

1990 No. 1142

PENSIONS

The Personal and Occupational Pension Schemes  
(Miscellaneous Amendments) (No. 2) Regulations 1990

<i>Made</i> - - - -	<i>29th May 1990</i>
<i>Laid before Parliament</i>	<i>6th June 1990</i>
<i>Coming into force</i> -	<i>27th June 1990</i>

The Secretary of State for Social Security, in exercise of the powers conferred by sections 96(1) and 99(1) and (3) of, and paragraph 13(5) of Schedule 16 to, the Social Security Act 1973(a), sections 166(1) and (2) and 168(1) of, and Schedule 20 to, the Social Security Act 1975(b), sections 39(1), 41C(7), 44A(1) and 66(2) of, and paragraphs 12(2A) and 20 of Schedule 1A to, the Social Security Pensions Act 1975(c), and sections 7(1), 83(1) and 84(1) of, and paragraph 9(4) of Schedule 1 to, the Social Security Act 1986(d), after considering the report of the Occupational Pensions Board on the proposals submitted to them(e), hereby makes the following Regulations:

**Citation and commencement**

1.—(1) These Regulations may be cited as the Personal and Occupational Pension Schemes (Miscellaneous Amendments) (No. 2) Regulations 1990.

(2) These Regulations come into force on 27th June 1990.

**Amendments to the Occupational Pension Schemes (Contracting-out) Regulations 1984**

2.—(1) The Occupational Pension Schemes (Contracting-out) Regulations 1984(f) are amended as described in paragraphs (2) and (3) of this regulation.

(2) Regulation 18A (case in which and condition subject to which transfer premiums may be paid) is amended by replacing the word “condition” in paragraph (1) with the word “conditions” and replacing paragraph (3) with the following—

- 
- (a) 1973 c.38. *See* definition of “prescribed” in section 99(1) and explanation of “regulations” in section 99(3).
  - (b) 1975 c.14. *See* definitions of “prescribe” and “regulations” in Schedule 20. Sections 166(1) and (2) and 168(1) apply, 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. Section 166(1) and (2) applies, by virtue of section 83(1) of the Social Security Act 1986 (c.50), to the exercise of powers to make regulations under that Act.
  - (c) 1975 c.60. Section 41C was inserted by Schedule 6 to the Health and Social Security Act 1984 (c.48) and amended by paragraphs 3 and 7 of Schedule 3 to the Social Security Act 1985 (c.53) and paragraph 8 of Schedule 6 to the Social Security Act 1989 (c.24). Section 44A was inserted by paragraph 1 of Schedule 1 to the Social Security Act 1985 and amended by paragraph 6(1)(g) of Schedule 2, and Schedule 11, to the Social Security Act 1986 (c.50) and paragraph 11 of Schedule 6 to the Social Security Act 1989. Schedule 1A was inserted by paragraph 3 of Schedule 1 to the Social Security Act 1985. The only relevant amendment to Schedule 1A was made by paragraph 30(a) of Schedule 10 to the Social Security Act 1986, which inserted sub-paragraphs (2A) and (2B) of paragraph 12.
  - (d) 1986 c.50. *See* definitions of “prescribed” and “regulations” in section 84(1).
  - (e) *See* section 68(1) of the Social Security Act 1973 and section 61(2) of the Social Security Pensions Act 1975.
  - (f) S.I. 1984/380; the relevant amending instruments are S.I. 1985/1928 and 1987/1114.

“(3) The conditions referred to in paragraph (1) are that—

- (a) the trustees of the occupational pension scheme from which the earner’s accrued rights have been transferred have, subject to regulation 19(2), elected to pay a transfer premium; and
- (b) if the earner’s accrued rights have been transferred to a personal pension scheme, the personal pension scheme is not an appropriate scheme.”.

