
STATUTORY INSTRUMENTS

1997 No. 785

PENSIONS

**The Occupational Pension Schemes (Assignment,
Forfeiture, Bankruptcy etc.) Regulations 1997**

<i>Made</i>	- - - -	<i>11th March 1997</i>
<i>Laid before Parliament</i>		<i>14th March 1997</i>
<i>Coming into force</i>	- -	<i>6th April 1997</i>

The Secretary of State for Social Security, in exercise of the powers conferred on him by sections 91(5), 92(3) and (6), 94(1), 124(1) and 174(2) and (3) of the Pensions Act 1995⁽¹⁾, and of all other powers enabling him in that behalf, by this instrument, after consultation with such persons as he considered appropriate⁽²⁾, hereby makes the following regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997 and shall come into force on 6th April 1997.

(2) In these Regulations—

“the 1995 Act” means the Pensions Act 1995;

“approved schemes” means an occupational pension scheme which is approved or was formerly approved under section 590 or 591 of the Income and Corporation Taxes Act 1988⁽³⁾ or in respect of which an application for such approval has been duly made which has not been determined;

“Armed Forces Pension Scheme” means the schemes under which pensions are payable by virtue of the Naval and Marine Pay and Pensions Act 1865⁽⁴⁾, Air Force (Constitution) Act 1917⁽⁵⁾ or Army Pensions Warrant 1977⁽⁶⁾;

“associated” has the same meaning as in section 435 of the Insolvency Act 1986⁽⁷⁾ or section 74 of the bankruptcy (Scotland) Act 1985⁽⁸⁾;

(1) 1995 c. 26. Section 124(1) is cited because of the meaning ascribed to “prescribed” and “regulations”.

(2) See section 120(1) of the Pensions Act 1995.

(3) 1988 c. 1.

(4) 1865 c. 73.

(5) 1917 c. 51.

(6) Dated 17th June 1977.

(7) 1986 c. 45.

(8) 1985 c. 66.

“public service pension scheme” has the same meaning as in section 1 of the Pension Schemes Act 1993⁽⁹⁾ but does not include an Armed Forces Pension Scheme.

- (3) In these Regulations, unless the context otherwise requires, a reference—
- (a) to a numbered regulation is to the regulation bearing that number in these Regulations;
 - (b) in a regulation to a numbered paragraph is to the paragraph bearing that number in that regulation;
 - (c) in a paragraph to a lettered sub-paragraph is to the sub-paragraph in that paragraph bearing that letter.

Commutation of a pension under an occupational pension scheme

2.—(1) For the purposes of section 91(5)(c)(ii) and (iii) of the 1995 Act (inalienability of occupational pension does not apply to commutation in prescribed circumstances) the prescribed circumstances are where—

- (a) either—
 - (i) the pension has become payable; or
 - (ii) the occupational pension scheme is being wound up; and
- (b) the aggregate amount of the benefit payable to the member or, as the case may be, his widow or her widower or dependant under all the schemes relating to employment with the same employer as the employment in respect of which the benefit is payable does not exceed £260 per annum.

(2) Where a member’s pension is commuted under paragraph (1)(b), any prospective widow’s or widower’s benefit payable under the scheme may also be commuted (provided that the aggregate amount of such benefit prospectively payable under all schemes relating to employment with the same employer as the employment in respect of which the benefit is payable does not exceed £260 per annum) and the value of any such widow’s or widower’s benefit shall not be taken into account for the purposes of the limit of £260 per annum mentioned in paragraph (1)(b).

(3) For the purposes of paragraph (1)(a)(ii) an occupational pension scheme shall be treated as being wound up when any of the circumstances referred to in regulation 2 of the Occupational Pension Schemes (Winding Up) Regulations 1996⁽¹⁰⁾ apply.

Charge or lien on or set-off against transfer credits

3. For the purposes of section 91(5)(d) of the 1995 Act (charge or a lien or set-off against transfer credits by employer) the prescribed transfer credits are those transfer credits attributable to employment with the same employer or an associated employer and the benefits of which could have been charged or a lien or set-off exercised in respect of such benefits under the occupational pension scheme from which the transfer was made.

Charge or lien on or set-off against an occupational pension

4. For the purposes of section 91(5)(e) of the 1995 Act (charge or lien or set-off against entitlement or accrued right to a pension for the purpose of discharging some monetary obligation to the scheme) the prescribed circumstance is where a monetary obligation arises out of a breach of trust by the person in question and the court has relieved him wholly or partly from personal liability under section 61 of the Trustee Act 1925⁽¹¹⁾ or section 32 of the Trusts (Scotland) Act 1921⁽¹²⁾.

(9) 1993 c. 48.

(10) S.I.1996/3126.

(11) 1925 c. 19.

(12) 1921 c. 58.

Payability of pension where forfeiture occurs

5. For the purposes of section 92(3)(d) of the 1995 Act (class of persons to whom a forfeited pension may be paid) the prescribed class is any person (other than a person mentioned in section 92(3)(a) to (c)) to whom, under the rules of the scheme, the pension was or could have been paid.

