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STATUTORY INSTRUMENTS

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**1996 No. 1172**

**Occupational Pension Schemes  
(Contracting-out) Regulations 1996**

**PART II**

**CERTIFICATION OF EMPLOYMENTS**

**Making of elections for the issue of contracting-out certificates**

2.—(1) Subject to the provisions of regulation 10, an election with a view to the issue of a contracting-out certificate—

- (a) may only be made—
  - (i) after notices to make such an election have been given by the employer in accordance with regulation 3; and
  - (ii) within the period after the expiry of those notices which is specified in regulation 5; and
- (b) shall be made in writing to the Secretary of State and shall include the particulars specified in regulation 6.

(2) An employer may elect that the employment of earners in an employment shall be contracted-out by reference to a scheme in relation to all earners in that employment with the exception of those mentioned in either or both of sub-paragraphs (a) and (b), namely—

- (a) where an earner in an employment to which the scheme relates opts in writing not to join or, as the case may be, not to remain as a member of any contracted-out employment to which the scheme relates, any earner who so opts; and
- (b) in a case where it is possible for one or more earners to be unable to complete 5 years' service in that employment as members of that scheme before reaching the normal pension age of that scheme, the earner or earners whose length of service (consisting of service in that employment as a member of that scheme, or linked qualifying service in relation to such service, or both) falls short of a minimum length of service (not exceeding 5 years) specified in the rules of the scheme and who cannot (so far as is known when the contracting-out certificate is issued, or if later in the case of a particular earner, when he enters the employment) complete such a minimum length of service before reaching the normal pension age of the scheme.

**Notices by employers of intended election.**

3.—(1) A notice of intention to make an election with a view to the issue of a contracting-out certificate shall be given by the employer, in the manner specified in paragraph (3), to—

- (a) the earners in respect of whose employment the election is proposed to be made, and those (if any) in that employment in relation to whom the employer is not electing that the employment shall be treated as contracted-out;

- (b) the trustees and administrator of the scheme to which the election is to relate;
  - (c) where there is a policy of insurance or annuity contract as a means of securing the protected rights, guaranteed minimum pensions or any benefits arising in respect of section 9(2B) rights to be payable under the scheme, the insurance company or Friendly Society concerned; and
  - (d) all independent trade unions recognised in relation to the earners concerned.
- (2) Notices given under this regulation shall be in writing and shall—
- (a) specify the scheme and the employments concerned and, if the election is not intended to be in relation to all earners in those employments, the categories or descriptions of the earners to be so affected;
  - (b) specify the date from which it is intended that the contracting-out certificate shall have effect;
  - (c) describe (whether or not by reference to another document) the benefits payable under the scheme to, and the contributions (if any) payable to the scheme by, the earners to be covered by the election, and the changes (if any) which would be made to those benefits and contributions if the employment were contracted-out;
  - (d) specify the date of expiry of the notice in accordance with paragraphs (4) and (5);
  - (e) specify the name and business address of the person to whom representations may be made with respect to the matters included in the notice;
  - (f) contain a statement that—
    - (i) such representations may also be made to the Secretary of State,
    - (ii) the Secretary of State may defer his determination to enable the election to be further considered in the light of representations made by or on behalf of the persons to whom the notice is given,
    - (iii) the Secretary of State has power to refuse to give effect to the election if he is not satisfied that the employer has undertaken consultations about the matters covered by the notice with all independent trade unions recognised in relation to the earners concerned; and
  - (g) explain (whether or not by reference to another document)—
    - (i) whether the employment would be contracted-out by reference to a salary-related or money purchase contracted-out scheme and how benefits would accrue to a member under the scheme if the employment were contracted-out,
    - (ii) how, if the employment were contracted-out, the additional pensions of State retirement pensions and widows' and widowers' benefits payable to or in respect of the earners in that employment under the Contributions and Benefits Act, and the rates at which contributions payable by those earners under Part I of that Act, would be affected,
    - (iii) where further information about the scheme, State retirement pensions and the benefits mentioned in sub-paragraph (ii) can be obtained.
- (3) A notice under this regulation shall be given—
- (a) to any earner concerned by—
    - (i) sending or delivering it to him, or
    - (ii) exhibiting it conspicuously at the place of work or employment so that it may be read conveniently by him and by drawing his attention to it in writing;
  - (b) to any other person, by sending or delivering it to that person.

(4) Subject to paragraph (5), a notice may specify a date of expiry which is not earlier than the date one month after that on which the notice is given.

