
STATUTORY INSTRUMENTS

1996 No. 1172

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

PART VI

RESTORATION OF STATE SCHEME RIGHTS

Insolvent schemes.

49.—(1) Where paragraph 5(3B) of Schedule 2 to the 1993 Act⁽¹⁾ applies in relation to a member of a contracted-out scheme which is being wound up and the conditions set out in paragraph (3) are satisfied, the member shall be treated as if sections 46 to 48 or, as the case may be, 48A(1) of the 1993 Act⁽²⁾—

- (a) except as provided in sub-paragraph (b), did not apply; or
- (b) in a case where the cash equivalent of the member's rights is less than the amount required for restoring his state scheme rights, applied only in so far as they extinguish such part of the member's state scheme rights as, in the opinion of the Secretary of State, corresponds to that shortfall.

(2) For the purposes of paragraph 5(3B)(b) of Schedule 2 to the 1993 Act, the debt due from the trustees of the scheme to the Secretary of State shall be only such part of the amount required for restoring the member's state scheme rights as does not exceed the amount which, in the opinion of the Secretary of State, is the amount available from the resources of the scheme to meet the liability for the cash equivalent of the member's rights.

(3) The conditions referred to in paragraph (1) are that—

- (a) in the case of a money purchase contracted-out scheme, there has been a determination by the Compensation Board that the conditions set out in section 81(1) of the 1995 Act (cases where compensation provisions apply) are satisfied; and
- (b) no later than 3 months after the date on which the trustees notify the member in accordance with regulation 50, or such further period as the Secretary of State may allow in a particular case, the Secretary of State has received from—
 - (i) the member; or
 - (ii) where the Secretary of State is satisfied that the member cannot be traced, the trustees,

a written application for the member's state scheme rights to be restored in accordance with this regulation.

(4) For the purposes of this regulation and paragraph 5(3A) to (3D) of Schedule 2 to the 1993 Act—

- (a) the cash equivalent of a member's rights under a scheme shall be determined—

(1) Sub-paragraphs (3A) to (3E) were inserted in paragraph 5 of Schedule 2 by section 141(2) of the Pensions Act 1995.

(2) Section 48A was inserted by section 140 of the Pensions Act 1995.

- (i) in the case of a scheme to which section 56 of the 1995 Act applies (minimum funding requirement) as if the requirements of subsection (1) of that section were satisfied; or
 - (ii) in the case of a money purchase scheme, as if there had been no reduction in the value of its assets attributable to an act or omission constituting a prescribed offence for the purposes of section 81(1)(c) of that Act;
 - (b) the extent (if any) to which the resources of the scheme are insufficient to meet that cash equivalent shall be determined—
 - (i) on the assumption that those resources include any payment to the trustees under the compensation provisions; and
 - (ii) where section 73 of the 1995 Act (preferential liabilities on winding up) applies, in accordance with the requirements of that section;
 - (c) the amount required for restoring the member's state scheme rights shall be an amount determined in accordance with regulations made under paragraph 5(3C)(c) of Schedule 2 to the 1993 Act.
- (5) In this regulation “Compensation Board” and “compensation provisions” have the same meaning as in section 124 of the 1995 Act.

Member to be informed of the option to restore state scheme rights.

50. Where the Secretary of State has advised the trustees of a scheme that he is of the opinion that the conditions referred to in paragraph 5(3A) of Schedule 2 to the 1993 Act are satisfied in respect of any member, the trustees must inform the member in writing of that fact—

- (a) when they give notice of any proposal to discharge a liability of the scheme in respect of the member in accordance with regulations under section 74 of the 1995 Act (discharge of liabilities by insurance etc.) or under sections 32A of the 1993 Act⁽³⁾ (discharge of protected rights on winding up: insurance policies);
- (b) if no notice is given by the trustees in accordance with sub-paragraph (a), when the member is advised of any other option available to discharge a liability of the scheme in respect of him.

Election to pay a contributions equivalent premium

51.—(2) For the purposes of section 55(2) of the 1993 Act⁽⁴⁾ (which provides for the prescribed person to elect to pay a contributions equivalent premium on termination of certified status) the prescribed person is the trustees of the scheme.

