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STATUTORY INSTRUMENTS

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**2015 No. 1677**

**The Occupational Pension Schemes (Schemes that  
were Contracted-out) (No.2) Regulations 2015**

**PART 4**

**ADDITIONAL REQUIREMENTS IN RELATION  
TO GUARANTEED MINIMUM PENSIONS**

**Alteration of scheme rules**

**20.** The rules of a scheme may be altered in relation to a guaranteed minimum under section 14(1) (earner's guaranteed minimum) or 17(2) (minimum pensions for widows and widowers) of the 1993 Act only if the alteration would not—

- (a) affect any of the matters dealt with in Part III of the 1993 Act (schemes that were contracted-out etc. and effects on members' state scheme rights), or any regulations made under that Part, that relate to guaranteed minimum pensions, in a manner that would or might adversely affect any entitlement or accrued rights of any member of the scheme acquired before the alteration takes effect;
- (b) affect any of the matters dealt with in sections 87 to 92 of the 1993 Act(3) (protection of increases in guaranteed minimum pensions) or sections 109 and 110 of that Act(4) (annual increases of guaranteed minimum pensions) or any matters dealt with in regulations made under any of those provisions.

**Circumstances for the purposes of section 17(6) of the 1993 Act in which widower's, widow's or surviving civil partner's guaranteed minimum pension is payable**

**21.—(1)** In addition to providing for a widower's, widow's or surviving civil partner's pension to be payable in the circumstances specified in section 17(4A) of the 1993 Act(5), a scheme that was a salary related contracted-out scheme is to make provision for such a pension to be payable if—

- (a) the widower, widow or surviving civil partner and the earner were both over pensionable age when the earner died;

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(1) Section 14 is amended by paragraph 15 of Schedule 13 to the 2014 Act, and was amended by paragraph 27 of Schedule 5 to the 1995 Act, paragraph 38 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 and paragraphs 1, 22(1) and (3) of Schedule 11 to the Proceeds of Crime Act 2002 (c.29).

(2) Section 17 is amended by paragraph 17 of Schedule 13 to the 2014 Act, and was amended by paragraph 39 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999, paragraph 1 of Schedule 5 to the Child Support, Pensions and Social Security Act 2000, section 284(2) of the 2004 Act, S.I. 2005/2050, section 14(2) of the Pensions Act 2007, paragraphs 18 and 20 of Schedule 4 to the Marriage (Same Sex Couples) Act 2013 and S.I. 2014/560.

(3) Section 87 was amended by paragraph 28 of Schedule 4 to the Pensions Act 2007 and is amended by paragraph 38 of Schedule 13 to the 2014 Act. Other amendments to sections 87 to 92 are made by S.I. 2005/2050.

(4) Section 109(3A) is amended by paragraph 40 of Schedule 13 to the 2014 Act. Subsection (3A) was inserted by section 55(b) of the 1995 Act. Sections 109 and 110 were also amended by sections 53(4), 55 and 56 of the 1995 Act and by S.I. 2005/2050.

(5) Paragraph (4A) of section 17 was inserted by paragraph 1(1) of Schedule 5 to the Child Support, Pensions and Social Security Act 2000 and amended by S.I. 2005/2050, S.I. 2014/560 and S.I. 2014/3229.

- (b) the widower, widow or surviving civil partner is either residing with a child, or is entitled to child benefit in respect of a child, who is—
  - (i) a child of the widower, widow or surviving civil partner and the earner;
  - (ii) a child in respect of whom the earner was, immediately before the earner's death, entitled to child benefit, or would have been so entitled, if the child had not been absent from Great Britain; or
  - (iii) if the widower, widow or surviving civil partner and the earner were residing together immediately before the earner's death, a child in respect of whom the widower, widow or surviving civil partner was, at that time, entitled to child benefit, or would have been so entitled, if the child had not been absent from Great Britain; or
- (c) the widower, widow or surviving civil partner attained the age of 45—
  - (i) before the earner died; or
  - (ii) during a period when the circumstances mentioned in sub-paragraph (b) existed.

(2) For the purposes of this regulation “child benefit” has the same meaning as in the Contributions and Benefits Act<sup>(6)</sup>.

