

**1988 No. 476**

**PENSIONS**

**The Occupational Pension Schemes (Miscellaneous  
Amendments) Regulations 1988**

<i>Made</i> - - - -	<i>10th March 1988</i>
<i>Laid before Parliament</i>	<i>16th March 1988</i>
<i>Coming into force</i> -	<i>6th April 1988</i>

The Secretary of State for Social Services, in exercise of the powers conferred upon him by paragraph 9(2) and (3) of Schedule 16 to the Social Security Act 1973(a), section 168(1) of and Schedule 20 to the Social Security Act 1975(b), sections 52C(4) and (5)(c), 56A and 56E(1), (3) and (4) of, and paragraphs 14 and 20 of Schedule 1A to, the Social Security Pensions Act 1975(c) and section 5 of the Social Security Act 1985(d), and of all other powers enabling him in that behalf, after reference to the Occupational Pensions Board(e), hereby makes the following Regulations:

**Citation and commencement**

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1988 and, subject to paragraph (2), shall come into force on 6th April 1988.

(2) Regulation 3(2)(c) shall come into force on 6th April 1988 immediately after the coming into force of the Personal and Occupational Pension Schemes (Consequential Provisions) Regulations 1987(f).

**Amendment of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1984**

2.—(1) The Occupational Pension Schemes (Preservation of Benefit) Regulations 1984(g) shall be amended in accordance with the provisions of this regulation.

(2) In regulation 12(1)(a)—

(a) for the words “a benefit smaller than that” there shall be substituted the words “a benefit or benefits smaller than that or those”;

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- (a) 1973 c.38. Paragraph 9(2) was amended by paragraph 32 of Schedule 4 to the Social Security Pensions Act 1975 (c.60).
- (b) 1975 c.14. See the definitions of “prescribe” and “regulations” in Schedule 20. Section 168(1) applies, by virtue of section 66(2) of the Social Security Pensions Act 1975, to the exercise of certain powers conferred by that Act.
- (c) 1975 c.60. Section 52C was inserted by Schedule 1 and sections 56A and 56E were inserted by Schedule 2 to the Social Security Act 1985 (c.53) and Schedule 1A by Schedule 1 to that Act.
- (d) 1985 c.53. Section 5 was amended by paragraph 103(1) of Schedule 10 to the Social Security Act 1986 (c.50).
- (e) See section 68 of the Social Security Act 1973 as amended by paragraph 3 of Schedule 3 to the Social Security Act 1979 (c.18) and paragraph 82 of Schedule 10 to the Social Security Act 1986 (c.50).
- (f) S.I. 1987/1114.
- (g) S.I. 1984/614; the relevant amending instruments are S.I. 1985/1926, 1986/2171 and 1987/1106.

- (b) for the words "becoming payable" there shall be substituted the words "being or including a benefit which becomes payable to the member"; and
  - (c) after the words "normal pension age" there shall be inserted, "whether or not it or they also include benefit or benefits as an alternative to short service benefit which is prospectively payable to the widow, widower or dependant of the member,".
- (3) In regulation 12(1)(b)–
- (a) for the words "a benefit larger than that" there shall be substituted the words "a benefit or benefits larger than that or those";
  - (b) for the words "becoming payable" there shall be substituted the words "being or including a benefit which becomes payable to the member"; and
  - (c) after the words "normal pension age" there shall be inserted " , whether or not it or they also include a benefit or benefits as an alternative to short service benefit which is prospectively payable to the widow, widower or dependant of the member".
- (4) In regulation 12(5), for the words "when the alternative" there shall be substituted the words "when the benefit to which the member is entitled".
- (5) In regulation 12(9), for "(5) to (7)" there shall be substituted "(6) and (7)".
- (6) For paragraph (2) of regulation 19 there shall be substituted–
- "(2) In a case where a scheme is being wound up regulation 12(1)(c), (d) and (e)(i) and (ii) shall not apply and the member's consent shall not be required–
  - (a) in the case of a member who at the time of winding up is employed in employment to which the scheme relates, to the transfer of his accrued rights to another scheme relating to the same employment or another employment with the same employer or his successor, with a view to the acquisition for him of transfer credits under that other scheme; and
  - (b) in the case of a member who at the time of winding up is not so employed, to the transfer of the liabilities of the scheme in respect of short service benefit or, as the case may be, payment of pension to another scheme which, if he were so employed, would satisfy the provisions of sub-paragraph (a) above."

