

1987 No. 1113

PENSIONS

The Personal and Occupational Pension Schemes
(Abatement of Benefit) 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>Regulations 1 to 3</i>	<i>4th January 1988</i>
<i>Regulations 4 and 5</i>	<i>6th April 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 29(2A) and (2C) of the Social Security Pensions Act 1975(b) and sections 4 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 and Occupational Pension Schemes (Abatement of Benefit) Regulations 1987, and regulations 2 and 3 and this regulation shall come into force on 4th January 1988, and regulations 4 and 5 on 6th April 1988.

(2) In these Regulations —

“minimum contributions” has the same meaning as in the Social Security Act 1986;

“the Pensions Act” means the Social Security Pensions Act 1975;

“rebate percentage” has the same meaning as in section 3(1) of the Social Security Act 1986;

“relevant year” has the same meaning as in section 35 of the Pensions Act;

“the Transfer Payment Regulations” means the Protected Rights (Transfer Payment) Regulations 1987(d);

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

(3) In these Regulations, unless 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.

(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 (c.60), to the exercise of certain powers conferred by that Act. (b) 1975 c.60. Subsections (2A) and (2C) were inserted into section 29 by the Social Security Act 1986 (c.50), section 6 and Schedule 2, paragraph 5. (c) 1986 c.50. See definitions of “prescribed” and “regulations” in section 84(1). (d) S.I. 1987/1118. [SS87/1704]

Guaranteed minimum pension to which earner is treated as entitled after minimum contributions have been paid

2.—(1) Where, in relation to any tax week, except a tax week such as is mentioned in paragraph (3), minimum contributions have been paid in respect of an earner, sections 16(2B), 28(7A) and 59(1A) of the Social Security Act 1975(a) and section 29 of the Pensions Act shall have effect in relation to him, as from the date on which he reaches pensionable age, as if he were entitled to a guaranteed minimum pension, arising from that tax week –

- (a) at the rate described in paragraph (2) if that tax week fell within a tax year which was a relevant year in relation to that earner; and
- (b) at a nil rate if it did not.

(2) The rate referred to in paragraph (1)(a) is the same rate as that of the guaranteed minimum pension to which he would have been entitled if –

- (a) he had been employed in that tax week in employment which was contracted-out employment by virtue of section 32(2)(a) and (b) of the Pensions Act;
- (b) his earnings factor for the relevant year which included that tax week, so far as derived from earnings (being earnings such as are mentioned in section 35(1) of the Pensions Act upon which primary Class 1 contributions have been paid or treated as paid) from that employment in that tax week, had been equal to the amount of which the minimum contributions referred to in paragraph (1) (less any part of them paid under section 3(1)(b) of the Social Security Act 1986) are the rebate percentage; and
- (c) the occupational pension scheme by reference to which that employment was contracted-out had made no provision under section 35(7) of the Pensions Act.

(3) In circumstances where, in relation to any tax week –

- (a) minimum contributions have been paid in respect of an earner; and
- (b) in respect of the protected rights which derived from them a transfer payment has been made in accordance with regulations 2(5) or (6) and 3(b) of the Transfer Payment Regulations,

sections 16(2B), 28(7A) and 59(1A) of the Social Security Act 1975 and section 29 of the Pensions Act shall have effect in relation to him, as from the date on which he reaches pensionable age, as if he were entitled to a guaranteed minimum pension arising from that tax week at a nil rate.

Guaranteed minimum pension to which earner's widow or widower is treated as entitled after minimum contributions have been paid

3.—(1) Where, in relation to any tax week, except a tax week such as is mentioned in paragraph (3), minimum contributions have been paid in respect of an earner, sections 16(2B), 28(7A) and 59(1A) of the Social Security Act 1975 and section 29 of the Pensions Act shall, in the circumstances specified in paragraph (2), have effect in relation to the earner's widow or widower –

- (a) if the earner died after reaching pensionable age, as if the widow or widower were entitled to a guaranteed minimum pension at a rate equal to one-half of the rate described in regulation 2(2); and
- (b) if the earner died before reaching pensionable age, as if the widow or widower were entitled to a guaranteed minimum pension at the same weekly rate (if any) as that of the guaranteed minimum pension to which she or he would have been entitled if the conditions set out in regulation 2(2) had been satisfied in relation to the earner.

(a) 1975 c. 14. Sections 16(2B), 28(7A) and 59(1A) were inserted by the Social Security Act 1985 (c.53), section 9(1)(b), (2)(c) and (4)(b).

(2) The circumstances referred to in paragraph (1) are those in which, if the conditions set out in regulation 2(2) had been satisfied in relation to the earner, a guaranteed minimum pension would have been payable to the widow (by virtue of section 36(6) of the Pensions Act) or to the widower (by virtue of regulations made under section 36(7A) of that Act(a)).

- (3) In circumstances where, in relation to any tax week –
- (a) minimum contributions have been paid in respect of an earner; and
 - (b) in respect of the protected rights which derived from them a transfer payment has been made in accordance with regulations 2(5) or (6) and 3(b) of the Transfer Payment Regulations,

the earner's widow or widower shall not, for the purposes of section 16(2B), 28(7A) and 59(1A) of the Social Security Act 1975 and section 29 of the Pensions Act, be treated as if she or he were entitled to a guaranteed minimum pension arising from that tax week.

