

---

STATUTORY INSTRUMENTS

---

**1996 No. 1172**

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

**PART IV**

**MONEY PURCHASE CONTRACTED-OUT SCHEMES**

**Further contracting-out requirements for money purchase contracted-out schemes**

**30.**—(1) For the purpose of section 9(3) of the 1993 Act (occupational pension schemes may be contracted-out if the requirements imposed by virtue of sections 26 to 32 of the 1993 Act and other prescribed requirements are satisfied) the prescribed requirements are—

- (a) restrictions imposed under section 40 of the 1995 Act (restriction on employer-related investments) apply to the scheme and the scheme complies with those restrictions;
- (b) in a case where the rules of the scheme provide for a member to make payments in addition (“additional payments”) to the minimum payments that are made to that scheme, the rules also provide that those payments shall, subject to paragraph (2), be invested so as to provide money purchase benefits;
- (c) the rules of the scheme require—
  - (i) in the case of an insured scheme, the insurance company to be notified of any alteration in the membership of the scheme and the amount of earnings of any member,
  - (ii) minimum payments to be invested on behalf of the member within one month of the end of the income tax month to which they relate and age-related payments to be invested on behalf of the member within one month of the date of payment by the Secretary of State.

(2) The requirement referred to in paragraph (1)(b) shall not apply in a case where the rules of the scheme provide that the additional payments made shall entitle the member to benefits which are not money purchase benefits and such benefits are paid in addition to the benefits derived from minimum payments.

**Deduction of minimum payments from earnings.**

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

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

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

- (a) A is the appropriate flat-rate percentage for primary Class 1 contributions specified in an order made under section 42B of the 1993 Act<sup>(1)</sup>; and
- (b) B is the appropriate flat-rate percentage for secondary Class 1 contributions specified in that order.

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

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

(6) Paragraph (5) applies only where—

- (a) the underdeduction occurred by reason of an error made by the employer in good faith; or
- (b) the emoluments in respect of which the underdeduction occurred are deemed to be earnings by virtue of regulations made under section 112 of the Contributions and Benefits Act; or
- (c) the underdeduction occurred as a result of the variation of the contracting-out certificate issued in respect of the employment in respect of which the payment of emoluments is made; or
- (d) the emoluments in respect of which the underdeduction occurred are, by virtue of regulation 17B of the Social Security (Contributions) Regulations 1979<sup>(2)</sup>, not paid through the secondary contributor in relation to the employment.

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

**32.**—(1) For the purposes of section 8(1) of the 1993 Act<sup>(3)</sup>, the employer of an earner whose employment is contracted-out by reference to a money purchase contracted-out scheme shall, subject to paragraph (2), make to the trustees of that scheme any minimum payments which fall to be made by him, other than amounts deductible by virtue of regulation 31(4) which he did not deduct, within 14 days of the end of the income tax month in which there arose the liability for Class 1 contributions in respect of the earnings to which those minimum payments relate.

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

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

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

(1) Section 42B was inserted by section 137(5) of the Pensions Act 1995.

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

(3) Section 8 was amended by section 136(2) of the Pensions Act 1995.

### **Calculation of minimum payments.**

**33.**—(1) Subject to the provisions of paragraphs (3) and (4), minimum payments shall be calculated in accordance with section 8(2) of the 1993 Act, so however that each such calculation shall be to the nearest penny and any amount of half a penny or less shall be disregarded.

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

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

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

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

### **Manner of calculation or estimation of earnings.**

**34.** Where the Secretary of State cannot readily ascertain the amount of earnings in any tax week or is satisfied that records of earnings in any tax week have not been maintained or retained or are otherwise unobtainable, he may—

- (a) compute, in such manner as he thinks fit, an amount which shall be regarded as the amount of earnings; or
- (b) take their amount to be such as he may specify in the particular case.

### **Manner of payment of the age-related payment.**

**35.** The Secretary of State shall make the age-related payment—

- (a) by automated credit transfer into a bank or building society account relating to the relevant scheme and which accepts payments made by automated credit transfer; or
- (b) in such other manner as the Secretary of State may in his discretion approve.

### **Verification of age.**

**36.**—(1) For the purposes of determining the appropriate age-related percentage in respect of an earner for the purposes of section 42A of the 1993 Act(4), the Secretary of State may require that earner to send documentary evidence of his date of birth.

