

1973 No. 1469

PENSIONS
**The Occupational Pension Schemes (Preservation of Benefit)
Regulations 1973**

<i>Made - - - -</i>	<i>20th August 1973</i>
<i>Laid before Parliament</i>	<i>30th August 1973</i>
<i>Coming into Operation</i>	<i>6th April 1975</i>

The Secretary of State for Social Services, in exercise of his powers under section 51(5) and (10) of, and paragraphs 5(1), 6(5), 9(1), (2) and (3), 12(2), 13(5), 15(4), 20, 22, 23, 24, 25 and 26 of Schedule 16 to, the Social Security Act 1973(a), and of all other powers enabling him in that behalf, hereby makes the following regulations:—

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Occupational Pension Schemes (Preservation of Benefit) Regulations 1973, and shall come into operation on 6th April 1975.

(2) In these regulations, unless the context otherwise requires—

“the Act” means the Social Security Act 1973 and “Schedule 16” means Schedule 16 to the Act;

“the Board” means the Occupational Pensions Board;

“centralised scheme” means a scheme for whose benefits earners in employments under different employers qualify by virtue of their respective service in those employments;

“non-centralised scheme” means a scheme which is not a centralised scheme;

“qualifying service”, in relation to a scheme, and except in the expression “linked qualifying service”, includes pensionable service under the scheme, service in recognised pensionable employment by reference to the scheme, and linked qualifying service under another scheme;

and other expressions have the same meanings as in the Act, or as in Schedule 16, as the case may be.

(3) Except so far as the context otherwise requires, any reference in these regulations to any enactment shall be construed as a reference to that enactment as amended, extended or re-enacted by any other enactment.

(4) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889(a) shall apply for the purposes of the interpretation of these regulations as they apply for the purposes of the interpretation of an Act of Parliament.

Meaning of expressions “member”, “prospective member” and “employer” in relation to a scheme

2.—(1) The following provisions of this regulation shall apply for the purposes of section 63 of and Schedule 16 to the Act (requirements relating to preservation of benefit).

(2) There are to be regarded as members of a scheme any persons, but only those persons, whose service in relevant employment is or has at any time been such that at the time when it is or was given it either qualifies or qualified them for benefits (in the form of pensions or otherwise, payable on termination of service, or on death or retirement) under that scheme or is or was certain so to qualify them subsequently if it continues or continued for a sufficiently long time and the rules of the scheme remain or remained unaltered during that time.

(3) There are to be regarded as prospective members of a scheme any persons in relevant employment who are not members but—

- (a) who, by virtue of the terms of their contracts of service, are able to become members at their own option or the option of any other person; or
- (b) who, by virtue of the terms of their contracts of service, will become so able, if their service in relevant employment continues for a sufficiently long time and the terms of their contracts of service remain unaltered during that time; or
- (c) who, by virtue of the rules of the scheme or the terms of their contracts of service, will become members in any event, if their service in relevant employment continues for a sufficiently long time and the rules of the scheme or, as the case may be, the terms of their contracts of service remain unaltered during that time.

(4) Any person, government department, public authority or body of persons who, under Part I of the Act is, or is to be treated as, the secondary Class 1 contributor shall be treated as the employer of the earner in respect of whom the Class 1 contributions are payable.

(5) Without prejudice to paragraph (4) above, there shall be treated as the employer of a self-employed earner to whom a scheme applies any person (other than that self-employed earner), government department, public authority or body of persons who makes or is to make payments towards the resources of that scheme in respect of that self-employed earner (either under actual or contingent legal obligation or in the exercise of a power conferred, or duty imposed, on a Minister of the Crown, government department or any other person, being a power or duty which extends to the disbursement or allocation of public money).

