
STATUTORY INSTRUMENTS

1973 No. 1854

PENSIONS

**The Occupational Pension Schemes (Recognition of Schemes)
(No. 2) Regulations 1973**

Made - - - - -	7th November 1973
Laid before Parliament	15th November 1973
Coming into Operation	6th April 1975

The Secretary of State for Social Services, in exercise of his powers under sections 51(4)(a)(ii), (b) and (e), 52(1), 53(8), 54(4) and 58(3), (4) and (5) of, and paragraphs 3, 4, 5, 10 and 12 of Schedule 15 to, the Social Security Act 1973(a), and of all other powers enabling him in that behalf, hereby makes the following regulations:—

Citation, interpretation and commencement

1. These regulations, which may be cited as the Occupational Pension Schemes (Recognition of Schemes) (No. 2) Regulations 1973, shall be read as one with the Occupational Pension Schemes (Recognition of Schemes) Regulations 1973(b) (hereinafter called “the principal regulations”) and shall come into operation on 6th April 1975.

Transfer of benefit between schemes

2.—(1) For the purposes of section 58(4) of the Act (where the rules of a scheme provide for the allowance of transfer credits, then for the scheme to be recognised in relation to any employment it must provide for them, if and so far as they consist of recognition credits, to be in such form as may be prescribed) the prescribed forms shall be—

- (a) in cases where the recognition credits are allowed in respect of rights accrued under another scheme which include—
 - (i) minimum personal pension, or
 - (ii) transfer credits previously allowed under any scheme, so far as representing or replacing, or otherwise allowed in respect of, benefits accrued under another scheme which included minimum personal pension,the form of a right to benefit which includes some personal pension; and
- (b) in cases where the recognition credits are allowed in respect of rights accrued under another scheme which include—
 - (i) minimum death benefit, or
 - (ii) transfer credits previously allowed under any scheme, so far as representing or replacing, or otherwise allowed in respect of, benefits

(a) 1973 c. 38.

(b) S.I. 1973/1470 (1973 II, p. 4481).

accrued under another scheme which included minimum death benefit,

the form of a right to benefit which includes some death benefit.

(2) For the purposes of section 58(3) of the Act (where, in relation to any employment, scheme rules allow for transfer of accrued rights to another scheme, then for the first scheme to be recognised in relation to that employment it must so provide that any transfer of minimum benefits or benefits including them or of recognition credits can be made only to recognised schemes or schemes which fall within a prescribed category), the prescribed category of schemes shall be one consisting of schemes—

- (a) which are administered primarily or wholly outside the United Kingdom;
- (b) whose rules allow the transfer of recognition credits only to other schemes in the category, or to other schemes which are recognised in relation to any employment; and
- (c) which are approved (whether or not subject to conditions) for the purpose of this regulation by the Board.

(3) For the purposes of section 58(5) of the Act (provision for accrued rights to be transferred without the earner's consent to be inadmissible in relation to minimum benefits except in prescribed cases), the prescribed case shall be where—

- (a) the transfer of accrued rights is to another scheme which relates to employment with the same employer or with another employer who is one of a group of companies consisting of a holding company and one or more subsidiaries within the meaning of section 154 of the Companies Act 1948(a), being a group which includes the first-mentioned employer; and
- (b) the rights allowed to the earner in the scheme to which the transfer is made are in the opinion of the trustees or managers of that scheme at least equal in value to the rights transferred.

Modification of section 54 of the Act in relation to certain annuity contracts

3.—(1) The provisions of section 54 of the Act (rate of minimum personal pension) shall, in the case of a scheme whose benefits are provided under an annuity contract for the time being approved by the Inland Revenue under section 226 or 226A of the Income and Corporation Taxes Act 1970(b) or which is a trust scheme approved by the Inland Revenue under either of those sections (such annuity contract or trust scheme being hereinafter referred to as an “approved annuity”), be subject to the modifications set out in the following paragraph of this regulation.

(2) Subsections (2), (4)(b) and (5) shall not apply, and subsection (1) shall have effect as if the section required that—

- (a) the rate of minimum personal pension must be calculated in accordance with subsection (4)(a);
- (b) the annual rates of minimum personal pension must be as mentioned in regulation 6(2)(a) and (3) of the principal regulations;
- (c) the earner must be under a legal obligation to the employer to pay in respect of the approved annuity, by means of contributions or premiums, an amount equivalent to at least 5 per cent of his reckonable earnings;
- (d) the terms of the approved annuity must specify the manner in which

(a) 1948 c. 38.

(b) 1970 c. 10.

the minimum personal pension and minimum death benefit are to be related to those contributions or premiums; and

- (e) the earner's employer must be under a legal obligation to the earner to pay the earner, in relation to the approved annuity, an amount equivalent to at least 2.5 per cent of the earner's reckonable earnings, being an amount that is additional to the earner's earnings from the relevant employment to which the earner would have been entitled but for the employer's said obligation to him.