(5) If any independent trade union recognised in relation to the earners concerned does not assent to the period of notice specified in accordance with paragraph (4), a notice must specify a date of expiry which is not earlier than the date 3 months after that on which the notice is given.

#### **Consultation with trade unions.**

4.—(1) An employer who has given a notice under regulation 3 shall undertake consultations, if he has not already done so, about the matters covered by the notice with all independent trade unions recognised in relation to the earners concerned.

(2) Any question whether an organisation is an independent trade union recognised in relation to earners may be referred by the employer of those earners, or by the organisation, to an industrial tribunal.

(3) Any question whether an employer has complied with the requirements as to consultations specified in paragraph (1) may be referred by the employer, or by an independent trade union recognised in relation to the earners concerned, to an industrial tribunal.

#### **Time for making an election.**

5. An election may be made only after the date of expiry of the notice given under regulation 3 and within 3 months of that date (or such longer period as the Secretary of State may in his discretion allow), but nothing in this regulation shall prevent an election from being made after the giving of further notices which comply with the requirements of that regulation.

#### **Information to be included in an election.**

6.—(1) An election shall include the following particulars—

- (a) the name and address of the employer;
- (b) the name by which the scheme to which the election relates is known;
- (c) a description of the employments to which the contracting-out certificate is intended to relate and, if the certificate is not intended to be in relation to all earners in those employments, the categories or descriptions of the earners intended to be included in the certificate;
- (d) the date from which it is desired that the certificate shall have effect;
- (e) the names and addresses of the trustees and administrator of the scheme to which the election relates; and
- (f) the persons to whom notices were given under regulation 3(1) (b), (c) and (d).

(2) The employer shall also confirm in writing—

- (a) that he has, in accordance with regulation 3(1), given the earners mentioned in regulation 3(1)(a) notice of the intention to make the election; and
- (b) how that notice was given and its date of expiry;
- (c) that the scheme is not one which is excluded from contracting-out under these Regulations;
- (d) unless the scheme is one to which regulation 27 applies (modification applying to public service pension schemes), that the restrictions imposed under section 40 of the 1995 Act (restrictions on employer-related investments) apply to the scheme and the scheme complies with those restrictions;

- (e) in the case of a scheme to which section 47 of the 1995 Act (professional advisers) applies, that the scheme complies with the requirement, under subsection (1)(b) of that section, to have an actuary;
  - (f) in the case of a trust scheme—
    - (i) that any fund manager to whom any discretion to make any decisions about investments has been delegated in accordance with section 34 of the 1995 Act (power of investment and delegation) is capable of giving proper advice within the meaning of section 36(6) of that Act;
    - (ii) that the requirements of section 49 of the 1995 Act (other responsibilities of trustees, employers, etc.) and any regulations made under that provision to keep any money received by the trustees in a separate account and to keep proper books and records are complied with;
  - (g) in the case of a scheme to which section 56 of the 1995 Act (minimum funding requirement) applies, that the requirements of sections 57(1) and (2) and 58 of that Act and any regulations made under those provisions to obtain actuarial valuations and certificates are complied with.
- (3) In the case of a scheme which is electing to contract out under section 9(2) of the 1993 Act<sup>(1)</sup> (salary-related contracted-out scheme) the employer shall also provide—
- (a) unless the scheme is one to which regulation 18(2) applies (public service pension scheme), written confirmation or evidence that the actuary is satisfied that the resources of the scheme are sufficient to meet the requirement prescribed in regulation 18 (requirement as to resources of the scheme) or, as the case may be, the transitional requirements as to resources prescribed in regulations 72 and 73; and
  - (b) a certificate signed by the actuary that the scheme satisfies the statutory standard in relation to any earner's service after the principal appointed day in accordance with section 12A of the 1993 Act<sup>(2)</sup>.
- (4) In the case of a scheme which is electing to contract out under section 9(3) of the 1993 Act<sup>(3)</sup> (money purchase contracted-out scheme) the employer shall also provide confirmation in writing—
- (a) that he will comply with obligations concerning minimum payments in accordance with section 8(1)(a)(ii) of the 1993 Act and regulations made under sections 8(3) and 9(3) of that Act, and
  - (b) that the requirements of regulation 30(1) (b) and (c) are satisfied.

#### **Amendment of an election.**

7. An employer may amend his election at any time before the issue of a contracting-out certificate if the amendment does not alter the categories or descriptions of the earners to which the election relates.

