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STATUTORY INSTRUMENTS

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**1997 No. 3038**

**PENSIONS**

**The Personal and Occupational Pension Schemes  
(Miscellaneous Amendments) (No. 2) Regulations 1997**

*Made* - - - - *18th December 1997*  
*22nd December*  
*Laid before Parliament* *1997*  
*Coming into force* - - *12th January 1998*

The Secretary of State for Social Security, in exercise of the powers conferred by sections 6(3), 7(2A), 42A(3), 44(1), 113, 181(1) and (4) and 182(2) and (3) of the Pension Schemes Act 1993<sup>(1)</sup> and sections 21(4) to (6), 23(3)(c), 41(6), 47(6), 56(2)(b), 61, 75(5), 124(1) and 174(2) and (3) of the Pensions Act 1995<sup>(2)</sup> and of all other powers enabling her in that behalf, having consulted such persons as she considers appropriate<sup>(3)</sup>, hereby makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Personal and Occupational Pension Schemes (Miscellaneous Amendments) (No. 2) Regulations 1997 and shall come into force on 12th January 1998.

**Amendment of the Occupational Pension Schemes (Contracting-out) Regulations 1996**

2. In regulation 76A(4) of the Occupational Pension Schemes (Contracting-out) Regulations 1996<sup>(4)</sup> (transitional arrangements for schemes contracted-out under section 9(2) of the Pension Schemes Act 1993 to become contracted-out under section 9(3) of that Act) omit the words “or 31st January 1998, if it is earlier”.

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(1) 1993 c. 48. Section 7(2A) was inserted by section 136(1) of the Pensions Act 1995, section 42A was inserted by section 137(5) of that Act and section 44(1) was amended by section 164(a) of that Act. Section 181(1) is cited for the meaning given to “prescribed” and “regulations”.

(2) 1995 c. 26. Section 124(1) is cited for the meaning given to “prescribed” and “regulations”.

(3) See section 185(1) of the Pension Schemes Act 1993, which was amended by paragraph 46 of Schedule 3 and paragraph 80 of Schedule 5 to the Pensions Act 1995, and section 120(1) of the Pensions Act 1995.

(4) S.I.1996/1172. Regulation 76A was inserted by S.I. 1996/1577 and paragraph (4) of that regulation was substituted by S.I. 1997/786.

### **Amendment of the Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations 1996**

3. In regulation 18 of the Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations 1996(5) (aggregation of linked schemes) omit the words “or regulation 5(2)”.

### **Amendment of the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996**

4.—(1) The Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996(6) shall have effect with the following amendments.

(2) In regulation 28(1) (exemptions from minimum funding requirement)—

(a) at the end of sub-paragraph (g) omit the word “or”;

(b) at the end of sub-paragraph (h) add—

“; or

(i) to the Chatsworth Settlement Estate Pension Scheme.”.

(3) In regulation 28(3) omit the words “at an applicable time (as defined in subsection (3) of that section)”.

(4) After regulation 28(3) insert—

“(3A) Paragraph (3) shall apply in the case of a debt which has arisen under section 144 of the Pension Schemes Act 1993(7) (deficiencies in the assets of a scheme on winding up) as if it were a debt arising under section 75.”.

(5) In regulation 29 (modifications) after paragraph (d) add—

“(e) schemes which are exempt from the requirement to appoint an actuary.”.

(6) In Schedule 5 (modifications) after paragraph 6 add—

“Schemes which are not required to appoint an actuary

7. Where a scheme is exempt from the application of section 47(1)(b) (requirement to appoint a scheme actuary) by virtue of regulations made under subsection (5) of that section(8), sections 56 to 60 and these Regulations shall apply as if references to the actuary were to an actuary authorised by the trustees or managers to provide such valuations or certifications as may be required under those sections and these Regulations.”.

### **Amendment of the Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations 1996**

5. In regulation 2(2) of the Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations 1996(9) (interpretation), before the definition of “the applicable time” insert—

““the actuary” means the actuary appointed for the scheme in pursuance of section 47(1)(b) or, in the case of a scheme to which that provision does not apply by virtue of regulations made under subsection (5) of that section, an actuary otherwise authorised by the trustees or managers to provide such valuations or certifications as may be required under these Regulations;”.

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(5) S.I. [1996/1216](#); a relevant amending instrument is S.I. [1997/786](#), which amended regulation 5 by omitting paragraph (2).