(3) Regulation 34 (commutation of pension) is amended by replacing proviso (b) to paragraph (4) with the following—

“(b) in the case of an earner who retires before normal pension age, commutation is not permitted before the date on which benefits become payable to the earner under the scheme’s early retirement provisions;”.

#### **Amendment to the Occupational Pension Schemes (Preservation of Benefit) Regulations 1984**

3. Regulation 7 of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1984(a) (which makes general provision for the computation of benefit) is amended by inserting the following new paragraph after paragraph (4)—

“(4A) A scheme may, for the purposes of any calculations made in accordance with paragraph 13(3) of Schedule 16, reckon both the following periods (or neither, but not only one) to the nearest, next highest or next lowest calendar month. The periods referred to are—

- (a) the period over which, on the assumption referred to in paragraph 13(3)(a) of Schedule 16, the credits would have accrued in full; and
- (b) the period between the time when the credits were awarded and the termination of the member’s pensionable service.”.

#### **Amendment to the Occupational Pension Schemes (Revaluation) Regulations 1985**

4. Regulation 10 of the Occupational Pension Schemes (Revaluation) Regulations 1985(b) (retirement benefits varied at state pension age) is replaced with the following—

##### **“Retirement benefits varied at state pension age**

10.—(1) In a case where a scheme provides that the pension or other retirement benefit payable under the scheme to a member at normal pension age is to be varied at state pension age (that is, age 60 years for a woman or age 65 years for a man), Schedule 1A to the Social Security Pensions Act 1975 shall have effect subject to the modifications specified in paragraphs (2) and (3) of this regulation.

(2) From the date on which the member attains normal pension age to the date on which the member attains state pension age, the appropriate amount is to be calculated as if D in the formula set out in paragraph 2(2) referred to the amount of the pension or other retirement benefit payable at normal pension age.

(3) On the member’s attaining state pension age, the appropriate amount to be added to the pension or other retirement benefit payable to the member after that date is to be calculated using the formula set out in paragraph 2(2) as if D in that formula referred to the amount of the pension or other benefit payable at state pension age.”.

#### **Amendments to the Occupational Pension Schemes (Transfer Values) Regulations 1985**

5.—(1) Regulation 2A of the Occupational Pension Schemes (Transfer Values) Regulations 1985(c) (which deals with the reduction of cash equivalents) is amended as described in paragraphs (2) and (3) of this regulation.

(2) Paragraph (1) is amended by inserting after the words “pensionable service” in

---

(a) S.I. 1984/614, to which there are amendments not relevant to these Regulations.

(b) S.I. 1985/1930; the only relevant amending instrument is S.I. 1988/476.

(c) S.I. 1985/1931; the only relevant amending instruments are S.I. 1987/1107 (which inserted regulation 2A) and 1988/523.

sub-paragraph (a) the words "commenced before 6th April 1988 and", and replacing the words "paragraph (2) below" with the words "paragraph (2) or (3) below, as appropriate".

(3) Paragraph (2) is replaced with the following—

"(2) Where the benefits are money purchase benefits, the part referred to in paragraph (1) above is the part of those benefits that has accrued to or in respect of the member after 5th April 1988.

(3) Where the benefits are not money purchase benefits, the part referred to in paragraph (1) above is the part, or the total of the parts, described in sub-paragraphs (a) and (b) of this paragraph.

(a) In the case of benefits that have accrued to or in respect of the member as a result of the member's pensionable service, the part of those benefits that is attributable to the member's pensionable service after 5th April 1988.

(b) In the case of any other benefits (for example, transfer credits), the part of those benefits that was credited to the member after 5th April 1988.

(4) Where a member exercises a right to the cash equivalent described in paragraph (1) above, sections 41A and 41B (protection of pensions) and Part I of Schedule 1A (revaluation of pensions) are modified so that, for the purposes of those provisions, the benefits to which the cash equivalent related are disregarded and the pensionable service by reference to which those benefits were calculated is excluded from B and C in the formula set out in paragraph 2(2)."