#### **Issue of contracting-out certificates.**

8.—(1) Subject to the provisions of this regulation, when the Secretary of State has determined that an employment should be treated, either in relation to all earners in it or in relation to any specified category or description of earners, as contracted-out employment, he shall issue and send to the employer concerned a contracting-out certificate.

- (2) The contracting-out certificate shall specify—

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(1) Section 9(2) was substituted by section 136(3) of the Pensions Act 1995.

(2) Sections 12A to 12D were inserted by section 136(5) of the Pensions Act 1995.

(3) Section 9(3) was amended by section 136(4) of the Pensions Act 1995.

- (a) the name and address of the employer;
- (b) the name of the scheme by reference to which that employment is to be so treated;
- (c) the employments to which the certificate relates or, if the contracting-out certificate does not relate to all earners in those employments, the categories or descriptions of the earners to whom it relates; and
- (d) the date from which the certificate is to have effect, which may, where the Secretary of State considers it appropriate, be earlier than the date on which the certificate is issued provided that the scheme satisfied any contracting-out conditions or requirements which apply to the scheme from the date from which the certificate is to have effect.

**Making of elections by employers for the variation or surrender of contracting-out certificates.**

9.—(1) Subject to the provisions of paragraphs (2) and (3) and regulation 10, an election with a view to the variation or surrender of a contracting-out certificate may only be made—

- (a) after notices of intention to make such an election have been given by the employer in accordance with paragraphs (4) and (5), and
- (b) within the period after the expiry of those notices which is specified in paragraph (7),

and shall be made in writing to the Secretary of State.

(2) Where a proposed variation is a change—

- (a) in the name of the employer;
- (b) in the address of the employer; or
- (c) in the name of the scheme,

an election with a view to the variation of a certificate shall be made in writing to the Secretary of State within 3 months of the event to which the election relates or such longer period as the Secretary of State may in his discretion allow and may be made without compliance with paragraphs (1) and (4) to (7).

(3) In addition to the cases described in paragraph (2), in such cases as the Secretary of State may approve, where a proposed variation would not alter—

- (a) the categories or descriptions of the earners affected by the certificate; or
- (b) in the case of a money purchase contracted-out scheme, the protected rights under, or in the case of any other scheme, the benefits provided by the scheme; or
- (c) the contributions (if any) payable by those earners to the scheme,

an election with a view to the variation of a certificate shall be made in writing to the Secretary of State within 3 months of the event to which the election relates or such longer period as the Secretary of State may in his discretion allow and may be made without compliance with paragraphs (1) and (4) to (7).

(4) Notices of intention to make an election with a view to the variation or surrender of a contracting-out certificate shall be given within 3 months of the event to which the election relates, or such longer period as the Secretary of State may in his discretion allow, to the persons referred to in regulation 3(1)(a) to (d) in the manner mentioned in regulation 3(3).

(5) Notices given under this regulation shall be given in writing and shall—

- (a) specify the scheme and the employments concerned and, if the election is not intended to be in relation to all earners in those employments, the categories or descriptions of the earners to be so affected;
- (b) specify the date from which it is intended that the variation or surrender is to have effect;

- (c) specify the date of expiry of the notice in accordance with paragraphs (4) and (5) of regulation 3;
- (d) specify the name and business address of the person to whom representations may be made with respect to the matters included in the notice;
- (e) contain a statement that—
  - (i) such representations may also be made to the Secretary of State,
  - (ii) the Secretary of State may defer his determination to enable the election to be further considered in the light of representations made by or on behalf of persons to whom the notice is given, and
  - (iii) the Secretary of State has power to refuse to give effect to the election if he is not satisfied that the employer has undertaken consultations about the matters covered by the notice with all independent trade unions recognised in relation to the earners concerned;
- (f) explain (whether or not by reference to another document) how, if the proposed variation or surrender took place, the additional pensions of State retirement pensions and widows' benefits payable to or in respect of the earners concerned under the Contributions and Benefits Act, and the rates at which contributions payable by those earners under Part I of that Act, would be affected; and
- (g) describe (whether or not by reference to another document) any changes which would be made to the benefits provided under, and the contributions (if any) payable by the earners concerned to, the scheme if the proposed variation or surrender took place.

(6) 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 in relation to the earners concerned and any question whether an employer has complied with this requirement may be referred to an industrial tribunal.

