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STATUTORY INSTRUMENTS

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**1987 No. 1115**

**PENSIONS**

**The Personal and Occupational Pension  
Schemes (Incentive Payments) Regulations 1987**

<i>Made</i> - - - -	<i>25th June 1987</i>
<i>Laid before Parliament</i>	<i>6th July 1987</i>
<i>Coming into force</i>	
<i>Regulations 1 and 2</i>	<i>4th January 1988</i>
<i>Remainder</i>	<i>6th April 1988</i>

The Secretary of State for Social Services, in exercise of the powers conferred upon him by sections 3(2), 7(1), (2), (3), (6) and (7), 14 and 84(1) of the Social Security Act 1986<sup>(1)</sup> and of all other powers enabling him in that behalf, by this instrument, which is made before the end of a period of 12 months from the commencement of the enactments under which it is made, makes the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Personal and Occupational Pension Schemes (Incentive Payments) Regulations 1987, and regulation 2 and this regulation shall come into force on 4th January 1988 and the remainder of these regulations on 6th April 1988.

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

“the Act” means the Social Security Act 1986;

“centralised scheme” means an occupational pension scheme for whose benefits earners in employments under different employers qualify by virtue of their respective service in those employments and which is either a money purchase contracted-out scheme or a scheme for which there is a common fund;

“employer” includes a person who, by virtue of regulations 1(4) and (5) and 14 to 16 of the Occupational Pension Schemes (Contracting-out) Regulations 1984<sup>(2)</sup>, is treated as an employer for the purpose of those Regulations;

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(1) 1986 c. 50. See definitions of “prescribed” and “regulations” in section 84(1).  
(2) S.I.1984/380, to which there are amendments not relevant to these Regulations.

“scheme”, except in the expression “personal pension scheme”, means occupational pension scheme;

and other expressions have the same meaning as in the Social Security Pensions Act 1975(3).

- (3) In these Regulations, unless the context otherwise requires, any reference—
- (a) to a numbered regulation is to the regulation in these Regulations bearing that number;
  - (b) in a regulation to a numbered paragraph is to the paragraph of that regulation bearing that number;
  - (c) in a paragraph to a lettered sub-paragraph is to the sub-paragraph of that paragraph bearing that letter.

**Employments in relation to which payments under section 3(1)(b) of the Act are not to be made**

- 2.—(1) This regulation applies where—
- (a) an earner is employed by a person (called in this regulation “the primary employer”) in employment (called in this regulation “the primary employment”) which is not contracted-out employment; and
  - (b) the primary employment would be contracted-out employment in relation to the earner by reference to a scheme (called in this regulation “the primary scheme”) but for the fact that the earner voluntarily left it.
- (2) Where—
- (a) the primary scheme is not a centralised scheme; and
  - (b) there has been a period of at least 2 years, ending after 3rd January 1988, throughout which the earner was employed, whether or not by the primary employer, in employment which was contracted-out by reference to a scheme by reference to which employment by the primary employer was contracted-out,

the primary employer shall notify the Secretary of State of the facts described in sub-paragraphs (a) and (b) of paragraph (1) and sub-paragraph (b) of this paragraph.

- (3) Where—
- (a) the primary scheme is a centralised scheme; and
  - (b) there has been a period ending after 3rd January 1988—
    - (i) of at least 2 years, throughout which the earner was employed in one employment, or
    - (ii) during which the earner was employed in a series of employments with intervals of not more than 6 months between consecutive employments in the series, the total duration of the employments, not including the intervals, being at least 2 years,
- and
- (c) the one employment referred to in sub-paragraph (b)(i) or each employment in the series referred to in sub-paragraph (b)(ii) is contracted-out by reference to the primary scheme,

the trustees, or, if there are no trustees, the managers of the primary scheme shall notify the Secretary of State of the facts described in sub-paragraphs (a) and (b) of paragraph (1) and sub-paragraphs (a) to (c) of this paragraph.

