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STATUTORY INSTRUMENTS

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**1991 No. 166**

**PENSIONS**

**The Contracting-Out (Protection of Pensions) Regulations 1991**

*Made* - - - - *1st February 1991*  
*Laid before Parliament* *7th February 1991*  
*Coming into force* - - *28th February 1991*

The Secretary of State for Social Security, in exercise of the powers conferred by sections 166(1) to (3A) and 168(1) of, and Schedule 20 to, the Social Security Act 1975(1) and sections 41B(3), 41C(7), 41E(2)(e) and 66(2), (3) and (4) of the Social Security Pensions Act 1975(2), and of all other powers enabling him in that behalf, after considering the report of the Occupational Pensions Board on the proposals referred to them(3), hereby makes the following Regulations:

**Citation, commencement and interpretation**

- 1.—(1) These Regulations may be cited as the Contracting-Out (Protection of Pensions) Regulations 1991.
- (2) These Regulations come into force on 28th February 1991.
- (3) In the following provisions of these Regulations, a reference to a numbered section is a reference to the section bearing that number in the Social Security Pensions Act 1975.

**Hybrid benefits**

- 2.—(1) This regulation applies where a scheme provides for the rate of a pension for the earner, or the earner's widow or widower, to be the greater of—
- (a) a rate that is calculated by reference to the earner's earnings, and
  - (b) a rate that is not calculated by reference to the earner's earnings.
- (2) For the purposes of sections 41A (earners' pensions) and 41B (widows' pensions), "the relevant sum" means an amount equal to the rate that is calculated by reference to the earner's

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(1) 1975 c. 14. See definitions of "prescribe" and "regulations" in Schedule 20. Sections 166(1) to (3A) and 168(1) apply, by virtue of section 66(2) of the Social Security Pensions Act 1975 (c. 60), to the exercise of certain powers conferred by that Act.

(2) 1975 c. 60. Sections 41A to 41E were inserted by Schedule 6 to the Health and Social Security Act 1984 (c. 48). Amendments relevant to these Regulations have been made to sections 41A and 41B by section 6 of the Social Security Act 1985 (c. 53) and paragraph 8 of Schedule 4 to the Social Security Act 1990 (c. 27). The references to "widow" in section 41B include references to "widower" by virtue of section 9(4)(f) of the Social Security Act 1986 (c. 50).

(3) See section 61(2) of the Social Security Pensions Act 1975.

earnings, whether or not the rate of the pension is calculated by reference to those earnings. Sections 41A(3) and 41B(3) are modified accordingly.

#### **Retirement benefits varied at pensionable age**

3.—(1) This regulation applies where a scheme provides that the pension payable to an earner at normal pension age is to be reduced when, or after, the earner attains pensionable age.

(2) Where this regulation applies—

- (a) section 41A(1) is so modified as to allow the pension to be reduced, and
- (b) section 41A(3) is so modified as to allow the relevant sum to be recalculated, when the pension is reduced, without regard to the amount by which the pension is reduced.

#### **Pensions for widows and widowers varied after commencement**

4.—(1) This regulation applies where a scheme provides that an increased pension will be payable to the earner's widow or widower for a period ending not later than the later of—

- (a) the date 6 months after the date of the earner's death, and
- (b) if the earner dies after starting to receive a pension under the scheme, the date 10 years after the date on which the earner's pension became payable.

(2) For the purposes of section 41B, the relevant sum is to be calculated as if the weekly rate at which the pension commences to be paid to the widow or widower did not include the increase referred to in paragraph (1). Section 41B(3) is modified accordingly.

#### **The relevant sum for widows and widowers**

5.—(1) This regulation prescribes the assumptions for the purpose of calculating “the relevant sum” defined in section 41B(3).

(2) For the purposes of section 41B, “the relevant sum” means an amount equal to the weekly rate at which a pension would have commenced to be paid to the widow or widower, on the assumptions that—

- (a) the earner had died on the day after the termination of employment date being then married to the widow or widower, and
- (b) the weekly rate of the pension was then calculated using the formula appropriate to the circumstances of the earner's actual death but excluding, where the earner dies in employment to which the scheme applies, any notional service after the termination of employment date.