#### **Amendments to the Personal and Occupational Pension Schemes (Incentive Payments) Regulations 1987**

6.—(1) Regulation 3 of the Personal and Occupational Pension Schemes (Incentive Payments) Regulations 1987(a) (cases in which payments under section 7 of the Social Security Act 1986 are not to be made) is amended as described in paragraphs (2) and (3) of this regulation.

(2) Paragraph (2) is amended by inserting at the beginning the words "Subject to paragraph (2B),".

(3) The following paragraph is inserted after paragraph (2A)—

"(2B) Paragraph (2) does not apply if both the following conditions are satisfied.

(a) The employment referred to in paragraph (2) is distinguishable from the employment of the earner in question because there has been a change in the identity of the employer.

(b) If the employment of the earner in question were contracted-out by reference to the scheme other than the scheme in question, payments under section 7 would be made to that other scheme in respect of the earner in question."

#### **Amendment to the Personal and Occupational Pension Schemes (Protected Rights) Regulations 1987**

7. Regulation 10 of the Personal and Occupational Pension Schemes (Protected Rights) Regulations 1987(b) (death of scheme member before effect given to his protected rights) is amended by deleting the words "in the case only of an occupational pension scheme," from paragraph (3)(c).

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

29th May 1990

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

(a) S.I. 1987/1115; the only relevant amending instrument is S.I. 1988/2237.

(b) S.I. 1987/1117, 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 personal and occupational pension schemes.

Regulation 2 amends the Occupational Pension Schemes (Contracting-Out) Regulations 1984. Regulation 18A of those Regulations is amended to prevent the payment of a transfer premium where the earner's accrued rights are transferred to a personal pension scheme that is an appropriate scheme. Regulation 34 is amended to clarify the circumstances in which an earner's accrued rights to guaranteed minimum pensions may be commuted for a lump sum.

Regulation 3 amends the Occupational Pension Schemes (Preservation of Benefit) Regulations 1984. It allows periods that are relevant to the calculation of certain credits, and the amount of certain deductions, to be rounded to the nearest, next highest or next lowest calendar month.

Regulation 4 replaces regulation 10 of the Occupational Pension Schemes (Revaluation) Regulations 1985 to make it clear that revaluation only applies up to normal pension age, even where benefits are subsequently varied at state pension age.

Regulation 5 amends regulation 2A of the Occupational Pension Schemes (Transfer Values) Regulations 1985. It makes clear the part of any benefits that have accrued to or in respect of a member of an occupational pension scheme as a result of pensionable service to which the member is entitled to a cash equivalent on "opting out" of the scheme.

Regulation 6 amends regulation 3 of the Personal and Occupational Pension Schemes (Incentive Payments) Regulations 1987. It creates an exception to the provision that prevents incentive payments under section 7 of the Social Security Act 1986 being made in respect of an earner whose employment has been contracted-out by reference to another scheme at some time during the period 1st January 1986 to 5th April 1993. The exception applies where the earner has moved from one scheme to another following a change in the identity of the employer and payments were being made to the first scheme before the earner moved.

Regulation 7 amends regulation 10 of the Personal and Occupational Pension Schemes (Protected Rights) Regulations 1987 which sets out the manner in which a member's protected rights must be used if the member dies before effect is given to those rights. Until now, where a member of a personal pension scheme was survived by a qualifying widow or widower, the member's protected rights had to be used to provide a pension for that widow or widower. The amendment allows those rights to be paid as a lump sum where they are not sufficient to provide a pension of more than £104. This option is already available to occupational pension schemes.

The report of the Occupational Pensions Board on the draft of these Regulations which was referred to them, together with a statement by the Secretary of State showing that these Regulations give effect to the Board's recommendations, is contained in Command Paper No. 1087, published by Her Majesty's Stationary Office.

95p net

ISBN 0 11 004142 9

Printed in the United Kingdom for HMSO

880 WO1084 C16 6/90 452/3 4235 46378 900924