
STATUTORY INSTRUMENTS

2015 No. 1677

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

PART 2

GENERAL PROVISIONS RELATING TO SCHEMES THAT WERE SALARY RELATED CONTRACTED-OUT SCHEMES

Alteration of scheme rules

3. For the purposes of section 37(1) of the 1993 Act (prohibition on alteration of rules of schemes that were contracted-out unless alteration is of a prescribed description), the alterations which are prescribed are any alterations which are allowed by regulations 17 and 20.

Determination that an earner was in contracted-out employment

4.—(1) This regulation applies where—

- (a) an earner (“E”) has been in employment, during a period in which employment of the same description as E’s employment was contracted-out, but E’s employment was not (apart from this regulation) contracted-out in relation to E; and
- (b) the Commissioners are satisfied—
 - (i) that the employment was not contracted-out in relation to E solely because E was not, during that period, a member of the relevant scheme; and
 - (ii) that E, during that period, was not a member of that scheme solely because of inadvertence.

(2) Where this regulation applies, the Commissioners may determine that E was in contracted-out employment by reference to that scheme during that period.

Provision of information

5.—(1) The Secretary of State or the Commissioners may give any information that they could give to the trustees of an occupational pension scheme, under section 156(1) of the 1993 Act (information for purposes of contracting-out), to the following persons—

- (a) an earner, or widow, widower or surviving civil partner of an earner, to whom the information relates;
- (b) the employer in relation to the contracted-out employment of an earner to whom the information relates;
- (c) any independent trade union recognised in relation to earners who are members of a scheme that was a salary related contracted-out scheme; and

- (d) any person who is or who, in the opinion of the Commissioners, is likely to become, responsible for paying guaranteed minimum pensions, or pensions in respect of section 9(2B) rights, in accordance with the pension scheme.
- (2) Paragraph (1)(c) is subject to the condition that the information to be given is either—
- (a) as to—
- (i) the total amount of the guaranteed minimum pensions to which it appears to the Commissioners that all persons entitled under the scheme (whether immediately or prospectively) are so entitled; or
 - (ii) whether the scheme is liable in respect of any section 9(2B) rights; or
- (b) given with the consent of the earner, widow, widower or surviving civil partner to whom it relates, such consent being given in writing, or by means of an electronic communication in such form as the Commissioners may approve.
- (3) For the purposes of this regulation, “independent trade union” means an independent trade union which is recognised to any extent for the purpose of collective bargaining.

Overseas schemes

6.—(1) The rules of an overseas scheme are to provide—

- (a) that, if the scheme is wound up, the assets of the scheme are to be applied first towards satisfying the amounts of the liabilities mentioned in section 73(4) of the 1995 Act (preferential liabilities on winding up) and, if they are insufficient to satisfy those amounts in full, then—
- (i) they are to be applied first towards satisfying the amounts of the liabilities mentioned in earlier paragraphs of that subsection before those mentioned in later paragraphs; and
 - (ii) where the amounts of the liabilities mentioned in one of those paragraphs cannot be satisfied in full, all such liabilities are to be satisfied in the same proportions;
- (b) that not more than 5 per cent of the current market value of the scheme’s resources are invested in a person who is an employer, or connected with an employer, in relation to the scheme if such investments are required to meet the liabilities specified in subparagraph (a) and the value of such investments is to be calculated and determined in a manner approved by the Commissioners; and
- (c) in respect of rights that have accrued as a result of contracted-out employment in the scheme in Great Britain, for revaluation of accrued rights in accordance with sections 83 to 86 of the 1993 Act and for indexation of pensions in accordance with sections 51 to 54 of the 1995 Act.

(2) In this regulation “overseas scheme” means an occupational pension scheme that was a salary related contracted-out scheme and that has its main administration outside the [F1United Kingdom], but does not include a scheme that was contracted-out in the Isle of Man by virtue of satisfying section 9(2) of the 1993 Act as it had effect in the Isle of Man before the second abolition date.

