

1978 No. 1089

PENSIONS

**The Contracting-out and Preservation (Further Provisions)
Regulations 1978**

<i>Made</i> - - - -	<i>27th July 1978</i>
<i>Laid before Parliament</i>	<i>7th August 1978</i>
<i>Coming into Operation</i>	<i>28th August 1978</i>

The Secretary of State for Social Services, in exercise of the powers conferred upon him by paragraph 9(3) of Schedule 16 to the Social Security Act 1973(a), and section 38(1) of, and paragraph 9 of Schedule 2 to, the Social Security Pensions Act 1975(b) and of all other powers enabling him in that behalf, and after considering the report of the Occupational Pensions Board on the draft submitted to them hereby makes the following regulations:—

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Contracting-out and Preservation (Further Provisions) Regulations 1978 and shall come into operation on 28th August 1978.

(2) In these regulations, unless the context otherwise requires:—

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

“administrator”, in relation to an occupational pension scheme, means the person or persons resident in the United Kingdom having the management of the scheme;

“the Board” means the Occupational Pensions Board;

“the Contracting-out Regulations” means the Occupational Pension Schemes (Contracting-out) Regulations 1975(c);

“the Preservation of Benefit Regulations” means the Occupational Pension Schemes (Preservation of Benefit) Regulations 1973(d);

and other expressions have the same meaning as in the Act or, as the case may be, the Social Security Act 1973.

(3) Any reference in these regulations to any provision made by or contained in any enactment or instrument shall, except insofar as the context otherwise requires, be construed as a reference to that provision as amended or extended 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.

(a) 1973 c. 38.
(d) S.I. 1973/1469.

(b) 1975 c. 60.

(c) S.I. 1975/2101.

(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 these regulations as they apply for the purposes of the interpretation of an Act of Parliament.

Amendment of the Contracting-out Regulations

2. Regulation 6 of the Contracting-out Regulations (transfer of accrued rights between schemes) shall be amended by substituting in paragraph (b) of that regulation the words “in the opinion of the trustees or administrator of the scheme from which the transfer is made” for the words “in the opinion of the trustees or administrator of that scheme”.

Amendment of the Preservation of Benefit Regulations

3. The Preservation of Benefit Regulations shall be amended by substituting for paragraph (4) of regulation 6 the following paragraph, namely—

“(4) A scheme rule may make provision—

- (a) in any case where the Board consider it reasonable for such provision to be made, for any of the alternatives mentioned in paragraph (1)(a)(ii), (e) or (f) of this regulation to be substituted for short service benefit without the member’s consent;
- (b) for the alternative specified in paragraph 9(2)(a) of Schedule 16 (transfer of member’s accrued rights to another scheme) to be provided by way of substitute for short service benefit without the member’s consent in any case to which (without prejudice to regulation 12(2) of these regulations) both heads (i) and (ii) below apply—
 - (i) where, by virtue of regulation 6(b) of the Occupational Pension Schemes (Contracting-out) Regulations 1975 as amended by regulation 2 of the Contracting-out and Preservation (Further Provisions) Regulations 1978 provision is made in the scheme for the member’s accrued rights to requisite benefits to be transferred to another scheme without his consent;
 - (ii) where, in the opinion of the trustees or administrator of the scheme from which the transfer is made, the transfer credits acquired by the member under the other scheme are at least equal in value to the rights transferred.”.

Conditions in connection with alteration of rules of contracted-out schemes

4.—(1) Where the consent of the Board is required by section 50 of the Act (alteration of rules of contracted-out schemes), the Board may, as a condition of their consent, in the cases to which by virtue of paragraph (2) below this regulation applies, require any employer of any member of the scheme to which the consent will relate to give notice of the intended alteration of the rules of the scheme in accordance with paragraph (3) and (4) below.

