
STATUTORY INSTRUMENTS

1993 No. 3219

INCOME TAX

The Occupational Pension Schemes (Transitional Provisions) (Amendment) Regulations 1993

	<i>22nd December</i>
<i>Made</i> - - - -	<i>1993</i>
<i>Laid before the House of</i>	<i>22nd December</i>
<i>Commons</i> - - - -	<i>1993</i>
<i>Coming into force</i> - -	<i>11th January 1994</i>

The Commissioners of Inland Revenue, in exercise of the powers conferred on them by paragraph 1(2) and (2A) of Schedule 23 to the Income and Corporation Taxes Act 1988(1), hereby make the following Regulations:

Citation, commencement and effect

1. These Regulations may be cited as the Occupational Pension Schemes (Transitional Provisions) (Amendment) Regulations 1993 and shall come into force on 11th January 1994, but shall take effect as from 17th March 1987.

Interpretation

2. In these Regulations “the principal Regulations” means the Occupational Pension Schemes (Transitional Provisions) Regulations 1988(2) and “regulation” means a regulation of those Regulations.

Amendments to the principal Regulations

3. In regulation 2(1), after the definition of “control”, there shall be inserted—

““the general level of earnings” means the general level of earnings obtaining in Great Britain;

“normal retirement date” means the date specified in the rules of the scheme as the date at which the employee will normally retire;

(1) 1988 c. 1; sub—paragraphs (2) and (2A) of paragraph 1 of Schedule 23 were substituted for sub—paragraph (2) by section 56 of the Finance Act 1988 (c. 39).
(2) S.I. 1988/1436.

“pensionable service” means service as an employee of the employer in question in respect of which benefits (other than benefits payable solely on death before retirement) accrue under an approved scheme;”.

4. In regulation 3—

- (a) in paragraph (1) for “(4)” there shall be substituted “(5)”;
- (b) in paragraph (2) for sub—paragraph (b) there shall be substituted—
 - “(b) benefits cease to accrue to the employee under the scheme—
 - (i) on or after 17th March 1987 and he thereupon becomes a member of another scheme established by his employer or of a scheme established by a relevant employer; or
 - (ii) by reason of his secondment or posting to a foreign branch of the employer or to another employer and on or after 17th March 1987 the period of his secondment or posting ends and he thereupon becomes a member of a scheme established by the employer by whom he was seconded or posted, or by a relevant employer, and at the time of his secondment or posting he had a definite expectation that he would become a member of such a scheme; or
 - (iii) by reason of his unpaid absence if, within one month of returning to work, and on or after 17th March 1987, he becomes a member of a scheme established by the employer who established the scheme, or of a scheme established by a relevant employer; or
 - (iv) by reason of her pregnancy or confinement if, within one month of returning to work, and on or after 17th March 1987, she becomes a member of a scheme established by the employer who established the scheme, or of a scheme established by a relevant employer; or
 - (v) (where the circumstances are other than those specified in paragraphs (ii), (iii) and (iv)) if, within one month of benefits ceasing so to accrue, and on or after 17th March 1987, benefits again accrue to the employee under that scheme.”;
- (c) after paragraph (4) there shall be added—

“(5) The circumstances prescribed in this paragraph are circumstances where before 17th March 1987 an employee was a member of a scheme and on or after 17th March 1987 the employee becomes a member of a scheme which provides benefits in addition to those under the scheme of which he remains a member.”.

5. Regulation 4 shall be renumbered as paragraph (1) of that regulation, and—

- (a) in that provision as so renumbered after “3(2)” there shall be inserted “or (5)”;
- (b) after that provision as so renumbered there shall be added—

“(2) In paragraph (1) above “the new scheme” means another scheme established by the employer or a scheme established by a relevant employer as mentioned in regulation 3(2)(b)(i).”.

6. After regulation 4 there shall be inserted—

“Modifications of paragraphs 2 and 9 of the Schedule

4A.—(1) In the circumstances prescribed in paragraph (2) below—

- (a) paragraph 2(2) of the Schedule shall be modified so that the reference to any contrary provision in the rules of the scheme does not include a reference to a provision in the rules allowing a pension to be increased, in accordance with the

rules of the scheme, to take account of increases in the cost of living or the general level of earnings;

- (b) paragraph 9 of the Schedule shall be modified so as to provide in addition that references in the Schedule to “service” (other than in relation to the expression “pensionable service”) shall be deemed to include service that would have been included if the employee had remained in employment until the date specified in the rules of the scheme as the date at which the employee would normally have retired.

(2) The circumstances prescribed in this paragraph are circumstances where an employee takes retirement before his normal retirement date as a result of physical or mental deterioration which is sufficiently serious to prevent him from following his normal employment or which seriously impairs his earning capacity.”

7. After regulation 5 there shall be inserted—

“5A.—(1) In the circumstances prescribed in paragraph (2) below, paragraph 2(2) of the Schedule shall be modified so that the reference to any contrary provision in the rules of the scheme does not include a reference to a provision in the rules allowing a pension to be increased, in accordance with the rules of the scheme, to take account of increases in the cost of living or the general level of earnings.

(2) The circumstances prescribed in this paragraph are circumstances, other than those prescribed in paragraph (2) of regulation 4A, where an employee retires with an immediate pension at or before his normal retirement date.