Supplementary credits

3. For the purposes of paragraph 5(1)(c) of Schedule 16 (circumstances in which increase of benefit or additional benefit constitutes “supplementary credits”), the prescribed circumstances shall be that a member of a scheme, in consequence of any provision made by or under the scheme after he becomes a member of it, becomes entitled, before the termination of his pensionable service in relation to that scheme, to any increase of benefit or additional benefit which is of an amount or at a rate unrelated to length of pensionable service or to the number or amount of contributions paid by or for the member.

Short service benefit in lump sum form

4. For the purposes of paragraph 6(5) of Schedule 16 (short service benefit in lump sum form not to be paid before normal pension age except in prescribed circumstances) the prescribed circumstances shall be—

- (a) that the member's earning capacity is destroyed or seriously impaired by physical or mental deterioration; or
- (b) such other circumstances as the Board may consider suitable.

Means of assuring short service benefit

5. For the purposes of paragraph 9(1) of Schedule 16 (short service benefit to be payable directly out of the resources of a scheme or to be assured by such means as may be prescribed) a policy of insurance taken out, or an annuity contract entered into, with either—

- (a) an insurance company to which the Insurance Companies Act 1958(a) or the Insurance Companies Act (Northern Ireland) 1968(b) applies and which is authorised by or under section 61 of the Companies Act 1967(c) or section 4 of the Insurance Companies Act (Northern Ireland) 1968 to carry on ordinary long-term insurance business as defined in those Acts; or
- (b) a friendly society enabled under regulations made under section 71(1) of the Act to conduct such business as is described in that section,

shall be a prescribed means of assuring short service benefit.

Alternatives to short service benefit

6.—(1) The prescribed alternatives to short service benefit for the purposes of paragraph 9(2) of Schedule 16 shall be the following benefits, where payable to the same member (or his wife, widow or dependant) as the one to whom (or to whose wife, widow or dependant) the short service benefit would have been payable:—

- (a) a benefit smaller than that which would be required to constitute short service benefit, becoming payable earlier than at normal pension age—
 - (i) where the member has attained the age of 50, or
 - (ii) where the member's earning capacity is destroyed or seriously impaired by physical or mental deterioration, or
 - (iii) in such other circumstances as the Board may consider suitable;

(a) 1958 c. 72.
(c) 1967 c. 81.

(b) 1968 c. 6 (N.I.).

- (b) a benefit larger than that which would be required to constitute short service benefit, becoming payable later than at normal pension age;
 - (c) the payment, at any time after the termination of the service in the relevant employment, of a lump sum (whether or not being by way of a refund of the member's contributions) in respect of any period of qualifying service before 6th April 1975;
 - (d) the payment, at any time after the termination of the service in the relevant employment, of a lump sum (whether or not being by way of a refund of the member's contributions) in respect of any period of qualifying service after 5th April 1975, in the following circumstances, namely—
 - (i) that a payment under paragraph (1)(c) of this regulation is being or has been made to the member in question under the scheme in question, and
 - (ii) that the duration of the period described in paragraph (2), or, as the case may be, the aggregate duration of the periods described in paragraph (3), of this regulation is less than 5 years, so however that for the purposes of this calculation no period shall be counted more than once;
 - (e) benefits under an insurance policy or annuity contract made with such an insurance company or such a friendly society as is mentioned in regulation 5 of these regulations, different from those required to constitute short service benefit, so however that such benefit shall not consist of or include a lump sum payable earlier than normal pension age, except—
 - (i) where the lump sum is paid in respect of a period of pensionable service before 6th April 1975, or
 - (ii) where the lump sum is paid in respect of a period of pensionable service after 5th April 1975 in the circumstances mentioned in paragraph (1)(d) of this regulation, or
 - (iii) where the member has attained the age of 50, or
 - (iv) where the member's earning capacity is destroyed or seriously impaired by physical or mental deterioration, or
 - (v) in such other circumstances as the Board may consider suitable; and
 - (f) any other alternative to short service benefit which complies with paragraph 9(4) of Schedule 16 and is in the opinion of the Board a suitable means of maintaining the provision of benefits in relation to a particular scheme or category of schemes.
- (2) The period referred to in paragraph (1)(d)(ii) of this regulation, where the scheme in question is a centralised scheme, is any period after 5th April 1975 during which the member was in qualifying service in relation to the scheme in question.
- (3) The periods referred to in paragraph (1)(d)(ii) of this regulation, where the scheme in question is a non-centralised scheme, are—
- (a) any period before 6th April 1975 during which the member in question was in qualifying service relevant to another non-centralised scheme which applied to the same employment as the scheme in question, no

