

1997 No. 470

PENSIONS

The Personal Pension Schemes (Appropriate Schemes)
Regulations 1997

Made - - - - 25th February 1997
Laid before Parliament 4th March 1997
Coming into force 6th April 1997

The Secretary of State for Social Security, in exercise of the powers conferred upon him by sections 7(1), (6) and (7), 9, 26, 34(1), (2) and (8), 43(1) and (3), 44(1) and (2), 45(3), 45B, 155, 181(1), 182(3) and (4), and 183(1) of the Pensions Schemes Act 1993(a) and of all other powers enabling him in that behalf, after agreement with the Occupational Pensions Board that certain proposals embodied in these Regulations need not be referred to them, by this instrument, which otherwise contains regulations made for the purpose of consolidating regulations revoked herein(b), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Personal Pension Schemes (Appropriate Schemes) Regulations 1997 and shall come into force on 6th April 1997.

(2) In these Regulations—

“the 1993 Act” means the Pension Schemes Act 1993;

➤¹◀

➤²◀

➤³◀

➤²◀

“overseas scheme” means an occupational pension scheme which is administered wholly or primarily outside the United Kingdom but does not include one which is contracted-out within the meaning of section 7(3) of the 1993 Act nor one to which section 53(c) of the 1993 Act applies;

“pensionable age” has the meaning given by the rules in paragraph 1 of Part I of Schedule 4 to the Pensions Act 1995; and

➤²◀

“tax week” has the same meaning as in section 181(1) of the 1993 Act.

➤²◀

¹Defn. of “administrators” omitted by reg. 10(2) of S.I. 2011/1245 as from 6.4.12.

²Defns. of “deposit-taker”, “EEA state”, “friendly society”, “Home state regulator”, “open-ended investment company”, “recognised scheme”, “UCITS” and “unit trust scheme” omitted by reg. 3(2) of S.I. 2008/1979 as from 1.10.08.

³Defn. of “investment business” revoked by art. 550(2) of S.I. 2001/3649 as from 1.12.01.

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- (a) 1993 c. 48 as amended by Part III of the Pensions Act 1995 (c. 26). Section 181(1) is cited because of the meaning ascribed to “prescribed” and “regulations”.
- (b) See section 185(1), (2) and (6) of the Pension Schemes Act 1993 (c. 48) and section 173(1)(b) of the Administration Act 1992 (c. 5), under which the requirement to consult does not apply where regulations are made only for the purpose of consolidating other regulations revoked by them or which are where the Occupational Pensions Board agrees that regulations need not be referred to them.
- (c) Section 7 was amended by section 136(1) of, and paragraph 22 of Schedule 5 to, the Pensions Act 1995. Section 53 was amended by paragraph 48 of Schedule 5 to the Pensions Act 1995.

PERSONAL PENSION SCHEMES (APPROPRIATE SCHEMES) REGULATIONS 1997

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

¹Regs. 2, 4-11 revoked by reg. 10(3)(a)-(j) of S.I. 2011/1245 as from 6.4.12.

²Reg. 3 omitted by reg. 3(4) of S.I. 2008/1979 as from 1.10.08.

2. ▶¹◀

3. ▶²◀

4.-11. ▶¹◀

Circumstances in which minimum contributions are not to be paid

12.—(1) Minimum contributions shall not be paid in respect of an earner for the tax year or any part of the tax year in which that earner—

- (a) reaches pensionable age; or
- (b) dies and in which he would have reached pensionable age.

³Reg. 12(1A) inserted and words added to paras. (2), (3) & (4) by art. 17(2)(a)-(d) of S.I. 2011/1246 as from 6.4.12.

▶³(1A) Subject to paragraph (2), where the earner is no longer a member of the earner's chosen scheme, minimum contributions in respect of that earner shall be paid—

- (a) to the trustees or managers of the earner's chosen scheme, if the earner has become a member of another scheme, and the earner's chosen scheme is able to transfer the payment to that other scheme,
- (b) to the trustees or managers of another scheme of which the earner is a member, if known to HMRC, or
- (c) in all other circumstances, to the earner.◀

(2) Where effect has been given to the earner's protected rights under section 28 of the 1993 Act(a) (ways of giving effect to protect rights) ▶³as it had effect prior to the abolition date◀, minimum contributions shall not, except as provided by paragraphs (3) to (9) be paid in respect of the period during which the scheme was the earner's chosen scheme.