#### **Amendment of the Occupational Pension Schemes (Transfer Values) Regulations 1985**

3.—(1) The Occupational Pension Schemes (Transfer Values) Regulations 1985(a) shall be amended in accordance with the provisions of this regulation.

(2) In regulation 3 of those Regulations–

- (a) in paragraph (1) for "paragraph (3)" there shall be substituted "paragraphs (1A) or (3)";
- (b) after paragraph (1) there shall be inserted the following paragraph–

"(1A) Where the member (in respect of whom a cash equivalent such as is mentioned in paragraph 12(1) is to be calculated and verified) is a member of a scheme having particulars from time to time set out in regulations made under section 7 of the Superannuation Act 1972(b), his cash equivalent shall be calculated and verified in such manner as may be approved by the Government Actuary or by an actuary authorised by the Government Actuary to act on his behalf for that purpose, and in such a case "actuary" in this regulation means the Government Actuary or the actuary so authorised."; and

- (c) in paragraph (3)(a)(c), the words "which is or was formerly a money purchase contracted-out scheme" shall be omitted.

(3) In regulation 4 of those Regulations–

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(a) S.I. 1985/1931; the relevant amending instruments are S.I. 1986/751, 1987/1107 and 1114.  
 (b) 1972 c.11.  
 (c) Regulation 3(3)(a) was inserted, as of 6th April 1988, by the Personal and Occupational Pension Schemes (Consequential Provisions) Regulations 1987 (S.I. 1987/1114), regulation 8.

(a) in paragraph (1), for the words from the beginning to the word "discretion" there shall be substituted "Where it is the established custom for additional benefits to be awarded from the scheme at the discretion of the trustees or the employer"; and

(b) after paragraph (5), there shall be inserted the following paragraphs—

"(5A) In a case where a contributions equivalent premium or an accrued rights premium has been paid in respect of a member in accordance with section 42 or, as the case may be, section 44, the cash equivalent referred to in paragraph 12(1) shall be reduced (to nil if need be) to the extent that it represents the member's accrued rights to a guaranteed minimum pension under the scheme.

(5B) Where a member of a scheme has had provided to or in respect of him an alternative to short service benefit such as is mentioned in regulation 12(1)(e) of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1984(a) (benefit provided under an insurance policy or annuity contract), and that alternative was provided—

(a) in accordance with sub-paragraph (a) of paragraph (4) of that regulation and the conditions specified in sub-paragraphs (c) to (f) of paragraph (4A) of it are satisfied; or

(b) in accordance with sub-paragraph (aa)(b) or paragraph (4) of that regulation,

and the trustees of the scheme are in consequence discharged from their liability to provide short service benefit by virtue of section 52C, the cash equivalent in respect of that member shall be reduced to nil."

(4) In regulation 6 of those Regulations—

(a) in paragraph (b), for "in the circumstances specified in paragraph 2 of Schedule 1 to those regulations," there shall be substituted "without his consent; or"; and

(b) after paragraph (b), there shall be inserted the following paragraphs—

"(c) the member's accrued rights under the transferring scheme have been transferred without his consent to the receiving scheme by virtue of regulation 19(2) of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1984; or

(d) the member's accrued rights, where they do not include any right to short service benefit, under the transferring scheme have been transferred without his consent to the receiving scheme,".

