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STATUTORY INSTRUMENTS

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**1996 No. 1172**

**Occupational Pension Schemes  
(Contracting-out) Regulations 1996**

**PART V**

**FURTHER REQUIREMENTS (ALL SCHEMES) AND OVERSEAS SCHEMES**

**Provision of information as to resources.**

**41.** The employer in relation to a scheme and the trustees of a scheme must provide the Secretary of State, in such manner and at such times as the Secretary of State may reasonably require, with such reports, accounts, and with such other documents and information relating to the resources of the scheme as the Secretary of State may reasonably require for the purposes of Part III of the 1993 Act and these Regulations.

**Alteration of rules of contracted-out schemes.**

**42.—(1)** For the purposes of section 37(1) of the 1993 Act (prohibition on alteration of rules of contracted-out scheme unless the alteration is of a prescribed description) the rules of a salary-related contracted-out scheme cannot be altered—

- (a) in relation to any section 9(2B) rights under the scheme unless—
  - (i) the trustees of the scheme have informed the actuary in writing of the proposed alteration to the scheme rules, and
  - (ii) the actuary has considered the proposed alteration and has confirmed to the trustees of the scheme in writing that he is satisfied that the scheme will continue to satisfy the statutory standard in accordance with section 12A of the 1993 Act after the alteration is made, and
  - (iii) the alteration is not one which would otherwise prevent the scheme from satisfying the conditions of section 9(2B) of that Act; and
- (b) in relation to any guaranteed minimum pensions under the scheme unless the alteration will not affect any of the matters dealt with in Part III of the 1993 Act and sections 87 to 92 (protection of increases in guaranteed minimum pensions) and 109 and 110 of that Act (annual increases of guaranteed minimum pensions) and any regulations made under those provisions which relate to guaranteed minimum pensions and that the alteration will not otherwise prevent the scheme from satisfying the conditions of section 9(2A) of that Act.

(2) For the purposes of section 37(1) of the 1993 Act the rules of a scheme contracted-out under section 9(3) of that Act (a money purchase contracted-out scheme) cannot be altered in relation to any protected rights, unless the alteration will not affect any of the matters dealt with in Part III of the 1993 Act or any regulations made under those provisions which relate to protected rights and the alteration will not otherwise prevent the scheme from satisfying the conditions of section 9(3) of that Act.

(3) Where the provisions of section 37 of the 1993 Act continue to apply after a scheme has ceased to be contracted-out, this regulation shall continue to apply so long as the circumstances provided for in subsections (3) or (4) of that section continue to apply.

**Termination of periods of contracted-out employment.**

**43.—**(1) Subject to paragraphs (2) and (7), an earner's employment shall be treated as having ceased to be contracted-out employment when any of the following circumstances applies—

- (a) the earner's contract of service has expired or been terminated;
- (b) in the absence of a contract of service, the service itself has ended;
- (c) the cancellation or surrender of the contracting-out certificate by virtue of which his employment was contracted-out employment has taken effect, except in a case where, within 6 months of the cancellation or surrender, or such longer period as the Secretary of State may allow in a particular case, he becomes a member in contracted-out employment of another contracted-out scheme under the same employer to which his accrued rights to guaranteed minimum pensions, section 9(2B) rights or his protected rights, as the case may be, are transferred;
- (d) a variation of the contracting-out certificate by virtue of which his employment was contracted-out employment has taken effect such that the certificate no longer applies to his employment, except in a case where, within 6 months of the variation, or such longer period as the Secretary of State may allow in a particular case, he again comes within the description of earners in relation to which the said contracting-out certificate applies or he becomes a member in contracted-out employment of another contracted-out scheme under the same employer to which his accrued rights to guaranteed minimum pensions, section 9(2B) rights or his protected rights, as the case may be, are transferred;
- (e) the earner has ceased to be within the description of earners in relation to which the contracting-out certificate applies or has ceased to be a member of the scheme, except in a case where, within 6 months of the ceasing, or such longer period as the Secretary of State may allow in a particular case, he again comes within the description of earners in relation to which the said contracting-out certificate applies or he becomes a member in contracted-out employment of another contracted-out scheme under the same employer to which his accrued rights to guaranteed minimum pensions, section 9(2B) rights or his protected rights, as the case may be, are transferred; and
- (f) the earner's employer dies or disposes of the whole or part of his business so that the earner ceases to be employed by that employer and the contracted-out employment is not, or cannot be, treated as continuing under the new employer under paragraph (5).

(2) In such cases as are specified in paragraph (3), an earner's employment shall not be treated as having ceased to be contracted-out employment by reason only of the circumstances mentioned in paragraph (1)(a) and (b) where the service in question is one (other than the last) of a series of employments to all of which the same scheme applies.

