

1991 No. 167

PENSIONS

The Occupational Pension Schemes (Preservation of Benefit) Regulations 1991

<i>Made</i> - - - -	<i>1st February 1991</i>
<i>Laid before Parliament</i>	<i>7th February 1991</i>
<i>Coming into force</i>	<i>28th February 1991</i>

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The Secretary of State for Social Security, in exercise of the powers conferred by sections 51(5) and (10), 64(1A), 96(1) and (2) and 99(1) and (3) of, and paragraphs 5(1), 6(5), 9(1), (2) and (3), 12(2), 13(5), 15(4) and 20 to 26 of Schedule 16 to, the Social Security Act 1973(a), section 6(4) of the National Insurance Act 1974(b), sections 166(1) to (3A) and 168(1) of, and Schedule 20 to, the Social Security Act 1975(c) and sections 52C(5), 56P, 62(4) and 66(2) and (3) of, and paragraphs 14(3) and 20 of Schedule 1A to, the Social Security Pensions Act 1975(d), and of all other powers enabling him in that behalf, after considering the report of the Occupational Pensions Board on the proposals submitted to them(e), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991.

(2) These Regulations come into force on 28th February 1991.

- (3) In these Regulations, unless the context otherwise requires—
- “the Act” means the Pension Schemes Act 1993(f);
 - “the 1995 Act” means the Pensions Act 1995(g);
 - “scheme” means an occupational pension scheme.◀

Reg. 1(3) amended by reg. 2(2) of S.I. 1996/2131 as from 6.4.97.

Meaning of “employer”

2.—(1) This regulation applies for the purposes of ►Chapter I of Part IV of the Act◀ (occupational pension schemes).

(2) In relation to an employed earner, “employer” means the secondary contributor in relation to any payment of earnings in respect of the employment concerned.

(3) In relation to a self-employed earner, “employer” means any other person, government department, public authority or body of persons who has made, or is to make, payments to the scheme in respect of the earner.

(4) In this regulation, “employed earner” and “self-employed earner” mean the same as in section 2 of the Social Security Act 1975 (categories of earners) and “secondary contributor” means the same as in section 4 of that Act (Class 1 contributions—incidence).

(a) 1973 c.38. Section 51(5) was amended by Schedule 5 to the Social Security Pensions Act 1975 (c.60). See the definition of “prescribed” in section 99(1) and the explanation of “regulations” in section 99(3). Schedule 16 has been amended by subsequent Social Security Acts and modified by the Personal and Occupational Pension Schemes (Modification of Enactments) Regulations 1987 (S.I. 1987/1116).

(b) 1974 c.14.

(c) 1975 c.14. See definitions of “prescribe” and “regulations” in Schedule 20. Sections 166(1) to (3A) and 168(1) apply, by virtue of section 66(2) of the Social Security Pensions Act 1975 (c.60), to the exercise of certain powers conferred by that Act.

(d) 1975 c.60. Section 56P was inserted by section 11 of the Social Security Act 1986 (c.50). Schedule 1A was inserted by paragraph 3 of Schedule 1 to the Social Security Act 1985 (c.53). The only relevant amendment to Schedule 1A was made by paragraph 30(d)(iii) of Schedule 10 to the Social Security Act 1986 which substituted a new paragraph 14(3)(b).

(e) See section 68(1) of the Social Security Act 1973 and section 61(2) of the Social Security Pensions Act 1975.

(f) 1993 c.48.

(g) 1995 c.26.

Words in reg. 2(1) substituted by para. 30(3) of Sch. 2 to S.I. 1994/1062 as from 12.5.94.

Meaning of “member” and “prospective member”

3.—(1) This regulation applies for all the purposes of ►Chapter I of Part IV of the Act◄.

Words in reg. 3(1) substituted by para. 30(3) of Sch. 2 to S.I. 1994/1062 as from 12.5.94.

►(2) There are to be regarded as members of an occupational pension scheme any persons who—

Reg. 3(2) and (3) substituted by reg. 34 of S.I. 1992/1531 as from 28.9.92.

- (a) are in pensionable service under the scheme;
- (b) have rights under the scheme by virtue of such pensionable service; or
- (c) have rights under the scheme by virtue of having been allowed transfer credits under the scheme.

(3) There are to be regarded as prospective members of an occupational pension scheme—

- (a) any persons who are able, at their own option, to become members of the scheme, and
- (b) any persons who under the terms of their contracts of service and the scheme rules will become so able, if they continue in the same employment for a sufficiently long period.◄

Benefits included in supplementary credits

4.—(1) For the purposes of ►section 75(1)(c) of the Act◄, in the circumstances set out in paragraph (2) below, “supplementary credits” include any increase of benefit or additional benefit that is of an amount, or at a rate, unrelated to length of pensionable service or to the number or amount of contributions paid by or for the member.

Words in reg. 4(1) substituted by para. 30(4) of Sch. 2 to S.I. 1994/1062 as from 12.5.94.

(2) The circumstances referred to in paragraph (1) are that the member becomes entitled to the increase of benefit or additional benefit in consequence of a provision made by or under the scheme after he becomes a member of it and before his pensionable service terminates.

Short service benefit in lump sum form

5.—(1) For the purposes of ►section 71(6) of the Act◄, a scheme may provide for payment of short service benefit in the form of a lump sum before normal pension age in the circumstances described in any of paragraphs (2) to (4) of this regulation ►◄.

Words in reg. 5(1) substituted by para. 30(5) of Sch. 2 to S.I. 1994/1062 as from 12.5.94.

(2) The circumstances described in this paragraph are that the member’s earning capacity is destroyed or seriously impaired by physical or mental infirmity.

Words deleted from reg. 5(1) by reg. 2(3) of S.I. 1996/2131 as from 6.4.97

(3) The circumstances described in this paragraph are that the member has become incapable of following his normal employment because of physical or mental infirmity.