(5) After regulation 6 of those Regulations there shall be inserted the following regulations—

**"Application of transfer value requirement to schemes with an overseas element**

7.—(1) This regulation applies to any scheme which has an overseas element within the meaning of regulation 21(1) of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1984.

(2) In the case of a scheme to which this regulation applies, Schedule 1A shall be so modified that the provisions of that Schedule relating to transfer values apply to that scheme only to the extent that the preservation requirements apply to it by virtue of regulation 21 of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1984.

**Termination of pensionable service**

8.—(1) Subject to paragraph (3) below, where the pensionable service of a member of an occupational pension scheme terminates in the circumstances set out in paragraph (2) below, Part II of Schedule 1A shall have effect as if that pensionable service had not terminated.

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(a) S.I. 1984/614; relevant amending instruments are S.I. 1985/1926, 1986/2171, 1987/1106.

(b) Sub-paragraph (aa) comes into force on 6th April 1988.

- (2) The circumstances referred to in paragraph (1) above are that—
- (a) the pensionable service which has terminated is a period of such service which is one, other than the last one, of a series of such periods in employment to which the scheme relates; and
  - (b) there is between successive periods of pensionable service—
    - (i) no interval, or
    - (ii) an interval not exceeding 1 month, or
    - (iii) an interval of any length if it is between 2 periods of pensionable service the second of which results from the exercise of a right to return to work under section 45(1) of the Employment Protection (Consolidation) Act 1978(a) (right to return to work following pregnancy or confinement), or
    - (iv) an interval of any length if it is between 2 periods of pensionable service the second of which results from a return to work by the member following a period of absence arising in consequence of a trade dispute within the meaning of section 19(2)(b) of the Social Security Act 1975(b).

(3) This regulation shall not have effect where the trustees or managers of a scheme have, during any interval such as is set out in paragraph (2)(b)(ii) to (iv) above, done what is needed to carry out what a member requires in exercising an option available to him under paragraph 13 of Schedule 1A.”.

#### **Amendment of the Occupational Pension Schemes (Discharge of Liability) Regulations 1985**

4.—(1) The Occupational Pension Schemes (Discharge of Liability) Regulations 1985(c) shall be amended in accordance with the provisions of this regulation.

(2) In regulation 4 of those Regulations the word “and” at the end of sub-paragraph (b)(iii) shall be omitted and at the end of paragraph (b) (but not as part of sub-paragraph (iii) of that paragraph) there shall be inserted “and in each case mentioned in sub-paragraphs (i) to (iii) that any increase of guaranteed minimum pension under section 37A results in a similar increase in the annuity; and”.

(3) In regulation 5(b)(ii), after “12(4)(a)” there shall be inserted “(and the conditions specified in regulation 12 (4A)(c) to (f) are satisfied)”(d).

#### **Amendment of the Occupational Pension Schemes (Revaluation) Regulations 1985**

5.—(1) The Occupational Pension Schemes (Revaluation) Regulations 1985(e) shall be amended in accordance with the provisions of this regulation.

(2) In regulation 1(2), in the definition of “normal pension age” etc. for “regulation 3” there shall be substituted “regulations 3 and 10 to 12”.

(3) After regulation 9 of those Regulations there shall be inserted the following regulations—

##### **“Retirement benefits varied at state pension age**

10. In a case where a scheme contains a provision that the pension or other retirement benefit payable to a member under it at normal pension age falls to be varied at state pension age (that is age 60 years for a woman or age 65 years for a man), Schedule 1A to the Social Security Pensions Act 1975 shall have effect as if:—

- (a) on the date on which the member attains normal pension age, D in the formula set out in paragraph 2(2) was the amount of the pension or other retirement benefit payable at normal pension age; and

(a) 1978 c.44.

(b) 1975 c.14.

(c) S.I. 1985/1929; the relevant amending instruments are S.I. 1986/2171, 1987/1106 and 1114.

(d) Paragraph (4A) was inserted by regulation 3(3) of S.I. 1987/1106.