payment being or having been made under paragraph (1)(c) of this regulation under that scheme in respect of that service; and

- (b) any period after 5th April 1975 during which the member was in qualifying service in relation to the scheme in question or another non-centralised scheme applying to the same employment as the scheme in question.

(4) A scheme rule may make provision, in cases where the Board consider it reasonable for such provision to be made, for any of the alternatives mentioned in paragraph (1)(a)(ii), (e) or (f) of this regulation to be substituted for short service benefit without the member's consent:

Computation of benefit

7.—(1) A scheme which provides for long service benefit to be related to a member's earnings during a period of a specified length shall provide for the short service benefit of a member whose total pensionable service is less than that length to be correspondingly related to his earnings throughout his pensionable service.

(2) In a case where—

- (a) short service benefit falls to be calculated in accordance with paragraph 11 (uniform accrual) of Schedule 16; and
- (b) a lump sum is paid as mentioned in regulation 6(1)(c),(d), (e)(i) or (e)(ii) of these regulations in substitution for part of that benefit,

any remaining short service benefit shall be calculated in accordance with paragraph 11 of Schedule 16, so however that the period in respect of which the lump sum is paid shall be left out of account in calculating the length of the first period (but not the second period) mentioned in that paragraph.

(3) A scheme may, for the purposes of the calculations mentioned in paragraph 11 of Schedule 16, reckon both the periods mentioned in that paragraph (or neither, but not only one) to the nearest, next highest or next lowest calendar month.

(4) A scheme may, for the purposes of the calculations mentioned in paragraph 13(2)(b) of Schedule 16, reckon both the periods mentioned in that paragraph (or neither, but not only one) to the nearest, next highest or next lowest calendar month.

Commutation of benefit

8.—(1) For the purposes of paragraph 15(4) of Schedule 16 (short service benefit and any alternative benefit permitted under regulation 6 of these regulations not to be commuted except in prescribed circumstances) the prescribed circumstances shall be those described in paragraphs (2) and (3) of this regulation.

(2) In the case of benefit for the member, the prescribed circumstances shall be—

- (a) that the aggregate of that benefit and all other benefits currently or prospectively payable to him under all schemes relating to employment with the same employer as the employment in respect of which that benefit is payable does not exceed £52 per annum, and either the scheme is being wound up, or that benefit has become payable; or

- (b) that the benefit has become payable and the commutation is at the member's option, and—
 - (i) he has attained the age of 50, or
 - (ii) his earning capacity is destroyed or seriously impaired by physical or mental deterioration; or
 - (c) such other circumstances as the Board consider suitable.
- (3) In the case of benefit for a member's widow or dependant, the prescribed circumstances shall be—
- (a) that the aggregate of that benefit and all other benefits currently or prospectively payable to that widow or dependant (excluding any which may be or become payable to her or him as a member) under all schemes relating to employment with the same employer as the employment in respect of which that benefit is payable does not exceed £52 per annum; and
 - (b) that either the benefit has become payable or the benefit payable to the member is being commuted (as mentioned in paragraph (2)(a) of this regulation) at the same time.
- (4) For the purpose of calculating the aggregate of the benefits mentioned in paragraphs (2)(a) and (3)(a) of this regulation, there shall be substituted for the amount of any benefit which is in lump sum form the annual amount of a benefit in pension form which is its equivalent in the opinion of the trustees or managers of the scheme in question.