(7) An election under this regulation may only be made after the date of the expiry of the notice given in accordance with paragraphs (4) and (5) and within 3 months of that date (or such longer period as the Secretary of State may in his discretion allow), so however that nothing in this paragraph shall prevent an election from being made after the giving of further notices which comply with the requirements of this regulation.

(8) An employer may amend his election under this regulation at any time before the variation or surrender of the certificate if the amendment does not alter the categories or descriptions of the earners affected by the certificate.

**Special provision with regard to elections for the issue, variation or surrender of certificates where the employment remains contracted-out.**

**10.—**(1) Subject to regulation 71 (elections for replacement certificates by salary-related schemes during transitional period) and to the provisions of this regulation, where in the case of an election with a view to the issue, variation or as the case may be, surrender of a contracting-out certificate the Secretary of State is satisfied, that—

- (a) any earner in respect of whose employment the election relates will continue to qualify for pensions which satisfy section 9(2) of the 1993 Act, or for protected rights, as the case may be, under the scheme when the election takes effect;
- (b) the accrued rights to pensions which satisfy section 9(2) of the 1993 Act or to protected rights, as the case may be, of that earner under that scheme, will be unaffected; and
- (c) the employment of the earner will continue to be contracted-out employment by reference to that same scheme,

then that election shall be made in writing to the Secretary of State and may be made without compliance with regulations 2(1), 4 and 5 and paragraphs (1) and (4) to (7) of regulation 9.

(2) Where, in accordance with paragraph (1), an election is made without compliance with the said provisions, the employer must give a notice in the manner mentioned in regulation 3(3) to—

- (a) the earners to whose employment the election relates; and
- (b) the persons referred to in regulation 3(1)(b) to (d).

(3) Notices given under paragraph (2) shall specify—

- (a) the name of the scheme;
- (b) the reason for the election;
- (c) the date from when the change is to have effect; and
- (d) the reasons why the election is being made without compliance with regulations 2(1), 4 and 5 and paragraphs (1) and (4) to (7) of regulation 9.

### **Special circumstances in which the Secretary of State may determine earners to have been in contracted-out employment**

**11.** Where an earner has been employed in an employment during a period in which employment of that description was contracted-out but such employment was not (apart from this regulation) contracted-out in relation to him, and the Secretary of State is satisfied—

- (a) that it was not contracted-out in relation to him solely because he was not during that period a member of the relevant scheme; and
- (b) that he was not during that period a member of that scheme solely because of inadvertence,

he may determine that that earner was in contracted-out employment by reference to that scheme during that period.

### **Special provision for holding companies and subsidiaries**

**12.—**(1) This regulation applies to cases where—

- (a) earners employed in employments under different employers qualify by virtue of their respective service in those employments for the benefits of the same scheme; and
- (b) each of the employers in the scheme is either—
  - (i) one of a group of companies consisting of a holding company and one or more subsidiaries, or
  - (ii) one of a group of employers who are associated employers within the meaning of section 590A(3) and (4) of the Taxes Act(4), or
  - (iii) one of a group of employers who are associated by a common interest.

(2) In this regulation the expression—

- (a) “associated by a common interest” means employers who share either management, shareholders, employees or business operations in common;
- (b) “holding company” means a body corporate which is either—
  - (i) a holding company within the meaning of section 736 of the Companies Act 1985(5),
  - or

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(4) Section 590A was inserted by section 75 of the Finance Act 1989 and paragraphs 1, 4 and 18(2) of Part I of Schedule 6 to that Act.

(5) 1985 c. 6.

- (ii) an employer who controls an associated employer within the meaning of section 590A(3) and (4) of the Taxes Act, or
  - (iii) an employer who is the principal employer for the purposes of the scheme in accordance with the scheme rules or the employer who has power to act on behalf of all employers in the scheme in relation to the scheme rules;
- (c) “subsidiary” means an employer in the scheme which is either—
- (i) a subsidiary within the meaning of section 736 of the Companies Act 1985, or
  - (ii) an employer controlled by an associated employer within the meaning of section 590A(3) and (4) of the Taxes Act, or
  - (iii) an employer subject to the rules of the scheme.

(3) In a case to which this regulation applies, any notice which is required or authorised to be given under these Regulations shall, subject to paragraph (4), be treated as properly given if given by the holding company on behalf of any of its subsidiaries, and where this is done the holding company shall, subject to paragraphs (4) and (5), be treated as the employer of the earners for the purposes of sections 7(1)(a), (2) and (7), 11 and 34(1)(a)(6), (2) and (8) of the 1993 Act and of any regulations made thereunder.