(4) The circumstances described in this paragraph are that the member has attained age 50 or is within 10 years of normal pension age.

Means of assuring short service benefit

6.—(1) For the purposes of ►section 73(1) of the Act◄, short service benefit that is not payable directly out of the resources of the scheme may be assured to the member by means of a transaction to which ►section 19 of the Act◄ (extinguishment of liability of scheme for pensions secured by insurance policies or annuity contracts) applies, and which satisfies the requirements of paragraph (2) of this regulation ►◄.

Words in reg. 6(1) substituted by para. 30(6)(a) and (7) of Sch. 2 to S.I. 1994/1062 as from 12.5.94.

Words deleted in reg. 6(1) by reg. 2(2) of S.I. 1995/3067 as from 1.2.96.

Regs. 6–8

Words in reg. 6 substituted by para. 30(7) of Sch. 2 to S.I. 1994/1062 as from 12.5.94.

Words in reg. 6(2)(b) substituted by reg. 3(2) of Sch. 1 to S.I. 1997/786 as from 6.4.97

Words added to reg. 6(3) by reg. 8(a) of S.I. 1995/35 as from 7.2.95.

Defns. of “friendly society” and of “authorised friendly society” in reg. 6(4) substituted by reg. 8(b) of S.I. 1995/35 as from 7.2.95.

Words in reg. 7 substituted by para. 30(8) of Sch. 2 to S.I. 1994/1062 as from 12.5.94.

Sub-paras. 7(3) and (4) deleted by reg. 2(4) of S.I. 1997/2131 as from 6.4.97.

(2) A transaction satisfies the requirements of this paragraph if—

- (a) it results in the member’s short service benefit being secured by one or more policies of insurance or annuity contracts that are appropriate for the purposes of ►section 19 of the Act◄; and
- (b) the member will be able to assign or surrender the insurance policies or annuity contracts on the conditions set out in ►regulation 3 of the Occupational Pension Schemes (Discharge of Liability) Regulations 1997◄ (conditions on which policies of insurance and annuity contracts may be assigned or surrendered).

(3) For the purposes of paragraph (2) of this regulation, a policy of insurance or annuity contract which is taken out or entered into with an authorised friendly society, but which otherwise satisfies the conditions for being “appropriate” for the purposes of ►section 19 of the Act◄, is to be treated as if it were appropriate for the purposes of that section ►provided the terms of such policy or contract are not capable of being amended, revoked or rescinded◄.

(4) In this regulation—

- “friendly society” has the same meaning as in the Friendly Societies Act 1992 (including any society which by virtue of section 96(2) of that Act is to be treated as a registered friendly society within the meaning of that Act);◄
- “authorised friendly society” means a friendly society which is authorised under section 32 of the Friendly Societies Act 1992 to carry on long term business under any of the Classes specified in Head A of Schedule 2 to that Act.◄

Alternatives to short service benefit

7.—(1) For the purposes of ►section 73(2) of the Act◄, a scheme may, instead of providing short service benefit, provide any of the alternatives to short service benefit described in regulations 8 to 10 below.

(2) The alternatives described in regulations 8 to 10 may be provided by way of complete or partial substitute for short service benefit, but (except in the cases specifically referred to) only with the member’s consent.

**Early retirement or deferred retirement**

8.—(1) The scheme may provide benefits that are different from those required to constitute short service benefit as regards amount, recipient and the time at which they are payable. The benefits must, however, include a benefit that is payable to the member.

(2) The member’s benefit must not be payable before normal pension age except in the circumstances referred to in regulation 5.

(3) Benefits consisting of, or including, a benefit that becomes payable to the member before normal pension age may be provided without the member’s consent where—

- (a) the member’s earning capacity is destroyed or seriously impaired by physical or mental infirmity, and
- (b) in the opinion of the trustees or managers of the scheme, the member is incapable of deciding whether it is in his interests to consent.

(4) Any scheme rule that allows the alternative described in this regulation must require the trustees or managers of the scheme to be reasonably satisfied that, when the member’s benefit becomes payable, the total value of the benefits to be provided under this regulation is at least equal to the amount described in regulation 11.

Bought out benefits

9.—(1) The scheme may provide for benefits different from those required to constitute short service benefit to be appropriately secured by a transaction to which ►section 19 of the Act◄ applies (extinguishment of liability of scheme for pensions secured by insurance policies or annuity contracts) ►◄.

Words in reg. 9(1) substituted by para. 30(7) of Sch. 2 to S.I. 1994/1062 as from 12.5.94.

(2) Any scheme rule that allows the alternative described in this regulation must require the trustees or managers of the scheme to be reasonably satisfied that, except where paragraph (3) below applies, the payment made to the insurance company is at least equal to the amount described in regulation 11.

Words deleted in reg. 9(1) by reg. 2(3) of S.I. 1995/3067 as from 1.2.96.

(3) The exception to paragraph (2) is where the member is requiring the trustees or managers to provide the alternative by exercising a right to a cash equivalent, as described in ►Chapter IV of Part IV of the Act◄ (transfer values).

Words in reg. 9(3) and (5) substituted and inserted respectively by para. 30(12) and (11) of Sch. 2 to S.I. 1994/1062 as from 12.5.94.

(4) A scheme may allow the alternative described in this regulation to be provided without the member's consent where—

Words in reg 9(4)(a) substituted by reg 3(2) of Sch. . 1 to S.I. 1997/786 as from 6.4.97.

- (a) the member will be able to assign or surrender the insurance policy or annuity contract on the conditions set out in ►regulation 3 of the Occupational Pension Schemes (Discharge of Liability) Regulations 1997 (conditions on which policies of insurance and annuity contracts may be assigned or surrendered); and
- (b) the requirements of paragraph (5) are satisfied.