(3) The cases mentioned in paragraph (2) are—

- (a) where all the employments are with the same employer or where the earner is employed by another employer in employment which is contracted-out by reference to the same scheme as the first employment and, in respect of the employment first mentioned in paragraph (2)
  - (i) no state scheme premium or contributions equivalent premium has been paid or any that has been paid has been refunded;

- (ii) the calculation of the earner's guaranteed minimum pension arising out of his service in that employment is not subject to any provision of the scheme prescribed by regulations made under section 16(3) of the 1993 Act<sup>(1)</sup>;
  - (iii) the earner's accrued rights to guaranteed minimum pensions or to section 9(2B) rights under the scheme arising out of his service in that employment have not been transferred in accordance with the provisions of the scheme under sections 12C(1)<sup>(2)</sup> or 20(1) of the 1993 Act or regulations made thereunder or, as the case may be, effect has not been given to protected rights under the scheme arising out of his service in that employment by the making of a transfer payment in accordance with the provisions of the scheme under section 28(2)(b)(i) of the 1993 Act;
  - (iv) the scheme is one for which there is a common fund,  
and any interval between one employment and the next is no longer than 6 months or such longer period as the Secretary of State may allow in a particular case; and
- (b) where a woman has a right to return to work under section 39 of the Employment Protection (Consolidation) Act 1978<sup>(3)</sup> (right to return to work following pregnancy or confinement) and does in fact return to work pursuant to that right.
- (4) The total period of contracted-out employment which consists of a series of employments to which paragraph (2) applies shall not include any intervals between employments.
- (5) In cases where an earner's employer dies or otherwise ceases to be the employer in relation to the earner's contracted-out employment and his business is taken over by a new employer, the earner's service in contracted-out employment under the old employer may be treated as continuing under the new employer if—
- (a) the earner's service after the change of employer continues to qualify him for guaranteed minimum pensions, section 9(2B) rights or protected rights, as the case may be, under the contracted-out scheme by virtue of which he qualified for such benefits or such rights before the change, or if his service does not so qualify him the earner is nevertheless to be treated as being in contracted-out employment by virtue of the provisions of regulation 28;
  - (b) the new employer accepts all the responsibilities of the former employer for any contributions to the scheme and any state scheme premiums or contributions equivalent premiums which are outstanding in respect of the scheme at the time of the change; and
  - (c) the new employer notifies the Secretary of State of the change within one month of its taking place or such longer period as the Secretary of State may consider reasonable in the particular case and provides the Secretary of State with such documents and information as he may reasonably require.
- (6) In a case where an earner's service in contracted-out employment is to be treated as continuing by virtue of paragraph (5) the contracting-out certificate issued to the former employer shall be treated as issued to the new employer and the Secretary of State may vary that certificate in such respects as may be necessary in the circumstances.
- (7) In cases where an earner is employed concurrently in two or more contracted-out employments by reference to the same scheme and with the same employer his employment in any one of those employments shall not be treated as having terminated by reason only of the circumstances mentioned in paragraph (1)(a) and (b) until all such employments are treated as having so terminated.
- (8) Where an earner ceases to be liable for Class 1 contributions under the Contributions and Benefits Act in respect of any contracted-out employment because he is employed outside Great

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(1) Section 16(3) is amended by paragraph 28 of Schedule 5 to the Pensions Act 1995.

(2) Section 12C(1) was inserted by section 136(5) of the Pensions Act 1995.

(3) 1978 c. 44. Section 39 was substituted by section 23 of the Trade Union Reform and Employment Rights Act 1993 (c. 19).

Britain and where, and for so long as, service in the employment outside Great Britain continues to qualify him for benefits under the scheme by reference to which his employment was contracted-out employment, the earner's service in that employment shall be treated as not having terminated.

(9) In this regulation the expression—

“common fund” means a fund into which all contributions, however derived, are paid, and to the whole of which recourse may be had to meet any liabilities of the scheme for the payment of benefit;

“holding company” has the same meaning as in regulation 12(2);

“state scheme premium” means a premium paid or payable under Chapter III of Part III of the 1993 Act before the principal appointed day or under those provisions as continued in force by an order made under section 180 of the 1995 Act.

#### **Notifications to the Secretary of State.**

**44.**—(1) Whenever an earner's service in contracted-out employment is treated as terminated under the provisions of regulation 43, the employer of that earner in that service shall, except where the termination is due to the death of the earner or occurs on a date later than the end of the tax year preceding that in which he attains pensionable age, or where the amount of a contributions equivalent premium in respect of that service would not exceed £17, notify the Secretary of State of that termination.