(3) Where effect has been given to the earner's protected rights by the making of a transfer payment to another appropriate scheme which has become the earner's chosen scheme or a money purchase contracted-out scheme, the minimum contributions shall be paid to the trustees or managers of that scheme▶³, except where the earner is no longer a member of that scheme, in which case the minimum contributions shall instead be paid to the earner◀.

(4) Where effect has been given to the earner's protected rights by the making of a transfer payment to a salary-related scheme or an overseas scheme and the Secretary of State becomes aware, as a consequence of evidence in respect of the earner's age being brought to his attention, that an additional amount of minimum contributions would have been payable had he been aware of that evidence, that additional amount of minimum contributions shall be paid to the trustees or managers of that scheme▶³, except where the earner is no longer a member of that scheme, in which case the additional amount of minimum contributions shall instead be paid to the earner◀.

(5) Where effect has been given to the earner's protected rights by the purchase of an annuity or by the provision by the scheme of a pension, and the amount of the minimum contributions in question is at least 10 times as great as the lower earnings limit for the tax year in which the Secretary of State becomes aware that minimum contributions are payable or would be payable, but for paragraph (2), those minimum contributions shall be paid (in the case of an annuity) to the insurance company from which the annuity has been purchased or (in the case of a pension) to the trustees or managers of the scheme.

(a) Section 28 was amended by section 142 and 146(2) of the Pensions Act 1995.

(6) Where effect has been given to the earner's protected rights by the purchase of an annuity or by the provision by the scheme of a pension and—

- (a) the circumstances in paragraph (5) do not exist; and
- (b) minimum contributions are payable for the tax year or part of the tax year in which the earner died,

those minimum contributions shall be paid to the earner's ►¹widow, widower, or surviving civil partner,◀ or if the earner died unmarried ►²and was not a civil partner at the time of his or her death,◀ they may at the Secretary of State's discretion be paid to any person.

¹Words substituted in reg. 12(6), (7) & (8) by para. 37 to Sch. 2 of S.I. 2005/2050 as from 5.12.05.

²Words substituted in reg. 12(6), (7) & (8) by reg. 3 of S.I. 2005/3164 as from 5.12.05.

(7) Where effect has been given to the earner's protected rights by the purchase of an annuity or by provision by the scheme of a pension and—

- (a) the circumstances in paragraph (5) do not exist; and
- (b) the Secretary of State becomes aware, as a consequence of evidence in respect of the earner's age being brought to his attention, that an additional amount of minimum contributions would have been payable had he been aware of that evidence,

that additional amount of minimum contributions shall be payable for any tax year before or part of a tax year before effect has been given to protected rights to the earner or the earner's ►¹widow, widower, or surviving civil partner,◀ or if the earner died unmarried ►²and was not a civil partner at the time of his or her death,◀ they may at the Secretary of State's discretion be paid to any person.

(8) Where effect has been given to the earner's protected rights by the provision of a lump sum, minimum contributions shall be payable to the earner or the earner's ►¹widow, widower, or surviving civil partner,◀ or if the earner died, ►²and was not a civil partner at the time of his or her death,◀ they may at the Secretary of State's discretion be paid to any person.

(9) Where effect has been given to the earner's protected rights by the making of payments under an interim arrangement, minimum contributions shall continue to be payable to the trustees or managers of the earner's chosen scheme.

Manner of payment of minimum contributions

13. Minimum contributions shall be paid—

- (a) by automated credit transfer into a bank or building society account which relates to the relevant scheme and which accepts payments made by automated credit transfer; or
- (b) in such other manner as the Secretary of State may in his discretion approve.

14. ►³◀

³Reg. 14 revoked by reg. 10(3)(k) of S.I. 2011/1245 as from 6.4.12.

Calculation or estimation of earnings

15.—(1) In relation to any tax year, the earnings of an earner shall be calculated or estimated, for the purposes of section 45(1) of the 1993 Act, on the basis mentioned in this regulation.