(5) The requirements of this paragraph are that—

- (a) the scheme is being wound up; or
- (b) the member has less than “5 years’ qualifying service” (as defined in paragraph 7 of Schedule 16 ►to the Social Security Act 1973◄ immediately before the coming into force of section 10 of the Social Security Act 1986(a) (changes to preservation requirements)) and the requirements of paragraph (6) are satisfied; or
- (c) ►the trustees or managers of the Scheme◄ consider that, in the circumstances, it is reasonable for the scheme to provide the alternative without the member's consent and the requirements of paragraph (6) are satisfied.

Words in reg. 9(5)(c) substituted by reg. 2(5) of S.I. 1996/2131 as from 6.4.97.

(6) The requirements of this paragraph are that all the conditions set out in sub-paragraphs (a) to (d) are satisfied, namely—

- (a) the member's rights under the scheme do not include “protected rights”, as defined in ►section 181(1) of the Act◄ (interpretation);
- (b) the insurance policy is taken out or the annuity contract entered into more than 12 months after the member's pensionable service terminates;
- (c) the trustees or managers of the scheme give the member at least 30 days' written notice of their intention to take out the insurance policy or enter into the annuity contract unless the member exercises a right to a cash equivalent, as described in ►Chapter IV of Part IV of the Act◄ (the notice being sent to the member at his last known address or delivered to the member personally); and
- (d) when the trustees or managers of the scheme agree with the insurance company to take out the insurance policy or enter into the annuity contract, there is no outstanding application by the member for a cash equivalent.

Words in reg. 9(6) substituted by para. 30(12) and (13) of Sch. 2 to S.I. 1994/1062 as from 12.5.94.

(7) For the purposes of this regulation, “appropriately secured” means the same as in ►section 19 of the Act◄ except that a policy of insurance of annuity contract which is taken out or entered into with an “authorised friendly society” (as defined for the purposes of regulation 6), but which otherwise satisfies the conditions for being “appropriate” for the purposes of ►section 19◄, is to be treated as if it were appropriate for the purposes of that section.

Words in reg. 9(7) substituted by para. 30(7) of Sch. 2 to S.I. 1994/1062 as from 12.5.94.

(a) 1986 c.50. Section 10 came into force on 6th April 1988.

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Money purchase benefits

10.—(1) The scheme may provide money purchase benefits instead of all or any of the benefits that constitute short service benefit.

(2) Any scheme rule that allows this alternative must require the trustees or managers of the scheme to be reasonably satisfied that the amount allocated to provide money purchase benefits in respect of the member is at least equal to the amount described in regulation 11. The scheme rule must also require the trustees or managers of the scheme to calculate the money purchase benefits, when they become payable, either on the basis of actuarial advice or in accordance with the terms of an insurance policy or annuity contract in which the amount allocated to provide the benefits is invested.

Value of alternatives to short service benefit

11.—(1) The amount referred to in regulations 8, 9 and 10 is an amount equal to the value of the benefits (or, where the alternative is provided by way of partial substitute for short service benefit, the relevant part of the benefits) that have accrued to or in respect of the member under the applicable rules.

(2) For the purposes of this regulation, “the applicable rules” means the same as in ►section 94(2) of the Act◀ (revaluation of pensions and transfer values).

►Further alternative to short service benefit – transfer to an overseas arrangement

11A.—(1) For the purposes of section 73(2) of the Act (alternatives to short service benefit) a scheme may, instead of providing short service benefit, provide for the member’s accrued rights to be transferred, if the member consents, to an overseas arrangement.

(2) For the purposes of paragraph (1) “overseas arrangement” means a scheme or arrangement, other than an occupational pension scheme, which—

- (a) has effect, or is capable of having effect, so as to provide benefits on termination of employments or on death or retirement to or in respect of earners;
- (b) is not an appropriate scheme; and
- (c) is administered wholly or primarily outside the United Kingdom. ◀

Words in reg. 11(2) substituted by para. 30(14) of Sch. 2 to S.I. 1994/1062 as from 12.5.94.

Reg. 11A added by reg. 2(b) of S.I. 1996/2131 as from 6.4.97.

Transfer of member's accrued rights without consent

Words in reg.12(1) substituted by para. 30(15) of Sch. 2 to S.I. 1994/1062 as from 12.5.94.

Words substituted in reg. 12(1) by reg. 2(4) of S.I. 1995/3067 as from 1.2.96.

Para. (1A) added to reg. 12 by reg. 27(a) of S.I. 2000/1403 as from 1.10.00.

12.—(1) For the purposes of ►section 73(4) of the Act◄, a scheme may provide for the member's accrued rights to be transferred to another occupational pension scheme (as described in ►►section 73(2)(a)(i)◄ of the Act◄) without the member's consent where ►the conditions set out in paragraphs (2) and (3) of this regulation are satisfied◄.

► (1A) For the purposes of section 73(4) of the Act, a scheme may provide for a transfer payment to be made to another occupational or personal pension scheme (as described in section 73(2)(a)(i) of the Act) without the member's consent where the conditions set out in paragraph (6) of this regulation are satisfied.◄

Reg. 12

►(2) The condition set out in this paragraph is that the rights of a member are being transferred from the transferring scheme to the receiving scheme and either—

Reg. 12(2) substituted by reg. 35 of S.I. 1992/1531 as from 28.9.92.

- (a) the transferring scheme and the receiving scheme apply to employment with the same employer; or
- (b) the transferring scheme and the receiving scheme apply to employment with different employers, the member concerned is one of a group in respect of whom transfers are being made from the transferring scheme to the receiving scheme, and either—
 - (i) the transfer is a consequence of a financial transaction between the employers; or
 - (ii) the employers are companies or partnerships bearing a relationship to each other such as is described in ►regulation 64(2) of the Occupational Pension Schemes (Contracting-out) Regulations 1996(a) (meaning of expression “connected employer”).◄◄

Words in reg. 12(2)(b)(ii) substituted by reg. 7(1)(a) of S.I. 1996/2131 as from 6.4.97
Reg. 12(3), (4) and (4A) substituted for reg. 12(3) and (4) by reg. 2(a) of S.I. 1993/1822 as from 1.9.93.

