

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.

▶¹(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);

▶²“European pensions institution” has the meaning given in section 293(8) of the Pensions Act 2004;◀

“scheme” means an occupational pension scheme.◀

▶³(4) Any information or documents required to be furnished under these Regulations to a person, may be given in accordance with regulations 26 to 28 of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (giving information and documents).◀

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

²Defn. of “European pensions institution” inserted in reg. 1(3) by reg. 2(2) of S.I. 2013/459 as from 6.4.13.

³Reg. 1(4) added by para. 1(2) of Sch. 9 to S.I. 2013/2734 as from 6.4.14.

(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.

Meaning of “employer”

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

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

(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).

Meaning of “member” and “prospective member”

3.—(1) This regulation applies for all the purposes of ►²Chapter I of Part IV of the Act◄.

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

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

³Reg. 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 ►⁴section 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.

⁴Words 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.

►⁵Short service benefit in lump sum form

⁵Reg. 5 substituted by reg. 2 of S.I. 2009/2930 as from 1.12.09.

5. For the purposes of section 71(6) of the Act (basic principles as to short service benefit), the circumstances in which the trustees or managers of a scheme may provide for payment of short service benefit in the form of a lump sum before normal pension age are that the payment of a lump sum—

- (a) to the member is permitted in accordance with paragraph (a), (b), ►⁶(ba),◄ (e), (f) or (g) of the lump sum rule in section 166(1) of the Finance Act 2004(a) (lump sum rule); or
- (b) is—
 - (i) made by a registered pension scheme (within the meaning given in section 150(2) of the Finance Act 2004 (meaning of “pension scheme”));

⁶Words in reg. 5(a) inserted by reg. 2 of S.I. 2015/493 as from 6.4.15.

(a) 2004 c. 12.

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- (ii) a payment that is described in Part 2 of the Registered Pension Schemes (Authorised Payments) Regulations 2009(a); and
- (iii) made to or in respect of a member.◀

Means of assuring short service benefit

¹Words in reg. 6(1) & (6)(2)(a) substituted by para. 30(6)(a) and (7) of Sch. 2 to S.I. 1994/1062 as from 12.5.94.
²Words deleted in reg. 6(1) by reg. 2(2) of S.I. 1995/3067 as from 1.2.96.

6.—(1) For the purposes of ►¹section 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 ►¹section 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 ►²◀.

(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 ►¹section 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 ►³regulation 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).

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

(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 ►⁴section 19 of the Act◀, is to be treated as if it were appropriate for the purposes of that section ►⁵provided the terms of such policy or contract are not capable of being amended, revoked or rescinded◀.

⁴Words in reg. 6(3) substituted by para. 30(7) of Sch. 2 to S.I. 1994/1062 as from 12.5.94.

⁵Words added to reg. 6(3) by reg. 8(a) of S.I. 1995/35 as from 7.2.95.
⁶Defns. 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.

(4) In this regulation—

- ⁶“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

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

7.—(1) For the purposes of ►⁷section 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.

⁸Sub-paras. 7(3) and (4) deleted by reg. 2(4) of S.I. 1996/2131 as from 6.4.97.

(3)—(4) ►⁸◀

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.

⁹Reg. 8(2) substituted by reg. 3(3) of S.I. 2007/814 as from 6.4.07.

►⁹(2) The member's benefit must not be payable before normal pension age except in the circumstances where the member has either—

- (a) met the ill-health condition specified in paragraph 1 of Schedule 28 to the Finance Act 2004 (registered pension schemes - defined benefits and money purchase arrangements - ill health condition) immediately before he became entitled to the benefit under the scheme; or

(a) S.I. 2009/1171.

- (b) attained normal minimum pension age as defined in section 279 of that Act (other definitions).◀

(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 ▶¹section 19 of the Act◀ applies (extinguishment of liability of scheme for pensions secured by insurance policies or annuity contracts) ▶²◀.

¹Words in regs. 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.

²Words 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 ▶³Chapter IV of Part IV of the Act◀ (transfer values).

³Words 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—

- (a) the member will be able to assign or surrender the insurance policy or annuity contract on the conditions set out in ▶⁴regulation 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.

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

(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 ▶³to 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) ▶⁵the 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.

⁵Words 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 ▶⁶sub-paragraphs (b), (c) and (d)◀ are satisfied, namely—

⁶Words in reg. 9(6) substituted and sub-para. (a) omitted by art. 6(a) & (b) of S.I. 2011/1246 as from 6.4.12.