Derivation of resources of schemes

4. For the purposes of section 51(4)(a)(ii) of the Act (scheme can be recognised scheme only if the derivation of its resources satisfies certain requirements) the following are the prescribed payments:—

- (a) in the case of a scheme whose members include persons employed by Her Majesty in Her private capacity, payments made by Her Majesty out of Her private resources;
- (b) in the case of a scheme relating to persons employed by the Duke of Lancaster or by the Duke of Cornwall, payments made out of the revenues of the Duchy of Lancaster or the Duchy of Cornwall; and
- (c) in the case of a scheme whose benefits are provided under an approved annuity, where either—
- (i) the employment to which the approved annuity (being an annuity contract) relates is such that the earnings from it fall to be included in a computation of profits assessable to tax under Schedule D (as defined in section 108 of the Income and Corporation Taxes Act 1970) and the earner is also liable to pay Class 1 contributions in respect of them, or
 - (ii) the earner had paid before, or was paying at, 5th April 1974 contributions or premiums under an approved annuity in respect of earnings received in any employment with the same employer or his predecessor in that business, or
 - (iii) the earner had at any time paid contributions or premiums, under the same approved annuity as that which provides the benefits of the scheme in question, in respect of earnings received in any recognised pensionable employment,
- payments made by the earner such as are mentioned in regulation 3(2)(c) above.

Determination of date from which earner has been in recognised pensionable employment

5. In a case where the trustees or managers of a scheme decide that past service of an earner in an employment to which the scheme relates shall qualify him (if his service continues for the appropriate period) for the minimum benefits of the scheme, the Board may determine that the earner has been in recognised pensionable employment from a date not earlier than the beginning of that past service, or the issue of a recognition certificate in respect of it, whichever is the later.

Modification of sections 53(1) and 55(6) of the Act

6.—(1) Section 53(1) of the Act (provision of minimum personal pension) and section 55(6) of the Act, as modified(a), (persons to whom minimum death benefit is payable) shall be modified, in accordance with the provisions of paragraph (2) below, in their application to cases in which the person to whom minimum benefit is payable (“the beneficiary”) is unable to act by reason of his minority, mental disorder or otherwise.

(2) The modification is that in relation to such cases the scheme may, with the approval of the Board, confer on the trustees or managers discretion to direct that, instead of being paid to the beneficiary, the benefit may be paid or applied for the maintenance of any one or more of the following persons, namely the beneficiary and his dependants.

Centralised schemes

7.—(1) In this and the following regulation “centralised scheme” means a scheme for whose benefits earners in employments under different employers qualify by virtue of their respective service in those employments, and “5 years’ qualifying service” has the same meaning as in section 53(2)(c) and (3) of the Act.

(2) In its application to a case where an earner is in employment to which a centralised scheme applies, section 53(4)(a) of the Act (form of minimum personal pension) shall be modified so as to have effect as if it referred to a pension payable as from whichever is the latest of the following:—

- (a) termination of the relevant employment;
- (b) termination of the last of a series of employments of the earner—
 - (i) of which the relevant employment was one,
 - (ii) to all of which one centralised scheme applied, and
 - (iii) which occurred at such times that any interval between one employment in the series and the next, in a case where the earner had not completed 5 years’ qualifying service in relation to that scheme, was not longer than 6 months or such longer period as the Board may allow; and
- (c) attainment by the earner of pensionable age.

Termination and linking of periods of recognised pensionable employment

8.—(1) Subject to paragraph (2) below, an earner’s employment shall be treated as having ceased to be recognised pensionable 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) he is no longer of requisite age (as defined in section 51(2) of the Act);
- (d) cancellation or withdrawal of the recognition certificate by virtue of which his employment was recognised pensionable employment has taken effect;
- (e) a variation of the recognition certificate by virtue of which his employment was recognised pensionable employment has taken effect such that the certificate no longer applies to his employment;
- (f) the earner has ceased to be within the description of earners in relation to which the recognition certificate applies.

(a) See Regulation 23 of S.I. 1973/1470 (1973 II, p. 4481).

(2) In such cases as are specified in paragraph (3) below, an earner's employment shall not be treated as having ceased to be recognised pensionable employment by reason only of the circumstances mentioned in paragraph (1)(a) and (b) above where the service in question was in an employment which 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) above are—

(a) where all the employments are with the same employer or the same centralised scheme applies to them all, cases where—

(i) no reserve scheme premium has been paid in respect of the employment first mentioned in paragraph (2) above or any that has been paid has been refunded, and

(ii) (except in a case where a centralised scheme applies to all the employments and the earner has completed 5 years' qualifying service in relation to that scheme) any interval between one employment in the series and the next is not longer than 6 months or such longer period as the Board may allow in a particular case; and

(b) where all the employments are with one employer and his successors, such cases as the Board (whether or not subject to conditions) consider suitable.