(4) The duty of an employer to undertake the consultations mentioned in regulations 3(2)(f)(iii), 4 and 9(5)(e)(iii) and (6) shall be carried out by each subsidiary in respect of the earners employed by it, unless all the independent trade unions recognised in relation to those earners have signified in writing to the holding company that they agree that those consultations may be conducted on the subsidiary’s behalf by the holding company.

(5) The Secretary of State may refuse to give effect to an election made by a holding company if he is not satisfied either that each subsidiary has undertaken those consultations in respect of the earners employed by it, or that the holding company has undertaken them with the agreement of those trade unions.

#### **Special provision for public service pension schemes.**

13.—(1) This regulation applies to cases where earners in employments under different employers qualify by virtue of their respective service in those employments for the benefits of the same public service pension scheme.

(2) In a case to which this regulation applies, any notice which is required or authorised to be given under these Regulations shall be treated as properly given if given either by the Secretary of State or by the Minister of the Crown having responsibility for the scheme and where this is done the Secretary of State or that Minister, as the case may be, shall be treated as the employer of the earners for the purposes of sections 7(1)(a), (2) and (7), 11 and 34(1)(a), (2) and (8) of the 1993 Act and of any regulations made thereunder.

#### **Special provision for holders of pensionable judicial office.**

14. In respect of earners who are holders of pensionable judicial office, any notice which is required or authorised to be given under these Regulations shall be treated as properly given if given either by the Lord Chancellor or by the Secretary of State and where this is done the Lord Chancellor or the Secretary of State, as the case may be, shall be treated as the employer of the earners for the purposes of sections 7(1)(a), (2) and (7), 11 and 34(1)(a), (2) and (8) of the 1993 Act and of any regulations made thereunder.

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(6) Section 34(1)(a) was substituted by paragraph 37 of Schedule 5 to the Pensions Act 1995.



**Further information and change of circumstances.**

15. An employer who makes an election with a view to the issue of a contracting-out certificate or an employer to whom such a certificate has been issued, shall furnish to the Secretary of State such reports, accounts and other documents and information relating to the scheme as the Secretary of State requires, and, in particular, shall notify the Secretary of State of any such change of circumstances affecting the scheme as he may have required the employer to notify as soon as practicable after its occurrence.

**Requirement to confirm relevant requirements are satisfied.**

16.—(1) An employer to whom a contracting-out certificate has been issued (including any certificate which has been surrendered or cancelled) shall, on such occasions and at such times as the Secretary of State may require, provide written confirmation and such other evidence as the Secretary of State may require—

- (a) in the case of a scheme contracted-out under section 9(2) of the 1993 Act (salary-related contracted-out scheme)—
  - (i) that the scheme is not one which is excluded from contracting-out under these Regulations, and
  - (ii) that section 9(2) of the 1993 Act and any regulations which apply to the scheme by reason of it being a scheme to which that provision relates are satisfied;
- (b) in the case of a scheme contracted-out under section 9(3) of the 1993 Act (money purchase contracted-out scheme)—
  - (i) that the scheme is not one which is excluded from contracting-out under these Regulations, and
  - (ii) that sections 8(1)(a)(ii) and 9(3) of the 1993 Act, and any regulations which apply to the scheme by reason of it being a scheme to which those provisions relate, are satisfied;
- (c) in the case of a scheme which has ceased to be contracted-out under section 9(2) of the 1993 Act (salary-related contracted-out scheme) and which preserves any of the rights specified in section 50(1)(a) of the 1993 Act within the scheme, that the requirements specified in regulation 45(3)(a) (approval of arrangements for salary-related schemes ceasing to be contracted-out) are satisfied;
- (d) in the case of a scheme which has ceased to be contracted-out under section 9(3) of the 1993 Act (money purchase contracted-out scheme) and which preserves any protected rights within the scheme, that the requirements specified in regulation 45(3)(b) (approval of arrangements for money purchase schemes ceasing to be contracted-out) are satisfied.

(2) In the case of a scheme which is contracted-out under section 9(2) of the 1993 Act (salary-related contracted-out scheme) the evidence to be provided to the Secretary of State referred to in paragraph (1) shall include a certificate signed by the actuary that the scheme continues to satisfy the statutory standard in accordance with section 12A of the 1993 Act.