

1987 No. 1111

PENSIONS

The Personal Pension Schemes (Personal Pension Protected Rights Premiums) Regulations 1987

<i>Made</i> - - - -	<i>25th June 1987</i>
<i>Laid before Parliament</i>	<i>6th July 1987</i>
<i>Coming into force</i>	<i>4th January 1988</i>

The Secretary of State for Social Services, in exercise of the powers conferred upon him by section 168(1) of, and Schedule 20 to, the Social Security Act 1975(a), section 52 of and paragraph 6 of Schedule 2 to the Social Security Pensions Act 1975(b) and sections 5(4), (7), (8), (10) and (14) and 84(1) of the Social Security Act 1986(c), and of all other powers enabling him in that behalf, by this instrument, which is made before the end of a period of 12 months from the commencement of the enactments under which it is made, makes the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Personal Pension Schemes (Personal Pension Protected Rights Premiums) Regulations 1987 and shall come into force on 4th January 1988.

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

“the Act” means the Social Security Act 1986;

“administrators”, in relation to a personal pension scheme, means the trustees or, if there are no trustees, the managers (except any trustee or manager who is resident outside the United Kingdom, or which, being a company, does not have its registered office in the United Kingdom), and any person who is resident in the United Kingdom, or which, being a company, has its registered office in the United Kingdom, who or which is authorised to act on behalf of the trustees, or, if there are no trustees, on behalf of the managers;

“appropriate scheme” shall be construed in accordance with Part I of the Act;

“the Board” means the Occupational Pensions Board;

“child benefit” has the same meaning as in the Child Benefit Act 1975(d);

“pensionable age” means, in the case of a man, 65, and in the case of a woman, 60;

“premium” means personal pension protected rights premium;

“scheme” means personal pension scheme;

“trustees”, in relation to a scheme which is not set up or established under a trust, means the managers of the scheme;

and other expressions have the same meaning as in the Act.

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(a) 1975 c. 14. See definitions of “prescribe” and “regulations” in Schedule 20. Section 168(1) applies, by virtue of section 66(2) of the Social Security Pensions Act 1975, to the exercise of certain powers conferred by that Act.

(b) 1975 c. 60. Paragraph 6 of Schedule 2 was amended by the Social Security Act 1980 (c. 30), section 3(12), and is modified, in relation to personal pension schemes, by the Personal and Occupational Pension Schemes (Modification of Enactments) Regulations 1987 (S.I. 1987/1116), regulation 3(11) and Schedule 5.

(c) 1986 c. 50. See definitions of “prescribed” and “regulations” in section 84(1).

(d) 1975 c. 61.

- (3) In these Regulations, except in so far as the context otherwise requires, any reference—
- (a) to a numbered regulation is to the regulation in these regulations bearing that number;
  - (b) in a regulation to a numbered paragraph is to the paragraph of that regulation bearing that number; and
  - (c) in a paragraph to a lettered sub-paragraph is to the sub-paragraph of that paragraph bearing that letter.

**Manner of calculation and verification of cash equivalents mentioned in section 5(8) and (10)(a)(i) of the Act**

2.—(1) Except in a case to which paragraph (3) applies, the cash equivalent mentioned in section 5(8) of the Act of protected rights (being those rights under a scheme, which has ceased to be an appropriate scheme, whose cash equivalent is to be the amount of a personal pension protected rights premium) shall be calculated and verified—

- (a) in such manner as may be approved in particular cases by the trustees of the scheme, and
- (b) by adopting methods consistent with the requirements of Schedule 1 to the Act.

(2) Except in a case to which paragraph (3) applies, the cash equivalent mentioned in section 5(10)(a)(i) of a person's rights (being those rights under a scheme, which has ceased to be an appropriate scheme, whose cash equivalent is to be used to supplement a personal pension protected rights premium) shall be calculated and verified in such manner as may be approved in particular cases by the trustees of the scheme.