Scheme rules to make express provision for certain matters

9. A scheme is not to be treated as conforming with the preservation requirements unless it contains express rules giving effect to (but not necessarily in the words of) the following paragraphs of Schedule 16, to the extent to which they apply to the scheme in question:—

- (a) paragraph 6(1) (basic principle of qualification);
- (b) paragraph 6(2) and (3) (age or time at which short service benefit is payable);
- (c) paragraphs 10 to 12 (computation of benefit);
- (d) paragraph 13 (computation of credits); and
- (e) paragraph 14 (pension increases).

Termination of service

10.—(1) For the purposes of Part I of Schedule 16 and subject to the provisions of this regulation, a person's service in any employment is to be treated as terminated when his contract of service expires or is terminated, or, in a case where there is no contract, when the service itself ends.

(2) When a person is successively in a series of employments in the circumstances set out in paragraph (3) of this regulation, his service in each of those employments except the last shall (except so far as is provided by paragraph (5) of this regulation) be treated as terminated when, and not until, either of the following events occurs:—

- (a) his service in the last of those employments is treated as terminated under paragraph (1) of this regulation; or
 - (b) his service in any subsequent employment in the series is treated as terminated for the purpose of the application of Part I of Schedule 16 to a non-centralised scheme under paragraph (5) of this regulation.
- (3) The circumstances referred to in paragraph (2) of this regulation are that—
- (a) every 2 consecutive employments in the series are either—
 - (i) employments with the same employer, or
 - (ii) employments with an employer and his successor, or
 - (iii) relevant employment in relation to the same scheme; and
 - (b) there is between every 2 consecutive employments in the series either—
 - (i) no interval, or
 - (ii) an interval not exceeding one month, or
 - (iii) an interval of any length if it is between 2 employments both of which are relevant employment in relation to the same centralised scheme, and when the interval begins the member has 5 years' qualifying service in relation to that scheme, subject to paragraph (4) of this regulation.
- (4) In reckoning the 5 years' qualifying service for the purposes of paragraph (3)(b)(iii) of this regulation, there shall be excluded any period of service if all the member's accrued rights in respect of that period have been either—
- (a) transferred to another scheme; or
 - (b) satisfied by the payment of a lump sum.
- (5) In a case where—
- (a) a person's service in an employment has included service in relation to both a non-centralised scheme and a centralised scheme; and
 - (b) while the centralised scheme continues to apply his contract of service expires or is terminated, or, in a case where there is no contract, the service itself ends; and
 - (c) the contract is not renewed (or, as the case may be, the service resumed) within a month with the same employer or his successor,

then for the purpose of the application of Part I of Schedule 16 to the non-centralised scheme the service shall then be treated as terminated.

More than one scheme applying to the same or related employment

11.—(1) Where an earner has been employed in pensionable service under, or in recognised pensionable employment by reference to, different non-centralised schemes relating to employment with the same employer or with an employer and his successor, the following paragraphs of this regulation shall apply for the purpose of deciding whether each of those schemes must provide for him to be entitled to short service benefit under paragraph 6(1) of Schedule 16.

(2) Without prejudice to paragraph 7(2) of Schedule 16, but subject to paragraph (3) of this regulation, paragraph 7(1) of Schedule 16 shall apply subject to the modification that the words "the scheme" are to be treated as including a series of non-centralised schemes of which—

- (a) one is the scheme in question; and
- (b) every 2 consecutive schemes in the series have applied (not necessarily at the same time, and whether or not they applied to other employments) to—
 - (i) a single employment of the earner, or
 - (ii) 2 employments of him by the same employer, or
 - (iii) 2 employments of him by an employer and his successor respectively.
- (3) No period during which the earner is employed in service under or by reference to 2 or more schemes concurrently shall be counted more than once.