(4) A notification required to be given under paragraph (2) or (3) shall be given within 6 months after the date on which the employment mentioned in paragraph (1)(a) ceased to be contracted-out employment 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.

(5) A notification required to be given under paragraph (2) or (3) 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 the purposes of this regulation.

(6) For the purposes of section 3(2) of the Act (no payment under section 3(1)(b) in relation to earnings paid with respect to prescribed employment) the prescribed employment is any employment to which paragraph (7) or (8) applies.

(7) This paragraph applies to the primary employment, where a notification has been given in accordance with paragraph (2) or (3) and the Secretary of State knows of no reason to suppose that the information given to him in the notification is incorrect.

(8) This paragraph applies to any employment (called in this regulation “the secondary employment”) which—

- (a) is employment of an earner about whom a notification has been given in accordance with paragraph (2) or (3), where the Secretary of State knows of no reason to suppose that the information given to him in the notification is incorrect;
- (b) is not contracted-out employment in relation to him; and
- (c) is not the primary employment,

except where the Secretary of State is satisfied that the circumstances specified in any one of subparagraphs (a), (b) and (c) of paragraph (9) obtain.

(9) The circumstances referred to in paragraph (8) are—

- (a) that the earner is employed in the secondary employment by a person other than the primary employer;
- (b) that there has been an interval of at least 7 days between the termination of the primary employment and the commencement of the secondary employment; and
- (c) that the secondary employment—
  - (i) is not employment to which the primary scheme applies, and
  - (ii) commenced before, or while, the earner was employed in employment to which paragraph (10) applies.

(10) This paragraph applies to—

- (a) the primary employment;
- (b) any employment of the earner by the primary employer which commences immediately after the primary employment terminates; and
- (c) any 2 or more employments of the earner by the primary employer of which the first commences immediately after the primary employment terminates and every subsequent one commences immediately after the previous one terminates.

(11) Where a notice under section 1(9) of the Act specifies, as the date from which the personal pension scheme in question is to be the chosen scheme of the earner in question, a date earlier than that on which the Secretary of State receives the notice—

- (a) in a case where the Secretary of State receives the notice in the tax year 1988—89 and the date specified by the notice as mentioned above is 6th April 1987, that part (if any) which the Secretary of State is required to pay under section 3(1)(b) of the Act of the minimum contributions which fall due in respect of earnings paid to the earner during the tax years 1987—88 and 1988—89 shall be paid not earlier than October 1989; and
- (b) in any other case, that part (if any) which the Secretary of State is required to pay under section 3(1)(b) of the Act of the minimum contributions which fall due in respect of

earnings paid to the earner during the tax year in which the Secretary of State receives the notice shall be paid not earlier than October in the tax year following that in which the Secretary of State receives the notice,

unless the Secretary of State has reason to suppose that no notification under paragraph (2) or (3), containing correct information, can or will be served on him in relation to that earner.

### **Cases in which payments under section 7 of the Act are not to be made, or are to be made to prescribed persons**

3.—(1) No payment shall be made under section 7 of the Act (schemes becoming contracted-out between 1st January 1986 and 5th April 1993) in any case to which paragraph (2), (3) or (4) applies.

(2) This paragraph applies to a case where the earner in question, or another earner, has been in employment which—

- (a) was contracted-out employment by reference to a scheme other than the scheme in question during part or all of the period beginning on 1st January 1986 and ending on 5th April 1993; and
- (b) is indistinguishable from the employment of the earner in question except by reference to the identity of the employer, or the identity of the person employed, or both.

(3) This paragraph applies to a case where the employment in question could have been contracted-out employment by reference to a scheme other than the scheme in question during part or all of the period beginning on 1st January 1986 and ending on 5th April 1993, but was not, because of a choice made by, or a failure to make a choice on the part of, the earner in question.