(4) The total period of recognised pensionable employment which consists of a series of employments to which paragraph (2) above applies shall include any intervals between employments in the series, so however that the intervals shall not count towards calculation of minimum benefits.

(5) Where an earner dies during the interval between the end of a period of service in recognised pensionable employment and what would, apart from this paragraph, have been the end of the period allowed for payment of any reserve scheme premium which relates to that period of service, and at the time of his death no reserve scheme premium has been paid in respect of that employment, or any that has been paid has been refunded, that employment shall be treated as having come to an end on, and not before, the date of his death, so however that the period between the end of the service and the death shall not count towards calculation of minimum benefits.

Miscellaneous amendments to the principal regulations

9.—(1) The principal regulations shall be amended in accordance with the following provisions of this regulation.

(2) In regulation 2 (schemes administered outside Great Britain), after paragraph (3) there shall be inserted the following paragraph—

“(4) In the case of a scheme which is administered primarily or wholly outside the United Kingdom, the preceding paragraphs of this regulation shall not apply, but, for the purposes of section 51(4)(e) of the Act (means by which minimum benefits are secured), the minimum benefits of the scheme shall be secured in such manner as the Board may (whether or not subject to conditions) consider suitable.”

(3) In regulation 5(2) (circumstances in which minimum benefit may be suspended), after sub-paragraph (c) there shall be inserted the following sub-paragraph—

“(cc) in any case where minimum personal pension is payable under a centralised scheme (namely a scheme for whose benefits earners in

employments under different employers qualify by virtue of their respective service in those employments) and the earner has attained pensionable age, during any period when the earner is in employment to which that centralised scheme applies or would apply if the earner were of requisite age (as defined in section 51(2) of the Act);”

and in condition (ii), after the words “sub-paragraph (c)” there shall be inserted the words “or (cc)”.

(4) In regulation 7(1) (calculation of minimum benefit based on earnings and length of service), for the words “paragraph (4)” there shall be substituted the words “paragraph (5)”.

(5) In regulation 19 (surrender of deferred pension on re-employment by the same employer), after the words “the same” (in both places where they occur), there shall be inserted the words “or another”.

(6) In regulation 21(2) (service which does not count for minimum benefits), after the words “that employment” (in both places where they occur), there shall be inserted the words “(or any other employment, being employment by reference to which he qualifies for the benefits of the scheme)”.

Transitory provision

10.—(1) This regulation applies to—

- (a) any scheme which existed on 5th April 1947 and in which no alterations have been made since that date other than alterations (if any) which have been approved by the Inland Revenue for the purposes of section 224(2) of the Income and Corporation Taxes Act 1970(a); and
- (b) any other scheme which is associated with a scheme to which sub-paragraph (a) above applies, in such manner that in the opinion of the Board it should be treated as a scheme to which this regulation applies.

(2) The requirements of regulation 2 of the principal regulations (means of securing minimum benefits) shall have effect, in their application to the case of a scheme to which this regulation applies, so as to require that the minimum benefits of the scheme shall be secured either—

- (a) by such irrevocable trust, policy of insurance or annuity contract as is mentioned in the said regulation 2, or
- (b) by such trust, policy or contract in conjunction with an undertaking which is given by the trustees or managers of the scheme, and which the Board consider satisfactory, to provide the earner with minimum personal pension and minimum death benefit so as to satisfy the requirements of sections 53 to 60 of the Act.

(3) This regulation shall cease to have effect on 6th April 1980 and any recognition certificate issued by the Board in a case where an undertaking such as is mentioned in paragraph (2) of this regulation is given shall have effect for a period expiring not later than 5th April 1980.

Keith Joseph,

Secretary of State for Social Services.

7th November 1973.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations supplement and amend the provisions of the Occupational Pension Schemes (Recognition of Schemes) Regulations 1973, which relate to the recognition of occupational pension schemes, in relation to an earner's employment, under Part II of the Social Security Act 1973.

The principal matters dealt with are the transfer of benefit between schemes (Regulation 2), the use of certain annuity contracts for recognition purposes (Regulation 3), certain types of payment from which a scheme's resources may derive (Regulation 4), the commencement, termination and linking of periods of recognised pensionable employment (Regulations 5 and 8), and the payment of benefit for maintenance of beneficiaries unable to act (Regulation 6). There are also special provisions for centralised and overseas schemes, and a transitory provision affecting schemes which existed on 5th April 1947 and have undergone no alterations, or only limited alterations, since then, and other schemes associated with them.

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