(3) In a case where the rights under a scheme mentioned in paragraph (1) or (2) fall, either wholly or in part, to be valued in a manner which involves making estimates of the value of benefits, the cash equivalent of those rights shall be calculated and verified—

- (a) in such manner as may be approved in particular cases by—
  - (i) a Fellow of the Institute of Actuaries, or
  - (ii) a Fellow of the Faculty of Actuaries, or
  - (iii) a person with other actuarial qualifications who is approved by the Secretary of State, at the request of the trustees of the scheme in question, as being a proper person to act for the purposes of these regulations in connection with that scheme,

and in this regulation “actuary” means any person such as is referred to in head (i), (ii) or (iii) of this sub-paragraph; and

- (b) by adopting methods and making assumptions which—
  - (i) if not determined by the trustees of the scheme in question, are notified to them by an actuary, and
  - (ii) are certified by an actuary to the trustees of the scheme as being consistent with “Retirement Benefit Schemes—Transfer Values (GN11)” published by the Institute of Actuaries and the Faculty of Actuaries and current at the date of the calculation, and, in the case of protected rights, as being consistent with the requirements of Schedule 1 to the Act.

**Circumstances in which a premium is not payable**

3.—(1) A premium shall not be payable—

- (a) in a case where the protected rights in question are in respect of an earner who has died and either—
  - (i) the earner is not survived by a qualifying widow or widower, or
  - (ii) the earner is survived by a qualifying widower and the earner or the widower or both were under pensionable age when the earner died;

or

- (b) in a case where the person in respect of whom it otherwise would be payable is not treated, under section 4 of the Act or under section 29(2) or (2A) of the Social Security Pensions Act 1975, as entitled to any guaranteed minimum pension which derives from the minimum contributions, minimum payments, or transfer payment or payments from which the protected rights in question derive, or is treated as entitled to such a guaranteed minimum pension at a nil rate.

(2) In paragraph (1)(a), "qualifying widow or widower" means a widow or widower of the earner who at the date of the earner's death either—

- (a) is aged 45 or over; or
- (b) is entitled to child benefit in respect of a child under 18 who is, or residing with a child under 16 who is—
  - (i) a son or daughter of the widow or widower and the earner, or
  - (ii) a child in respect of whom the earner immediately before his death, was, or would have been if the child had not been absent from Great Britain, entitled to child benefit, or
  - (iii) if the widow or widower and the earner were residing together immediately before the earner's death, a child in respect of whom the widow or widower then was, or would have been if the child had not been absent from Great Britain, entitled to child benefit.

#### **Liability for payment of a premium**

4.—(1) For the purposes of section 5(7) of the Act (liability to pay a premium to the Secretary of State) the prescribed person is—

- (a) in a case where the circumstances specified in regulation 6(7)(a) and (c) obtain, the person to whom the cash sum mentioned in regulation 6(7)(c) has been paid; and
- (b) in any other case, the trustees of the scheme.

(2) Where an appropriate scheme ceases to be appropriate, the Board shall certify to the Secretary of State whether or not protected rights under the scheme are subject to approved arrangements as mentioned in section 5 of the Act.

(3) Where protected rights which were subject to approved arrangements as mentioned in section 5 of the Act have ceased to be so subject, the Board shall certify to the Secretary of State the date on which those rights ceased to be so subject.

(4) Any liability for the payment of a premium which is, by any provision of these regulations, imposed on the trustees of a scheme shall be a liability to make that payment out of the resources of the scheme.

#### **Time for payment of a premium**

5.—(1) Subject to paragraph (3), any premium which is payable shall be paid on or before whichever is the later of the following days—

- (a) the day 6 months after the day on which the Board certify under regulation 4(2) or (3) that the protected rights in question are not subject to approved arrangements or have ceased to be so subject; and
- (b) the day one month after the day on which the Secretary of State sends to the person liable to pay the premium a notice certifying that the premium is payable.

(2) Subject to paragraph (3), in cases where a premium has become payable by reason of the fact that a scheme has ceased to be appropriate and an earner's protected rights are, in part only, subject to approved arrangements under section 5 of the Act, the premium shall be paid on or before whichever is the later of the following days—

- (a) the day 6 months after the day on which the Board certify under regulation 4(2) or (3) that the protected rights in question are, in part only, subject to approved arrangements; and
- (b) the day one month after the day on which the Secretary of State sends to the person liable to pay the premium a notice certifying that the premium is payable.