(2) In paragraph (3)—

- “eligible tax week” means any tax week in any part of which the earner in question is at least 16 years of age and in no part of which he is over pensionable age; and
- “ineligible tax week” means any tax week which is not an eligible tax week.

(3) In relation to any eligible tax week in a tax year the earnings of an earner shall be taken to be the amount calculated or estimated in accordance with paragraph (4) divided by the number of eligible tax weeks in that tax year, and in relation to any ineligible tax week they shall be taken to be nil.

**PERSONAL PENSION SCHEMES (APPROPRIATE SCHEMES) REGULATIONS
1997**

(4) The formula to be applied shall be the formula set out in paragraph (5)(a) or, if it produces a smaller value for X, the formula set out in paragraph (5)(b), so however, that if the formula set out in paragraph (5)(a) produces a negative value for X, or if the value of P is nil, the value of X shall be taken to be nil.

(5) The formulae mentioned in paragraph (4) are—

- (a) $X = P + R - S - 52L$; and
- (b) $X = 53U - 52L$.

(6) In paragraph (7)—

- (a) “primary Class 1 contributions” does not include contributions which the earner, being a married woman or widow, is liable to make at a reduced rate in accordance with an election which she has made and which is still operative; and
- (b) the reference to contributions as having been paid includes the case of contributions which are treated as having been paid under regulation 39 of the Social Security (Contributions) Regulations 1979(a) but does not include the case of contributions which are treated as not paid under regulation 38(1) and (2)(a) of those Regulations.

(7) In this regulation—

- (a) L is the lower earnings limit for the tax year in question;
- (b) P is the total earnings, in so far as the earnings for each week did not exceed U, paid to or for the benefit of the earner in relation to the tax year in question, in relation to which primary Class 1 contributions have been paid with respect to employments that are not contracted-out;
- (c) R is the total earnings, in so far as the earnings for each week did not exceed U, paid to or for the benefit of the earner in relation to the tax year in question, in relation to which primary Class 1 contributions have been paid with respect to employments that are contracted-out;
- (d) S is the total earnings, in so far as the earnings for each week equalled or exceeded L but did not exceed U, paid to or for the benefit of the earner in relation to the tax year in question, in relation to which primary Class 1 contributions have been paid with respect to employments that are contracted-out; and
- (e) U is the upper ¹accrual point¹ for the tax year in question.

¹Words substituted in reg. 15(7)(e) by reg. 10 of S.I. 2009/615 as from 6.4.09.

Calculation of minimum contributions

16.—(1) For the purposes of determining the appropriate age related percentage for the purposes of section 45(1) of the 1993 Act(b), the Secretary of State may require an earner to send documentary evidence of his date of birth.

(2) For the purposes of section 45B(2) of the 1993 Act(c) (information held as to the age to be disclosed by the Secretary of State to trustees or managers of an appropriate personal pension scheme and such other persons as may be prescribed) the prescribed person shall be the person who is responsible for administering the scheme.

Adjustment of amount of minimum contributions

17. Where the amount of minimum contributions payable in respect of an earner in relation to a tax year would otherwise not be whole number of pence, it shall be adjusted to the nearest whole number of pence, and any amount of half penny or less shall be disregarded.

(a) S.I. 1979/591; relevant amendments are S.I. 1984/77, 1987/413 and 2111, 1992/669, 1993/2094, 1994/1553 and 1995/829.

(b) Section 45(1) is amended by section 138(2) of the Pensions Act 1995.

(c) Section 45B was inserted by section 139 of the Pensions Act 1995.

18. ▶¹◀

¹Reg. 18 omitted by reg. 3(7) of S.I. 2008/1979 as from 1.10.08.

Transitional provision in respect of earnings

19. For the purposes of paying minimum contributions in respect of an employed earner for any period of up to and including the tax year 1996-1997, regulations 16 and 17 of the Personal Pension Schemes (Appropriate Schemes) Regulations 1988(a) shall continue to have effect as if regulation 15 of these Regulations had not come into force.

Reproduced below are regs. 16 & 17 of S.I. 1988/137 for use with reg. 19 above.

