

1997 No. 785

PENSIONS

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

Made - - - - 11th March 1997
Laid before Parliament 14th March 1997
Coming into force 6th April 1997

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(a), and of all other powers enabling him in that behalf, by this instrument, after consultation with such persons as he considered appropriate(b), 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;



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

“associated” has the same meaning as in section 435 of the Insolvency Act 1986(f) or section 74 of the Bankruptcy (Scotland) Act 1985(g);

▶¹“normal minimum pension age” has the meaning given by section 279(1) of the Finance Act 2004;

“registered scheme” means—

- (a) a scheme registered under section 153 of the Finance Act 2004;
- (b) a scheme which was formerly registered under section 153 of that Act; or
- (c) a scheme which was formerly approved under section 590 or 591 of the Income and Corporation Taxes Act 1988 immediately before 6th April 2006;◀

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

¹Defn. of “approved scheme” omitted and defn. of “normal minimum pension age” inserted by art. 14(2)(a) & (b) of S.I. 2006/744 as from 6.4.06.

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

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

(c) 1865 c. 73.

(d) 1917 c. 51.

(e) Dated 17th June 1977.

(f) 1986 c. 45.

(g) 1985 c. 66.

(h) 1993 c. 48.

(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

¹Reg. 2(1) substituted & para. (1B) inserted by art. 14(3)(a) & (b) of S.I. 2006/744 as from 6.4.06.

2.—¹(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) any amount payable as a lump sum to—
 - (i) the earner is permitted by the lump sum rule in section 166 of the Finance Act 2004 and qualifies as a trivial commutation lump sum for the purposes of paragraph 7 of Part 1 of Schedule 29 to that Act; or
 - (ii) the earner's widow, widower or surviving civil partner is permitted by the lump sum death benefit rule in section 168 of that Act and qualifies as a trivial commutation lump sum death benefit for the purposes of paragraph 20 of Part 2 of Schedule 29 to that Act; or
- ▶²(iii) the earner or the earner's widow, widower or surviving civil partner is a payment
 - (aa) by a registered pension scheme (within the meaning given in section 150(2) of the Finance Act 2004 (meaning of "pension scheme")); and
 - (bb) that is described in Part 2 of the Registered Pension Schemes (authorised payments) Regulations 2009; or
- (b) the scheme is being wound up and the aggregate amount of all benefits payable as a lump sum to—
 - (i) the earner is permitted by the lump sum rule in section 166 of that Act and qualifies as a winding-up lump sum for the purposes of paragraph 10 of Part 1 of Schedule 29 to that Act; or
 - (ii) the earner's widow, widower or surviving civil partner is permitted by the lump sum death benefit rule in section 168 of that Act and qualifies as a winding-up lump sum death benefit for the purposes of paragraph 21 of Part 2 of Schedule 29 to that Act. ◀

²Reg. 2(1)(a)(iii) inserted by reg. 7 of S.I. 2009/2930 as from 1.12.09.

▶³(1A) There are also prescribed for the purposes of section 91(5)(c)(iii) of the 1995 Act the circumstances where—

- (a) the rights of the member consist only of rights derived from equivalent pension benefits under Part III of the National Insurance Act 1965(a); and
- (b) either—
 - (i) the member has consented to the commutation; or
 - (ii) he has not consented but the conditions in paragraph (4) are satisfied. ◀

▶¹(1B) There are also prescribed for the purposes of—

- (a) section 91(5)(c)(ii) of the 1995 Act the circumstances where the payment of a lump sum to a person is permitted in accordance with any of paragraphs (a) to (e) of the lump sum death benefit rule in section 168 of the Finance Act 2004 (lump sum death benefit rule);
- (b) section 91(5)(c)(iii) of the 1995 Act the circumstances where a person has reached normal minimum pension age but has not retired from the employment of the employer in relation to the scheme, the payment of a lump sum to the person is permitted in accordance with paragraph (a) or (g) of the lump sum rule in section 166 of the Finance Act 2004 (lump sum rule). ◀

³Para. (1A) substituted in reg. 2 by reg. 6(2)(a) of S.I. 2006/778 as from 6.4.06.

(a) 1965 c. 51.

