
 STATUTORY INSTRUMENTS

1977 No. 2038 (C. 68)

SOCIAL SECURITY

**The Social Security Pensions Act 1975 (Commencement No. 11)
Order 1977**

Made - - - - 8th December 1977
Laid before Parliament 15th December 1977
Coming into Operation 5th January 1978

The Secretary of State for Social Services, in exercise of the powers conferred upon him by section 67(1), (3) and (4) of the Social Security Pensions Act 1975(a) and of all other powers enabling him in that behalf, hereby makes the following order:—

Citation, commencement and interpretation

1.—(1) This order may be cited as the Social Security Pensions Act 1975 (Commencement No. 11) Order 1977 and shall come into operation on 5th January 1978.

(2) In this order, unless the context otherwise requires—

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

“the No. 3 Order” means the Social Security Pensions Act 1975 (Commencement No. 3) Order 1975(b);

“the Certification Regulations” means the Occupational Pension Schemes (Certification of Employments) Regulations 1975(e);

“the Determinations Regulations” means the Occupational Pensions Board (Determinations and Review Procedure) Regulations 1976(d);

“the Transitional Regulations” means the Contracted-out Employment (Transitional Arrangements) Regulations 1977(e);

“the Board” means the Occupational Pensions Board;

“employer”, in a case where an election with a view to the issue, surrender or variation of a contracting-out certificate is made by a person other than the employer of the earners concerned, means that other person;

“trade union recognised to any extent” includes a trade union treated as recognised to any extent under section 31(9) of the Act as amended by section 125 of and Schedule 16 to the Employment Protection Act 1975(f);

and other expressions have the same meanings as in the Act.

(3) Any reference in this order to any provision made by or contained in any enactment or instrument shall, except in so far as the context otherwise requires, be construed as a reference to that provision as amended or extended

(a) 1975 c. 60.

(c) S.I. 1975/1927 (1975 III, p. 7163).

(e) S.I. 1977/1615 (1977 III, p. 4649).

(b) S.I. 1975/1689 (1975 III, p. 5771).

(d) S.I. 1976/185 (1976 I, p. 473).

(f) 1975 c. 71.

by any enactment or instrument and as including a reference to any provision which it re-enacts or replaces, or which may re-enact or replace it, with or without modification.

(4) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889(a) shall apply for the purposes of the interpretation of this order as they apply for the purposes of the interpretation of an Act of Parliament.

Amendment of the No. 3 Order

2. The provisions contained in Article 2(2) of the No. 3 Order, in so far as they appoint 6th April 1978 as the day for the coming into operation of section 30(1) (b) and (c) of the Act for the purpose of causing an employment to be a contracted-out employment for the purposes of section 27 of the Act (contracted-out rates of Class 1 contributions), shall cease to have effect and for that purpose the said section 30(1) (b) and (c) shall come into operation on 6th October 1978.

Adaptation of provisions of the Act

3.—(1) Section 30(1) of the Act shall be adapted, in consequence of its partly postponed operation, so as to provide that, subject to the provisions of the Act, the employment of an earner in employed earner's employment shall, for the purposes of section 27 of the Act, be treated as contracted-out employment in relation to him during any period between 6th April 1978 and 5th October 1978 (inclusive) in which he is under pensionable age and his service in the employment is for the time being service which qualifies him for the requisite benefits of an occupational pension scheme, if either—

- (a) the scheme is a contracted-out scheme in relation to that employment, and there is in force a contracting-out certificate, issued by the Board, to the effect that the employment is contracted-out employment by reference to the scheme; or
- (b) (subject to paragraph (2) below) an election under section 31 of the Act that the employment of that earner should be included in a contracting-out certificate and that the certificate should be effective from 6th April 1978 has been posted or delivered to the Board on or before 23rd March 1978.

(2) If at the earliest of the dates specified in paragraph (3) below a contracting-out certificate in respect of the employment of that earner has not been received by the employer and—

- (a) if that earliest date is not later than 6th April 1978, that employment shall not be treated as contracted-out employment as aforesaid; and
- (b) if that earliest date is later than 6th April 1978, that employment shall be treated as if it had never been treated as contracted-out employment as aforesaid,

(but without prejudice to the effect of the subsequent issue of any contracting-out certificate).

(3) The dates first referred to in paragraph (2) above are—

- (a) any date with effect from which the employer of the earner, under Article 5 below, withdraws the election or amends it so that it does not apply to the employment of that earner;

- (b) any date on which the employer receives from the Board notification in writing that the Board—
 - (i) refuse to issue a contracting-out certificate on the basis of the election made by the employer, or
 - (ii) cannot issue a contracting-out certificate to the employer, unless the employer takes some further action required under the Act or regulations, or
 - (iii) cannot issue a contracting-out certificate to the employer under the Transitional Regulations,and
- (c) a date which is either 6th July 1978 or such later date (not being later than 6th October 1978) as the Secretary of State may in his discretion allow.

Notification of liability for arrears of contributions

4.—(1) Where an election to which Article 3(1)(b) above applies has been posted or delivered to the Board, the employer of any earner to whom the election applies, and in respect of whom the rate of primary contributions can differ according to whether his employment is or is not contracted-out employment, shall give notice in writing of the matters specified in paragraph (2) below to that earner and to all independent trade unions recognised to any extent for the purpose of collective bargaining in relation to that earner, on or before the first day after 5th April 1978 on which a payment of earnings is due from that employer to that earner, unless either—

- (a) before that payment is due the earliest of the dates specified in Article 3(3) above has been reached or a contracting-out certificate has been issued which includes the employment of that earner; or
- (b) the employer intends himself to pay any arrears of contributions for which liability may arise in respect of that earner as mentioned in paragraph (2)(b) below.

