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STATUTORY INSTRUMENTS

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**1997 No. 819**

**PENSIONS**

**The Occupational Pension Schemes (Reference Scheme and Miscellaneous Amendments) Regulations 1997**

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| <i>Made</i>                   | - - - - | <i>13th March 1997</i> |
| <i>Laid before Parliament</i> |         | <i>14th March 1997</i> |
| <i>Coming into force</i>      | - -     | <i>6th April 1997</i>  |

The Secretary of State for Social Security, in exercise of the powers conferred on him by sections 7(2A), 12(3), 12B(6), 50(1B), 53(3), 113, 181(1) and 182(3) of the Pension Schemes Act 1993<sup>(1)</sup> and sections 27(3), 40(2), 47(6), 124(1), 125(3), 174(2), (3) and (4) and 180(4) of the Pensions Act 1995<sup>(2)</sup>, and of all other powers enabling him in that behalf, after agreement with the Occupational Pensions Board that the proposals within regulations 2, 3 and 4 of these Regulations need not be referred to it, and after consulting such persons as he considered appropriate as regards the proposals within regulations 5 and 6, by this instrument, hereby makes the following Regulations—

**Citation and commencement**

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Reference Scheme and Miscellaneous Amendments) Regulations 1997 and shall come into force on 6th April 1997.

**Amendment of section 12B(4) of the Pension Schemes 1993 Act**

2. Sub-section (4) of section 12B of the Pension Schemes 1993 Act (reference scheme) shall be amended by the substitution for paragraph (b) of the following—

- “(b) for entitlements to those pensions to commence on the day following the death of the earners, and
- (c) except in prescribed circumstances, for the annual rate of those pensions to be—

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(1) 1993 c. 48. Section 7(2A) is inserted by the Pensions Act 1995, section 136(1); section 12B is inserted by the Pensions Act 1995, section 136(5); section 50(1B) is inserted by the Pensions Act 1995, Schedule 5, paragraph 45(b); section 53(3) is substituted by the Pensions Act 1995, Schedule 5, paragraph 48(c). Section 181(1) is cited because of the meaning given to “modification”, “prescribed” and “regulations”.

(2) 1995 c. 26. Section 124(1) is cited because of the meaning given to “prescribed” and “regulations”.

- (i) if the earners die on or after their normal pension age, 50 per cent. of the annual rate which a reference scheme was required to provide to the deceased earners immediately before their death, or
- (ii) if the earners die before their normal pension age, 50 per cent. of the annual rate which a reference scheme would have been required to provide to the deceased earners if the date of their death had been their normal pension age, and
- (d) if those pensions are payable in respect of earners who die—
  - (i) otherwise than in pensionable service under the scheme, and
  - (ii) before their own entitlements to pensions under the scheme have commenced,
 for those pensions to be revalued in accordance with section 84 as though they were such benefits as are mentioned in section 83(1)(a).”

### **Amendment of the Occupational Pension Schemes (Contracting-out) Regulations 1996**

#### **3. In the Occupational Pension Schemes (Contracting-out) Regulations 1996(3)**

- (a) in regulation 39 (circumstances in which schemes may change mode of contracting-out), before “Subject to the provisions” insert “(1)” and after “protected rights.” insert—
 

“(2) Subject to the provisions of any regulations made under section 149 of the 1995 Act, and to regulation 76A, a scheme which has been contracted-out by virtue of section 9(2) of the 1993 Act may become contracted-out by virtue of section 9(3) of the 1993 Act only if its trustees have been discharged of all liability to provide guaranteed minimum pensions and section 9(2B) rights.”;
- (b) in regulation 45 (approval of arrangements for schemes ceasing to be contracted-out)—
  - (i) in paragraph (3)(a) for “a rule which provides” to the end of paragraph (3)(a), substitute “a protection rule;”; and
  - (ii) after paragraph (3) insert—
 

“(3A) For the purpose of paragraph (3)(a) a protection rule is a rule which provides that the total amount of the benefits under the scheme for each member at normal pension age and the member’s widow or widower at the day following the date of death of the member will not be less than the aggregate of—

    - (a) any such benefits arising in respect of section 9(2B) rights and guaranteed minimum pensions;
    - (b) any other such benefits due in respect of rights which have accrued to the member in relation to service in employment which was contracted-out before the principal appointed day under section 9(2) of the 1993 Act; and
    - (c) any such benefits due in respect of rights which have accrued to the member in relation to service in employment which was not contracted-out.

(3B) The amount of the benefits mentioned in paragraph (3A)(a) and (b) and, so far as they relate to service on or before the date on which the scheme ceased to be contracted-out, those mentioned in paragraph (3A)(c) shall be calculated on an early leaver basis in accordance with Chapter I of Part IV of the 1993 Act and any regulations made under that Chapter, as if the member had ceased to be in pensionable service under the scheme on that date.”;
- (c) in regulation 46 (supervision of schemes that have ceased to contract out)—

- (i) in paragraph (1) for “the liabilities referred” substitute “liabilities in respect of such entitlement or rights as are referred”, and
  - (ii) in paragraph (2) for “regulation 5(4) of the Occupational Pension Schemes (Discharge of Liability) Regulations 1985” substitute “regulation 3 and, in the case of a pension or accrued benefit under a relevant scheme, 11 of the Occupational Pension Schemes (Discharge of Liability) Regulations 1997(4)”.
- (d) after paragraph (6) of regulation 76A (transitional arrangements for schemes contracted out under section 9(2) of the 1993 Act to become contracted-out under section 9(3) of that Act(5) insert—
- “(7) Section 55(2) of the 1993 Act(6) shall be modified so as to have effect in relation to a scheme to which this regulation applies as though it were a salary related scheme, save that an election to pay a contributions equivalent premium shall apply only in respect of the earner’s service before the principal appointed day.”.

