

**1988 No. 475**

**PENSIONS**

**The Contracting-out (Miscellaneous Amendments)  
Regulations 1988**

*Made* - - - -                      *10th March 1988*

*Laid before Parliament*                      *16th March 1988*

*Coming into force*                                      *6th April 1988*

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), and sections 31(4), 35(8), 38(1) and (1A), 41C(7), 43(4), 44(2), 45(1), 51 and 52 of, and paragraph 6 of Schedule 2 to, the Social Security Pensions Act 1975(b), and sections 14 and 84(1) of the Social Security Act 1986(c) and all other powers enabling him in that behalf, after considering the report of the Occupational Pensions Board on the proposals submitted to them(d), hereby makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Contracting-out (Miscellaneous Amendments) Regulations 1988, and shall come into force on 6th April 1988.

**Amendment of the Occupational Pension Schemes (Contracting-out) Regulations 1984**

2.—(1) The Occupational Pension Schemes (Contracting-out) Regulations 1984(e) shall be amended in accordance with the provisions of this regulation.

(2) In regulation 1(2), in paragraph (b)(i) of the definition of “responsible paying authority”, for “satisfies the conditions specified in regulation 39” there shall be substituted “is an appropriate policy of insurance or an appropriate annuity contract for the purposes of section 52C”(f).

(3) For paragraph (2) of regulation 2, there shall be substituted the following paragraph—

“ (2) The employer of the earners in an employment who are members of a scheme may elect that that employment shall be contracted-out by reference to that scheme in relation to all those earners with or without the exception of those mentioned in either or both of sub-paragraphs (a) and (b), namely—

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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 (c.60), to the exercise of certain powers conferred by that Act.

(b) 1975 c.60. Section 35(8) was amended by the Social Security Act 1985 (c.53), section 4 and Schedule 3, paragraph 8. Section 38(1) was substituted by the Social Security Act 1986 (c.50), section 86(1) and Schedule 10, paragraph 18. Section 38(1A) was inserted by the Health and Social Security Act 1984 (c.48), section 19(1). Section 41C was inserted by the Health and Social Security Act 1984 (c.48), section 20 and Schedule 6. Section 45(1) was amended by the Social Security (Miscellaneous Provisions) Act 1977 (c.5), section 22(7), and the Social Security Act 1985 (c.53), section 29(1) and Schedule 5, paragraph 25.

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

(d) See section 61(2) and (3) of the Social Security Pensions Act 1975: section 61(2) is amended in ways not relevant to these Regulations.

(e) S.I. 1984/380; the relevant amending instruments are S.I. 1985/1928, 1987/1104.

(f) Section 52C was inserted by the Social Security Act 1985, section 2 and Schedule 1, paragraph 2, and was amended by the Social Security Act 1986, section 86 and Schedule 10, paragraph 26.

- (a) where a scheme makes provision whereby an earner in an employment to which the scheme relates may opt in writing not to join or, as the case may be, not to remain as a member of a section of the scheme whose members' employment will be contracted-out by reference to the scheme (whether or not the provision imposes any restriction on the number of times such an option may be exercised), any earner who so opts; and
- (b) in a case where it is possible for one or more earners to be unable to complete 5 years' service in that employment as members of that scheme before reaching the normal pension age of that scheme, the earner or earners whose length of service (consisting of service in that employment as a member of that scheme, or linked qualifying service in relation to such service, or both) falls short of a minimum length of service (not exceeding 5 years) specified in the rules of the scheme and who cannot (so far as is known when the contracting-out certificate is issued, or if later in the case of a particular earner, when he enters the employment) complete such a minimum length of service before reaching the normal pension age of the scheme."

(4) In regulation 18—

- (a) in paragraph (3), for "£5" there shall be substituted "£16"; and
- (b) in sub-paragraph (a) of paragraph (4), for "the subject of a certificate issued by the Secretary of State under section 22(9) of the 1977 Act and still in force" there shall be substituted "appropriately secured within the meaning of section 52C".

(5) For sub-paragraph (e) of paragraph (1) of regulation 19, there shall be substituted the following sub-paragraph—

- "(e) cases where an earner's accrued rights to guaranteed minimum pensions are appropriately secured within the meaning of section 52C."

(6) At the beginning of paragraph (3), of regulation 22 there shall be inserted "Subject to paragraph (3A)" and after that paragraph there shall be inserted—

- " (3A) In a case where an earner's employment in contracted-out employment by reference to the scheme terminates on or after 6th April 1988 paragraph (3) shall have effect as if, for the reference to 8½ per cent. compound, there were a reference to 7½ per cent. compound; but if there has been transferred to the scheme the earner's accrued rights to guaranteed minimum pension arising from contracted-out employment which terminated before that date and in relation to another scheme, this paragraph does not apply to those rights."

(7) In regulation 22(4), there shall be added at the end, "or for members whose guaranteed minimum pensions are, or are to be, appropriately secured within the meaning of section 52C(4)".

(8) At the beginning of paragraph (7) of regulation 22, there shall be inserted "Subject to paragraph (7A)" and after that paragraph there shall be inserted—

- " (7A) In a case where an earner's employment in contracted-out employment by reference to the scheme terminates on or after 6th April 1988 paragraph (7) shall have effect as if for the reference to 8½ per cent. compound there were a reference to 7½ per cent. compound; but if there has been transferred to the scheme the earner's accrued rights to guaranteed minimum pension arising from contracted-out employment which terminated before that date and in relation to another scheme, this paragraph does not apply to those rights."