(6) S.I. [1996/1536](#); a relevant amending instrument is S.I. [1997/786](#).

(7) Section 144 was repealed by paragraph 38 of Schedule 3 to the Pensions Act 1995 subject to the savings in S.I. [1997/664](#).

(8) See regulation 3(2) of the Occupational Pension Schemes (Scheme Administration) Regulations 1996 (S.I. [1996/1715](#)).

(9) S.I. [1996/3128](#).

### **Amendment of the Occupational Pension Schemes (Disclosure of Information) Regulations 1996**

6.—(1) The Occupational Pension Schemes (Disclosure of Information) Regulations 1996(10) shall have effect with the following amendments.

(2) In regulation 4(2) (requirement to disclose basic information about the scheme) for the words following “has not previously been given” substitute—

“to an active member or a pensioner member who was a member of the scheme on 5th April 1997, such information shall be given to that person—

- (a) in the case of a pensioner member who was a deferred member on that date, within 2 months of his becoming a pensioner member or by 5th April 1998, whichever is later;
- (b) in any other case, by 5th April 1998.”.

(3) In regulation 5(10) (information to be given to individuals on winding up) for the words “Subject to paragraph (11), when” substitute “When”(11).

### **Amendment of the Occupational Pension Schemes (Scheme Administration) Regulations 1996**

7. In regulation 5(2)(b)(i) of the Occupational Pension Schemes (Scheme Administration) Regulations 1996(12) (manner and terms of appointment and removal of professional advisers)—

(a) after the word “who—” insert—

“—is subject to rules made under section 48 of the Financial Services Act 1986(13), which impose requirements in relation to conflicts of interest, or”; and

(b) omit the words “of Chapter III”.

### **Amendment of the Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) Regulations 1996**

8. For paragraph 5 of the Schedule to the Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) Regulations 1996(14) (contents of accounts) substitute—

“5. Where the scheme has employer-related investments, within the meaning of section 40(2) of the Pensions Act 1995, a statement—

- (a) as to the percentage of the scheme’s resources invested in such investments at the end of the scheme year; and
- (b) if that percentage exceeds 5 per cent., as to the percentage of the scheme’s resources which are investments to which regulation 6 of the Occupational Pension Schemes (Investment) Regulations 1996(15) (investments to which restrictions on employer-related investments do not apply) applies.”.

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(10) S.I. 1996/1655; relevant amending instruments are S.I. 1997/786 and 1997/819.

(11) Paragraph (11) was revoked by S.I. 1997/786.

(12) S.I. 1996/1715; a relevant amending instrument is S.I. 1997/819.

(13) 1986 c. 60. See also section 50 of that Act.

(14) S.I. 1996/1975.

(15) S.I. 1996/3127. Regulation 6 was amended by S.I. 1997/819.

### **Amendment of the Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996**

**9.**—(1) The Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996<sup>(16)</sup> shall have effect with the following amendment.

(2) After regulation 1 insert—

#### **“Persons entitled to benefits to be regarded as members for the purposes of section 146(7) of the 1993 Act**

**1A.** For the purposes of section 146(7) of the 1993 Act<sup>(17)</sup> (persons who are actual or potential beneficiaries) a person shall be regarded as a member of a scheme if he is, or has been, entitled to the payment of benefits under it.”.

### **Amendment of the Occupational Pension Schemes (Independent Trustee) Regulations 1997**

**10.** In regulation 2 of the Occupational Pension Schemes (Independent Trustee) Regulations 1997<sup>(18)</sup> (additional requirement for independent trustee) for paragraph (b) substitute—

“(b) that the person is neither connected with, nor an associate of, a person who has an interest in the assets of the employer or of the scheme, otherwise than as a trustee of the scheme.”.

### **Amendment of the Register of Occupational and Personal Pension Schemes Regulations 1997**

**11.** In regulation 3(2) of the Register of Occupational and Personal Pension Schemes Regulations 1997<sup>(19)</sup> (information to be contained in the register) for sub-paragraph (i) substitute—

“(i) where scheme benefits, or any of them, are secured by a contract of insurance or annuity contract issued by an insurance company which provides administration services to the scheme, the name and address of that insurance company;”.

### **Amendment of the Personal Pension Schemes (Appropriate Schemes) Regulations 1997**

**12.** In regulation 10(2) of the Personal Pension Schemes (Appropriate Schemes) Regulations 1997<sup>(20)</sup> (notice under section 44(1) of the Pension Schemes Act 1993), after the words “6th April in the” where they first appear, insert the word “tax”.