(4) This paragraph applies to a case where the earnings in question are either—

- (a) earnings in relation to which the earner, being a married woman or widow, is liable to make contributions at a reduced rate in accordance with an election which she has made and which is still operative; or
- (b) earnings in relation to which contributions have not been paid or treated as paid, or the earner has paid contributions which are treated as not paid under regulation 38(1) and (2) (a) of the Social Security (Contributions) Regulations 1979<sup>(4)</sup>.

(5) In a case where a scheme has ceased, on any date after 31st December 1985, to be a contracted-out scheme, no payment shall be made under section 7 of the Act to the trustees or managers of that scheme.

(6) In a case where—

- (a) the scheme in question is a money purchase contracted-out scheme;
- (b) a period during which the earner in question has been in an employment which is or was contracted-out by reference to that scheme has terminated; and
- (c) effect has been given to that earner's protected rights under that scheme,

no payment shall be made under section 7 of the Act to the trustees or managers of that scheme in respect of that earner in relation to any tax week falling within the period referred to in subparagraph (b) of this paragraph, except as provided by paragraph (12).

(7) Where, but for the provisions of paragraph (6), or paragraphs (5) and (6), a payment would have fallen to be made under section 7 of the Act to the trustees or managers of a money purchase contracted-out scheme, a payment of the same amount shall, subject to paragraph (8), be made, in the circumstances described in paragraphs (9) and (11), to the persons described in paragraphs (10) and (12) (and in no other circumstances and to no other persons).

(4) S.I. 1979/591, to which there are amendments not relevant to these Regulations.

(8) Where a payment would otherwise be required under paragraph (7), it shall not be required if the scheme in question has ceased to be a contracted-out scheme unless effect was given to the protected rights of the earner in question before the end of the tax year following that which included the date with effect from which the scheme ceased to be a contracted-out scheme.

(9) Paragraph (10) applies where effect has been given to the earner's protected rights by the making of a transfer payment to a personal pension scheme or to another occupational pension scheme.

(10) Where the personal pension scheme is an appropriate scheme or the occupational pension scheme is another money purchase contracted-out scheme, the payment shall be made to the trustees or managers of that personal pension scheme or occupational pension scheme.

(11) Paragraph (12) applies where effect has been given to the earner's protected rights by the purchase of an annuity, or, where the scheme is still a contracted-out scheme, by the provision by the scheme of a pension.

(12) Where—

- (a) the amount of the payment is at least 10 times as great as the lower earnings limit (within the meaning of section 1 of the Social Security Pensions Act 1975) for the tax year in which the Secretary of State first becomes aware that the relevant payment under section 7 falls to be made, or would fall to be made but for paragraph (5) or (6); and
- (b) the Secretary of State is satisfied that the amount paid will be applied fairly to increase the amount of the annuity or pension,

the payment shall be made (in the case of an annuity) to the insurance company from which the annuity has been purchased, or (in the case of a pension) to the trustees or managers of the scheme.

#### **Claim for payment under section 7 of the Act**

4. A payment under section 7 of the Act shall not be made unless a claim is made for it in writing in such form as the Secretary of State may direct, by—

- (a) the person who is or was the employer of the earner in question in relation to the employment in question; or
- (b) in a case where the Secretary of State is satisfied by information furnished to him by the trustees or managers of the scheme that that person has not made, and does not intend to make, any claim in relation to the scheme in question, the trustees or managers of the scheme.

#### **Manner of payment under section 7 of the Act**

5. Payments under section 7 of the Act shall be made—

- (a) by automated direct credit transfer into a bank or building society account which relates to the relevant scheme and which accepts payments made by automated direct credit transfer; or
- (b) in such other manner as the Secretary of State may in his discretion decide.