Textual Amendments

- F1** Words in [reg. 6\(2\)](#) substituted (31.12.2020) by [The Occupational and Personal Pension Schemes \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/192\)](#), regs. 1, [36\(2\)](#); 2020 c. 1, Sch. 5 para. 1(1)

Restoration of state scheme rights

7.—(1) This regulation applies where paragraph 5(3B) of Schedule 2 to the 1993 Act (state scheme premiums: schemes which were being wound up before the second abolition date) applies in relation to a member of a scheme that was a contracted-out scheme and that was being wound up before the second abolition date if, by virtue of that provision—

- (a) the member was treated as if sections 46 to 48 or 48A(1) of the 1993 Act (effect of entitlement to guaranteed minimum pensions on payments of social security benefits) did not apply; or
- (b) in a case where the cash equivalent of the member's rights was less than the amount required for restoring their state scheme rights, the member was treated as if sections 46 to 48 or 48A(1) of the 1993 Act applied only in so far as they extinguish such part of the member's state scheme rights as, in the opinion of the Commissioners, corresponded to that shortfall.

(2) Where this regulation applies, the member is to continue to be treated as mentioned in paragraph (1)(a) or, as the case may be, (1)(b).

Contributions equivalent premiums: prescribed person

8.—(1) For the purposes of section 55(2) of the 1993 Act (which requires the prescribed person to pay a contributions equivalent premium in the case mentioned in section 55(2B) of that Act and enables them to elect to do so in certain other cases) the prescribed person is—

- (a) in a case where a transfer has been made in relation to a scheme under section 161 of the 2004 Act (effect of Board assuming responsibility for a scheme), the Board of the Pension Protection Fund (as defined in that Act); and
- (b) in all other cases, the trustees of the scheme.

(2) Where, in accordance with paragraph (1)(a), the prescribed person is the Board of the Pension Protection Fund, regulations 9, 12 and 13 apply with the following modifications—

- (a) except in regulation 12(1), references to “the trustees of the scheme”, “the trustees” or “the trustees of a scheme” are to be read as references to “the Board of the Pension Protection Fund”; and
- (b) references to “the resources of the scheme” are to be read as references to “the Pension Protection Fund”, being the Pension Protection Fund specified in section 173(1) of the 2004 Act (Pension Protection Fund).

Notification of requirement to pay a contributions equivalent premium

9.—(1) Where a contributions equivalent premium is required to be paid in respect of an earner by virtue of section 55(2) of the 1993 Act (payment of state scheme premiums on termination of certified status), the trustees of the scheme are to notify the Commissioners of that fact in such form as the Commissioners may reasonably require for the purpose of identifying the earner.

(2) Such notification is to be given—

- (a) where the scheme is being wound up, within the period of two years starting with the date the scheme started to wind up; and
- (b) where the earner ceased to serve in employment which was contracted-out employment for any other reason mentioned in section 55(2A) of the 1993 Act, within the period starting one month before and ending six months after the date on which the earner so ceased.

[^{F2}(3) The Commissioners may in any particular case or class of case extend the period within which notification is to be given—

- (a) if it appears to them that notification could not reasonably have been given within the period specified in paragraph (2); or
- (b) if—
 - (i) the trustees are seeking to reach, or have reached, an agreement with the Commissioners as to the scheme’s liabilities for guaranteed minimum pensions or section 9(2B) rights of members through the scheme reconciliation service; and
 - (ii) as a result of doing so, the Commissioners and the trustees agree that a premium is payable.]

Textual Amendments

- F2** Reg. 9(3) substituted (6.4.2017) by [The Occupational Pension Schemes and Social Security \(Schemes that were Contracted-out and Graduated Retirement Benefit\) \(Miscellaneous Amendments\) Regulations 2017 \(S.I. 2017/354\)](#), regs. 1(2), **4(3)**

Cases where payment of a contributions equivalent premium is not required

10.—(1) Section 55(2B) of the 1993 Act (by virtue of which a contributions equivalent premium must be paid in any case where the earner has no accrued right to benefit under the scheme) does not apply if any of the following paragraphs of this regulation apply.