Claim for the purpose of section 3(1)(b) of the Act

16. For the purpose of ▶²section 3(1)(b) of the Social Security Act 1986◀ £1.00 shall be substituted for 2 per cent. of the earnings referred to in ▶²section 45(1) of the Act◀ if 2 per cent. of those earnings is less than £1.00 and the earner or his widow or her widower, or the administrators of the relevant scheme in respect of whom the minimum contributions are to be paid, applies or apply in writing in such form as the Secretary of State may in his discretion accept.

²Words in reg. 16 substituted by para. 21(8) of Sch. 2 to S.I. 1994/1062 as from 12.5.94.

Calculation or estimation of earnings

17.—(1) In relation to any tax year, the earnings of an earner shall be calculated or estimated, for the purposes mentioned in this regulation, on the bases mentioned in this regulation.

(2) In paragraph (3)—

“eligible tax week” means any tax week in any part of which the earner in question is at least 16 years of age, and in no part of which he is over pensionable age, and (for the purposes of ▶³section 3(1)(b) of the Social Security Act 1986, but not section 45(1)◀ of the Act) which is not a week for which he is entitled to a Class 1 credit, by virtue of regulation 9 of the Social Security (Credits) Regulations 1975(b), by reason of unemployment; and “ineligible tax week” means any tax week which is not an eligible tax week.

³Words in reg. 17(2) substituted by para. 21(9)(a) of Sch. 2 to S.I. 1994/1062 as from 12.5.94.

(3) In relation to any eligible tax week in a tax year the earnings of an earner shall be taken to be the amount calculated or estimated in accordance with paragraph (1) divided by the number of eligible tax weeks in that tax year, and in relation to any ineligible tax week they shall be taken to be nil.

(4) For the purposes of ▶⁴section 45(1) and (2)◀ of the Act, the formula set out in paragraph (5)(a), or, if it produces a smaller value for X, the formula set out in paragraph (5)(b), shall be applied, so however that if the formula set out in paragraph (5)(a) produces a negative value for X, or if the value of P is nil, the value of X shall be taken to be nil.

⁴Words in reg. 17(4) & (6) substituted by para. 21(9)(b) & (c) of Sch. 2 to S.I. 1994/1062 as from 12.5.94.

(5) The formulae mentioned in paragraph (4) are—

- (a) $X = P + R - S - 52L$; and
- (b) $X = 53U - 52L$.

(6) For the purposes of ▶⁴section 3(1)(b) of the Social Security Act 1986◀, the formula set out in paragraph (7)(a), or, if it produces a smaller value for X, the formula set out in paragraph (7)(b), shall be applied, so however that if the formula set out in paragraph (7)(a) produces a negative value for X, or if the value of P-Q is nil, the value of X shall be taken to be nil.

(7) The formulae mentioned in paragraph (6) are—

- (a) $X = P - Q + R - S - 52L$; and
- (b) $X = 53U - 52L$.

(a) S.I. 1988/137.

(b) S.I. 1975/1556; amended by S.I. 1976/1736, 1977/788, 1978/409, 1981/1501, 1982/96, 1983/197, 463, 1987/414, 687.

- (8) In paragraph (9)—
- (a) “primary Class 1 contributions” does not include contributions which the earner, being a married woman or widow, is liable to make at a reduced rate in accordance with an election which she has made and which is still operative; and
 - (b) the reference to contributions as having been paid includes the case of contributions which are treated as having been paid under regulation 39 of the Social Security (Contributions) Regulations 1979(a) but does not include the case of contributions which are treated as not paid under regulation 38(1) and (2)(a) of those regulations.
- (9) In this regulation—
- (a) L is the lower earnings limit ¹ for the tax year in question;
 - (b) P is the total earnings, insofar as the earnings for each week did not exceed U, paid to or for the benefit of the earner in relation to the tax year in question, in relation to which primary Class 1 contributions have been paid with respect to employments that are not contracted-out;
 - (c) Q is that part (if any) of P which derives from employments prescribed under ¹section 3(2) of the Social Security Act 1986 (employments in respect of which incentive payments are not to be made);
 - (d) R is the total earnings, insofar as the earnings for each week did not exceed U, paid to or for the benefit of the earner in relation to the tax year in question, in relation to which primary Class 1 contributions have been paid with respect to employments that are contracted-out;
 - (e) S is the total earnings, insofar as the earnings for each week equalled or exceeded L but did not exceed U, paid to or for the benefit of the earner in relation to the tax year in question, in relation to which primary Class 1 contributions have been paid with respect to employments that are contracted-out;
 - (f) U is the upper earnings limit ¹ for the tax year in question; and
 - (g) X is so much of the earnings paid to or for the benefit of the earner with respect to any employment which is not contracted-out employment in relation to him as exceeds the lower earnings limit but does not exceed the upper earnings limit.