**Period for the purposes of section 17(6) of the 1993 Act for which widower's, widow's or surviving civil partner's guaranteed minimum pension is payable**

22.—(1) Where a pension is payable by virtue of regulation 21(1)(a), the scheme is to make provision for the pension to be payable for the remainder of the widower's, widow's or surviving civil partner's life.

(2) Subject to paragraph (4), where a pension is payable by virtue of regulation 21(1)(b) but not by virtue of regulation 21(1)(a) or (c), the scheme is to make provision for the pension to be payable for the period during which the circumstances described in regulation 21(1)(b) continue to exist.

(3) Subject to paragraph (4), where a pension is payable by virtue of regulation 21(1)(c), but not by virtue of regulation 21(1)(a), the scheme is to make provision for the pension to be payable for the remainder of the widower's, widow's or surviving civil partner's life.

(4) Subject to paragraph (5), there is excluded from the periods prescribed by paragraphs (2) and (3) any period—

- (a) after the widower or widow has remarried whilst under pensionable age, or the surviving civil partner has married whilst under that age;
- (b) after the formation of a civil partnership by the widower or widow whilst under pensionable age, or the formation of a subsequent civil partnership by the surviving civil partner whilst under that age;
- (c) during which the widower, widow or surviving civil partner is under pensionable age and he or she and another person are living together as a married couple;
- (d) after the widower, widow or surviving civil partner has attained pensionable age if, immediately before he or she attained that age, he or she and another person were living together as a married couple.

(5) The following provisions do not apply where a man became a widower before 5th December 2005—

- (a) paragraph (4)(a) so far as it relates to a marriage or remarriage involving two people of the same sex;
- (b) paragraph (4)(b); and

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<sup>(6)</sup> See section 141.

- (c) paragraphs (4)(c) and (4)(d) so far as they relate to the living together of two people of the same sex.

### **Fixed rate revaluation of guaranteed minimum pensions secured by insurance policies or annuity contracts**

**23.** A scheme may make provision by virtue of section 16(2) of the 1993 Act<sup>(7)</sup> (revaluation of earnings factors for the purposes of section 14: early leavers etc.) for those of its members whose guaranteed minimum pensions are, or are to be, appropriately secured (within the meaning of section 19(3) of the 1993 Act), even though the same provision is not made for other members of the scheme.

### **Fixed rate revaluation of guaranteed minimum pensions for early leavers**

**24.—**(1) This regulation applies where a scheme provides, in accordance with section 16(2) of the 1993 Act (as substituted by paragraph 16 of Schedule 13 to the Pensions Act 2014), for a person's earnings factors to be determined for the purposes of section 14(2) of the 1993 Act by reference to the last order to come into force under section 148 of the Social Security Administration Act 1992<sup>(8)</sup> before the end of the last service tax year.

(2) Subject to paragraph (3), in a case to which this regulation applies, the scheme is to provide for the weekly equivalent mentioned in section 14(2) of the 1993<sup>(9)</sup> Act to be increased by at least 4.75 per cent compound in relation to the period of service in respect of which accrued rights to a guaranteed minimum pension have been acquired under, or transferred to, the scheme, where the period of pensionable service under the scheme terminates on or after 6th April 2016.

(3) The scheme may make provision which is different to that made by virtue of paragraph (2) with respect to—

- (a) members whose rights to guaranteed minimum pensions under the scheme arise in respect of a transfer or transfer payment made in accordance with section 20(1) of the 1993 Act<sup>(10)</sup> or regulations made under that provision;
- (b) members whose guaranteed minimum pensions are, or are to be, appropriately secured within the meaning of section 19(3) of the 1993 Act.

### **Payment of a lump sum instead of a pension**

**25.—**(1) The scheme may provide for the payment of a lump sum instead of a pension that the scheme is required to provide in accordance with section 13<sup>(11)</sup> or 17 of the 1993 Act if—

- (a) a guaranteed minimum pension has become payable (but see also paragraph (3)); and
- (b) the payment of a lump sum is authorised under section 164 of the Finance Act and the payment fulfils the conditions in paragraph (2).

(2) The conditions are that the payment is—

- (a) permitted by the lump sum rule in section 166 of the Finance Act and qualifies as—

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(7) Section 16(2) is substituted by paragraph 16 of Schedule 13 to the 2014 Act. Section 16(2) is saved for certain purposes by [S.I. 2015/1502](#).