- (a) ▶⁶◀
- (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 ▶⁷Chapter IV of Part IV of the Act◀ (the notice being sent to

⁷Words in reg. 9(6) substituted by para. 30(12) 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.

Regs. 9-11B

¹Words in reg. 9(6)(c) substituted by para. 1(3) of Sch. 9 to S.I. 2013/2734 as from 6.4.14.

the member ►¹in accordance with regulations 26 to 28 (giving information and documents) of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013◀ 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.

²Words in regs. 9(7) substituted by para. 30(7) 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 ►²section 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 ►²section 19◀, is to be treated as if it were appropriate for the purposes of that section.

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

³Words in reg. 10(2) substituted by reg. 27(2) of 2014/1711 as from 24.7.14.

- ³(a) the money purchase benefits, when they become payable, in accordance with the terms of an insurance policy or annuity contract in which the amount allocated to provide the benefits is invested; or
- (b) a pension under the scheme derived from the money purchase benefits, on the basis of actuarial advice.◀

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.

⁴Words in reg. 11(2) substituted by para. 30(14) of Sch. 2 to S.I. 1994/1062 as from 12.5.94.

(2) For the purposes of this regulation, “the applicable rules” means the same as in ►⁴section 94(2) of the Act◀ (revaluation of pensions and transfer values).

►⁵Further alternative to short service benefit – transfer to an overseas arrangement

⁵Reg. 11A added by reg. 2(6) of S.I. 1996/2131 as from 6.4.97.

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—

⁶Word added to reg. 11A(2)(a) & sub-para. (b) omitted by reg. 3(a) & (b) of S.I. 2011/1245 as from 6.4.12.

- (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; ►⁶and◀
- (b) ►⁶◀
- (c) is administered wholly or primarily outside the United Kingdom.◀

⁷Reg. 11B inserted by reg. 2(3) of S.I. 2013/459 as from 6.4.13.

►⁷Further alternative to short service benefit - transfer to a European pensions institution without consent

11B.—(1) For the purposes of section 73(2)(b) and (4)(b) of the Act (prescribed alternatives to short service benefit), a scheme may, instead of providing short service benefit, provide for the transfer of the member’s accrued rights to a European pensions institution without the member’s consent where the conditions in paragraphs (2) and (3) of regulation 12 are satisfied.

(2) For the purposes of paragraph (1) of this regulation, references in paragraphs (2), (3) and (4A) of regulation 12 to “receiving scheme” are to be read as “receiving European pensions institution”.

(3) 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 date on which the proposed transfer is due to take place.◀

Transfer of member’s accrued rights without consent

12.—(1) For the purposes of ►¹section 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 ►¹►²section 73(2)(a)(i)◀ of the Act◀) without the member’s consent where ►²the conditions set out in paragraphs (2) and (3) of this regulation are satisfied◀.

►³(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.◀

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

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

³Para. (1A) added to reg. 12 by reg. 27(a) of S.I. 2000/1403 as from 1.10.00.

►¹(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—

- (a) the transferring scheme and the receiving scheme ►²relate to persons who are or have been in◄ employment with the same employer; or
- (b) the transferring scheme and the receiving scheme ►²relate to persons who are or have been in◄ 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 ►³regulation 64(2) of the Occupational Pension Schemes (Contracting-out) Regulations 1996(a) (meaning of expression “connected employer”).◄ ◄

¹Reg. 12(2) substituted by reg. 35 of S.I. 1992/1531 as from 28.9.92.

²Words in reg. 12(2)(a) & (b) substituted by reg. 2(4) of S.I. 2013/459 as from 6.4.13.

³Words in reg. 12(2)(b)(ii) substituted by reg. 2(7)(a) of S.I. 1996/2131 as from 6.4.97.

►⁴(3) The condition set out in this paragraph is that—

- (a) the relevant actuary gives a certification, by completing the certificate in Schedule 3, in relation to the members’ rights in the receiving scheme;
- (b) the relevant actuary sends that certificate to the trustees or managers of the transferring scheme;
- (c) the transfer takes place within 3 months of the date of the relevant actuary’s signature in the certificate; and
- (d) there are no significant changes to the benefits, data and documents used in making the certificate (see the benefits, data and documents specified in the certificate) by the date on which the transfer takes place.◄

⁴Words in reg. 12(3), (4) and (4A) substituted by reg. 3(2) of S.I. 2011/672 as from 6.4.11.

►⁵(4) For the purposes of ►⁴making the certification in paragraph 1 of the certificate in Schedule 3◄, 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.