¹Words deleted and words substituted in reg. 17(9)(a), (c) & (f) by para. 21(7) and (9)(d) of Sch. 2 to S.I. 1994/1062 as from 12.5.94.

Revocations

20. The regulations listed in column 1 of Schedule 3 to these Regulations are revoked to the extent specified in column 3 of that Schedule.

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

25th February 1997

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

²Schs. 1 & 2 omitted by reg. 3(8) of S.I. 2008/1979 as from 1.10.08.

Schs. 1-2 ²

(a) S.I. 1979/591, to which there are amendments not relevant to these Regulations.

SCHEDULE 3

Regulation 20

REVOCATIONS

<i>Regulations Revoked</i>	<i>References</i>	<i>Extent of Revocation</i>
The Personal Pension Schemes (Appropriate Schemes) Regulations 1988	1988/137	The whole of the Regulations.
The Personal Pension Schemes (Miscellaneous Amendments) Regulations 1988	1988/830	Regulation 3.
The Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1989	1989/500	Regulation 4.
The Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1990	1990/1141	Regulation 8.
The Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 1993	1993/519	Regulation 5.
The Occupational and Personal Pension Schemes (Consequential Amendments) Regulations 1994	1994/1062	Regulation 2 and Schedule 2 paragraph 21 in so far as it relates to the Personal Pension Schemes (Appropriate Schemes) Regulations 1988.
The Occupational and Personal Pensions (Miscellaneous Amendments) Regulations 1995	1995/35	Regulation 7.
The Personal Pension Schemes (Appropriate Schemes) Amendment Regulations 1995	1995/1612	Regulation 2.
The Personal Pension Schemes (Appropriate Schemes and Disclosure of Information) (Miscellaneous Amendments) Regulations 1996	1996/1435	Regulation 2.
The Personal and Occupational Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1996	1996/776	Regulation 6.

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Personal Pension Schemes (Appropriate Schemes) Regulations 1997 (“the Regulations”) consolidate the Personal Pension Schemes (Appropriate Schemes) Regulations 1988 with amendments and in addition make minor and drafting amendments. The Regulations also make provisions which are consequential upon Part III of the Pensions Act 1995 (c. 26) coming into force.

The Regulations prescribe the form of schemes which may be appropriate schemes (regulation 2 and Schedule 1); persons and bodies which may establish appropriate schemes (regulation 3); the requirements in respect of an application and issue of an appropriate scheme certificate (regulations 4 and 5); the requirement to give the Secretary of State information as requested in respect of the application for cancellation or variation or the surrender of an appropriate scheme certificate (regulations 6, 7, 8 and 9); the requirements in respect of notices under section 44 of the Pension Schemes Act 1993 (regulations 10 and 11); circumstances in which minimum contributions are not to be paid, manner of payment and allocation of minimum contributions (regulations 12, 13 and 14); calculation and estimation of earnings (regulation 15); calculation and adjustment of minimum contributions (regulations 16 and 17); cancellation of membership of interest-bearing account-funded appropriate personal pension schemes (regulation 18 and Schedule 2).

Regulations 19 and 20 and Schedule 3 provide for savings and revocations.

An assessment of the compliance cost of measures arising from the Pension Act 1995, including regulations, has been placed in the libraries of both Houses of Parliament. Copies can be obtained from the Department of Social Security, 11th Floor, Adelphi, 1-11 John Adam Street, London WC2N 6HT.