►(3) The condition set out in this paragraph is that ►the relevant actuary◄ certifies to the trustees or managers of the transferring scheme that—

- (a) the transfer credits to be acquired for each member under the receiving scheme are, broadly, no less favourable ►◄ than the rights to be transferred; and

(a) Words substituted and omitted in reg. 12(3), substituted in reg. 12(4A) and reg. 12(5) substituted by reg. 2 of S.I. 1999/2543 as from 1.10.99.

►◄

- (b) where it is the established custom for discretionary benefits or increases in benefits to be awarded under the transferring scheme, there is good cause to believe that the award of discretionary benefits or increases in benefits under the receiving scheme will (making allowance for any amount by which transfer credits under the receiving scheme are more favourable than the rights to be transferred) be, broadly no less favourable.

(4) For the purposes of paragraph (3)(a), where long service benefit in the transferring scheme is related to a member’s earnings at, or in a specified period before, the time when he attains the normal pension age then, in the case of a member in pensionable service at the date of transfer, the value of the rights to be transferred shall be based on pensionable service (including any transfer credits) in the transferring scheme up to that date and projected final pensionable earnings.

(4A) For the purposes of paragraph (3)(b), the ►relevant actuary◄ shall, in considering whether there is good cause, have regard to all the circumstances of the case and in particular—

- (a) to any established custom of the receiving scheme with regard to the provision of discretionary benefits or increases in benefits; and
- (b) to any announcements made with regard to the provision of such benefits under the receiving scheme.◄

►(4B) Where it is proposed that a member’s accrued rights are to be transferred in accordance with this regulation, information about the proposed transfer and details of the value of the rights to be transferred (including rights in respect of death in service benefits and survivors benefits) shall be furnished to the member not less than one month before the proposed transfer is due to take place.◄

Para. (4B) added to reg.12 by reg. 2(7)(b) of S.I. 1996/2131 as from 6.4.97.

►(5) In this regulation “the relevant actuary” means—

See note (a) above

- (a) where the transferring scheme is a scheme for which an actuary is required under section 47 of the Pensions Act 1995 to be appointed, the individual for the time being appointed in accordance with subsection (1) of that section as actuary for that scheme;
- (b) in any other case, a Fellow of the Institute of Actuaries, or a person with other actuarial qualifications who is approved by the Secretary of State, at the request of the trustees or managers of the scheme, as being a proper person to act for the purposes of this regulation in connection with the scheme.◄►◄

Word “and” and defn. of “the applicable rules” in reg. 12(5) deleted by reg. 2(b) of S.I. 1993/1822 as from 1.9.93.

►◄

(a) S.I. 1996/1172.

Regs. 12-14

Para. (6) added to reg. 12 by reg. 27(b) of S.I. 2000/1403 as from 1.10.00.

- ▶ (6) The conditions set out in this paragraph are that—
 - (a) the transferring scheme is or has been a stakeholder pension scheme, within the meaning of section 1 of the Welfare Reform and Pensions Act 1999 or Article 3 of the Welfare Reform and Pensions (Northern Ireland) Order 1999(a) and the receiving scheme is such a scheme;
 - (b) the transferring scheme has commenced winding-up; and
 - (c) the transfer payment is of an amount at least equal to the cash equivalent of the member’s rights under the scheme, as calculated and verified in a manner consistent with regulations made under section 97 of the 1993 Act (calculation of cash equivalents). ◀

Benefits attributable to waiting periods

- 13.—(1) This regulation applies where—
 - (a) an earner in relevant employment is required to complete a period of service (“waiting period”) before joining the scheme, and
 - (b) if the earner joins the scheme, a specific part of long service benefit will, ▶◀ be attributable to the waiting period.
- (2) Where this regulation applies, the preservation requirements are modified so that—
 - (a) the waiting period is treated as pensionable service,
 - (b) the earner is treated as a member during that period, and
 - (c) the part of long service benefit that will, ▶◀ be attributable to the waiting period is treated as accruing at such a rate as to accrue in full over the whole of the waiting period.

(a) Words deleted and substituted in sub-paras (1)(b), (2)(c) and (3) by reg 2(8) of S.I. 1996/2131 as from 6.4.97.

(3) This paragraph applies where the rate at which the long service benefit is treated as accruing during the waiting period is lower than the rate at which the rest of long service benefit accrues. In such circumstances short service benefit must be computed on the basis of uniform accrual (in accordance with ▶section 74(6) of the Act◀) except that the scheme may provide for short service benefit to be computed on the same basis as long service benefit (in accordance with ▶section 74(1) of the Act◀) where ▶the waiting period does not exceed 2 years◀.

Words in reg. 13(3) substituted by para. 30(16) of Sch. 2 to S.I. 1994/1062 as from 12.5.94.

See note (a) above

Computation of benefit – money purchase benefits

14.—(1) This regulation applies to “money purchase benefits”, as defined in ▶section 181(1) of the Act◀ (interpretation).

Words in reg. 14 substituted by para. 30(13) and (16) of Sch. 2 to S.I. 1994/1062 as from 12.5.94.

(2) This paragraph applies where long service benefit is related to bonuses which have been declared at, or before, the time when the member attains normal pension age. In such circumstances short service benefit that is computed on the same basis as long service benefit (in accordance with ▶section 74(1) of the Act◀) must be correspondingly related to bonuses which have been declared at, or before, the time when the member’s pensionable service terminates.

(3) This paragraph applies where long service benefit is related to the value of securities at, or in a specified period before, the time when the member attains normal pension age. In such circumstances short service benefit that is computed on the same basis as long service benefit (in accordance with ▶section 74(1) of the Act◀) must be correspondingly related to the value of securities at, or in the same period before, the time when the member’s pensionable service terminates. But, if the trustees or managers of the scheme so decide before, or not more than one month after, the member’s pensionable service terminates, short service benefit may be correspondingly related to the value of securities at, or in the same period before, the time when the benefit becomes payable.