(2) The obligation under section 57(2) of the 1993 Act (not to discriminate between different earners when making or abstaining from making elections to pay contributions equivalent premiums) shall not apply to—

- (a) cases where an earner's rights are transferred in accordance with regulations under section 20 (transfer of accrued rights) or under section 12C (transfer, commutation etc.) of the 1993 Act⁽⁵⁾;
- (b) married women and widows who, by virtue of regulations under section 19(4) and (5) of the Contributions and Benefits Act, have elected to pay contributions under that Act at a reduced rate;

⁽³⁾ Section 32A was inserted by section 146 of the Pensions Act 1995.

⁽⁴⁾ Section 55(2) was substituted by section 141(1) of the Pensions Act 1995.

⁽⁵⁾ Section 12C was inserted by section 136(5) of the Pensions Act 1995.

- (c) cases where, on the death of an earner, there arises an entitlement to a widow's or widower's pension which comprises amounts of pension which have accrued by reference to the earner's service in employment which was not contracted-out and to his service in employment which was contracted-out;
- (d) cases where the earner has completed less than two years qualifying service for the purposes of Chapter I of Part IV of the 1993 Act (preservation) but where, nevertheless, he is entitled under the rules of the scheme to elect, and he has elected, that his accrued rights shall be preserved; and
- (e) cases where an earner's accrued rights to guaranteed minimum pensions are appropriately secured within the meaning of section 19 of the 1993 Act (discharge of liability for guaranteed minimum pensions) or where any liability to provide pensions to that earner has been discharged in accordance with regulations under section 12C of that Act,

but in respect of any of the classes of case mentioned in this paragraph an employer shall not discriminate between different earners falling within the same class of case.

(3) An election under section 55(2) of the 1993 Act shall be notified to the Secretary of State in writing in such form as he may reasonably require for the purpose of identifying the earner to whom the election relates. Such notification shall be given—

- (a) where the circumstances specified in section 55(2A)(d) of the 1993 Act⁽⁶⁾ apply (the scheme is wound up), within two years of the cessation of the scheme; or
- (b) where the circumstances specified in section 55(2A)(a) to (c) or (e) apply, within the period beginning one month before, and ending 6 months after, the date on which the person ceases to serve in employment which is contracted-out employment by reference to the scheme.

(4) The Secretary of State may, in any particular case or class of case, extend the periods mentioned in paragraph (3) for the making of an election to pay a contributions equivalent premium if it appears to him that the circumstances are such that an election could not reasonably be made within the specified period.

Payment of a contributions equivalent premium.

52.—(1) A contributions equivalent premium which the trustees have elected to pay shall be paid on or before whichever is the later of the following days—

- (a) the day 6 months after the date of termination of contracted-out employment in respect of which the premium is payable; or
- (b) the day one month after the day on which the Secretary of State sends to the trustees a notice certifying the amount of the premium payable.

(2) Where the amount of any contributions equivalent premium which is payable does not exceed £17, the trustees shall not be liable to pay it and, accordingly, if it is not paid, it shall be treated as paid for the purposes of section 60 (effect of payment of premium on rights) and section 48A(2) (additional pension and other benefits) of the 1993 Act.

(3) Any liability for a contributions equivalent premium shall be a liability to make payment out of the resources of the scheme.

(6) Section 55(2A) was inserted by section 141(1) of the Pensions Act 1995.

Payment in lieu of benefit and delay in refund for the purposes of employer's right of recovery.

53.—(1) For the purposes of section 61(10) of the 1993 Act (payments in lieu of benefit) a payment in lieu of benefit shall include a payment made or to be made out of the resources of the scheme towards the provision of deferred benefits for the earner.

(2) Where on the coming to an end of an employed earner's service in contracted-out employment, he (or, by virtue of a connection with him, any other person) is or may be entitled to a refund of any payments made under a contracted-out scheme by or in respect of him towards the provision of benefits under the scheme, the following provisions of this regulation shall apply for the purpose of enabling any right of recovery conferred by section 61 of the 1993 Act(7) to be exercised.

