in regulation 9 of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 (bought out benefits) without the member’s consent in the circumstances described in paragraph (5) (b) of that regulation; and”.

(3) In paragraph (b), the words “the conditions specified in regulation 5(c)” are replaced with the words “the requirements of regulation 5(5)”.

SCHEDULE 2

Regulation 29

REVOCATIONS

Column 1 Regulations	Column 2 Extent of revocation
The Occupational Pension Schemes (Preservation of Benefit) Regulations 1984 (S.I. 1984/614)	The whole of the Regulations.
The Contracting-out (Transfer) Regulations 1985 (S.I. 1985/1323)	Regulation 4(6).
The Occupational Pension Schemes (Preservation of Benefit) Amendment Regulations 1985 (S.I. 1985/1926)	The whole of the Regulations.
The Contracting-out (Requisite Benefits-Consequential Provisions) Regulations 1986 (S.I. 1986/1716)	Regulation 4.
The Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1986 (S.I. 1986/2171)	Regulation 2.
The Occupational Pension Schemes (Qualifying Service-Consequential and Other Provisions) Regulations 1987 (S.I. 1987/1106)	Regulation 3.
The Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1988 (S.I. 1988/476)	Regulation 2.

(30) S.I. 1987/1106.

Column 1 Regulations	Column 2 Extent of revocation
The Personal and Occupational Pension Schemes (Miscellaneous Amendments) (No. 2) Regulations 1989 (S.I. 1989/1641)	Regulation 2.
The Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1990 (S.I. 1990/1141)	Regulation 3.
The Personal and Occupational Pension Schemes (Miscellaneous Amendments) (No. 2) Regulations 1990 (S.I. 1990/1142)	Regulation 3.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations consolidate, with amendments, Regulations relating to the preservation of benefits under occupational pension schemes.

The requirements as to preservation of benefit under occupational pension schemes are contained in Part I of Schedule 16 to the Social Security Act 1973. Part II of that Schedule has effect for enabling the Secretary of State to make regulations modifying those requirements and generally in relation to the preservation of benefit under occupational pension schemes. Section 63 of that Act has effect for securing that occupational pension schemes conform with the preservation requirements insofar as conformity can be achieved by the use of powers conferred by that section (in addition to any power otherwise exercisable) on those concerned with such schemes and on the Occupational Pensions Board.

These Regulations prescribe the persons who are to be treated as “employers”, “members” and “prospective members” in relation to occupational pension schemes (regulations 2 and 3) and extend the definition of “supplementary credits” (regulation 4). They prescribe means of assuring short service benefit (regulation 6), the alternatives to short service benefit that may be provided instead of short service benefit (regulations 7 to 11), requirements relating to the basis of computation of short service benefit (regulations 14 to 17), the deductions that may be made from short service benefit (regulation 20) and specific provisions relating to preservation of benefit that must be included in scheme rules (regulation 27).

These Regulations also prescribe the circumstances in which short service benefit in the form of a lump sum may be paid before normal pension age (regulation 5), a member’s accrued rights may be transferred to another occupational pension scheme without the member’s consent (regulation 12), “waiting periods” must be treated as pensionable service (regulation 13), short service benefit and benefits or rights alternative to short service benefit may be commuted (regulation 18), short service benefit must be provided for people other than the member (regulation 19), payment of short service benefit may be postponed or suspended (regulation 22) and transfers may be made to “overseas schemes” (regulation 26).

Finally, these Regulations modify the preservation requirements in cases where a member whose pensionable service is broken returns to pensionable service under the same scheme (regulation 21)

Status: *This is the original version (as it was originally made).*

and cases where schemes provide for the payment by members of voluntary contributions (regulation 23), and in their application to schemes funded by level annual premiums (regulation 24) and schemes with an overseas element (regulation 25).

The report of the Occupational Pensions Board on the draft of these Regulations which was referred to them, together with a statement by the Secretary of State showing the extent to which these Regulations give effect to the Board's recommendations, is contained in Command Paper No. 1409, published by Her Majesty's Stationery Office.