(3) On application made to him for that purpose the Secretary of State may, in any particular case or class of case, extend the period within which, under paragraph (1) or (2), a premium is required to be paid—

- (a) by up to 6 months if he is satisfied that the circumstances are such that payment of the premium could not reasonably be required to be made within that period; and
- (b) by such further period as he considers reasonable if he is satisfied that to require earlier payment of the premium would be prejudicial to the interests of the person in respect of whom the premium is payable or of the generality of members of the scheme.

### **Miscellaneous provisions affecting premiums**

6.—(1) Subject to paragraphs (3) and (4), where a premium is payable pursuant to certification by the Board to the Secretary of State under regulation 4(2) or (3) the premium shall, for the purpose of extinguishing protected rights and reducing any guaranteed minimum pension to which a person is treated as being entitled, be treated as having been paid, or paid in part in a case to which either paragraphs (6) to (8) apply or paragraph (9) applies, on the date specified in paragraph (2).

(2) The date mentioned in paragraph (1) is whichever is the later of—

- (a) the date on which the scheme ceased to be appropriate; and
- (b) any date certified by the Board under regulation 4(3) in relation to the rights mentioned in paragraph (1).

(3) Where a premium has been treated as paid under paragraph (1), the effect of that paragraph shall, except as provided in paragraph (5), be disregarded if—

- (a) the Board subsequently approve arrangements for the preservation or transfer of the protected rights; or
- (b) the person who is liable to pay the premium fails to do so within the period prescribed by regulation 5(1) or (2), or such longer period as the Secretary of State may allow under regulation 5(3).

(4) Where by virtue of the operation of paragraphs (1) and (3) in relation to a person entitled to a benefit specified in section 29(1)(a) of the Social Security Pensions Act 1975 an amount of that benefit, as certified by the Secretary of State, was paid to that person which would not otherwise have been paid—

- (a) the Secretary of State shall be entitled to recover that amount from the scheme and any amount so recovered shall be paid into the National Insurance Fund; and
- (b) the sums payable under the scheme to that person may be reduced by the amount so recovered by the Secretary of State.

(5) Paragraph (3)(b) shall not apply where the Secretary of State is satisfied that the failure to pay was not with the consent or connivance of, or attributable to any negligence on the part of, the person in respect of whom the premium is payable, and where, subject to paragraphs (6) and (8), the scheme, being a scheme which is or has been appropriate, is being or has been wound up.

(6) In a case where the circumstances specified in paragraph (7)(a) and either (b) or (c) obtain, the premium in question shall be treated as paid under paragraph (1) only in accordance with the provisions of paragraph (8).

(7) The circumstances mentioned in paragraph (6) are that—

- (a) a premium has become payable in respect of the person in question by reason of the withdrawal by the Board of their approval of, or their inability to give their approval to, arrangements for the preservation or transfer of the protected rights in question under section 5;
- (b) the scheme is being or has been wound up, its resources are insufficient to meet the cost of that premium, and the Board are satisfied that no arrangements have been made to meet that cost, or, as the case may be, such part of that cost as cannot be met from the resources of the scheme;
- (c) the scheme has been wound up, and a cash sum in lieu of the protected rights in question has been paid to or for the benefit of the person concerned.

(8) In a case to which paragraph (6) applies, where the Secretary of State is satisfied that the part of the premium that the resources of the scheme are sufficient to meet or the amount of the cash sum referred to in paragraph (7)(c) is less than the value of the protected rights in question, such part of the premium as represents, in the opinion of the Secretary of State, the difference between the lesser and greater amounts shall be treated as having been paid.

(9) Where a person in respect of whom a premium is payable is a person to whom regulation 4(1)(a) applies and that person pays part only of that premium, that part of the premium shall be treated as having been paid under paragraph (1).

(10) Where part of a premium is treated as having been paid under paragraph (1)—

- (a) section 5(9) of the Act shall be modified so as to have effect as if there were inserted at the end thereof the words “and payment of part of the premium shall operate

to extinguish such part of those rights as corresponds, in the opinion of the Secretary of State, to that part of the premium” and section 5(10)(a) shall have effect as if there were substituted for the words “the premium” the words “that part of the premium which has been paid”; and

- (b) in a case to which paragraph (6) applies, section 5 of the Act shall be modified so as to have effect as if—
  - (i) in subsection (1) there were inserted after the words “protected rights” the words “or part thereof”,
  - (ii) in each of paragraphs (a) and (b) of subsection (4) there were inserted after the words “are not” the words “or are in part only”, and
  - (iii) in subsection (8) there were inserted after the words “in question” the words “to the extent that those rights are not subject to approved arrangements”.