▶¹◀

(3) For the purposes of ▶¹paragraph (1)(b)◀ an occupational pension scheme shall be treated as being wound up when any of the circumstances referred to in ▶²section 124(3A) and (3B) of the 1995 Act apply (but subject to section 124(3C) and (3E).◀

▶³(4) For the purposes of paragraph (1A)(b)(ii), the conditions are that—

- (a) the trustees or managers of the scheme have sent to the member's last known address written notice of their intention to commute his rights derived from equivalent pension benefits under Part III of the National Insurance Act 1965; and
- (b) no response has been received from the member before the end of the period of two months beginning with the date on which the notice was sent.◀

¹Reg. 2(2) and words in para. (3) omitted by art. 14(3)(c) & (d) of S.I. 2006/744 as from 6.4.06.

²Words in para. 2(3) substituted by reg. 12 of Sch. 1 to S.I. 2005/706 as from 6.4.05.

³Para. (4) inserted in reg. 2 by reg. 6(2)(b) of S.I. 2006/778 as from 6.4.06.

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(a) or section 32 of the Trusts (Scotland) Act 1921(b).

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 ▶⁴widow, widower or surviving civil partner◀ 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—

⁴Words substituted in reg. 6(1)(a) by para. 7(3) of Sch. 2 to S.I. 2005/2877 as from 5.12.05.

(a) 1925 c. 19.

(b) 1921 c. 58.

- (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

¹Words deleted & amended in reg. 8(1) and para 8(1A) inserted by reg. 3(2)(a) to (c) and 3(3) of S.I. 1999/1849 as from 9.8.99.

8.—(1) If a scheme is one the trustees of which have made ►¹◀ a loan in respect of which the conditions of regulation 6(8) of the Occupational Pension Schemes (Investment) Regulations 1996(a) are met (investments to which the restrictions do not apply), section ►¹91(1)◀ of the 1995 Act shall not apply to the extent that it would ►¹prevent enforcement of the security referred to in sub-paragraph (b) of that regulation 6(8).◀

►¹(1A) If a scheme is one the trustees of which have given or wish to give security in respect of which the conditions of regulation 6(8A) of the Occupational Pension Schemes (Investment) Regulations 1996 are met (investments to which restrictions do not apply), section 91(1) of the 1995 Act shall not apply to the extent that it would prevent that security being given or enforced.◀

(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(b), 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 ►²registered◀ 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.

►²(6) Section 91(1)(a) of the 1995 Act (inalienability of occupational pension) shall not apply to a scheme to the extent that it would prevent the making of any arrangement to effect a surrender of excess rights, at the option of the person in question, for the purposes of paragraph 12 of Schedule 36 to the Finance Act 2004 (pension schemes etc: transitional provisions and savings).◀

►³(7) Section 91(1)(a) of the 1995 Act (inalienability of occupational pension) does not apply to a scheme where—

- (a) the scheme administrator satisfies any part of a person's liability to the annual allowance charge under section 237A of the Finance Act 2004(c) (liability of individual) at the request of that person, to the extent that it would prevent

(a) S.I. 1996/3127.

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

(c) 2004 c. 12. Sections 237A to 237F of the Finance Act 2004 were inserted by section 66 of, and paragraph 15 of Schedule 17 to, the Finance Act 2011 (c. 11).

²Words substituted in reg. 8(3) and para. (6) added by art. 14(4)(a) & (b) of S.I. 2006/744 as from 6.4.06.

³Reg. 8(7) & (8) inserted by reg. 2 of S.I. 2011/1801 as from 11.8.11.

an adjustment to that person's benefits under the scheme as a consequence of the scheme administrator satisfying that liability, or

- (b) the scheme administrator satisfies a liability under section 237B of the Finance Act 2004 (liability of scheme administrator) in respect of a person, to the extent that it would prevent a consequential adjustment to that person's benefits under the scheme under section 237E(1) of that Act (consequential benefit adjustments to be reasonable etc).

(8) In paragraph (7)–

“annual allowance charge” has the meaning given in section 227(1) of the Finance Act 2004 (annual allowance charge), and

“scheme administrator” has the meaning given in section 270 of the Finance Act 2004 (meaning of “scheme administrator”).◀

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

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 of Parliament. Copies can be obtained by post from the Department of Social Security, Occupational Pensions Security, Adelphi, 1-11 John Adam Street, London WC2 6HT.