- (2) This paragraph applies where—
 - (a) the earner’s service in the employment ceased on the earner’s death; and
 - (b) the earner left a surviving spouse or civil partner who is not entitled to any of the following benefits—
 - (i) a widowed mother’s allowance under section 37 of the Contributions and Benefits Act;
 - (ii) a widow’s pension under section 38 of that Act;
 - (iii) a widowed parent’s allowance under section 39A of that Act;
 - (iv) a bereavement support payment under section 30 of the Pensions Act 2014.

(3) This paragraph applies where the earner is a woman who has made, or is treated as having made, an election under regulations made under section 19(4) of the Contributions and Benefits Act (general power to regulate liability for contributions), which has not been revoked, that her liability in respect of primary Class 1 contributions is to be at a reduced rate.

(4) This paragraph applies where, on termination of an earner’s pensionable service, the earner elects to acquire a right to a cash transfer sum in accordance with section 101AB(1)(a) of the 1993 Act (right to cash transfer sum and contribution refund).

Elections to pay contributions equivalent premiums

11.—(1) Subject to paragraph (2), the obligation under section 57(2) of the 1993 Act (not to discriminate between different earners when making or abstaining from making elections to pay contributions equivalent premiums) does not apply to cases where—

- (a) an earner’s rights are transferred in accordance with regulations made under section 37A of the 1993 Act (transfer of liabilities etc.: schemes contracted-out on or after 6th April 1997);
- (b) the earner is a woman who has made, or is treated as having made, an election under regulations made under section 19(4) of the Contributions and Benefits Act, which has

- not been revoked, that her liability in respect of primary Class 1 contributions is to be at a reduced rate;
- (c) on the death of an earner, there arose an entitlement to a widow's, widower's or surviving civil partner's pension which comprises amounts of pension which accrued by reference both to the earner's service in employment which was not contracted-out and to service in employment which was contracted-out;
- (d) the earner—
- (i) has completed less than two years qualifying service for the purposes of Chapter 1 of Part IV of the 1993 Act (preservation); and
 - (ii) has made an election under the rules of the scheme to preserve the earner's accrued rights; or
- (e) any liability to provide pensions to an earner has been discharged in accordance with regulations made under section 12C (transfer, commutation etc.) or 37A of the 1993 Act (as it had effect before the second abolition date).
- (2) An employer is not to discriminate between different earners falling within the same class of case mentioned in paragraph (1).
- (3) An election under section 55(2) of the 1993 Act is to be notified to the Commissioners in such form as they may reasonably require for the purpose of identifying the earner to whom the election relates.
- (4) Such notification is to be given—
- (a) where the scheme is being wound up, within the period of two years starting with the date the scheme started to wind up;
 - (b) where the earner ceased to serve in employment which was contracted-out employment for any other reason mentioned in section 55(2A) of the 1993 Act, within the period starting one month before and ending six months after the date on which the earner so ceased.
- [^{F3}(5) The Commissioners may in any particular case or class of case extend the period within which notification of an election is to be given—
- (a) if it appears to them that notification could not reasonably have been given within the period specified in paragraph (4); or
 - (b) if—
 - (i) the trustees are seeking to reach, or have reached, an agreement with the Commissioners as to the scheme's liabilities for guaranteed minimum pensions or section 9(2B) rights of members through the scheme reconciliation service; and
 - (ii) as a result of doing so, the Commissioners and the trustees agree that a premium is payable.]