(e) 1985/1930; the relevant amending instrument is S.I. 1987/1106.

- (b) on the member attaining state pension age the appropriate amount fell to be recalculated on the basis that state pension age was normal pension age for that member except that for the purposes of the calculation any increase in the member's pension or other retirement benefit between his actual normal pension age and state pension age was to be disregarded.

#### **Refunds in respect of service prior to 6th April 1975**

11. Where a member's pensionable service includes a period before 6th April 1975 and in respect of which payment of a lump sum (whether or not being or including a payment by way of a refund of contributions) has been made to him, Schedule 1A to the Social Security Pensions Act 1975 shall have effect as if—

- (a) that period of service was excluded from C in the formula set out in paragraph 2(2); and
- (b) D in that formula was reduced by an amount representing any pension or other retirement benefit which accrued in consequence of the lump sum.

#### **Rounding**

12. Schedule 1A to the Social Security Pensions Act 1975 shall have effect so as to allow scheme rules to make provision for the length of a member's qualifying pensionable service and pensionable service, set out in paragraph 2(2) as items B and C respectively, to be expressed in whole numbers of months, provided that—

- (a) the method of rounding to a whole month is the same for both item B and item C and involves rounding only to the nearest, next highest or next lowest month;
- (b) subject to paragraph (c) below, in calculating the amount of any pension or other benefit due to the member under scheme rules provision is made for rounding pensionable service to a period of a whole month or a greater period; and
- (c) where the member's pensionable service commenced prior to 1st January 1985 his qualifying pensionable service shall, for the purposes of any calculation such as is referred to in paragraph (a) above, be taken to have commenced on that date.

#### **Application of revaluation requirement to schemes with an overseas element**

13.—(1) This regulation applies to any scheme which has an overseas element within the meaning of regulation 21(1) of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1984(a).

(2) In the case of a scheme to which this regulation applies Schedule 1A to the Social Security Pensions Act 1975 shall be so modified that provisions of that Schedule relating to revaluation apply to that scheme only to the extent that the preservation requirements apply to it by virtue of regulation 21 of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1984.

#### **Termination of pensionable service**

14.—(1) Subject to paragraph (3) below, where the pensionable service of a member of an occupational pension scheme terminates in the circumstances set out in paragraph (2) below, Part I of Schedule 1A to the Social Security Pensions Act 1975 shall have effect as if that service had not terminated.

- (2) The circumstances referred to in paragraph (1) above are that—
  - (a) the pensionable service which has terminated is a period of such service which is one, other than the last one, of a series of such periods in employment to which the scheme relates; and
  - (b) there is between successive periods of pensionable service—
    - (i) no interval;

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(a) S.I. 1984/614; the relevant amending instruments are S.I. 1986/2171 and 1987/1106.

- (ii) an interval not exceeding 1 month, or
- (iii) an interval of any length if it is between 2 periods of pensionable service the second of which results from the exercise of a right to return to work under section 45(1) of the Employment Protection (Consolidation) Act 1978(a) (right to return to work following pregnancy or confinement), or
- (iv) an interval of any length if it is between 2 periods of pensionable service the second of which results from a return to work by the member following a period of absence arising in consequence of a trade dispute within the meaning of section 19(2)(b) of the Social Security Act 1975(b).

(3) This regulation shall not have effect where the trustees or managers of a scheme have, during any interval such as is set out in paragraph (2)(b)(ii) to (iv) above, done what is needed to carry out what a member requires in exercising an option available to him under paragraph 13.”

#### **Amendment of the Occupational Pension Schemes (Auditors) Regulations 1987**

6.—(1) The Occupational Pension Schemes (Auditors) Regulations 1987(c) shall be amended in accordance with the provisions of this regulation.

(2) There shall be inserted at the end of regulation 2 of those Regulations “or which is established outside the United Kingdom”.