(2) The cases to which this regulation applies are where the intended alteration of the rules of the scheme—

- (a) would have the effect of adding or removing the employment of any earner to or from the employments which are contracted-out employments by reference to that scheme, or
- (b) would, in the opinion of the Board, have the effect of significantly diminishing the requisite benefits provided by the scheme.

(a) 1889 c. 63.

(3) Where in accordance with this regulation the Board require notice to be given of the intended alteration of the rules of the scheme, such notice shall be given, in the manner specified below, to—

- (a) the earners affected by the intended alteration of the rules by virtue of being within either of the cases referred to in paragraph (2) above;
- (b) the trustees (if any) and administrator of the scheme to which the consent will relate;
- (c) where there is a policy of insurance or an annuity contract as a means of securing the guaranteed minimum pensions to be payable under the scheme, the insurance company or friendly society concerned; and
- (d) all independent trade unions recognised to any extent for the purpose of collective bargaining in relation to the earners to whom notice is required to be given.

(4) Notices given under this regulation shall—

- (a) specify the purport of the intended alteration of the rules of the scheme and the date from which the alteration is intended to have effect, and give an explanation of such effect on the earners concerned;
- (b) specify, by description or otherwise, a person or persons to whom representations may be made with respect to the matters included in the notice by or on behalf of the persons to whom the notice is given;
- (c) specify a date by which such representations may be made; so however that a date earlier than 3 months from the date of the giving of the notice may be specified only if approved by the Board and assented to by all trade unions to whom notice must be given in accordance with paragraph (3)(d) of this regulation; and
- (d) contain a statement that—
 - (i) such representations may also be made to the Board provided they are made not later than 14 days from the expiration of the period for making any representations in accordance with subparagraph (c) of this paragraph or within such shorter period as shall be approved by the Board;
 - (ii) the Board have power to consent or refuse to consent to the intended alteration to the rules of the scheme and that if the Board do not consent, the intended alteration will not be permitted to be made.

(5) An employer who has given such a notice as is mentioned in this regulation shall undertake consultations, if he has not already done so, about the matters covered by the notice with all independent trade unions recognised to any extent for the purpose of collective bargaining in relation to those earners to whom notice is required to be given by virtue of this regulation; and any question whether an employer has complied with this requirement may be referred to a tribunal established under section 12 of the Industrial Training Act 1964(a).

(6) In these regulations “trade unions recognised to any extent” includes a trade union which is 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(b) or under Article 33(9) of the Social Security Pensions (Northern Ireland) Order 1975(c).

(a) 1964 c. 16.

(b) 1975 c. 71.

(c) S.I. 1975/1503 (N.I. 15).

- (7) A notice under this regulation shall be given—
- (a) to any earner concerned by—
 - (i) sending or delivering it in writing to him; or
 - (ii) exhibiting it conspicuously at his place of work or employment so that it may be read conveniently by him and by drawing his attention to it in writing; or
 - (iii) giving it in such other manner as the Board may consider to be reasonable in the circumstances of the case;
 - (b) to any other person or body, by sending or delivering it to that person or body in writing.

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

Stanley Orme,
Minister for Social Security,
Department of Health & Social Security.

27th July 1978.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations amend the Occupational Pension Schemes (Contracting-out) Regulations 1975 so as to provide that on a transfer of accrued rights between schemes without the member's consent the trustees or administrator of the transferring scheme must be of the opinion that the rights allowed in the other scheme are at least equal in value to the rights transferred.

They amend the Occupational Pension Schemes (Preservation of Benefit) Regulations 1973 so as to permit a scheme to provide, by way of substitute for short service benefit, for the member's accrued rights to be transferred to another scheme without his consent in the cases prescribed.

They also provide that the Occupational Pensions Board may require, as a condition of their consent (under section 50 of the Social Security Pensions Act 1975) to the alteration of the rules of a contracted-out scheme, the specified notification and consultation procedures.

The report of the Occupational Pensions Board on the draft of these regulations, dated 29th June 1978, is contained in Command Paper (Cmnd. 7309) published by Her Majesty's Stationery Office.

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