Preservation of benefit on winding up of schemes

12.—(1) With a view to securing that the preservation requirements include requirements for provision to be made in a scheme as to the preservation of a member's benefit in the event of the scheme being wound up, paragraph 6(1) of Schedule 16 shall be so modified as to require schemes to make the same provision for that event as for the termination before normal pension age of a member's service in relevant employment, subject to paragraph (2) of this regulation.

- (2) In a case where a scheme is being wound up—
 - (a) the member's consent shall not be required to the transfer of his accrued rights to another scheme relating to—
 - (i) the same employment, or
 - (ii) another employment with the same employer or his successor, with a view to the acquisition for him of transfer credits under that other scheme; and
 - (b) sub-paragraphs (c), (d), (e) (i) and (e) (ii) of regulation 6(1) of these regulations shall not apply.

Miscellaneous

13.—(1) The Board may decide that a scheme conforms with the preservation requirements (notwithstanding that it is one which they would otherwise treat as not conforming) if it is set up or amended under an interim trust deed or other interim arrangement, and—

- (a) if the trust deed or other document giving interim effect to the scheme or to the amendment contains a requirement that the trustees or managers shall operate the scheme in conformity with those requirements; and
- (b) if in the opinion of the Board adequate steps have been taken to notify employees of the general purport of the proposed permanent scheme rules on the matters mentioned in regulation 9 of these regulations.

(2) Schemes which provide long service benefit payable to a member's widow or dependant (being, as the case may be, a wife to whom he was married or a person who was dependent upon him when he attained normal pension age) shall be required to provide short service benefit payable to a member's widow or dependant who was (as the case may be) a wife to whom he was married or a person who was dependent upon him both when his pensionable service terminated and when he attained normal pension age.

(3) In the case of a member some of whose service in relevant employment is service in respect of which a reserve scheme premium has been paid under section 78 of the Act, paragraph 6(1) of Schedule 16 shall apply subject to the modification that a scheme shall not be required to provide for the payment of any short service benefit in respect of the period in respect of which the reserve scheme premium was paid, except to the extent (if any) that it provides for long service benefit to be paid in respect of that period.

(4) With a view to securing the orderly implementation of the provisions of section 63 of the Act, paragraph 6(1) of Schedule 16 shall be modified so that it applies only where a member is or has been in qualifying service after 5th April 1975 in relation to either the scheme in question or another scheme which applies or applied to—

- (a) the employment which is relevant employment in relation to the scheme in question; or
- (b) employment with the same employer as that employment; or
- (c) employment with that employer's successor.

Keith Joseph,

Secretary of State for Social Services.

20th August 1973.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

Regulation 2 of these Regulations defines “member”, “prospective member” and “employer” (in relation to occupational pension schemes) for the purposes of section 63 of and Schedule 16 to the Social Security Act 1973.

Regulations 3-13 are all related to the preservation requirements set out in Schedule 16 to the Act. Regulation 3 sets out some circumstances in which an increase of benefit or additional benefit is to constitute “supplementary credits”. Regulation 4 prescribes circumstances in which short service benefit in lump sum form may be paid before normal pension age. Regulation 5 prescribes means of assuring short service benefit. Regulation 6 sets out some permissible alternatives to short service benefit. Regulation 7 modifies the principles of computation of short service benefit. Regulation 8 prescribes some circumstances in which short service benefit may be commuted. Regulation 9 requires schemes to contain express rules dealing with certain aspects of preservation of benefit. Regulation 10 prescribes circumstances in which a person’s employment is treated as terminated or not terminated. Regulation 11 provides for the treatment of cases where 2 or more schemes relate to the same or related employment. Regulation 12 provides for the application of the preservation requirements on the winding up of a scheme. Regulation 13 provides that the preservation requirements apply only to cases where a member is in qualifying service in the relevant scheme or a related scheme after 5th April 1975, and also makes miscellaneous provisions dealing with interim trust documents, dependants and reserve scheme premiums.

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