Para. (4) deleted by reg. 2(9) of S.I. 1996/2131 as from 6.4.97.

▶◀

(a) S.I. 1999/3447 (N.I. 11).

► Circumstances in which uniform accrual does not apply – money purchase benefits

14A.—(1) In the case of a scheme providing money purchase benefits, section 74 of the Act (computation of short service benefit) applies with the following modifications.

Reg. 14A added by reg. 2(10) of S.I. 1996/2131 as from 6.4.97.

(2) In subsection (6) after “it must” there is inserted “, subject to subsection (6A),” and after subsection (6) there is inserted—

“(6A) If the requirements set out in subsection (6B) is satisfied in relation to a scheme, so much of any money purchase benefits provided by the scheme as would otherwise be required to be computed in accordance with subsection (6) must be computed in accordance with subsection (1).

(6B) The requirement is that, when calculated in relation to a hypothetical member who, at any given age and when in receipt of any given salary from the relevant employments equal to any of the indicative salaries specified in subsection (6C)(b), begins to accrue money purchase benefits in the scheme and continues to do so for a period ending before he attains normal pension age and comprising any given number of years (but not less than 2)—

- (a) in the case of at least 90 per cent. of such hypothetical members the amount of the fund (“F”) which the member could have been expected to accumulate at the end of the period is equal to or more than an amount (“G¹”) calculated in accordance with subsection (6C)(d) and corresponding to a proportion of the fund (“G”) which he could have been expected to accumulate had he continued to accrue money purchase benefits until normal pension age; and
- (b) in the case of all such hypothetical members, F is not less than 90 per cent. of G.

(6C) For the purposes of determining whether the requirement set out in subsection (6B) is satisfied—

- (a) F and G shall be calculated in accordance with the contribution structure provided for in the scheme rules, applying the following actuarial assumptions—
 - (i) a rate of gross investment return of 8 per cent. per annum;
 - (ii) a rate of salary escalation of 5¾ per cent. per annum up to normal pension age;
 - (iii) where it is necessary to predict the rate of future price inflation (for example where the contribution structure of the scheme is related to the lower or upper earnings limits) a rate of future price inflation of 3¾ per cent. per annum;
- (b) indicative salaries are—
 - (i) ¾ of the upper earnings limit in force for the date on which the calculation is made;
 - (ii) 1½ time that limit; and
 - (iii) except in cases where more than 90 per cent. of members accruing money purchase benefits in the scheme earn below 3 times that limit, 3 times that limit;
- (c) in calculating F and G there may be disregarded—
 - (i) so much of any benefit as derives from the payment of minimum payments or payments under section 42A(3) (age-related rebates)(a); and
 - (ii) where a scheme provides for members to have the option to increase their contributions after attaining a specified age or completing a specified period of service, so much of any benefit as would accrue at a higher rate if a member exercised that option;
- (d) G¹ shall be calculated in accordance with the following formula—
$$G^1 = G \times (N/NS) \times (1/1.08)^{(NS-N)} \times (1.0375/1.0575)^{(NS-N)}$$

(a) Section 42A was inserted by section 137 of the Pensions Act 1995.

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where—

N = the number of years in the period referred to in subsection (6B); and

NS = the number of years from the date on which that period commences to the date on which the member attains normal pension age.

(6D) Where a scheme has differing contribution structures each of which relates to a specified category of member (not being a category defined by age or length of service) subsections (6A) to (6C) shall apply to each such category as though the members falling within it were members of a separate scheme.◀

Computation of benefit – earnings related benefits

15. Where long service benefit is related to a member's earnings during a specified period and the member's pensionable service is less than that period, the scheme must provide for short service benefit to be correspondingly related to the member's earnings during the whole of the member's pensionable service.

Computation of benefit – uniform accrual

16.—(1) This regulation applies where short service benefit is computed on the basis of uniform accrual, in accordance with ▶section 74(6) of the Act◀.

(2) Where this regulation applies long service benefit at the time when the member's pensionable service terminates is to be calculated on the assumption that the member's earnings would have remained constant from the time when pensionable service terminates until normal pension age.

(3) For the purpose of computing a member's short service benefit, the trustees or managers of the scheme may make such assumptions as ▶they◀ consider reasonable as to—

- (a) the level at which the member's earnings would have remained constant,
- (b) the dates on which bonuses would have been declared and the rates of those bonuses, and
- (c) the value of, and the rate of interest on, securities.

Computation of benefit – rounding

17.—(1) For the purpose of computing short service benefit on the basis of uniform accrual (in accordance with ▶section 74(6) of the Act◀), a scheme may provide for both the periods mentioned in that paragraph (the period of pensionable service and the period from the beginning of that service to the time when the member would attain normal pension age) to be calculated to the nearest, next highest, or next lowest whole month.

(2) For the purpose of calculating the proportion of purchased credits that must be included in short service benefit (in accordance with ▶section 75(3) of the Act◀), a scheme may provide for both the periods mentioned in ▶section 75(4)(b) of the Act◀ (the period between the time when the first payment became due and the termination of the member's pensionable service, and the whole period over which payment was to be made) to be calculated to the nearest, next highest, or next lowest whole month.

(3) For the purpose of calculating the proportion of bonus credits, or credits for which payment is to be made by deduction from some benefit, that must be included in short service benefit (in accordance with ▶section 75(5) of the Act◀), a scheme may provide for both the periods described in paragraph (4) to be calculated to the nearest, next highest, or next lowest whole month. Where applicable, the scheme must make the same provision for the purpose of calculating the amount of any relevant deduction.

Words in reg. 16(1) substituted by para. 30(16) of Sch. 2 to S.I. 1994/1062 as from 12.5.94.

Words in para. (3) substituted by reg. 2(11) of S.I. 1996/2131 as from 6.4.97.