(2) A notification required to be given under paragraph (1) may be given at any time within the period of one month before the expected date of termination but if not so given shall be given within 6 months from the date on which the service terminated or, if the Secretary of State is satisfied that the notification could not reasonably have been given within that period, such longer period as he may approve in a particular case or class of case.

(3) A notification required to be given under paragraph (1) shall be given in writing in such form as the Secretary of State may direct and shall contain such information as the Secretary of State may reasonably require for calculating guaranteed minimum pensions (including those to which persons are treated as entitled under section 48(2) of the 1993 Act), any entitlements arising in respect of section 9(2B) rights and contributions equivalent premiums and for related purposes.

(4) In any case where a person transfers his responsibility for, or makes a transfer payment in respect of, a guaranteed minimum pension or any section 9(2B) rights to another person, the first person shall, within 5 weeks from the date of the transfer or transfer payment, notify the Secretary of State of its occurrence, giving such particulars as the Secretary of State may reasonably require to enable him to identify the second person.

(5) Except in a case to which paragraph (6) applies, within 5 weeks after effect has been given to the protected rights of a member of the scheme, the trustees of that scheme shall notify the Secretary of State in writing that effect has been given to those rights, giving such particulars as the Secretary of State may reasonably require to enable him—

- (a) to identify the means by which effect has been given to them;
- (b) where effect has been given to them by means of a pension, annuity or lump sum, to identify the recipient of it;
- (c) where effect has been given to them by means of an annuity, to identify the insurance company responsible for paying the annuity;
- (d) where effect has been given to them by means of a transfer payment, to identify the personal or occupational pension scheme to which the transfer payment was made; and

(e) where effect has been given to them by means of an appropriate policy of insurance under section 32A(1)(a) or (b) of the 1993 Act<sup>(4)</sup> (discharge of protected rights on winding up: insurance policies), to identify the member in respect of whom, and the insurance company with which, that policy was taken out or entered into.

(6) 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 (5) shall not apply.

(7) An employer to whom a contracting-out certificate has been issued or the trustees of the scheme to which the certificate relates shall, if required to do so by the Secretary of State, in such manner and at such times as the Secretary of State may reasonably require, furnish to the Secretary of State such information relating to members of that scheme to which the contracting-out certificate relates as he may reasonably require for the purpose of calculating guaranteed minimum pensions (including those to which persons are treated as entitled under section 48(2) of the 1993 Act), any entitlement arising in respect of section 9(2B) rights and in order to know for what, if any, protected rights the scheme is responsible, and from what minimum contributions, minimum payments or transfer payments they derive, and for related purposes.

#### **Approval of arrangements for schemes ceasing to be contracted-out.**

**45.**—(1) Subject to regulation 74 (transitional arrangements relating to schemes ceasing to contract out before the principal appointed day), for the purposes of section 50(1B) of the 1993 Act<sup>(5)</sup> (prescribed conditions to be met in order for arrangements to be approved on the cessation of contracting-out) arrangements shall not be approved by the Secretary of State unless the conditions specified in paragraphs (2) or (3) are satisfied.

(2) To the extent that the arrangements concern the transfer of rights or the discharge of liabilities they must meet the requirements of (as the case may be) sections 12C of the 1993 Act (transfer or discharge of section 9(2B) rights), section 19 of that Act (discharge of liability for guaranteed minimum pensions secured by insurance policies or annuity contracts), section 20 of that Act (transfer of guaranteed minimum pensions), section 28(2)(b) and (3)<sup>(6)</sup> of that Act (transfer of protected rights) or section 32A of that Act (discharge of protected rights on winding up) and any regulations made under those provisions and the Secretary of State must be satisfied that such arrangements will be completed within two years of the date of cessation or such later date as the Secretary of State may specify in relation to a particular case or class of case.

(3) To the extent that the arrangements concern the preservation of rights within the scheme, the scheme must comply with the requirements of paragraphs (a) or (b), as the case may be—

(a) in the case of a scheme where employment was contracted-out under section 9(2) of the 1993 Act (salary-related contracted-out scheme) the scheme must continue to satisfy the requirements of that section and any regulations which would apply to the scheme by reason of it being a scheme to which section 9(2) of that Act relates, other than section 9(2B)(a) of that Act (requirement to comply with section 12A of that Act) and any regulations which relate to compliance with that section, and the scheme must contain a rule which provides that the amount of any benefits under the scheme arising in respect of section 9(2B) rights and guaranteed minimum pensions for each member and their widow or widower shall, at normal pension age, be the higher of A and B where—

(A) is the aggregate of—

(i) the amount of such benefits calculated on an early leaver basis in accordance with Chapter I of Part IV of the 1993 Act and any regulations made under those

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<sup>(4)</sup> Section 32A was inserted by section 146 of the Pensions Act 1995.