(2) The matters referred to in paragraph (1) above of which notice is to be given are—

- (a) that the contracted-out rate of Class 1 contributions is being applied by virtue of this order to earnings paid as from 6th April 1978 in the expectation that a contracting-out certificate will be issued; and
- (b) that if a contracting-out certificate is not issued, the non-contracted-out rate of Class 1 contributions will be applied to earnings paid as from 6th April 1978, and liability will therefore arise for arrears of contributions as from 6th April 1978, being the difference between the non-contracted-out and contracted-out rates.

(3) In paragraph (2) above “contracted-out rate” means the rate at which a Class 1 contribution is payable in respect of earnings paid in respect of employment which is contracted-out employment and “non-contracted-out rate” means the rate at which a Class 1 contribution is payable in respect of earnings paid in respect of employment which is not contracted-out employment.

Withdrawal or amendment of elections to contract-out

5.—(1) Where an election with a view to the issue of a contracting-out certificate has been made and the employer has not received a contracting-out certificate in response to it, he may at any time before 6th July 1978 (or, in a case where the Secretary of State has exercised his discretion under Article 3(3)(c) above to allow a later date, that later date) notify the Board in writing that he withdraws the election, and the withdrawal shall have effect from the date on which he posts or delivers the notification to the Board.

(2) Where an election with a view to the issue of a contracting-out certificate has been made and the employer has not received a contracting-out certificate in response to it, he may at any time before 6th July 1978 (or, in a case where the Secretary of State has exercised his discretion under Article 3(3)(c) above to allow a later date, that later date) notify the Board that he amends the election by making it cease to apply to some earners or categories or descriptions of earners; the amendment shall have effect from the date on which he posts or delivers the notification to the Board, and regulation 7 of the Certification Regulations shall not apply to such an amendment.

(3) An employer who withdraws or amends an election under paragraph (1) or (2) above shall forthwith give notice of the withdrawal or amendment, as the case may be, including particulars of the reasons for it and the consequences of it, in the manner mentioned in regulation 3(3) of the Certification Regulations, to—

- (a) the earners whose employment would have been contracted-out had a certificate been issued on the basis of the election before its withdrawal or amendment but (in the case of an amendment) who are not within the scope of the election as amended;
- (b) the trustees (if any) and administrator of the scheme concerned; and
- (c) the persons or bodies mentioned in regulation 3(1)(c) and (d) of the Certification Regulations,

unless before notifying the Board of the withdrawal or amendment he gave notice of his intention to do so, including the same particulars, in the same manner and to the same persons or bodies as aforesaid.

(4) Subject to the provisions of paragraph (5) below—

- (a) where a notification of withdrawal of an election under paragraph (1) above is made to the Board and the Board whether before or after the posting or delivering of the notification issue a certificate under regulation 2(1) of the Transitional Regulations in response to the election, an election with a view to the surrender of that certificate shall be deemed to have been made; and
- (b) where a notification of amendment of an election under paragraph (2) above is made to the Board and the Board whether before or after the posting or delivering of the notification issue a certificate under regulation 2(1) of the Transitional Regulations in response to the election in its unamended form, an election with a view to the variation of that certificate so as to give effect to the amendment shall be deemed to have been made.

(5) In any case to which paragraph (4) above applies, regulation 10(1) to (5) of the Certification Regulations shall not apply to the election so deemed to have been made and for the purposes of regulation 3 of the Determinations

Regulations the case shall be regarded as one where the Board under the said regulation 10(1) approved the making of the election without compliance with paragraphs (1)(a) and (b) and (2) to (5) of the said regulation 10.

(6) Regulation 2(6) of the Transitional Regulations shall be amended by the addition, after the words "cancelled or varied it", of the words "or accepted a surrender of it in pursuance of an election deemed to have been made under Article 5(4)(a) of the Social Security Pensions Act 1975 (Commencement No. 11) Order 1977".

David Ennals,

Secretary of State for Social Services.

8th December 1977.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order provides that for the purpose of causing an employment to be a contracted-out employment for the purposes of section 27 of the Social Security Pensions Act 1975, which deals with contracted-out rates of Class 1 contributions, section 30(1) (b) and (c) of that Act shall come into force not on 6th April 1978 but on 6th October 1978.

In consequence of the partly postponed operation of section 30(1), provision is also made that during a period commencing on 6th April 1978 and terminating not later, in any case, than 6th October 1978 employment is to be treated as contracted-out employment for the purposes of the rate at which Class 1 contributions are payable, not only where a contracting-out certificate has been issued, but also where the employer has made an election that the employment should be included in such a certificate and posted or delivered the election to the Occupational Pensions Board on or before 23rd March 1978. If by the end of the relevant period a contracting-out certificate has not been issued in respect of the employment in question that employment is to be treated as if it had never been contracted-out employment. Except in the circumstances specified in Article 4(1)(a) and (b), the employer is required to give written notice to the employees concerned and to the relevant trade unions that if a contracting-out certificate is not issued, liability for arrears of contributions will arise.

Where an election with a view to the issue of a contracting-out certificate has been made and no certificate has been issued, the employer may within a specified period (terminating not later, in any case, than 6th October 1978) notify the Occupational Pensions Board that the election is withdrawn, or amended so as no longer to apply to some earners or categories of earners; whereupon, under Article 3(3)(a), the provision enabling Class 1 contributions to be paid at the contracted-out rate will no longer apply in respect of the earners concerned. It also provides that where this is done the employer is to give notice of the withdrawal or amendment to the persons or bodies, and including the particulars, specified in Article 5(3).

The remaining provisions are of a minor or consequential nature.

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