#### **Amendment of the Occupational Pension Schemes (Disclosure of Information) Regulations 1996**

4. In paragraph (2) of regulation 4 of the Occupational Pension Schemes (Disclosure of Information) Regulations 1996(7) (basic information about the scheme) for “who was a member” substitute “who was an active or pensioner member”.

#### **Amendment of the Occupational Pension Schemes (Scheme Administration) Regulations 1996**

5. In the Occupational Pension Schemes (Scheme Administration) Regulations 1996(8)—
- (a) for paragraph (2)(b) of regulation 5 (manner and terms of appointment and removal of professional advisers) substitute—
    - “(b) (i) in the case of a fund manager, or a person carrying out functions referred to in regulation 2(c), who—
      - is a member of a self-regulating organisation (as defined in section 8 of the Financial Services Act 1986)(9) which imposes requirements in relation to conflicts of interest, or
      - holds a certificate issued for the purposes of Part I of Chapter III of the Financial Services Act 1986 by a recognised professional body which professional body imposes requirements in relation to conflicts of interest,
      - confirm in writing that he will notify the trustees or managers of any conflict of interest to which he is or may be subject in relation to the scheme, in accordance with those requirements, and—
    - (ii) in the case of any other professional adviser, confirm in writing that he will notify the trustees or managers of any conflict of interest to which he is subject in relation to the scheme immediately he becomes aware of its existence.”;

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(4) S.I. 1997/784.

(5) Regulation 76A is inserted by the Occupational Pension Schemes (Contracting-out) Amendment Regulations 1996, S.I. 1996/1577; paragraph (4) of regulation 76A is substituted, and paragraphs (5) and (6) inserted by the Personal and Occupational Pension Schemes (Miscellaneous Amendment) Regulations 1997, S.I. 1997/786.

(6) Section 55(2) is substituted by section 141(1) of the Pensions Act 1995.

(7) S.I. 1996/1655; the relevant amending instrument is 1997/786.

(8) S.I. 1996/1715; the relevant amending instrument is 1997/786.

(9) 1986 c. 60.

- (b) in regulation 7 (ineligibility to act as actuary or auditor)—
  - (i) in paragraph (c) for the words “section 435(3) of the Insolvency Act 1986” substitute “section 435(2) of the Insolvency Act 1986; and”;
  - (ii) after paragraph (c) insert—
    - “(d) in the case where a person is an associate of any person with whom he is in partnership, the husband or wife or a relative of any individual with whom he is in partnership.”.

### **Amendment of the Occupational Pension Schemes (Investment) Regulations 1996**

- 6. In the Occupational Pension Schemes (Investment) Regulations 1996~~(10)~~—
  - (a) after regulation 1 (citation, commencement and interpretation) insert—

#### **“Extension of the meaning of “employer”**

- 1A. In these Regulations, except where the context otherwise requires, and for the purposes of sections 35 and 40 of the 1995 Act, “employer” includes, in relation to a scheme in respect of which there are no active members, the person who was the employer immediately before the occurrence of the event after which the scheme ceased to have any such members.”;
- (b) for paragraph (8) of regulation 6 (investments to which restrictions do not apply) substitute—
  - “(8) This regulation applies to a loan to the employer or a company associated with the employer if—
    - (a) the scheme provides benefits for directors of a company which is the employer, or such directors and others;
    - (b) there is a policy of insurance taken out under the scheme which is specifically allocated to the provision of benefits under the scheme and the directors' interests under which are used as security for the loan;
    - (c) the policy concerned is effected with an insurance company such as is mentioned in paragraph (2)(b)(i), (ii) or (iii);
    - (d) Inland Revenue requirements concerning the loan have been satisfied; and
    - (e) the directors agreeing to their interests under the policy concerned being used as security for the loan, have so agreed in writing.”;
- (c) in paragraph (2)(d) of regulation 7 (transitional provisions), after “employer-related loans” insert “which do not contravene the 1992 Regulations and”.

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

13th March 1997

*Oliver Heald*  
Parliamentary Under-Secretary of State,  
Department of Social Security

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations:—

- (a) amend the terms of the reference scheme set out in section 12B of the Pensions Act 1995 (compliance with which is a condition of obtaining a contracting-out certificate under the Pension Schemes Act 1993), and
- (b) make miscellaneous amendments to regulations relating to occupational pensions.

Regulation 1 deals with citation and commencement.

Regulation 2 makes an amendment to the reference scheme relating to the pensions that schemes must offer widows or widowers of members of the scheme.

Regulation 3 makes amendments to the Occupational Pension Schemes (Contracting-out) Regulations 1996 which relate to the circumstances in which schemes may change the mode of contracting-out, approval of arrangements for schemes ceasing to be contracted-out, supervision of schemes that have ceased to be contracted-out, and the transitional arrangements for salary related schemes becoming money purchase schemes.

Regulation 4 makes an amendment to the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 limiting the range of members certain basic information about the scheme has to be given to.

Regulation 5 makes amendments to the Occupational Pension Schemes (Scheme Administration) Regulations 1996 relating to the manner and terms of appointment of professional advisers as regards conflicts of interest and to the ineligibility of trustees to act as actuary or auditor.

Regulation 6 makes amendments to the Occupational Pension Schemes (Investment) Regulations 1996 extending the meaning of “employer” to cover schemes in respect of which there are no active members, amending the list of investments to which the restrictions do not apply, and amending the transitional provisions.

An assessment of the compliance cost for employers of the measures arising from the Pensions Act 1995, including regulations, has been placed in the libraries of both Houses of Parliament. Copies can be obtained by post from the Department of Social Security, the Adelphi, 1—11 John Adam Street, London, WC2N 6HT.