#### **Re-allocation and refund of premium**

7.—(1) Where a premium is wrongly paid, or paid as to the wrong amount, the Secretary of State may treat all or part of that premium as paid (wholly or in part) in discharge of a liability for another premium.

(2) Where a premium has been paid in connection with protected rights and another such premium subsequently becomes payable in connection with the same protected rights or protected rights including those rights, the Secretary of State may treat all or part of the first premium as paid (wholly or in part) in discharge of a liability for the second premium.

- (3) Subject to paragraphs (1) and (2) the Secretary of State shall refund a premium if—
  - (a) that premium was paid in error; or
  - (b) he is satisfied that a transfer of the protected rights will be made in accordance with Schedule 1 to the Act;

and where a premium is refunded under the provisions of this paragraph the protected rights which were extinguished by payment of the premium and the corresponding reduction in any guaranteed minimum pension to which that person or any widow or widower of that person was treated as entitled shall be restored.

(4) A refund under paragraph (3) shall be made only if an application is made in writing, in such form as the Secretary of State may reasonably require for the purpose.

- (5) In paragraph (3) “error” means, and means only, an error which—
  - (a) is made at the time of payment; and
  - (b) relates to some present or past matter.

(6) The Secretary of State shall refund a premium if he is satisfied that it ought to be refunded where the person in respect of whom it was paid has died without leaving a widow or widower on or before the later of the days first mentioned in sub-paragraphs (a) and (b) respectively of regulation 5(1) or, as the case may be, regulation 5(2).

#### **Prescribed person and prescribed periods for the purposes of section 5(10)(a) of the Act**

8. For the purposes of section 5(10)(a) of the Act—

- (a) the prescribed person is the Secretary of State;
- (b) the prescribed period—
  - (i) for the purpose of giving notice to the Secretary of State,
  - (ii) for the purpose of the payment referred to in section 5(10)(a)(i), and
  - (iii) for the purpose of the payment referred to in section 5(10)(a)(ii),

is the period allowed for the payment of the premium under regulation 5.

Signed by Authority of the Secretary of State for Social Services

25th June 1987

*Nicholas Scott*  
Minister of State, Department of Health and Social Security

## EXPLANATORY NOTE

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

These Regulations are all made under provisions of the Social Security Act 1986 ("the 1986 Act"), or provisions of the Social Security Pensions Act 1975 ("the 1975 Act") as modified under powers conferred by the 1986 Act, before the end of the period of 12 months from the commencement of those provisions. Consequently, by virtue of section 61(5) of the 1986 Act, the provisions of section 61(2) and (3) of the 1975 Act (as amended by section 86(1) of, and paragraph 94 of Schedule 10 to, the 1986 Act), which require reference to the Occupational Pensions Board of, and a report by the Board on, proposals to make regulations for certain purposes of both Acts, do not apply to them.

When a personal pension scheme ceases to be an appropriate scheme, within the meaning of the 1986 Act, a "personal pension protected rights premium" may become payable under section 5 of the 1986 Act in respect of each person in the categories described in subsection (4) of that section.

Under subsection (8) of that section, the amount of a personal pension protected rights premium is the cash equivalent of the protected rights of the person concerned, calculated and verified in the prescribed manner.

Regulation 2 provides for the manner in which protected rights, and other rights under the scheme, are to be calculated and verified.

In relation to a personal pension protected rights premium, regulation 3 specifies the circumstances in which it is not payable. Regulation 4 makes provision about the liability to pay it; regulation 5 about the time within which it is to be paid; regulation 6 about treating it as paid; and regulation 7 about re-allocation and refunding. Regulation 8 amplifies section 5(10) of the 1986 Act.

The publication "Retirement Benefit Schemes—Transfer Values (GN11)", referred to in regulation 2(3)(b)(ii), may be obtained from the Institute of Actuaries, Staple Inn Hall, High Holborn, London WC1V 7QJ, and from the Faculty of Actuaries, 23 St. Andrew Square, Edinburgh EH2 1AQ.