<sup>(5)</sup> Section 50(1B) was inserted by paragraph 45 of Schedule 5 to the Pensions Act 1995.

<sup>(6)</sup> Section 28(3) was amended by section 142(4) of the Pensions Act 1995.

provisions as if the member had ceased to be in pensionable service at the date on which the scheme ceased to be contracted-out, and

- (ii) the amount of any benefits due in respect of rights which have accrued to the member in relation to service which was not contracted-out; and

(B) is the amount of benefits otherwise payable under the scheme;

- (b) in the case of a scheme where employment was contracted-out under section 9(3) of the 1993 Act (money purchase contracted-out scheme) the scheme must, subject to paragraph (4), continue to satisfy the requirements of section 9(3) of that Act and any regulations which apply to the scheme by reason of it being a scheme to which section 9(3) of that Act relates.

(4) For the purposes of paragraph (3)(b), in determining whether a scheme complies with the requirements concerning the calculation of protected rights in accordance with section 27(2) of the 1993 Act, regard shall be had only to any rights of the member to money purchase benefits which have accrued under the scheme up to the date it ceased to be contracted-out.

#### **Supervision of schemes that have ceased to contract out.**

**46.**—(1) Subject to such directions as the Secretary of State may give under section 53(1) of the 1993 Act (supervision of formerly contracted-out schemes) for the purposes of section 53(3) of the 1993 Act (requirement to discharge liabilities following issue of certificate of non-approval), the liabilities referred to in section 52(2A)(a) or (b) of the 1993 Act<sup>(7)</sup> must, subject to paragraphs (2), (3) and (4), be transferred or discharged in the manner permitted by paragraph (2) of regulation 45 within 6 months of the date a certificate of non-approval under sub-section (2) of section 50 is issued, unless the certificate has been cancelled.

(2) In the case of a scheme where employment was contracted-out under section 9(2) of the 1993 Act (salary-related contracted-out scheme), the discharge may be arranged in accordance with the requirements of regulation 5(4) of the Occupational Pension Schemes (Discharge of Liability) Regulations 1985<sup>(8)</sup>, notwithstanding that a member's pensionable service has not terminated and the scheme is not winding up.

(3) In the case of a scheme where employment was contracted-out under section 9(3) of the 1993 Act (money purchase contracted-out scheme), the discharge may be arranged in the manner specified by regulations made under section 32A of the 1993 Act, notwithstanding that the scheme is not winding up.

(4) Every active and deferred member with any entitlement to protected rights, guaranteed minimum pensions or section 9(2B) rights under the scheme must be notified of the issue of the certificate of non-approval and the reasons for it and allowed a period of 3 months from the date of such notification in which he may elect to transfer any such rights before they are discharged.

#### **Circumstances in which the Secretary of State may vary or cancel a contracting-out certificate.**

**47.**—(1) Where the Secretary of State has reason to suppose that any employment to which a contracting-out certificate applies should not continue to be contracted-out employment and the employer has not shown to the satisfaction of the Secretary of State that it should so continue, the Secretary of State may determine that the employment should not continue to be treated as contracted-out employment and where he so determines, he shall cancel or vary the certificate with effect, subject to paragraph (2), from such date as he may specify and he shall notify the employer in writing of his determination, the reasons for it and of his powers to review that determination.

(7) Section 52(2A) was inserted by paragraph 47 of Schedule 5 to the Pensions Act 1995.

(8) S.I.1985/1929: the relevant amending instruments are S.I. 1991/167 and S.I. 1994/1062.

(2) The date from which the cancellation or variation is to have effect may not be earlier than the date of the cancellation or variation, as the case may be, except—

- (a) in a case of a salary-related contracted-out scheme where the Secretary of State considers that the resources of the scheme have not been maintained at a sufficient level for maintaining all claims in respect of guaranteed minimum pensions and section 9(2B) rights so far as falling to be met out of those resources, the date may be the latest date on which in the opinion of the Secretary of State those resources were maintained at such a sufficient level; or
- (b) in a case of a salary-related contracted-out scheme where the earners in employments to which the contracting-out certificate applies have ceased to qualify for guaranteed minimum pensions or benefits arising from section 9(2B) rights under the scheme, the date may be a date not earlier than the date on which, in the opinion of the Secretary of State, the said cessation occurred; or
- (c) in a case where the Secretary of State discovers that the scheme did not satisfy the requirements for being a contracted-out scheme at the date the contracting-out certificate was issued, the date may be the date from which the certificate had effect or any later date; or
- (d) in a case where the Secretary of State considers that the scheme has ceased to satisfy the requirements for being a contracted-out scheme, the date may be any date not earlier than when, in the Secretary of State's opinion, the scheme ceased to satisfy those requirements.