Textual Amendments

- F3** Reg. 11(5) substituted (6.4.2017) by [The Occupational Pension Schemes and Social Security \(Schemes that were Contracted-out and Graduated Retirement Benefit\) \(Miscellaneous Amendments\) Regulations 2017 \(S.I. 2017/354\)](#), regs. 1(2), **4(4)**

Payment of a contributions equivalent premium

12.—(1) A contributions equivalent premium which the trustees are required or have elected to pay is to be paid on or before—

- (a) the day six months after the date of termination of contracted-out employment in respect of which the premium is payable; or
- (b) the day one month after the day on which the Commissioners send to the trustees a notice certifying the amount of the premium payable,

whichever is the later.

(2) In a case to which regulation 8(1)(a) applies, the Board of the Pension Protection Fund (as defined in that regulation) (“the Board”) is to pay the contributions equivalent premium on or before—

- (a) the day six months after the date the assessment period (construed in accordance with section 132 of the 2004 Act) ended; or
- (b) the day one month after the day on which the Commissioners send to the Board a notice certifying the amount of the premium payable,

whichever is the later.

(3) On an application made to them for that purpose, the Commissioners may in any particular case or class of case extend the period within which a premium is to be paid under paragraph (1) or (2)—

- (a) if they are satisfied that the circumstances are such that payment of the premium could not reasonably be required to be made within the period specified in that paragraph, by a period not exceeding six months; ^{F4} ...
- (b) if they are satisfied that to require earlier payment would be prejudicial to the interests of the earner in respect of whom the premium is payable or of the generality of the members of the scheme, by such further period as they consider reasonable^{F5}; and
- (c) if—
 - (i) the trustees are seeking to reach, or have reached, an agreement with the Commissioners as to the scheme’s liabilities for guaranteed minimum pensions or section 9(2B) rights of members through the scheme reconciliation service; and
 - (ii) as a result of doing so, the Commissioners and the trustees agree that a premium is payable,

by such further period as they consider reasonable.]

(4) Where the amount of any contributions equivalent premium which is payable does not exceed £17, the trustees are not liable to pay it and, accordingly, if it is not paid, it is to be treated as paid for the purposes of section 48A(2) (additional pension and other benefits) and section 60 (effect of payment of premiums on rights) of the 1993 Act.

(5) Any liability for a contributions equivalent premium is a liability to make payment out of the resources of the scheme.

Textual Amendments

- F4** Word in reg. 12(3) omitted (6.4.2017) by virtue of [The Occupational Pension Schemes and Social Security \(Schemes that were Contracted-out and Graduated Retirement Benefit\) \(Miscellaneous Amendments\) Regulations 2017 \(S.I. 2017/354\)](#), regs. 1(2), **4(5)(a)**
- F5** Reg. 12(3)(c) and word inserted (6.4.2017) by [The Occupational Pension Schemes and Social Security \(Schemes that were Contracted-out and Graduated Retirement Benefit\) \(Miscellaneous Amendments\) Regulations 2017 \(S.I. 2017/354\)](#), regs. 1(2), **4(5)(b)**

Payment in lieu of benefit and delay in refund for the purposes of the employer's right of recovery

13.—(1) For the purposes of section 61(10) of the 1993 Act (payments in lieu of benefit) a payment in lieu of benefit is to include a payment made or to be made out of the resources of the scheme towards the provision of deferred benefits for the earner.

(2) The following provisions of this regulation apply, for the purpose of enabling any right of recovery conferred by section 61 of the 1993 Act to be exercised, where an employed earner (or, by virtue of a connection with the earner, any other person) is entitled to a refund of any payments made under a scheme that was contracted-out in respect of the earner towards the provision of benefits under the scheme (“the refund”).

(3) Subject to paragraph (4), where a contributions equivalent premium falls to be paid in respect of the earner under the 1993 Act and the person liable for the refund has been given a notice of delay in accordance with paragraph (5), that person is not to make the refund in whole or in part until after the end of the period of four weeks starting with—

- (a) the date of payment of the contributions equivalent premium; or
- (b) the last day of the prescribed period for payment of that premium,

whichever occurs first.

