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STATUTORY INSTRUMENTS

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**1996 No. 1172**

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

**PART VIII**

**TRANSITIONAL ARRANGEMENTS AND SAVINGS**

**Transitional arrangements for certification of schemes.**

**70.**—(1) In the case of a scheme contracted-out under section 9(2) of the 1993 Act, a contracting-out certificate issued before the principal appointed day shall continue to have effect during the period beginning with that day and ending on either—

(a) whichever is the earlier of—

(i) the day before the effective date of a replacement contracting-out certificate issued by the Secretary of State, or

(ii) 31st January 1998, or

(b) such later date as the Secretary of State may in his discretion permit in any particular case, provided that it is not otherwise cancelled or surrendered and the scheme satisfies all contracting-out conditions or requirements which apply to the scheme from the principal appointed day by virtue of it being a scheme to which section 9(2) of that Act applies.

(2) In the case of a scheme contracted-out under section 9(3) of the 1993 Act, a contracting-out certificate issued before the principal appointed day shall continue to have effect on and after that date provided that it is not cancelled or surrendered and the scheme satisfies all contracting-out conditions or requirements which apply to the scheme from the principal appointed day by virtue of it being a scheme to which section 9(3) of that Act applies.

(3) A contracting-out certificate having effect on or after the principal appointed day by virtue of this regulation, shall have effect in relation to any earner's service on and after that day as if the certificate was issued by the Secretary of State on or after that day.

**Elections for replacement certificates by salary-related schemes during transitional period.**

**71.** During the period beginning with the principal appointed day and ending on 31st January 1998 or such later date as the Secretary of State may allow in relation to a particular case or class of case, an election made with a view to the issue of a contracting-out certificate in relation to an employment which is to remain contracted-out under section 9(2) of the 1993 Act on or after the principal appointed day must be made in compliance with regulation 2 and regulation 10 shall not apply.

**Transitional requirements as to sufficiency of resources of salary-related schemes.**

**72.**—(1) Except in cases to which regulation 73 applies (schemes which have begun winding up before the principal appointed day) for the purposes of section 9(2B)(c)(i) of the 1993 Act

(requirement as to the amount of the resources of the scheme) and section 25(2) of that Act (scheme to comply with prescribed requirements in relation to securing that the resources of the scheme are brought to and maintained at satisfactory level in respect of any earner's service before the principal appointed day) at any time during the period of ten years beginning with the principal appointed day or such longer period as the Secretary of State may specify in a particular case or class of case, the amount of resources of the scheme must be sufficient to meet the liabilities specified in paragraph (2).

- (2) The liabilities referred to in paragraph (1) are any liability for—
- (a) pensions or other benefits which, in the opinion of the trustees, are derived from the payment by any member of the scheme of voluntary contributions;
  - (b) where a person's entitlement to payment of a pension or other benefit has arisen, liability for that pension or benefit and for any pension or other benefit which will be payable to dependants of that person on his death and any increases to such pensions;
  - (c) equivalent pension benefits, guaranteed minimum pensions and protected rights which have accrued to or in respect of any members of the scheme and any increases to such pensions;
  - (d) pensions or other benefits which have accrued after the principal appointed day to or in respect of members whose employment is contracted-out by reference to the scheme and any increases to such pensions; and
  - (e) in respect of members with less than two years pensionable service who are not entitled to accrued rights under the scheme, the return of contributions.

(3) Subject to paragraphs (4) and (5), the liabilities specified in paragraph (2) and the resources required to meet such liabilities shall be calculated, determined and verified in accordance with regulations made under section 56(3) of the 1995 Act (minimum funding requirement).

(4) In calculating the amount of resources of a scheme for the purposes of paragraph (1) during the period of five years beginning with the principal appointed day there shall be excluded any employer-related investments within the meaning of section 40 of the 1995 Act (other than any such investments to which the restrictions imposed by regulations made under that section do not apply) which are—

- (a) prohibited by regulations made under that section, or
- (b) in excess of 5 per cent. of the current market value of the scheme's resources,

and at any later time, there shall be excluded from the amount of resources of a scheme any such employer-related investments which are excluded at that time from the calculation of the assets of a scheme for the purposes of the minimum funding requirement in accordance with regulations made under section 56(3) of the 1995 Act.

(5) During the period beginning with the principal appointed day and ending on the date on which the first actuarial valuation is required to be obtained in relation to a scheme in accordance with regulations made under section 57(1)(a) of the 1995 Act (minimum funding requirement: valuation and certification of assets and liabilities), the resources and liabilities specified in this regulation shall be calculated, determined and verified in a manner approved by the Secretary of State.