(8) [1992 c.5](#). Section 148 was amended by paragraph 27 of Schedule 8 to the 1993 Act, and section 37 of the Child Support, Pensions and Social Security Act 2000.

(9) Section 14(2) is amended by paragraph 15 of Schedule 13 to the 2014 Act.

(10) Section 20(1) is amended by paragraph 18 of Schedule 13 to the 2014 Act, and was amended by paragraph 2 of Schedule 5 to the Child Support, Pensions and Social Security Act 2000.

(11) Section 13 is amended by paragraph 14 of Schedule 13 to the 2014 Act, and was amended by section 14 of the Pensions Act 2007.

- (i) a trivial commutation lump sum for the purposes of paragraph 7 of Schedule 29 to that Act; or
  - (ii) a winding-up lump sum for the purposes of paragraph 10 of that Schedule;
  - (b) permitted by the lump sum death benefit rule in section 168 of the Finance Act and qualifies as a trivial commutation lump sum death benefit for the purposes of paragraph 20 of Schedule 29 to that Act; or
  - (c) made by a registered pension scheme (within the meaning of section 150(2) of the Finance Act), is a payment that is described in Part 2 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 and is made to or in respect of a member.
- (3) The condition in paragraph (1)(a) does not apply in cases where—
- (a) the scheme is being wound up or an earner retires before pensionable age;
  - (b) a premium under section 55(2) of the 1993 Act (contributions equivalent premium) has been paid or treated as paid or the scheme has made the provision mentioned in section 16(2) and (3)(12) of the 1993 Act; and
  - (c) the conditions in paragraph (4) are met.
- (4) The conditions are—
- (a) the aggregate amount of the benefits that have accrued to the earner at the date of winding-up or, as the case may be, of the earner's retirement, increased—
    - (i) in accordance with section 16(2) and (3) of the 1993 Act; or
    - (ii) in a case where section 16(2) and (3) applies, to the amount that would have been payable at pensionable age,
 is to be treated as the amount of benefits currently payable to the earner under the scheme;
  - (b) in the case of an earner who retires before normal pension age, commutation is not permitted before the date on which benefits become payable to the earner under the scheme's early retirement provisions;
  - (c) in cases where the earner is a member of more than one scheme relating to the same employment, all those schemes are being wound up or, as the case may be, the earner is treated by all those schemes as having retired and, in each case, all those schemes have paid a contributions equivalent premium or have made the provisions mentioned in section 16(2) and (3) of the 1993 Act.
- (5) Subject to paragraph (6), the scheme may provide for the payment of a lump sum instead of a pension that the scheme is required to provide in accordance with section 13 or 17 of the 1993 Act if the payment—
- (a) is authorised under section 164 of the Finance Act;
  - (b) is permitted by the lump sum rule in section 166 of that Act; and
  - (c) qualifies as a serious ill-health lump sum for the purposes of paragraph 4 of Schedule 29 to that Act.
- (6) Where—
- (a) under the scheme, an earner qualifies for a lump sum payment on the ground of serious ill-health; and
  - (b) the scheme also provides for the payment of a guaranteed minimum pension to the widow, widower or surviving civil partner of the earner ("a survivor's pension"),

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(12) Section 16(3) was amended by paragraph 28(a) of Schedule 5 to the 1995 Act.

the scheme is to continue to include provision for a survivor's pension notwithstanding the payment of a lump sum to the earner.

### **Suspension and forfeiture of guaranteed minimum pension**

**26.**—(1) The scheme may provide for an earner's or an earner's widow's, widower's or surviving civil partner's guaranteed minimum pension to be suspended if—

- (a) the person entitled to payments giving effect to those rights ("the pensioner") is, in the opinion of the trustees of the scheme, unable to act by reason of mental disorder, and there is provision in the scheme that requires that, in those circumstances, sums equivalent to the guaranteed minimum pension—
  - (i) must be paid or applied for the maintenance of the pensioner, except in so far as they are not, in the opinion of the trustees, required for that purpose;
  - (ii) may, in so far as they are not in the opinion of the trustees required for the maintenance of the pensioner, be paid or applied for the maintenance of any dependants of the pensioner;
  - (iii) must, in so far as such sums are not in the opinion of the trustees required for the maintenance of the pensioner or of any dependant of the pensioner, be held by the trustees for the pensioner until the pensioner is again able to act, or if the pensioner dies before that happens, for the pensioner's estate;
- (b) the pensioner is in prison or detained in legal custody and there is provision in the scheme for sums equivalent to the guaranteed minimum pension to be paid or applied during such circumstances for the maintenance of such one or more of the pensioner's dependants as the trustees of the scheme may in their discretion determine;
- (c) the earner is re-employed by the employer by whom the earner was previously employed in contracted-out employment in respect of which the guaranteed minimum pension became payable and there is provision in the scheme for the guaranteed minimum pension that becomes payable when the suspension is lifted to be increased in accordance with section 15(1) of the 1993 Act.