Guaranteed minimum pension to which earner is treated as entitled after minimum payments have been made

4.— (1) Where, in relation to any tax week, except a tax week such as is mentioned in paragraph (3), minimum payments have been made in respect of an earner to an occupational pension scheme which in relation to the earner's employment ("the actual employment") is a money purchase contracted-out scheme, then, for the purposes of sections 16(2B), 28(7A) and 59(1A) of the Social Security Act 1975 and section 29 of the Pensions Act, the earner shall be treated, as from the date on which he reaches pensionable age, as if he were entitled to a guaranteed minimum pension, arising from that tax week –

- (a) at the rate described in paragraph (2) if that tax week fell within a tax year which was a relevant year in relation to that earner; and
- (b) at a nil rate if it did not.

(2) The rate referred to in paragraph (1)(a) is the same rate as that of the guaranteed minimum pension to which he would have been entitled if –

- (a) he had been employed in that tax week in employment ("the notional employment") which was contracted-out employment by virtue of section 32(2)(a) and (b) of the Pensions Act;
- (b) his earnings in that tax week from the notional employment had been what his earnings in that tax week from the actual employment in fact were; and
- (c) the occupational pension scheme by reference to which the notional employment was contracted-out had made no provision under section 35(7) of the Pensions Act.

(3) In circumstances where, in relation to any tax week –

- (a) minimum payments have been paid in respect of an earner; and
- (b) in respect of the protected rights which derived from them a transfer payment has been made in accordance with regulations 2(5) or (6) and 3(b) of the Transfer Payment Regulations,

sections 16(2B), 28(7A) and 59(1A) of the Social Security Act 1975 and section 29 of the Pensions Act shall have effect in relation to him, as from the date on which he reaches pensionable age, as if he were entitled to a guaranteed minimum pension arising from that tax week at a nil rate.

(a) Subsection (7A) was inserted into section 36 by the Social Security Act 1986 (c. 50), section 9(3)(c). See the Contracting-out (Widowers' Guaranteed Minimum Pensions) Regulations 1987 (S.I. 1987/1100).

Guaranteed minimum pension to which earner's widow or widower is treated as entitled after minimum payments have been made

5.—(1) Where, in relation to any tax week, except a tax week such as is mentioned in paragraph (3), minimum payments have been made in respect of an earner to an occupational pension scheme which in relation to the earner's employment is a money purchase contracted-out scheme, sections 16(2B), 28(7A) and 59(1A) of the Social Security Act 1975 and section 29 of the Pensions Act shall, in the circumstances specified in paragraph (2), have effect in relation to the earner's widow or widower –

- (a) if the earner died after reaching pensionable age, as if the widow or widower were entitled to a guaranteed minimum pension at a rate equal to one-half of the rate described in regulation 4(2); and
- (b) if the earner died before reaching pensionable age, as if the widow or widower were entitled to a guaranteed minimum pension at the same weekly rate (if any) as that of the guaranteed minimum pension to which she or he would have been entitled if the conditions set out in regulation 4(2) had been satisfied in relation to the earner.

(2) The circumstances referred to in paragraph (1) are those in which, if the conditions set out in regulation 4(2) had been satisfied in relation to the earner, a guaranteed minimum pension would have been payable to the widow (by virtue of section 36(6) of the Pensions Act) or to the widower (by virtue of regulations made under section 36(7A) of that Act).

(3) In circumstances where, in relation to any tax week –

- (a) minimum payments have been paid in respect of an earner; and
- (b) in respect of the protected rights which derived from them a transfer payment has been made in accordance with regulations 2(5) or (6) and 3(b) of the Transfer Payment Regulations,

the earner's widow or widower shall not, for the purposes of section 16(2B), 28(7A) and 59(1A) of the Social Security Act 1975 and section 29 of the Pensions Act, be treated as if she or he were entitled to a guaranteed minimum pension arising from that tax week.

Signed by authority of the Secretary of State for Social Services
Nicholas Scott

25th June 1987

Minister of State
Department of Health and Social Security

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are all either made under the Social Security Act 1986 ("the 1986 Act"), or made under provisions inserted into the Social Security Pensions Act 1975 by provisions of the 1986 Act, and are made before the end of a period of 12 months from the commencement of the relevant sections of that Act. Consequently, by virtue of section 61(5) of that Act, the provisions of section 61(2) and (3) of the Social Security Pensions Act 1975 (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.

Section 4 of the 1986 Act provides that where minimum contributions have been paid (by the Secretary of State to a personal pension scheme) in respect of an earner, that earner on reaching pensionable age, or his or her widow or widower in prescribed circumstances, is to be treated as entitled to a guaranteed minimum pension at a prescribed weekly rate for the purposes of certain sections of the Social Security Acts 1975, under which national insurance benefits are abated if the beneficiary is entitled to a guaranteed minimum pension. Regulations 2 and 3 prescribe the rate of the guaranteed minimum pension for the earner and the widow or widower respectively, and regulation 3 also prescribes the circumstances in which the widow or widower is to be treated as entitled to it.

Section 29(2A) of the Social Security Pensions Act 1975 (inserted by Schedule 2 to the 1986 Act) makes provision similar to that of section 4 of the 1986 Act for the case where minimum payments have been made (by an earner's employer to an occupational pension scheme). Regulations 4 and 5 prescribe the rate of the guaranteed minimum pension for the earner and the widow or widower respectively, and regulation 5 also prescribes the circumstances in which the widow or widower is to be treated as entitled to it.