#### **Amendment of the Occupational Pension Schemes (Managers) Regulations 1986**

7.—(1) The Occupational Pension Schemes (Managers) Regulations 1986(d) shall be amended in accordance with the provisions of this regulation.

(2) After regulation 2 of those Regulations, there shall be inserted the following regulation—

“Person to be treated as manager of scheme established outside the United Kingdom

“3. For the purposes of sections 56A, 56E and 56L of the Act (disclosure of information about occupational pension schemes), in their application to the making available of information and documents to a particular member or prospective member of any occupational pension scheme established outside the United Kingdom, or by reason of his membership or prospective membership to any other person or body, the person or body to be treated as the manager of the scheme shall be such person as is for the time being treated by the Board of Inland Revenue as the administrator of the scheme for the purposes of Chapter I of Part XIV of the Income and Corporation Taxes Act 1988(e).”

#### **Amendment of the Occupational Pension Schemes (Disclosure of Information) Regulations 1986**

8.—(1) The Occupational Pension Schemes (Disclosure of Information) Regulations 1986(f) shall be amended in accordance with the provisions of this regulation.

(2) In regulation 1(2) of those Regulations, in the definition of “trustees” there shall be added at the end “, except in relation to a scheme established outside the United Kingdom and in such a case “trustees” means the person or body treated by the Board of Inland Revenue for the time being as the administrator of the scheme for the purposes of Chapter I of Part XIV of the Income and Corporation Taxes Act 1988”.

(3) In regulation 3 of those Regulations—

- (a) after sub-paragraph (b) of paragraph (1) there shall be inserted the word “or” and the following sub-paragraph—

(a) 1978 c.44.

(b) 1975 c.14.

(c) S.I. 1987/1102.

(d) S.I. 1986/1718.

(e) S.I. 1988 c.1.

(f) S.I. 1986/1046; the relevant amending instruments are S.I. 1986/1717 and 1987/1105.

- “(c) unless it has at least 2 members in employment in the United Kingdom to which it relates and either—
- (i) it is established in the United Kingdom, or
  - (ii) it has 1 or more trustees resident in the United Kingdom.”;
- (b) after sub-paragraph (c) of paragraph (2) there shall be inserted the word “or” and the following sub-paragraph—
- “(d) any person whose employment is not in the United Kingdom, unless he is a person whose earnings give rise to a liability for payment of primary Class I contributions, or would do if they were equal to or greater than the lower earnings limit.”.
- (4) In regulation 4 of those Regulations, after paragraph (4) there shall be inserted the following paragraph—
- “(5) Any document of which disclosure is required by paragraph (1) which is not in the English language shall be accompanied by a translation in that language.”.
- (5) In regulation 7 of those Regulations, after paragraph (5) there shall be inserted the following paragraph—
- “(6) Where the audited accounts of a scheme established outside the United Kingdom such as are mentioned in paragraph (1) fall to be prepared outside of the United Kingdom, they shall be prepared in accordance with the law of, and the professional practices prevalent in, the country in which they are prepared.”.
- (6) In regulation 8 of those Regulations, after sub-paragraph (a) of paragraph (2) there shall be inserted the following sub-paragraph—
- “(aa) to a scheme established outside the United Kingdom; or”.
- (7) In regulation 9 of those Regulations—
- (a) in sub-paragraph (a) of paragraph (1) there shall be inserted at the beginning “subject to sub-paragraph (aa);”;
  - (b) after sub-paragraph (a) of paragraph (1) there shall be inserted the following sub-paragraph:—
    - “(aa) in relation to a scheme established outside the United Kingdom, a copy of the accounts for the scheme year to which the document relates;”;and
  - (c) in paragraph (4), after “request and of the person who” there shall be inserted “or trade union which”.

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

*Nicholas Scott*  
Minister of State,

10th March 1988

Department of Health and Social Security.

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#### EXPLANATORY NOTE

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

These Regulations make miscellaneous amendments to various regulations about occupational pension schemes.