Words in reg. 17 substituted by para. 30(16) and (17) of Sch. 2 to S.I. 1994/1062 as from 12.5.94.

(4) The periods referred to in paragraph (3) are—

- (a) the period over which, on the assumption referred to in ▶section 75(5)(a) of the Act◀, the credits would have accrued in full, and
- (b) the period between the time when any credit was awarded and the termination of the member’s pensionable service.

(5) Where a scheme provides for rounding as described in this regulation, it must provide for both the periods referred to in each paragraph to be rounded in the same way.

18. ▶◀

Widows, widowers and dependants

19. This regulation applies to schemes that provide long service benefit payable to a person other than the member only if the person is married to, or dependent on, the member when the member reaches normal pension age. These schemes are required to provide short service benefit payable to the person concerned only if the person was also married to, or (as the case may be) dependent on, the member when the member’s pensionable service terminated.

Reg.18 revoked by reg. 2(12) of S.I. 1996/2131 as from 6.4.97

Deductions from short service benefit

20.—(1) This regulation applies where a scheme provides that, in computing the amount of long service benefit payable to any person, a deduction will be made, either to take account of benefits payable to that person under the Social Security Act 1975(a) or otherwise.

(2) Where this regulation applies, the scheme may provide for a corresponding deduction from short service benefit. ▶◀

(3) ▶◀

Words deleted from para. (2) by reg. 2(13)(a) of S.I. 1996/2131 as from 6.4.97

Breaks in pensionable service

21.—(1)In the case of a member whose pensionable service has been broken, the preservation requirements are modified as described in this regulation. For this purpose, a member’s pensionable service is broken if, after it terminates, the member returns to pensionable service under the same scheme.

Para (3) deleted by reg. 2(13)(b) of S.I. 1996/2131 as from 6.4.97

(2) If paragraph (3) applies to the break and the member’s pensionable service is again terminated before normal pension age, the period of pensionable service previously terminated, and any linked qualifying service in relation to that period, must count towards the 2 years’ qualifying service whether or not it counts towards qualification for long service benefit. ▶Section 71(9) of the Act◀ is modified accordingly.

Words substituted in reg. 21(2)–(5) by para. 30(7), (8) and (20) of Sch. 2 to S.I. 1994/1062 as from 12.5.94.

(3) This paragraph applies to the break in pensionable service if one or more of the following conditions is satisfied—

- (a) the break does not exceed one month;
- (b) the break corresponds to the member’s absence from work wholly or partly because of pregnancy or confinement, the member returns to work after the break in exercise of a right under section 45(1) of the Employment Protection (Consolidation) Act 1978(b) (right to return to work) and the member returns to pensionable service no later than one month after returning to work;
- (c) the break corresponds to the member’s absence from work in furtherance of a “trade dispute”, as defined in section 19(2)(b) of the

(a) 1975 c.14.
(b) 1978 c.44.

Social Security Act 1975(a) (loss of employment due to stoppage of work).

(4) If paragraph (5) applies to the break and the member's pensionable service is again terminated before normal pension age, the scheme must provide for the member to be entitled to short service benefit in respect of pensionable service after the break whether or not the conditions described in ▶section 71(1) of the Act◀ are satisfied. ▶Section 71(1) of the Act◀ is modified accordingly.

(5) This paragraph applies to the break in pensionable service if the member became entitled to short service benefit when his pensionable service previously terminated. This paragraph does not apply, however, if all the member's accrued rights in respect of the period before the break have been—

- (a) transferred to another scheme as described in ▶section 73(2) of the Act◀;
- (b) “appropriately secured” by a transaction to which ▶section 19 of the Act◀ applies (extinguishment of liability of scheme for pensions secured by insurance policies or annuity contracts) ▶◀; or
- (c) extinguished by payment of a state scheme premium under ▶Chapter III or Part III of the Act◀ or by payment of a lump sum.

(6) A scheme may provide that, when the member returns to pensionable service under the scheme, the member's pensionable service before and after the break be treated as continuous so that the whole period qualifies the member for long service benefit under the scheme. The scheme will not then be required to provide short service benefit in respect of the period before the break.

(7) For the purposes of this regulation, “appropriately secured” means the same as in ▶section 19 of the Act◀ except that a policy of insurance or annuity contract which is taken out or entered into with an “authorised friendly society” (as defined for the purposes of regulation 6), but which otherwise satisfies the conditions for being “appropriate” for the purposes of ▶section 19◀, is to be treated as if it were appropriate for the purposes of that section.

Postponement or suspension of benefit

22.—(1) The preservation requirements are modified as described in this regulation where—

- (a) a scheme provides for payment of long service benefit to be postponed, or suspended, for any period after normal pension age during which the member is in service in relevant employment (whether or not that service qualifies the member for additional benefits under the scheme); and
- (b) a member continues in, or returns to, service in relevant employment after becoming entitled to short service benefit under the scheme.

(2) The scheme may provide for payment of short service benefit to be postponed, or suspended, for any period after normal pension age during which the member is in service in relevant employment. ▶Section 71(3) of the Act◀ is modified accordingly.

Refunds of additional voluntary contributions

23.—(1) This regulation applies where a scheme provides for the payment by members of voluntary contributions.

(2) Where this regulation applies the preservation requirements are modified so that the scheme may be treated as conforming with those requirements even

Words deleted in reg. 21(5)(b) by reg. 2(5) of S.I. 1995/3067 as from 1.2.96.

Words substituted in reg. 21(5)(c) and (7) by para. 30(20)(d) and (7) respectively of Sch.2 to S.I. 1994/1062 as from 12.5.94.

Words in reg. 22(2) substituted by para. 30(21) of Sch. 2 to S.I. 1994/1062 as from 12.5.94.

(a) 1975 c.14.

though the provisions of Part III of Schedule 6 to the Finance Act 1989(a) (which provides for the return of surplus additional voluntary contributions to members) apply to the scheme.