(6) This regulation does not apply to a public service pension scheme to which section 56 of the 1995 Act does not apply.

**Transitional arrangements and savings for salary-related schemes which have begun winding up before the principal appointed day.**

**73.** In the case of a scheme to which section 23(2) and (3) of the 1993 Act<sup>(1)</sup> applies (schemes where winding up began before the principal appointed day)—

(1) Section 23 was amended by paragraph 31 of Schedule 5 to the Pensions Act 1995.

- (a) regulation 40 (priorities on the winding-up of a scheme) of the Occupational Pension Schemes (Contracting-out) Regulations 1984<sup>(2)</sup> shall continue to have effect, and
- (b) the resources of the scheme must be sufficient to meet the liabilities specified in section 24(1)(c) of the 1993 Act, such resources and liabilities being calculated, determined and verified in a manner approved by the Secretary of State.

**Transitional arrangements in relation to the powers of the Secretary of State to approve arrangements for schemes ceasing to contract out before the principal appointed day.**

74. In the case of a scheme which ceased to be certified as contracted-out before the principal appointed day, the Secretary of State may approve arrangements under section 50(1) or (1A) of the 1993 Act<sup>(3)</sup>, notwithstanding that the conditions prescribed under section 50(1B) of that Act are not met.

**Transitional modifications to sections 35 and 36 of the 1993 Act.**

75. Sections 35 and 36 of the 1993 Act (surrender and cancellation of contracting-out certificates: issue and cancellation of further certificates) shall be modified for transitional purposes until the coming into force of an order under section 180 of the 1995 Act repealing those provisions as follows—

- (a) in paragraph (a) of subsection (1) of section 35 of the 1993 Act “or the Secretary of State” is added after “the Board”;
- (b) in each other place where the word appears, for “Board” there is substituted “Secretary of State”;
- (c) in subsection (3) of section 35 of the 1993 Act, for “they consider” there is substituted “he considers”;
- (d) in paragraph (c) of subsection (1) of section 36 of the 1993 Act, for “have formed” there is substituted “has formed”, for “had they been aware” there is substituted “had he been aware” and for “they would have been prevented” there is substituted “he would have been prevented”; and
- (e) in subsection (6) of section 36, for “have cancelled” there is substituted “has cancelled”.

**Prevention of recovery by employers of Class 1 contributions where certificate cancelled under section 36(3) of the 1993 Act.**

76.—(1) This regulation shall apply in any case where the Occupational Pensions Board or the Secretary of State has cancelled a contracting-out certificate under section 36(3) of the 1993 Act.

(2) An employer shall not be entitled to recover (whether by deduction from emoluments or otherwise) any arrears which he is required to pay to the Secretary of State in respect of an earner’s liability under section 6(3) of the Contributions and Benefits Act in so far as those arrears comprise the difference between the amount of the primary Class 1 contributions payable at the normal rate in respect of the emoluments from the employed earner’s employment and the amount of the primary Class 1 contributions that were paid while the employment was regarded as contracted-out to the cancellation of the further contracting-out certificate.

(3) This regulation shall apply notwithstanding the terms of any contract to the contrary.

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(2) S.I.1984/380: the relevant amending instrument is S.I. 1994/1062.

(3) Section 50(1A) was inserted by paragraph 45 of Schedule 5 to the Pensions Act 1995.

### **Savings in respect of State Scheme Premiums.**

77. The following regulations shall continue to have effect in relation to any state scheme premium which has been paid before the principal appointed day or is payable immediately before that day—

- (a) regulations 18 to 26, 34, 44, 45, 47, 48 and 49 of the Occupational Pension Schemes (Contracting-out) Regulations 1984<sup>(4)</sup>;
- (b) the Occupational Pension Schemes (Contracted-out Protected Rights Premiums) Regulations 1987<sup>(5)</sup>.

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(4) S.I. 1984/380: the relevant amending instruments are S.I. 1985/1323, S.I. 1985/1928, S.I. 1986/317, S.I. 1986/1716, S.I. 1987/1103, S.I. 1987/1106, S.I. 1987/1114, S.I. 1988/475, S.I. 1989/500, S.I. 1990/1142, S.I. 1992/1531, S.I. 1993/519, S.I. 1994/1062.

(5) S.I. 1987/1103: the amending instrument is S.I. 1994/1062.