⁵Reg. 12(4) and (4A) substituted for reg. 12(3) and (4) by reg. 2(a) of S.I. 1993/1822 as from 1.9.93.

(4A) For the purposes of ►⁴making the certification in paragraph 2 of the certificate in Schedule 3◄, the ►⁶relevant 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.◄

⁶Words substituted in reg. 12(4A) and reg. 12(5) substituted by reg. 2 of S.I. 1999/2543 as from 1.10.99.

►⁷(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.◄

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

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

- (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 ►⁸Institute and Faculty of Actuaries(b)◄, 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.◄ ►⁹◄

⁸Words in reg. 12(5)(b) substituted by reg. 3 of S.I. 2012/692 as from 6.4.12.

⁹Word “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.

►⁹◄

(a) S.I. 1996/1172.

(b) The Institute and Faculty of Actuaries can be contacted at Staple Inn Hall, High Holborn, London WC1V 7QJ and at www.actuaries.org.uk

¹Para. (6) added to reg. 12 by reg. 27(b) of S.I. 2000/1403 as from 1.10.00.

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▶¹(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, ▶²◀ 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, ▶²◀ 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.

(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 ▶³section 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 ▶³section 74(1) of the Act◀) where ▶²the waiting period does not exceed 2 years◀.

14. ▶⁴◀

²Words deleted and substituted in Reg. 13(1)(b), (2)(c) and (3) by reg. 2(8) of S.I. 1996/2131 as from 6.4.97.

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

⁴Reg. 14 omitted by reg. 27 of S.I. 2014/1711 as from 24.7.14.

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

►¹**Benefits to which section 74(6) does not apply – money purchase benefits**

¹Reg. 14A added by reg. 27(4) of S.I. 2014/1711 as from 24.7.14.

14A. Section 74(6) of the Act (commutation of short service benefit) does not apply to money purchase benefits.◄

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 ►²section 74(6) of the Act◄.

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

(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 ►³they◄ consider reasonable as to—

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

- (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 ►⁴section 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.

⁴Words in reg. 17 substituted by para. 30(16) and (17) of Sch. 2 to S.I. 1994/1062 as from 12.5.94.

(2) For the purpose of calculating the proportion of purchased credits that must be included in short service benefit (in accordance with ►⁴section 75(3) of the Act◄), a scheme may provide for both the periods mentioned in ►⁴section 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 ►⁴section 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.

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

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

- (a) the period over which, on the assumption referred to in ¹section 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.

¹Words in reg. 17 substituted by para. 30(16) & (17) of Sch. 2 to S.I. 1994/1062 as from 12.5.94.

(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. [▶]²◀

Widows, widowers [▶]³, surviving civil partners◀ 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, [▶]³in a civil partnership with,◀ 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) [▶]³in a civil partnership with, or◀ dependent on, the member when the member's pensionable service terminated.

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

³Words inserted in heading to and in reg. 19 by para. 2 of Sch. 2 to S.I. 2005/2877 as from 5.12.05.

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. [▶]⁴◀

(3) [▶]⁵◀

⁴Words deleted from para. (2) by reg. 2(13)(a) of S.I. 1996/2131 as from 6.4.97.

⁵Para. (3) deleted by reg. 2(13)(b) 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.

(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. [▶]⁶Section 71(9) of the Act◀ is modified accordingly.

⁶Words substituted in reg. 21(2) 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 Social Security Act 1975(c) (loss of employment due to stoppage of work).

(a) 1975 c. 14.

(b) 1978 c. 44.

(c) 1975 c. 14.

(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 ►¹section 71(1) of the Act◄ are satisfied. ►¹Section 71(1) of the Act◄ is modified accordingly.

¹Words substituted in reg. 21(4)-(5) by para. 30(7), (8) and (20) of Sch. 2 to S.I. 1994/1062 as from 12.5.94.

(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 ►¹section 73(2) of the Act◄;
- (b) “appropriately secured” by a transaction to which ►¹section 19 of the Act◄ applies (extinguishment of liability of scheme for pensions secured by insurance policies or annuity contracts) ►²◄; or
- (c) extinguished by payment of a state scheme premium under ►³Chapter III or Part III of the Act◄ or by payment of a lump sum.

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

³Words 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.

(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 ►³section 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 ►³section 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. ►⁴Section 71(3) of the Act◄ is modified accordingly.

⁴Words in reg. 22(2) substituted by para. 30(21) of Sch. 2 to S.I. 1994/1062 as from 12.5.94.