(3) If the provisions of Part III of Schedule 6 to the Finance Act 1989 would not otherwise apply to the scheme, the preservation requirements are modified so that the scheme may provide for those provisions to be treated as applying to the scheme.

Schemes funded by level annual premiums

24.—(1) This regulation applies in the case of a member of a scheme that satisfies all the requirements of paragraph (3) below whose pensionable service under that scheme began before 6th April 1975.

(2) In this regulation—

“policy” means a policy of insurance of an annuity contract; and

“premium” means any payment made in consideration for the assurance of the benefit under a policy.

(3) The requirements of this paragraph are that—

- (a) the scheme was in existence on 6th April 1974 and has not, ►◄ been materially altered since that date;
- (b) the benefit for each member under the scheme is related to the member’s earnings at a specified time, or over a specified period not exceeding 5 years;
- (c) the benefit for each member is secured by one or more policies;
- (d) each policy provides separate assurance in respect of each member and the proceeds of the policy are to go to that member, at least to the extent that they are not greater than the benefits to which the member is entitled at normal pension age; and
- (e) a premium is payable under each policy at least once a year and the yearly rate of the premium does not change during the member’s pensionable service, except as a result of the declaration of a bonus or a change in the premium rate of the insurer.

Words in para (3)(a) deleted by reg. 2(14) of S.I. 1996/2131 as from, 6.4.97

(4) Where this regulation applies, if the member becomes entitled to short service benefit under the scheme, the short service benefit must be the greater of the amounts described below, namely—

- (a) the total benefit payable to, or in respect of, the member, under the policy, on the basis that no further premiums are to fall due after the date on which the member’s pensionable service is terminated; and
- (b) the appropriate proportion of the benefits (excluding any bonuses) that would have been payable under the policy to, or in respect of, the member if the member had continued in pensionable service until normal pension age, plus any bonuses declared in respect of the policy before the date on which the member’s pensionable service actually terminated.

(5) For the purposes of paragraph (4)(b) of this regulation, the “appropriate proportion” means the proportion that the number of premiums that have fallen due in respect of each policy bears to the number of premiums that would have been payable if the member had continued in pensionable service under the scheme until normal pension age.

(a) 1989 c.26.

OCCUPATIONAL PENSION SCHEMES (**PRESERVATION OF BENEFIT**) REGULATIONS 1991**Schemes with an overseas element**

25.—(1) This regulation applies to schemes with an overseas element, that is to say, schemes established, or relating to employment, or with parties domiciled, resident or carrying on business, in any part of the world outside the United Kingdom, or otherwise not confined in their operation to the United Kingdom.

Words in reg. 25 substituted by para. 30(22) of Sch. 2 to S.I. 1994/1062 as from 12.5.94.

(2) ►Sections 69 to 80 of the Act are◄ modified in relation to a scheme with an overseas element, so that the preservation requirements apply to the scheme only if the scheme is established in the United Kingdom or has an appointed representative in the United Kingdom.

(3) In the case of a scheme with any overseas element to which the preservation requirements apply, ►section 71(1) of the Act◄ is modified so that the scheme is required to provide short service benefit only for those members whose pensionable service terminates while they are in employment in the United Kingdom.

(4) For the purposes of this regulation—

- (a) a scheme has an appointed representative in the United Kingdom if there is a person resident in the United Kingdom who is appointed for tax purposes in relation to the scheme or who performs one or more functions that, ►◄ would normally be performed by a trustee or manager of the scheme;
- (b) a member’s employment outside the United Kingdom is to be treated as employment in the United Kingdom if the most recent payment of earnings in respect of that employment gave rise to liability for primary Class 1 contributions, or would have done so had the level of earnings not been below the lower earnings limit; and
- (c) “Class 1 contributions” means the same as in section 1(2) of the Social Security Act 1975(a) (outline of contributory system) and “lower earnings limit” means the same as in section 4(1) of that Act (Class 1 contributions—incidence).

Words deleted from para. (4) by reg. 2(15) of S.I. 1996/2131 as from 6.4.97

[Reg. 26 revoked by reg. 2(16) of S.I. 1996/2131.]

Specific provisions to be included in scheme rules

27.—(1) Except where paragraph (2) applies, a scheme is not to be treated as conforming with the preservation requirements unless it contains express rules to the effect (but not necessarily in the words) of the following provisions of ►Chapter I of Part IV of the Act◄, to the extent that they apply to the scheme concerned, namely—

Words in reg. 27 substituted by para. 30(24) of Sch. 2 to S.I. 1994/1062 as from 12.5.94.

- (a) ►section 71(1)◄ (members who must be entitled to short service benefit);
- (b) ►section 71(3) and (4)◄ (age or time at which short service benefit must be made payable);
- (c) ►section 74◄ (computation of benefit);
- (d) ►section 75◄ (supplementary credits to be included in short service benefit); and
- (e) ►section 76◄ (pension increases).

(2) A scheme that is constituted or amended by an interim trust deed or other interim instrument or agreement ► shall be treated ◄ as satisfying the preservation requirements if both the following conditions are satisfied, namely—

Words in para(2) substituted by reg. 2(17)(a) of S.I. 1996/2131 as from 6.4.97

- (a) the instrument or agreement constituting or amending the scheme requires the trustees or managers of the scheme to operate it in accordance with the preservation requirements; and
- (b) ► members an prospective members have been notified ◄ of the general effect of the definitive provisions of the scheme that will give effect to the provisions of ►Chapter I of Part IV of the Act◄ referred to in paragraph (1) above.

Words in para. (2)(b) substituted by reg. 2(17)(b) of S.I. 1996/2131 from 6.4.97

(a) 1975 c.14.