### **Amendment of the Occupational Pension Schemes (Age-related Payments) Regulations 1997**

**13.** The Occupational Pension Schemes (Age-related Payments) Regulations 1997<sup>(21)</sup> shall have effect with the following amendments.

(2) In each of regulations 4 and 7 (age-related payments not to be paid if an earner’s age allows his admission only to a money purchase scheme)—

(a) for “If” substitute

“—

(1) Subject to paragraph (2), if”;

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<sup>(16)</sup> S.I. 1996/2475.

<sup>(17)</sup> Section 146(7) was amended by section 157(3) of the Pensions Act 1995.

<sup>(18)</sup> S.I. 1997/252.

<sup>(19)</sup> S.I. 1997/371.

<sup>(20)</sup> S.I. 1997/470.

<sup>(21)</sup> S.I. 1997/946.

(b) after paragraph (1) add—

“(2) Paragraph (1) shall not apply if—

- (a) the rules of the schemes established by the employer allow an earner to be admitted to a scheme contracted-out under section 9(2), or the salary-related part of a relevant scheme, only when the earner has reached a specified age, and
- (b) on his admission to a scheme established by the employer, the earner has not reached that age.”.

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

18th December 1997

*John Y. Denham*  
Parliamentary Under-Secretary of State,  
Department of Social Security

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## EXPLANATORY NOTE

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

These Regulations amend a number of sets of regulations related to the Pensions Act 1995.

Regulation 1 relates to citation and commencement.

Regulations 2 to 13 contain miscellaneous amendments of the following sets of regulations—

- the Occupational Pension Schemes (Contracting-out) Regulations 1996
- the Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations 1996
- the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996
- the Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations 1996
- the Occupational Pension Schemes (Disclosure of Information) Regulations 1996
- the Occupational Pension Schemes (Scheme Administration) Regulations 1996
- the Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) Regulations 1996
- the Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996
- the Occupational Pension Schemes (Independent Trustee) Regulations 1997
- the Register of Occupational and Personal Pension Schemes Regulations 1997
- the Personal Pension Schemes (Appropriate Schemes) Regulations 1997
- the Occupational Pension Schemes (Age-related Payments) Regulations 1997.

The amendments include provisions which—

- make clear the intention that a contracted-out salary-related scheme which becomes a contracted-out money purchase scheme is to remain certified whilst the administrative formalities in relation to obtaining a new contracting-out certificate are completed (regulation 2);
- provide for a further exemption from the minimum funding requirement (“the MFR rules”) (regulation 4(2));
- provide that where a debt on the employer has already arisen under the deficiency provisions before 6th April 1997, the employer will not be liable a second time for that same deficiency under the MFR rules (regulation 4(3) and (4));
- provide, in relation to schemes which are not required to appoint an actuary, as to who may give the certifications and valuations required for the purposes of the MFR rules and provisions relating to deficiency on winding up (regulation 4(5) and (6) and regulation 5);
- require trustees to provide basic scheme information to persons who were deferred members of the scheme on 5th April 1997 on their becoming pensioner members of the scheme (regulation 6);
- oblige fund managers who are subject to rules made under section 48 of the Financial Services Act 1986 to undertake to report conflicts of interest to trustees in accordance with those rules (regulation 7);

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provide for audited accounts to show how much of the scheme's assets are invested in employer-related investments and, where such investments exceed 5 per cent. of those assets, the percentage which is invested in employer-related investments to which restrictions do not apply (regulation 8);

clarify the extent of the jurisdiction of the Pensions Ombudsman (regulation 9);

remove the requirement to take account of a past interest in the assets of the scheme or of the employer in determining a person's independence for the purposes of appointment as independent trustee (regulation 10);

require trustees to provide the Registrar of Occupational and Personal Pension Schemes with the name and address of an insurer of scheme benefits where that insurer provides administration services to the scheme (regulation 11);

enable age-related payments to be paid in respect of earners who have access to salary-related pension provision with their employer only when they reach a specified age (regulation 13);

An assessment of the compliance cost for employers of the measures arising from the Pensions Act 1995, including these Regulations, has been placed in the libraries of both Houses of Parliament. Copies can be obtained by post from the Department of Social Security, Occupational Pensions Security, The Adelphi, 1–11 John Adam Street, London WC2N 6HT.