Forfeiture of occupational pension

6.—(1) For the purposes of section 92(6) of the 1995 Act (a pension under an occupational pension scheme cannot be forfeited except in prescribed circumstances) the prescribed circumstances are where—

- (a) a pension is payable to a member's widow or widower, dependant or any other person who is nominated under the scheme rules by the member and that person is convicted of the offence of murder or manslaughter of that member or any other offence of which unlawful killing of that member is an element;
- (b) a person in respect of whom a pension is or would have been payable has caused a monetary loss to the scheme as a result of—
 - (i) a criminal, negligent or fraudulent act or omission by him, or
 - (ii) in the case of a trust scheme of which the person is a trustee, a breach of trust by him;
- (c) in the case of a public service pension scheme—
 - (i) the member is convicted of an offence committed in connection with his service as a public servant, and
 - (ii) a Minister of the Crown certifies that the commission of that offence has been gravely injurious to the interests of the State or is liable to lead to serious loss of confidence in the public service;
- (d) in the case of the Armed Forces Pension Scheme—
 - (i) the member is convicted of an offence committed in connection with his service as a member of the Armed Forces, and
 - (ii) the Secretary of State considers that offence to have been gravely injurious to the defence, security or other interests of the State.

(2) For the purposes of paragraph (1)(a) unlawful killing shall include the case of a person who has unlawfully aided, abetted, counselled or procured the death of a person.

(3) A person's entitlement or accrued right to a pension may be forfeited under paragraph (1)(b) to the extent only that it does not exceed the amount of the monetary loss to the scheme, or (if less) the value of the person's entitlement or accrued right under the scheme.

Modification of section 91 of the 1995 Act in respect of public service pension schemes and the Armed Forces Pension Scheme

7. Section 91(5)(d) of the 1995 Act shall have effect in its application to public service pension schemes and the Armed Forces Pension Scheme with the omission of the words "and arising out of a criminal, negligent or fraudulent act or omission by him".

Exemptions from the inalienability and forfeiture provisions

8.—(1) If a scheme is one the trustees of which have made or wish to make a loan in respect of which the conditions of regulation 6(8) of the Occupational Pension Schemes (Investment)

Regulations 1996(13) are met (investments to which the restrictions do not apply), section 91(1)(b) of the 1995 Act shall not apply to the extent that it would prevent the directors' interest under the policy referred to being used as security for that loan.

(2) Section 91(1)(a) of the 1995 Act shall not apply to that part of an occupational pension scheme under which there is an entitlement or an accrued right to a lump sum retirement benefit and the Inland Revenue have granted a concession, in accordance with a statement issued on 11th October 1996(14), to a member in respect of that lump sum retirement benefit.

(3) Subject to paragraph (4), section 91(2) of the 1995 Act shall not apply in relation to schemes which are not approved schemes.

(4) Paragraph (3) shall not apply to public service pension schemes and the Armed Forces Pension Scheme.

(5) Section 92(4)(a) of the 1995 Act (forfeiture) shall not apply in relation to public service pension schemes.

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

11th March 1997

Oliver Heald
Parliamentary Under-Secretary of State,
Department of Social Security

(13) S.I. 1996/3127.

(14) A copy of the statement can be obtained from Inland Revenue Information Centre, South West Wing, Bush House, Strand, London WC2B 4RD.

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997 (“the Regulations”) are the first Regulations to be made under sections 91 to 94 of the Pensions Act 1995 (c. 26).

Regulation 1 deals with citation, commencement and interpretation.

Regulation 2 prescribes the circumstances where an occupational pension may be commuted.

Regulation 3 prescribes the type of transfer credit which may be included in a charge or lien on, or set-off in respect of, a monetary obligation due to an employer.

Regulation 4 prescribes the circumstances where a pension may not be charged or a lien exercised or a set-off exercised in respect of it, for the purpose of discharging some monetary obligation to the scheme.

Regulation 5 prescribes the class of persons to whom a forfeited pension may be paid.

Regulation 6 prescribes the circumstances where a pension under an occupational pension scheme can be forfeited.

Regulation 7 modifies section 91(5)(d) of the Pensions Act 1995 (charge or lien or set-off against entitlement in respect of a monetary obligation due to the employer) in respect of public service pension schemes and the Armed Forces Pension Scheme.

Regulation 8 provides for certain schemes to be exempt from the inalienability and forfeiture provisions.

An assessment of the compliance cost for employers of the measures arising from the Pensions Act 1995, including regulations, has been placed in the libraries of both Houses section 91(5)(d) of the Pensions Act 1995 (charge or lien or set-off against entitlement in respect of a monetary obligation due to the employer) in respect of public service pension schemes and the Armed Forces Pension Scheme.

Regulation 8 provides for certain schemes to be exempt from the inalienability and forfeiture provisions.

An assessment of the compliance cost for employers of the measures arising from the Pensions Act 1