(2) For the purposes of section 45B of the 1993 Act(5) (information held as to the age to be disclosed by the Secretary of State to trustees or managers of a money purchase scheme and such other persons as may be prescribed) the prescribed person shall be the person who is responsible for administering the scheme.

---

(4) Section 42A was inserted by section 137(5) of the Pensions Act 1995.

(5) Section 45B was inserted by section 139 of the Pensions Act 1995.

**Circumstances in which the age-related payments are not to be paid.**

**37.**—(1) An age-related payment shall not be paid in respect of an earner for the tax year or part of the tax year in which that earner—

- (a) reaches pensionable age; or
- (b) dies and in which he would have reached pensionable age.

(2) Where effect has been given to protected rights under section 28 of the 1993 Act<sup>(6)</sup> (ways of giving effect to protected rights) age-related payments shall not, except as provided for by paragraphs (3) to (6), be paid in respect of an earner for any tax year or part of a tax year before effect had been given to that earner's protected rights.

(3) Where effect has been given to the earner's protected rights by the purchase of an annuity or by the provision by the scheme of a pension and the amount of the age-related payment in question is at least 10 times as great as the weekly lower earnings limit for the tax year in which the Secretary of State first becomes aware that the age-related payment is payable or would have been payable but for paragraph (2), the age-related payments shall be paid (in the case of an annuity) to the insurance company from which the annuity had been purchased, or (in the case of a pension) to the trustees or managers of the scheme.

(4) Where effect has been given to the earner's protected rights but the circumstances described in paragraph (3) do not exist the age-related payments shall be payable to the earner or the earner's widow or widower, or if the earner died unmarried, they may at the Secretary of State's discretion be paid to any person.

(5) Where effect has been given to the earner's protected rights by the provision of a lump sum, the age-related payment shall be payable to the earner or the earner's widow or widower or, if the earner died unmarried, they may at the Secretary of State's discretion be paid to any person.

(6) Where effect has been given to the earner's protected rights by virtue of a transfer payment to another money purchase contracted-out scheme or a salary-related scheme and either the whole or part of a contributions equivalent premium has not been paid or no election to pay the whole or part of the contributions equivalent premium has been received by the Secretary of State, or to an appropriate personal pension scheme or an overseas scheme, the age-related payments shall be payable up to the date on which the transfer payment was made to the trustees or managers of that other scheme.

(7) Where effect has been given to the earner's protected rights by means of an appropriate policy of insurance by virtue of section 32A of the 1993 Act<sup>(7)</sup> (discharge of protected rights on winding up: insurance policies), the age-related payments in respect of the tax year or part of the tax year before the tax year in which either the earner reaches pensionable age, or dies and in which he would have reached pensionable age, shall be payable to the insurance company with which that policy of insurance is or was taken out or entered into.

**Adjustment of the amount of the age-related payment.**

**38.** Where the amount of the age-related payment payable in respect of an earner would otherwise not be a whole number of pence, it shall be adjusted to the nearest whole number of pence, and any amount of half a penny or less shall be disregarded.

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

**39.** Subject to the provisions of any regulations made under section 149 of the 1995 Act, a scheme which has been contracted-out by virtue of section 9(3) of the 1993 Act may become contracted-

<sup>(6)</sup> Section 28 was amended by sections 142 and 146(2) of the Pensions Act 1995.

<sup>(7)</sup> Section 32A was inserted by section 146(1) of the Pensions Act 1995.

out by virtue of section 9(2) of that Act only if its trustees have been discharged of all liability to give effect to protected rights.

**Schemes which may not be contracted-out under section 9(3) of the 1993 Act.**

**40.** For the purposes of section 9(3)(aa) of the 1993 Act<sup>(8)</sup> (prescribed class or description of scheme which may not be a money purchase contracted-out scheme) the prescribed class or description is a scheme which is not exempt approved within the meaning of section 592(1) of the Taxes Act, unless it either—

- (a) has applied for such approval which has not yet been determined, or
- (b) it is a relevant statutory scheme within the meaning of section 611A of that Act.

---

<sup>(8)</sup> Section 9(3)(aa) was inserted by section 136(4) of the Pensions Act 1995.