(2) The scheme may provide for an earner's or an earner's widow's, widower's or surviving civil partner's guaranteed minimum pension (whether current or prospective) to be forfeited if—

- (a) the person entitled to that pension has been convicted of—
  - (i) an offence of treason; or
  - (ii) one or more offences under the Official Secrets Acts 1911 to 1989<sup>(13)</sup> for which the person has been sentenced on the same occasion to a term of imprisonment of, or to two or more consecutive terms amounting in aggregate to, at least ten years;
- (b) in the case of a widow's, widower's or surviving civil partner's guaranteed minimum pension, the earner by reference to whose contracted-out employment that pension is payable has been convicted of an offence of treason, or has been convicted of an offence or offences and has been sentenced to a term or terms of imprisonment as set out in subparagraph (a)(ii);
- (c) in the case of a guaranteed minimum pension payable under a scheme for members of Her Majesty's forces, being a scheme for which the Secretary of State is responsible, the person entitled to that pension or, as the case may be, the member of the forces whose widow, widower or surviving civil partner is currently or prospectively entitled to that pension has, in the opinion of the Secretary of State, committed an act which is gravely prejudicial to the defence, security or other interests of the State;

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<sup>(13)</sup> 1911 c.28; 1920 (c.75); 1939 (c.121); 1989 (c.6).

- (d) in the case of any payment of guaranteed minimum pension for which a claim has not been made, a period of at least eight years has elapsed from the date on which that payment became due;
  - (e) in the case of a widow's, widower's or surviving civil partner's guaranteed minimum pension, that person is convicted of the offence of murder or manslaughter of the earner by reference to whose contracted-out employment that pension is payable, or any other offence of which unlawful killing of that member is an element.
- (3) For the purposes of paragraph (2)(e), "unlawful killing" includes unlawfully aiding, abetting, counselling or procuring the death of a person.

### **Conversion into other benefits: actuarial equivalence**

27.—(1) For the purposes of Condition 1 of section 24B of the 1993 Act<sup>(14)</sup> (the conversion conditions), actuarial equivalence is to be determined in accordance with this regulation.

- (2) The trustees are responsible for determining actuarial equivalence.
- (3) In determining actuarial equivalence, the trustees must—
  - (a) obtain advice from the actuary appointed for the scheme in accordance with section 47(1)(b) of the 1995 Act ("the actuary") about what assumptions are appropriate at the conversion date;
  - (b) consider that advice;
  - (c) decide what assumptions are appropriate at the conversion date and, if the trustees later think it is necessary, change that decision; and
  - (d) arrange for the actuary to calculate the actuarial values of the post-conversion benefits and the pre-conversion benefits in accordance with paragraph (4).
- (4) In calculating the actuarial values mentioned in paragraph (3)(d), the actuary must—
  - (a) use the assumptions chosen by the trustees under paragraph (3)(c); and
  - (b) ignore the value of any—
    - (i) benefits that have been commuted;
    - (ii) amounts that have been paid in respect of any benefits;
    - (iii) amounts in respect of any benefits that, before the conversion date, became due to be paid; and
    - (iv) discretionary benefits that might be awarded in the future.
- (5) When the actuarial values mentioned in paragraph (3)(d) have been calculated, the actuary must send the trustees a certificate if the post-conversion benefits are actuarially at least equivalent to the pre-conversion benefits.
- (6) The certificate is to—
  - (a) state that—
    - (i) the calculations have been completed; and
    - (ii) the post-conversion benefits are actuarially at least equivalent to the pre-conversion benefits; and
  - (b) be sent to the trustees no later than three months after the calculations have been completed.

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<sup>(14)</sup> Section 24B was inserted by section 14 of the Pensions Act 2007.