
STATUTORY INSTRUMENTS

1996 No. 1172

**Occupational Pension Schemes
(Contracting-out) Regulations 1996**

PART III

SALARY-RELATED CONTRACTED-OUT SCHEMES

Further contracting-out conditions for salary-related contracted-out schemes

17. A scheme may be contracted-out in relation to the employment of an earner under section 9(2) of the 1993 Act (requirements for certification of a salary-related contracted-out scheme) only if, in relation to an earner's service on or after the principal appointed day, in addition to satisfying the conditions required by section 9(2B)(a) and (b) of that Act⁽¹⁾, it also satisfies the requirements of regulations 18 to 22.

Requirement as to resources of the scheme.

18.—(1) Subject to paragraph (2) and regulations 72 and 73 (transitional arrangements concerning requirements as to resources), for the purposes of section 9(2B)(c)(i) of the 1993 Act (requirements as to amount of the resources of the scheme), the amount of the resources of the scheme must be sufficient either to enable the scheme to meet the minimum funding requirement provided for in section 56(1) of the 1995 Act, or the actuary to the scheme must have certified under section 58(6)(b) of that Act that in his opinion the rates of contributions are adequate for the purpose of securing that the minimum funding requirement will be met by the end of the period prescribed in relation to that section.

(2) Paragraph (1) does not apply to a public service pension scheme to which section 56 of the 1995 Act does not apply.

Lump sum benefits and salary-related contracted-out schemes.

19. A salary-related contracted-out scheme may not provide for the payment of a lump sum instead of a pension except in accordance with regulation 20 (trivial commutation of section 9(2B) rights) and, as the case may be, regulation 60 (trivial commutation of guaranteed minimum pensions) or—

- (a) in the case of a scheme which is exempt approved within the meaning of section 592(1) of the Taxes Act or a scheme which has applied for such approval which has not yet been determined, to the extent permitted under the rules of that scheme in accordance with that approval, or

(1) Section 9(2B) was inserted by section 136(3) of the Pensions Act 1995.

- (b) in the case of a relevant statutory scheme within the meaning of section 611A of the Taxes Act(2), to the extent permitted under the regulations or rules governing the scheme as a relevant statutory scheme.

Trivial commutation of benefits derived from section 9(2B) rights.

20. For the purposes of section 12C(1)(c) of the 1993 Act (regulations may prohibit or restrict the payment of a lump sum instead of a pension under a relevant scheme except in prescribed circumstances or on prescribed conditions), any benefits which have accrued in respect of an earner's section 9(2B) rights under a scheme may not be paid as a lump sum instead of a pension unless—

- (a) such benefits are payable under the rules of the scheme;
- (b) the aggregate of all benefits including benefits in respect of section 9(2B) rights payable to the earner (or his widow or widower) does not exceed £260 per annum; and
- (c) the Secretary of State is satisfied that the scheme provides a reasonable basis for ascertaining the sum to be paid on commutation.

Payable age in salary-related contracted-out schemes.

21. For the purposes of section 12D of the 1993 Act (regulations may provide for the ages for payment of benefits in salary-related contracted-out schemes) in respect of an earner's service on or after the principal appointed day, schemes must provide for benefits to be paid by reference to an age which is equal for men and women and which—

- (a) in the case of a scheme which is exempt approved within the meaning of section 592(1) of the Taxes Act or a scheme which has applied for such approval which has not yet been determined, is permitted under the rules of that scheme in accordance with that approval, or
- (b) in the case of a relevant statutory scheme within the meaning of section 611A of the Taxes Act, is permitted under the regulations or rules governing the scheme as a relevant statutory scheme.

Each part of scheme to comply with section 12A of the 1993 Act.

22.—(1) Where a scheme makes provision in relation to earners in one category of employment which differs from provision made in the case of earners in another such category, the Secretary of State must be satisfied that the scheme satisfies section 12A of the 1993 Act in relation to each of the categories of employment which is to be contracted-out.

(2) Where a scheme makes provision in relation to one description of earners within a category of employment which differs from provision made in the case of another description of earners within that category, the Secretary of State must be satisfied that the scheme satisfies section 12A of the 1993 Act in relation to each such description of earners which is to be contracted-out.

Requirements for meeting the statutory standard.

23. For the purposes of section 12A(4) of the 1993 Act (regulations may provide for the manner of, and criteria for, determining whether pensions are broadly equivalent to those under a reference scheme) in determining whether the pensions provided under the scheme are broadly equivalent to or better than those which would be provided under a reference scheme, the actuary—

(2) Section 611A was inserted by section 75 of the Finance Act 1989 and Part I, paragraphs 1, 15 and 18(1) of Schedule 6 to that Act.