#### **Benefits other than short service benefit**

6.—(1) This regulation applies where the earner reaches normal pension age after the termination of employment date and, on the termination of employment date, no short service benefit has accrued to the earner.

(2) For the purposes of section 41C (supplementary provisions), any provision contained in a scheme that would be a protected provision in relation to short service benefit is to be treated as a protected provision in relation to any other benefit to which section 41A(3)(b) applies. Section 41C is modified accordingly.

### **Transfers agreed but not implemented before 1st January 1985**

7.—(1) This regulation applies where, before 1st January 1985, there was an enforceable agreement for the transfer of accrued rights to, or the liability for the payment of, benefits from one scheme to another. This regulation applies whether or not the enforceable agreement was subject to further agreements about the rates of benefits to be provided by the receiving scheme.

(2) For the purposes of sections 41A(6) and 41B(5), the transfer pursuant to the enforceable agreement is to be treated as made before the commencement of those sections. Sections 41A(6) and 41B(5) are modified accordingly.

### **The later earnings addition**

8.—(1) This regulation applies where part of the pension for the earner, or the earner's widow or widower, accrues after the earner reaches normal pension age by reason of the earner's employment after that date.

(2) Sections 41A(2B) and 41B(3B) are so modified as to require the earner's later earnings level to be calculated as if the earner's termination of employment date had fallen on the earlier of—

- (a) the earner's commencement of payment date, or
- (b) the date on which the pension ceased to accrue under the scheme.

### **Applications to the Occupational Pensions Board**

9.—(1) This regulation applies for the purposes of section 41E (which deals with applications to the Occupational Pensions Board for advice on any questions concerning the protection of pensions provisions).

(2) In section 41E, "employer", "member" and "prospective member" mean the same as in regulations 2 and 3 of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991(4).

(3) In addition to the persons referred to in paragraphs (a) to (d) of section 41E(2), the widow or widower of any member of the scheme is competent to make an application under that section in respect of the scheme.

### **Revocations**

10. The Regulations specified in Column 1 of the Schedule to these Regulations are revoked to the extent specified in Column 2.

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

1st February 1991.

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

*Status: This is the original version (as it was originally made).*

## SCHEDULE

Regulation 10

Column 1 Regulations	Column 2 Extent of Revocation
The Contracting-out (Protection of Pensions) Regulations 1984 (S.I. <a href="#">1984/1921</a> )	The whole of the Regulations.
The Contracting-out (Protection of Pensions) Regulations 1985 (S.I. <a href="#">1985/1927</a> )	The whole of the Regulations.
The Personal and Occupational Pension Schemes (Consequential Provisions) Regulations 1987 (S.I. <a href="#">1987/1114</a> )	Regulation 5.
The Contracting-out (Miscellaneous Amendments) Regulations 1988 (S.I. <a href="#">1988/475</a> )	Regulation 3.
The Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1990 (S.I. <a href="#">1990/1141</a> )	Regulation 4.

**EXPLANATORY NOTE**

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

These Regulations consolidate, with amendments, Regulations relating to the protection of pensions provisions (sometimes called the “anti-franking” provisions) of the Social Security Pensions Act 1975.

The protection of pensions provisions are contained in sections 41A to 41E of the Social Security Pensions Act 1975. They override any conflicting provision of a scheme, as described in section 41C(1) of that Act.

These Regulations modify the protection of pensions provisions in cases where retirement benefits are varied at state pension age (regulation 3), cases where pensions for widows and widowers are varied after commencement (regulation 4), cases where, before 1st January 1985, there was an enforceable agreement for the transfer of benefits from one scheme to another (regulation 7) and cases where part of a pension accrues after normal pension age under the scheme (regulation 8).

These Regulations also modify the protection of pensions provisions in their application to hybrid benefits (regulation 2) and benefits other than short service benefit (regulation 6).

In addition, regulation 5 prescribes the assumptions for the purpose of calculating “the relevant sum” for a widow or widower and regulation 9 deals with the persons who are competent to apply to the Occupational Pensions Board for advice on any question concerning the protection of pensions provisions.

The report of the Occupational Pensions Board on the draft of these Regulations which was referred to them, together with a statement by the Secretary of State showing that these Regulations give

effect to the Board's recommendations, is contained in Command Paper No. 1407, published by Her Majesty's Stationery Office.