► **Information to be furnished to early leavers**

27A.—(1) The trustees or managers of any scheme must furnish in writing the information specified in paragraph (2)—

Regs. 27A and 27B
added by reg. 2(18) of
S.I. 1996/2131 as from
6.4.97

- (a) as of course to any person as soon as practicable and, in any event, within 2 months after he or his employer has notified the trustees that his pensionable service has terminated; and
- (b) to any member or prospective member on request (not being a request made less than 12 months after the last occasion on which such information was furnished to him) as soon as practicable and, in any event, within 2 months after he requests it.

(2) The information referred to in paragraph (1) is information as to the rights and options (if any) available to a member whose pensionable service terminates before he attains normal pension age.

(3) The trustees or managers of any scheme must furnish in writing the information specified in paragraph (4) on request (not being a request made—

- (a) after such information has already been furnished to the same person in a case where the information was that no refund of contributions would be available in any circumstances; or
- (b) less than 12 months after the last occasion on which such information was furnished to the same person, in any other case),

to any person who has paid contributions to the scheme which have not been refunded, as soon as practicable and, in any event, within 2 months after he requests it.

(4) The information referred to in paragraph (3) is information as to whether a refund of contributions is available or would be available in any circumstances, and in either case, an estimate of the amount of the refund and an explanation of the method of calculating it.

Offence and penalties

27B. Where a person fails, without reasonable excuse, to comply with any requirement imposed on him by regulation 12(4B) (requirement to provide information regarding a transfer of accrued rights without consent) or 27A, the Occupational Pensions Regulatory Authority may require him to pay, within 28 days, a penalty which—

- (a) in case of an individual, shall not exceed £1,000; and
- (b) in any other case, shall not exceed £10,000. ◀

Related amendments to other Regulations

28. ▶◀

Reg. 28 revoked by Sch.
2 to S.I. 1997/784 as
from 6.4.97

Revocations

29. The Regulations specified in column 1 of Schedule 2 are revoked to the extent specified in column 2 of that Schedule.

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

Nicholas Scott
Minister of State,
Department of Social Security

1st February 1991

OCCUPATIONAL PENSION SCHEMES (**PRESERVATION OF BENEFIT**) REGULATIONS 1991

[Sch. 1 revoked by Sch. 2 to S.I. 1997/784 as from 6.4.97.]

SCHEDULE 2

Regulation 29

REVOCATIONS

<i>Column 1</i> <i>Regulations</i>	<i>Column 2</i> <i>Extent of revocation</i>
The Occupational Pension Schemes (Preservation of Benefit) Regulations 1984 (S.I. 1984/614)	The whole of the Regulations.
The Contracting-out (Transfer) Regulations 1985 (S.I. 1985/1323)	Regulation 4(6).
The Occupational Pension Schemes (Preservation of Benefit) Amendment Regulations 1985 (S.I. 1985/1926)	The whole of the Regulations.
The Contracting-out (Requisite Benefits—Consequential Provisions) Regulations 1986 (S.I. 1986/1716)	Regulation 4.
The Occupational Pension Schemes (Miscellaneous Amendment Regulations 1986 (S.I. 1986/2171)	Regulation 2.
The Occupational Pension Schemes (Qualifying Service—Consequential and Other Provisions) Regulations 1987 (S.I. 1987/1106)	Regulation 3.
The Occupational Pension Schemes (Miscellaneous Amendment Regulations 1988 (S.I. 1988/476)	Regulation 2.
The Personal and Occupational Pension Schemes (Miscellaneous Amendments) (No. 2) Regulations 1989 (S.I. 1989/1641)	Regulation 2.
The Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1990 (S.I. 1990/1141)	Regulation 3.
The Personal and Occupational Pension Schemes (Miscellaneous Amendments) (No. 2) Regulations 1990 (S.I. 1990/1142)	Regulation 3.

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

These Regulations consolidate, with amendments, Regulations relating to the preservation of benefits under occupational pension schemes.

The requirements as to preservation of benefit under occupational pension schemes are contained in Part I of Schedule 16 to the Social Security Act 1973. Part II of that Schedule has effect for enabling the Secretary of State to make regulations modifying those requirements and generally in relation to the preservation of benefit under occupational pension schemes. Section 63 of that Act has effect for securing that occupational pension schemes conform with the preservation requirements insofar as conformity can be achieved by the use of powers conferred by that section (in addition to any power otherwise exercisable) on those concerned with such schemes and on the Occupational Pensions Board.

These Regulations prescribe the persons who are to be treated as “employers”, “members” and “prospective members” in relation to occupational pension schemes (regulations 2 and 3) and extend the definition of “supplementary credits” (regulation 4). They prescribe means of assuring short service benefit (regulation 6), the alternatives to short service benefit that may be provided instead of short service benefit (regulations 7 to 11), requirements relating to the basis of computation of short service benefit (regulations 14 to 17), the deductions that may be made from short service benefit (regulation 20) and specific provisions relating to preservation of benefit that must be included in scheme rules (regulation 27).

These Regulations also prescribe the circumstances in which short service benefit in the form of a lump sum may be paid before normal pension age (regulation 5), a member’s accrued rights may be transferred to another occupational pension scheme without the member’s consent (regulation 12), “waiting periods” must be treated as pensionable service (regulation 13), short service benefit and benefits or rights alternative to short service benefit may be commuted (regulation 18), short service benefit must be provided for people other than the member (regulation 19), payment of short service benefit may be postponed or suspended (regulation 22) and transfers may be made to “overseas schemes” (regulation 26).

Finally, these Regulations modify the preservation requirements in cases where a member whose pensionable service is broken returns to pensionable service under the same scheme (regulation 21) and cases where schemes provide for the payment by members of voluntary contributions (regulation 23), and in their application to schemes funded by level annual premiums (regulation 24) and schemes with an overseas element (regulation 25).

The report of the Occupational Pensions Board on the draft of these Regulations which was referred to them, together with a statement by the Secretary of State showing the extent to which these Regulations give effect to the Board’s recommendations, is contained in Command Paper No. 1409, published by Her Majesty’s Stationery Office.