5B.—(1) In the circumstances prescribed in paragraph (2) below, paragraph 2(2) of the Schedule shall be modified so that the reference to any contrary provision in the rules of the scheme does not include a reference to a provision in the rules allowing a pension to be increased, in accordance with the rules of the scheme, to take account of increases in the cost of living or the general level of earnings.

(2) The circumstances prescribed in this paragraph are circumstances, other than those prescribed in paragraph (2) of regulation 4A, where an employee leaves pensionable service with an entitlement to a pension from a future date.

5C.—(1) In the circumstances prescribed in paragraph (2) below, paragraph 2(2) of the Schedule shall be modified—

- (a) so that the reference to any contrary provision in the rules of the scheme does not include a reference to a provision in the rules allowing a pension to be increased, in accordance with the rules of the scheme, to take account of increases in the cost of living or the general level of earnings; and
- (b) so as to substitute for the reference to a pension exceeding one—thirtieth of the employee’s relevant annual remuneration for each year of service up to a maximum of 20 a reference to a pension of the greatest of—
 - (i) one—thirtieth of his relevant annual remuneration for each year of service up to a maximum of 20,
 - (ii) one—thirtieth of his relevant annual remuneration for each year of service at the normal retirement date up to a maximum of 20, increased on an actuarial basis in respect of the period from the normal retirement date to the date the payment of the pension commenced,
 - (iii) one—thirtieth of his relevant annual remuneration for each year of service at the normal retirement date up to a maximum of 20, increased in accordance

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with the rules of the scheme to take account of increases in the cost of living or general level of earnings from the normal retirement date to the date the payment of the pension commenced, and

- (iv) where the employee's total service has exceeded 40 years, the aggregate of one—sixtieth of his relevant annual remuneration for each year of service before the normal retirement date up to a maximum of 40, and of a further one—sixtieth of his relevant annual remuneration for each year of service in respect of the period from the normal retirement date to the date the payment of the pension commenced, subject to an overall maximum of 45 years of service.

(2) The circumstances prescribed in this paragraph are circumstances where an employee continues in service after his normal retirement date.

5D.—(1) In the circumstances prescribed in paragraph (2) below, paragraph 2(2) of the Schedule shall be modified so as to include in the reference to service a reference to service with a relevant employer.

(2) The circumstances prescribed in this paragraph are circumstances where a pension attributable to a transfer payment is provided to an employee in respect of service with a former employer of his who is a relevant employer.”.

8. In regulation 6(2) there shall be added at the end “or such higher amount as may be prescribed by regulations made under paragraph 15(4) of Schedule 16 to the Social Security Act 1973(3)”.

*L. J. H. Beighton
C. W. Corlett*

22nd December 1993

Two of the Commissioners of Inland Revenue

(3) 1973 c. 38; paragraph 15(4) of Schedule 16 was amended by paragraph 4(c) of Schedule 6 to the Social Security Act 1989 (c. 24) and by paragraph 5(3) of Schedule 4 to the Social Security Act 1990 (c. 27).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Occupational Pension Schemes (Transitional Provisions) Regulations 1988 (S.I.1988/1436) (“the principal Regulations”). The principal Regulations provide, amongst other matters, for the disapplication and modification of provisions contained in Schedule 23 to the Income and Corporation Taxes Act 1988 (“the Schedule”) (occupational pension schemes approved before 23rd July 1987) in the circumstances prescribed in those Regulations.

These Regulations amend the principal Regulations, prescribe further circumstances in which certain provisions contained in the Schedule are applied with prescribed modifications, and provide that the Regulations shall take effect as from 17th March 1987.

Regulation 1 provides for citation, commencement and effect and regulation 2 contains definitions.

Regulation 3 inserts additional definitions into regulation 2(1) of the principal Regulations.

Regulation 4 amends regulation 3 of the principal Regulations, extending the circumstances prescribed in that regulation so that they also apply to periods which began before 17th March 1987 but ended on or after that date. Regulation 5 makes consequential amendments to regulation 4 of the principal Regulations.

Regulation 6 inserts a new regulation 4A into the principal Regulations. The new regulation modifies paragraphs 2 and 9 of the Schedule in circumstances where an employee takes early retirement as the result of physical incapacity. The modifications permit such an employee to be retired on the pension that could have been paid if service had continued up to the normal retirement date, and (where the scheme rules so allow) on a pension which takes account of rises in the cost of living or the general level of earnings obtaining in Great Britain.

Regulation 7 inserts further new regulations (regulations 5A to 5D) into the principal Regulations, all of which modify paragraph 2 of the Schedule. Regulations 5A and 5B provide (where the scheme rules so allow) for a pension to take account of rises in the cost of living or the general level of earnings in circumstances other than those prescribed in regulation 4A. Regulation 5A applies to an employee who retires with an immediate pension, and regulation 5B applies to an employee who leaves pensionable service with an entitlement to a pension from a future date. Regulation 5C applies to an employee who continues in service after his normal retirement date, and provides for the pension to take account of the extra service and (where the scheme rules so allow) of rises in the cost of living or the general level of earnings. Regulation 5D applies where a pension attributable to a transfer payment is provided for an employee in respect of service with a former employer who is a relevant employer (as defined in the principal Regulations), and provides for service with that former employer to be included in pensionable service.

Regulation 8 makes a minor amendment to regulation 6(2) of the principal Regulations.

Authority for the retrospective effect of these Regulations is given by sub-paragraph (2A) of paragraph 1 of the Schedule.