(9) In regulation 23—

- (a) in paragraph (5)(b)(ii), for "£5", in both places where it occurs, there shall be substituted "£16"; and
- (b) in paragraph (7)—
  - (i) in sub-paragraph (a), for "the conditions prescribed in regulation 39" there shall be substituted "is an appropriate policy of insurance or an appropriate annuity contract for the purposes of section 52C"; and
  - (ii) the word "or" at the end of sub-paragraph (b)(i) and sub-paragraph (b)(ii) shall be omitted.

(10) In regulation 24(8)–

- (a) in sub-paragraph (a), the reference to “42(2)” shall be omitted; and
- (b) after sub-paragraph (a), there shall be inserted the following sub-paragraph–  
“(aa) where it was paid under section 42(2), and the person in respect of whom it was paid has died, without leaving a widow, on or before the day 7 months after the date of termination of contracted-out employment in respect of which the premium is payable;”.

(11) In regulation 33A, for “are appropriately secured” there shall be substituted “are, or are to be, appropriately secured”.

(12) In regulation 38(1), for sub-paragraph (d) there shall be substituted the following sub-paragraph–

- “(d) any person who is, or who in the opinion of the Secretary of State is likely to become, the responsible paying authority.”.

(13) Regulation 39 shall be omitted.

(14) In regulation 43–

- (a) in paragraph (1), for “£5” there shall be substituted “£16”;
- (b) at the beginning of paragraph (4A)(a) there shall be inserted “Except in a case to which paragraph (4B) applies,”; and
- (c) after paragraph (4A) there shall be inserted the following paragraph–  
“ (4B) Where the member is a married woman or widow, and effect has been given to her protected rights at a time when an election is operative that her liability in respect of primary Class 1 contributions shall be a liability to contribute at a reduced rate, paragraph (4A) shall not apply.”.

#### **Amendment of Contracting-out (Protection of Pensions) Regulations 1984**

3.—(1) The Contracting-out (Protection of Pensions) Regulations 1984(b) shall be amended in accordance with the provisions of this regulation.

(2) In each of paragraphs (1) and (2) of regulation 6, for sub-paragraphs (a) and (b) there shall be substituted the following sub-paragraphs–

- “(a) a rate which is directly related to the earner’s salary; and
- (b) some other rate which is not directly related to his salary.”.

#### **Amendment of the Contracting-out (Transfer) Regulations 1985**

4.—(1) The Contracting-out (Transfer) Regulations 1985(c) shall be amended in accordance with the provisions of this regulation.

(2) In paragraph 1 of Schedule 1 for the words after “entered employment” there shall be substituted the words “with an employer who is, or in the case of a transfer to a section 49 salary-related scheme, is or was, a contributor to the receiving scheme.”

(3) In paragraph 2 of Schedule 1–

- (a) the words “The rights allowed in the receiving scheme to the earner or person concerned are, in the opinion of the trustees of the transferring scheme, at least equal in value to the rights transferred and” shall be omitted; and
- (b) in each of sub-paragraphs (a) and (b), for “the 2 schemes” there shall be substituted “the transferring scheme and the receiving scheme”.

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

*Nicholas Scott*  
Minister of State,

10th March 1988

Department of Health and Social Security

(a) Regulation 43(4A) was inserted by the Personal and Occupational Pension Schemes (Protected Rights) Regulations 1987 (S.I. 1987/1117), regulation 14 as of 6th April 1988.

(b) S.I. 1984/1921; the relevant amending instrument is S.I. 1987/1114.

(c) S.I. 1985/1323, to which there are amendments not relevant to these Regulations.

## EXPLANATORY NOTE

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

These Regulations make miscellaneous amendments to regulations about occupational pension schemes which are contracted-out of the earnings-related part of the state pension scheme.

The main changes are to the Occupational Pension Schemes (Contracting-out) Regulations 1984 ("the Contracting-out Regulations") and provide—

for an employer to be able to exclude from an election to contract-out any employee who requests or agrees in writing that he should be excluded (regulation 2(3));

for an increase, from £5 to £16, in the amount of a state scheme premium below which it need not be paid (regulation 2(4)(a), (9)(a) and (14)(a));

for a reduction, from 8½ per cent. to 7½ per cent. compound, in the fixed rate of revaluation of guaranteed minimum pensions in cases where contracted-out employment ends after 5th April 1988 (regulation 2(6) and (8));

for schemes to be able to provide for fixed or limited rate revaluation of guaranteed minimum pensions when a member's accrued rights are to be bought out (regulation 2(7) and (11));

for a contributions equivalent premium to be refundable in the period of 7 months after the end of the contracted-out employment in respect of which it was payable where the person in respect of whom it was paid has died without leaving a widow (regulation 2(10));

for the Secretary of State to be able to supply information about guaranteed minimum pensions to any person who is likely to become the responsible paying authority for that pension (regulation 2(12)); and

for schemes to be relieved of the obligation to inform the Secretary of State when effect has been given to the protected rights of married women and widows who pay reduced rate national insurance contributions (regulation 2(14)(b) and (c)).

The remainder of the Regulations make amendments to the Contracting-out Regulations, the Contracting-out (Protection of Pensions) Regulations 1984 and the Contracting-out (Transfer) Regulations 1985 which are consequential on repeals and amendments effected by the Social Security Acts 1985 and 1986.

The report of the Occupational Pensions Board on the draft of these Regulations which had been referred to them, together with a statement showing that the regulations give effect to the Board's recommendations, is contained in Command Paper No. 337 published by Her Majesty's Stationery Office.

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