Refunds of additional voluntary contributions

⁵Reg. 23 omitted by art. 6(2) of S.I. 2006/744 as from 6.4.06.

►⁵◄

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, ¹been 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.

¹Words 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.

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.

¹Words in reg. 25 substituted by para. 30(22) of Sch. 2 to S.I. 1994/1062 as from 12.5.94.

(2) ¹Sections 69 to 80 of the Act are¹ 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, ¹section 71(1) of the Act¹ 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, ² 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).

²Words 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 ³Chapter I of Part IV of the Act³, to the extent that they apply to the scheme concerned, namely—

³Words in reg. 27 substituted by para. 30(24) of Sch. 2 to S.I. 1994/1062 as from 12.5.94.

- (a) ³section 71(1)³ (members who must be entitled to short service benefit);
- (b) ³section 71(3) and (4)³ (age or time at which short service benefit must be made payable);
- (c) ³section 74³ (computation of benefit);
- (d) ³section 75³ (supplementary credits to be included in short service benefit); and
- (e) ³section 76³ (pension increases).

(2) A scheme that is constituted or amended by an interim trust deed or other interim instrument or agreement ⁴shall be treated⁴ as satisfying the preservation requirements if both the following conditions are satisfied, namely—

⁴Words 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) ⁵members an prospective members have been notified⁵ of the general effect of the definitive provisions of the scheme that will give effect to the provisions of ⁵Chapter I of Part IV of the Act⁵ referred to in paragraph (1) above.

⁵Words in para. (2)(b) substituted by reg. 2(17)(b) of S.I. 1996/2131 from 6.4.97.

(a) 1975 c. 14.

►¹**Information to be furnished to early leavers**

¹Regs. 27A and 27B added by reg. 2(18) of S.I. 1996/2131 as from 6.4.97.

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

- (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 ►²Regulatory Authority may by notice in writing◄ require him to pay, within 28 days, a penalty which—

²Words in reg. 27B substituted by reg. 2(2) of S.I. 2009/615 as from 6.4.09.

- (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. ►³◄

³Reg. 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.

1st February 1991

Nicholas Scott
Minister of State,
Department of Social Security

[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.

¹Sch. 3 inserted by reg. 3(3) of S.I. 2011/672 as from 6.4.11.

▶²**SCHEDULE 3**

Regulation 12(3)

ACTUARY'S CERTIFICATE

Given for the purposes of regulation 12(3) of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991.

THIS CERTIFICATE IS SUBJECT TO THE NOTES BELOW

The name of the transferring scheme is:

The reference number of Her Majesty's Revenue and Customs for that scheme is:

1. I certify that in my opinion, the transfer credits to be acquired for each member under the receiving scheme in the categories of member covered by this certificate are, broadly, no less favourable than the rights to be transferred.

2. Where it is the established custom for discretionary benefits or increases in benefits to be awarded under the transferring scheme, I certify that in my opinion, 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.

In making this certification:

- I used these benefits:

- I used this data:

- I used these key actuarial assumptions to value the rights, transfer credits, any discretionary benefits and any discretionary increases in benefits:

- I used these documents:

The categories of member covered by this certificate are:

Signature:

Date of signature:

Name:

Qualification:

Address:

Name of employer (if applicable):

Notes:

Phrases used in this certificate have the same meaning as in the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 (“the 1991 Regulations”).

The certification in paragraph 1 was made in accordance with regulation 12(4) of the 1991 Regulations. The certification in paragraph 2 was made in accordance with regulation 12(4A) of the 1991 Regulations.

This certificate is valid only for the purposes of the 1991 Regulations.

This certificate must not be taken by the trustees or managers of the scheme as authority to make a transfer without members’ consents. It must also not be taken as a recommendation to make a transfer without members’ consents. The trustees or managers of the scheme need to satisfy themselves that making the transfer is consistent with their duties to the transferring members and the remaining members. The trustees of the scheme need to satisfy themselves that making the transfer is consistent with their responsibilities and powers under trust law.

The actuary is not expressing in this certificate an opinion on whether or not the amount of the transfer value is reasonable.

The actuary has taken account of the benefits accrued by the date of this certificate. The actuary has not taken account of any differences between the terms and conditions of any benefits that may accrue in the future under the transferring scheme and the receiving scheme. ◀

EXPLANATORY NOTE

Supplement No. 95 [June 2014] (*This note is not part of the Regulations relating to Social Security*)

5.7717

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

SI 1991/167

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