(3) In any case where the Secretary of State has cancelled or varied a certificate under the provisions of paragraph (1) above he may require the employer to give notice of the cancellation or variation, in the manner specified in regulation 3(3), to—

- (a) the earners in relation to whom the employment was contracted-out by virtue of the certificate immediately before its cancellation or variation;
- (b) the trustees (if any) and administrator of the scheme by reference to which the employment was contracted-out immediately before the cancellation or variation of the certificate; and
- (c) the persons specified in regulation 3(1)(c) and (d),

and he may require any such notice to include such particulars (including particulars of the consequences of the cancellation or variation) as he considers appropriate.

#### **Special provision for overseas schemes.**

**48.**—(1) In the case of an overseas scheme the modifications and, as the case may be, the additional requirements specified in this regulation apply.

(2) A notice of intention to make an election which relates to an overseas scheme shall, in addition to the requirements of paragraph (2) of regulation 3, specify that the scheme is an overseas scheme.

(3) An overseas scheme shall have an administrator for the scheme who is resident in the United Kingdom and appointed in accordance with section 590(2)(c) of the Taxes Act.

(4) Any obligation placed on an employer in Part II (Certification of Employments) may be discharged by an administrator for the scheme appointed in accordance with paragraph (3).

(5) In the case of an overseas scheme which is a salary-related scheme—

- (a) the trustees or managers must appoint an actuary to the scheme who satisfies the requirements of regulations made under section 47(5) of the 1995 Act and such an actuary may provide certification to the Secretary of State in accordance with section 12A(6) of the 1993 Act<sup>(9)</sup>;

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<sup>(9)</sup> Section 12A(6) was inserted by section 136(5) of the Pensions Act 1995.

- (b) regulation 18 shall not apply;
- (c) subject to regulation 73, for the purposes of section 9(2B)(c)(i) of the 1993 Act, the requirement as to the amount of the resources of the scheme is that such resources, were the scheme to wind-up at any time, are sufficient to meet any liability for the following—
  - (i) pensions or other benefits which, in the opinion of the trustees, are derived from the payment by any member of the scheme of voluntary contributions;
  - (ii) where a person's entitlement to payment of a pension or other benefit has arisen, liability for that pension or benefit and for any pension or other benefit which will be payable to dependants of that person on his death and any increases to such pensions;
  - (iii) equivalent pension benefits, guaranteed minimum pensions and protected rights which have accrued to or in respect of any members of the scheme and any increases to such pensions;
  - (iv) pensions or other benefits which have accrued after the principal appointed day to or in respect of members whose employment is contracted-out by reference to the scheme and any increases to such pensions;
  - (v) in respect of members with less than two years pensionable service who are not entitled to accrued rights under the scheme, the return of contributions,and such liabilities and resources shall be calculated, determined and valued in a manner approved by the Secretary of State, and
- (d) section 9(2B)(b) of the 1993 Act is modified with effect that the Secretary of State must be satisfied that not more than 5 per cent. of the current market value of the scheme's resources are invested in a person who is an employer, or connected with an employer, in relation to the scheme if such investments are required to meet the liabilities specified in paragraph (b) and the value of such investments shall be calculated and determined in a manner approved by the Secretary of State.
- (6) In the case of an overseas scheme which is a money purchase scheme—
  - (a) the trustees or managers of the scheme must appoint an auditor who satisfies the requirements of regulations made under section 47(5) of the 1995 Act;
  - (b) regulation 30(1)(a) shall not apply; and
  - (c) the Secretary of State must be satisfied that not more than 5 per cent. of the current market value of the scheme's resources are invested in a person who is an employer, or connected with an employer, in relation to the scheme if such investments are required to meet the scheme's liabilities for protected rights and the value of such investments shall be calculated and determined in a manner approved by the Secretary of State.
- (7) An overseas scheme must provide, in respect of any members who are resident in Great Britain, for revaluation of accrued rights in accordance with sections 83 to 86 of the 1993 Act<sup>(10)</sup> and for indexation of pensions in accordance with sections 51 to 54 of the 1995 Act.

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<sup>(10)</sup> Section 84(5) was amended by paragraph 62 of Schedule 5 to the Pensions Act 1995.