(3) Where in such a case a contributions equivalent premium falls to be paid in respect of the earner under the 1993 Act, the person liable for the refund shall not, after he has been given notice in accordance with paragraph (5) ("notice of delay"), make the refund in whole or in part until the expiration of the period of delay specified in paragraph (4), but this paragraph shall not apply to so much, if any, of the refund as exceeds the amount certified by the Secretary of State under section 63(1)(d) of the 1993 Act.

(4) The period of delay referred to in paragraph (3) shall be the period beginning with the notice of delay and ending with the expiration of 4 weeks after the payment of the contributions equivalent premium or any part of it, or 4 weeks after the end of the prescribed period for the payment of that premium, whichever first occurs.

(5) A notice of delay shall be a notice in writing given by the trustees of the scheme concerned relating either to a particular case or class of case and containing the following particulars—

- (a) the name of the earner or such particulars as will sufficiently identify the class of case concerned;
- (b) such particulars as will sufficiently identify the refund or refunds concerned; and
- (c) a memorandum in a form approved by the Secretary of State giving brief particulars of the effect of paragraphs (3) and (4).

(6) Where the trustees of a scheme have given notice of delay they shall from time to time inform any person to whom they have given notice of the ending of the period of delay in relation to any refund affected by the notice.

Refund of a contributions equivalent premium.

54.—(1) The Secretary of State shall refund a contributions equivalent premium if—

- (a) it was paid in error; or
- (b) he is satisfied that the employment to which it relates will be linked with another employment in the circumstances set out in regulation 43(2) and (3); or
- (c) he is satisfied that the earner in respect of whom it was paid has entered into employment which is contracted-out employment by reference to the same contracted-out scheme as that by which the employment to which it relates was contracted-out employment, and that for the purpose of calculating the earner's accrued rights under the scheme the two employments will be linked; or
- (d) he is satisfied that a transfer of the earner's accrued rights will be made in accordance with regulations under section 20 (transfer of accrued rights) or under section 12C (transfer, commutation etc.) of the 1993 Act; or

(7) Section 61 was amended by paragraph 55 of Schedule 5 to the Pensions Act 1995.

- (e) the scheme is one under which a member may qualify for benefits by virtue of service either in employed earner's employment or as a self-employed earner (within the meaning of section 2 of the Contributions and Benefits Act) or both and he is satisfied that the earner in respect of whom that premium was paid has completed a period of membership of the scheme as a self-employed earner which, when aggregated with his service in employed earner's employment, amounts to not less than two years,

and, where a contributions equivalent premium is refunded under the provisions of this paragraph the earner's accrued rights under the scheme, which were extinguished by payment of the premium, shall be restored.

(2) A refund under paragraph (1) shall only be made if application is made in writing, in such form as the Secretary of State may reasonably require for the purpose.

(3) In paragraph (1)(a) "error" means an error which—

- (a) is made at the time of payment; and
- (b) relates to some present or past matter.

(4) Where—

- (a) an earner has been employed concurrently in two or more contracted-out employments, on the termination of one or more of which, a contributions equivalent premium has been paid; and
- (b) the aggregate amount of any such payments has the effect that the National Insurance Fund has gained, by reference to any employment in respect of which such a payment has been made, a greater amount than it would have gained from Class 1 contributions under the Contributions and Benefits Act if those employments had not been contracted out,

there shall be paid out of the National Insurance Fund to the earner (or his estate) an amount which bears the same proportion to the amount of the excess as the reduction under paragraph (a) of subsection (1A) of section 41 of the 1993 Act⁽⁸⁾, in the normal percentage of primary Class 1 contributions bears to the total reduction under that subsection in the total normal percentage of Class 1 contributions.

(5) The Secretary of State shall refund a contributions equivalent premium if he is satisfied that—

- (a) where it was paid in the circumstances mentioned in section 55(2A)(a), (b), (d) or (e) of the 1993 Act, the person in respect of whom it was paid has died, without leaving a widow or widower, on or before the later of the days first mentioned in sub-paragraphs (a) and (b) respectively of regulation 52(1); or
- (b) where it was paid in the circumstances mentioned in paragraph (2A)(c) of that section, there are no accrued rights to guaranteed minimum pensions or section 9(2B) rights under the scheme in question in respect of the widow or widower in question.

⁽⁸⁾ Section 41(1A) was inserted by section 137(2) of the Pensions Act 1995.