- (a) must follow guidance note GN 28 prepared from time to time by the Institute of Actuaries and Faculty of Actuaries⁽³⁾ and approved by the Secretary of State;
- (b) may not certify that the pensions to be provided by the scheme for earners in employed earner's employment and their widows or widowers collectively are broadly equivalent to or better than those which would be provided for such persons under a reference scheme if the pensions to be provided for more than 10 per cent. of such earners or their widows or widowers are not broadly equivalent to the pensions which would be provided for them under a reference scheme;
- (c) must have regard to the pensions to be provided under the scheme for the persons specified in section 12A(1) of the 1993 Act who are in the scheme at the date from which the certificate has effect;
- (d) must not have regard to any pensions to be provided under the scheme in respect of earners who are not in contracted-out employment;
- (e) must not have regard to any money purchase benefits; and
- (f) may have regard to the payment of a lump sum.

Circumstances when actuary other than actuary appointed under section 47 of the 1995 Act may certify broad equivalence.

24. For the purposes of section 12A(6) of the 1993 Act (scheme actuary appointed under section 47 of the 1995 Act to certify whether pensions are broadly equivalent to or better than those in a reference scheme except in prescribed circumstances) the prescribed circumstances are where a scheme is not required to appoint an actuary for the scheme under section 47 of the 1995 Act.

Requirements for a reference scheme.

25. A reference scheme is a scheme which, in addition to complying with the requirements of section 12B(3) and (4) of the 1993 Act, complies with the requirements of Chapter II of Part IV of the 1993 Act (revaluation of benefits in the case of scheme members who leave pensionable service before attaining normal pension age) and section 51 of the 1995 Act (indexation of pensions).

Reference scheme: circumstances in which widows' or widowers' pensions need not be payable.

26. For the purposes of section 12B(4)(a) of the 1993 Act (reference scheme to provide widows' and widowers' pensions except in prescribed circumstances) the prescribed circumstances are where—

- (a) the scheme member marries after having received benefits under the scheme; or
- (b) the widow or widower of the scheme member remarries or lives together as husband and wife with another person to whom he or she is not married after having received benefits under the scheme; or
- (c) the widow or widower of the scheme member is living together as husband and wife with another person to whom he or she is not married at the time of the member's death.

Modification applying to public service pension schemes.

27. In the case of schemes which are public service pension schemes, section 9(2B) of the 1993 Act (requirements for salary-related contracted out schemes in relation to service on or after the

(3) The Institute of Actuaries is at Staple Inn Hall, High Holborn, London WC1V 7QJ. The Faculty of Actuaries is at 23 St. Andrew Square, Edinburgh, EH2 1AQ.

principal appointed day) is modified by omitting paragraph (b) (a requirement that the restrictions on employer-related investments apply to the scheme and the scheme complies with those restrictions).

Service in a salary-related contracted-out scheme that does not qualify for further benefits

28.—(1) This regulation applies in cases in which any description of benefit under a salary-related contracted-out scheme is subject to a limit (however imposed) operating so as to prevent service beyond a particular length from qualifying for further benefits.

(2) Subject to the following provisions of this regulation, in cases to which this regulation applies the employment of an earner in employed earner’s employment shall be treated as contracted-out employment in relation to him, notwithstanding that his further service in the employment does not qualify him for further benefits under the scheme, where the following conditions are satisfied, namely that—

- (a) the earner’s service in employed earner’s employment has qualified him for benefit up to a limit imposed by the scheme; and
- (b) the annual rate of the benefit by way of pension for which that service has qualified him is not less than half the pensionable earnings on which it is calculated; and
- (c) the total benefits payable under the scheme (other than benefits attributable to voluntary contributions within the meaning of section 111 of the 1993 Act) are the same as or more favourable than the guaranteed minimum pension and any benefits arising in respect of section 9(2B) rights to which the earner would be entitled in respect of service in that employment and any linked qualifying service during which the earner was in contracted-out employment and any periods of service in that employment which would be contracted-out employment by virtue of this regulation.

(3) For the purposes of paragraph (2)(c) “total benefits” includes benefits which have accrued to the earner in respect of service in employment whether or not contracted-out employment and whether with the same or another employer, except any part of such benefits which consists of equivalent pension benefits for the purposes of Part III of the National Insurance Act 1965(4).

Schemes which cannot be certified under section 9(2B) of the 1993 Act.

29. For the purposes of section 9(2B)(d) of the 1993 Act (prescribed class or description of schemes which may not be salary-related contracted-out schemes) the prescribed schemes are—

- (a) a scheme which is not exempt approved within the meaning of section 592(1) of the Taxes Act, unless it either has applied for such approval which has not yet been determined or it is a relevant statutory scheme within the meaning of section 611A of that Act;
- (b) a money purchase scheme.

(4) 1965 c. 51. The relevant provisions were repealed by the Social Security Act 1973 (c. 38) but continued in force by S.I.1974/2057.