#### **Periods to be substituted for a tax week in particular cases**

6.—(1) Section 7 of the Act shall have effect—

- (a) in the case of an earner whose earnings are paid monthly, as if for any reference to a tax week there were substituted a reference to a month and as if for the references to £1.00 in subsection (4)(b) there were substituted references to £4 $\frac{1}{3}$ ;

- (b) in the case of an earner whose earnings are paid by reference to a period consisting of 2 or more months, as if for any reference to a tax week there were substituted a reference to that period and as if for the references to £1.00 in subsection (4)(b) there were substituted references to £ $4\frac{1}{3}$  multiplied by the number of months in that period; and
- (c) in the case of an earner whose earnings are paid by reference to any other period which is not a week or an exact number of weeks or a month or an exact number of months, as if for any reference to a tax week there were substituted a reference to that other period and as if for the references to £1.00 in subsection (4)(b) there were substituted references to a seventh of £1.00 multiplied by the number of days in that period.

(2) Where an amount to be paid under section 7 would otherwise not be a whole number of pence, it shall be taken to be the nearest whole number of pence, or, when the 2 nearest whole numbers are equally near, the lower of them.

### **State scheme premiums increased by interest on incentive payments**

7.—(1) For the purposes of section 7(7)(b) of the Act (state scheme premiums under section 44 or 44A of the Social Security Pensions Act 1975 to be increased by the amount of a payment under section 7 of the Act and interest on that payment) the interest shall be calculated in accordance with paragraph (3).

(2) In this regulation, “the relevant period” means a period beginning on the date on which the payment under section 7 was made, and ending—

- (a) where the state scheme premium is an accrued rights premium or a pensioner’s rights premium—
  - (i) on the date (if any) on which arrangements made in relation to the relevant earner and approved by the Occupational Pensions Board under section 44 of the Social Security Pensions Act 1975 ceased to be so approved, or
  - (ii) if no such arrangements have been so approved, on the date of the determination by the Occupational Pensions Board as a result of which the relevant occupational pension scheme ceased to be contracted-out;

and

- (b) where the state scheme premium is a transfer premium, on the date of the election to pay it.

(3) The interest shall be calculated at the rate of  $8\frac{1}{2}$  per cent. a year compound, so however that—

- (a) if the relevant period is less than a year, no interest shall be paid; and
- (b) if the relevant period consists of one or more complete years followed by a part of a year, the interest during that part of a year shall be calculated at the rate, for each day in that part of a year, of  $8\frac{1}{2}$  per cent. divided by 366 where that day falls, or 365 where it does not fall, within a period of a year which begins on an anniversary of the first day of the relevant period and includes 29th February.

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

25th June 1987

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

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are all made under the Social Security Act 1986 before the end of a period of 12 months from the commencement of the relevant sections of that Act. Consequently, by virtue of section 61(5) of that Act, the provisions of section 61(2) and (3) of the Social Security Pensions Act 1975 (as amended by section 86(1) of, and paragraph 94 of Schedule 10 to, the Social Security Act 1986), which require reference to the Occupational Pensions Board of, and a report by the Board on, proposals to make regulations for the purposes of Part I of the Social Security Act 1986, do not apply to them.

Regulation 2 provides that where an earner has been employed in contracted-out employment for at least 2 years ending between 4th January 1988 and 5th April 1993 and would still be so employed, but for the fact that he voluntarily left the relevant scheme, the Secretary of State must be notified: in relation to the earnings of the earner in such a case, and in related cases where the earner has more than one employment, the additional minimum contributions otherwise payable by the Secretary of State under section 3(1)(b) of the Social Security Act 1986 to an appropriate pension scheme for tax weeks before 6th April 1993 are not to be paid. There is also provision (in paragraph (11)) for the Secretary of State to defer payment of minimum contributions where he is notified that a personal pension scheme is to be an earner's chosen scheme from a date earlier than the date of the notification.

Regulation 3 provides that, in certain cases, the additional payments otherwise required, under section 7 of the Social Security Act 1986, to be made by the Secretary of State to the trustees or managers of an occupational pension scheme newly contracted-out between 1st January 1986 and 5th April 1993 are not to be made, or are to be paid to another scheme or to other persons.

Regulation 4 deals with claims for payments under section 7; regulation 5 with the manner of making such payments; regulation 6 with adaptations for the case of earners paid otherwise than weekly; and regulation 7 with the addition to certain state scheme premiums of interest on payments under section 7.