*The Occupational Pension Schemes (Preservation of Benefit) Regulations 1984.* These are amended so as to apply the provisions about alternatives to short service benefit in regulation 12 to benefits for dependants as well as to the scheme member's personal

benefit (regulation 2(2) to (5)). Regulation 19 (preservation of benefit on winding up of schemes) is amended so that it specifically applies to cases where the member is already in receipt of pension or has only preserved rights to benefit (regulation 2(6)).

*The Occupational Pension Schemes (Transfer Values) Regulations 1985.* Regulation 3 is amended to provide that the cash equivalents of accrued rights under the Local Government superannuation schemes shall be calculated and verified in a manner approved by the Government Actuary or by an actuary authorised by him (regulation 3(2)(b)). The provision of regulation 3(3) whereby, in the case of a money purchase contracted-out scheme, an actuary is required to calculate and verify the cash equivalent of rights to money purchase benefits only if the calculation involves estimating the value of benefit is extended to all money purchase benefits (regulation 3(2)(c)). Regulation 4(1) (cash equivalents to be calculated by reference to discretionary increases in benefits) is amended so as to apply where the increase is at the discretion of either the trustees or the employer (regulation 3(3)(a)). New provisions are inserted into regulation 4 so that where a contributions equivalent premium or an accrued rights premium has been paid in respect of a member, his cash equivalent shall be reduced to the extent that it represents his accrued rights to a guaranteed minimum pension under the scheme and to discharge trustees from the obligation to provide a cash equivalent where they have "bought out" a member's benefits without his consent, but only if they have complied with the conditions of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1984 as to giving the member an opportunity to make alternative arrangements (regulation 3(3)(b)). Regulation 6, which confers a right to a cash equivalent in the receiving scheme to which a member's rights are transferred, is extended to apply to all cases in which a member's rights may be transferred without his consent (regulation 3(4)). A new regulation 7 is inserted to provide that in the case of a scheme with an overseas element the provisions of Schedule 1A to the Social Security Pensions Act 1975 relating to transfer values apply only to the extent that the provisions about preservation of benefit apply under regulation 21 of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1984, and a new regulation 8 provides that for the purposes of the cash equivalent provisions of that Schedule certain short breaks in service shall not be regarded as terminating pensionable service (regulation 3(5)).

*The Occupational Pension Schemes (Discharge of Liability) Regulations 1985.* These are amended to reflect the requirement on occupational pension schemes, imposed by section 37A of the Social Security Pensions Act 1975, to revalue guaranteed minimum pensions in payment in respect of rights accruing after 6th April 1988 (regulation 4).

*The Occupational Pension Schemes (Revaluation) Regulations 1985.* New regulations are inserted to provide for the manner in which the revaluation provisions of Schedule 1A to the Social Security Pensions Act 1975 are to apply in cases where the scheme's normal pension age is lower than state pension age and for cases where a lump sum has been paid to a member in respect of service before 6th April 1975; to permit a degree of rounding of periods of pensionable service; make the same provision for schemes with an overseas element and in respect of termination of pensionable service as is made in the case of the transfer value requirements (regulation 5).

*The Occupational Pension Schemes (Auditors) Regulations 1987; The Occupational Pension Schemes (Managers) Regulations 1986 and The Occupational Pension Schemes (Disclosure of Information) Regulations 1986.* These are all amended so as to modify the requirements for disclosure of information about schemes in the case of schemes with an overseas element (regulations 6, 7 and 8).

The report of the Occupational Pensions Board on the draft of these Regulations which had been referred to them, together with a statement showing why the regulations give effect to the Board's recommendations only in part, is contained in Command Paper No. 338 published by Her Majesty's Stationery Office.

£1.60 net

ISBN 0 11 086476 X

Printed in the United Kingdom for Her Majesty's Stationery Office

880 WO.465 C15 3/88 452/3 4235 PS 7944007 880680P