(4) Paragraph (3) does not apply to so much, if any, of the refund as exceeds the amount certified by the Commissioners under section 63(1)(d) of the 1993 Act (certification of amount attributable to reductions of contributions).

(5) A notice of delay is a notice in writing given by the trustees of the scheme concerned, relating either to a particular case or to a class of case and containing the following particulars—

- (a) the name of the earner or such particulars as will sufficiently identify the class of case concerned;
- (b) such particulars as will sufficiently identify the refund or refunds concerned; and
- (c) a memorandum in a form approved by the Commissioners giving brief particulars of the effect of paragraphs (3) and (4).

(6) Where the trustees of a scheme have given a notice of delay, they are to inform the person to whom the notice was given of the end date of the period during which they may not make a refund to which the notice applies.

Refund of a contributions equivalent premium

14.—(1) The Commissioners are to refund a contributions equivalent premium if—

- (a) it was paid in error;
- (b) they are satisfied that a transfer of the earner's accrued rights will be made in accordance with regulations made under section 20 (transfer of accrued rights) or section 37A of the 1993 Act; or
- (c) the scheme is one under which a member may qualify for benefits by virtue of service either in employed earner's employment or as a self-employed earner (within the meaning of section 2 of the Contributions and Benefits Act) or both and the Commissioners are satisfied that the earner in respect of whom the premium was paid has completed a period of membership of the scheme as a self-employed earner which, when aggregated with service in employed earner's employment, amounts to not less than two years.

(2) Where a contributions equivalent premium is refunded under paragraph (1), the earner's accrued rights under the scheme, which were extinguished by payment of the premium, are to be restored.

(3) A refund under this regulation is only to be made if an application is made in writing in such form as the Commissioners may reasonably require for that purpose, or by means of an electronic communication in such form as the Commissioners may approve.

(4) In paragraph (1)(a), “error” means an error which—

- (a) was made at the time of payment; and
- (b) relates to some present or past matter.

(5) Where—

- (a) an earner has been employed concurrently in two or more contracted-out employments, on the termination of one or more of which a contributions equivalent premium has been paid; and
- (b) the aggregate amount of any such payments has the effect that the National Insurance Fund has gained, by reference to any employment in respect of which such a payment has been made, a greater amount than it would have gained from Class 1 contributions under the Contributions and Benefits Act if those employments had not been contracted-out,

there is to be paid out of the National Insurance Fund to the earner (or to the earner’s estate) an amount which bears the same proportion to the amount of the excess as the reduction under section 41(1A) of the 1993 Act (as it had effect immediately before the second abolition date) (reduced rates of Class 1 contributions) in the normal percentage of primary Class 1 contributions bears to the total reduction under subsections (1A) and (1B) of that section in the total normal percentage of Class 1 contributions.

(6) The Commissioners are also to refund a contributions equivalent premium if they are satisfied that—

- (a) where it was paid in the circumstances mentioned in section 55(2A)(a), (b), (d) or (e) of the 1993 Act, the person in respect of whom it was paid has died, without leaving a widow, widower or surviving civil partner, on or before the later of the days mentioned in subparagraphs (a) and (b) respectively of regulation 12(1); or
- (b) where it was paid in the circumstances mentioned in section 55(2A)(c) of the 1993 Act, there are no accrued rights to guaranteed minimum pensions or section 9(2B) rights under the scheme in question in respect of the widow, widower or surviving civil partner in question.

Continuation of transitional arrangements for schemes that began winding up before 6th April 1997

15. Where a scheme that was a salary related contracted-out scheme began winding up before the principal appointed day—

- (a) regulation 40 (priorities on the winding-up of a scheme) of the Occupational Pension Schemes (Contracting-out) Regulations 1984 continues to have effect in relation to that scheme; and
- (b) the resources of the scheme must be sufficient to meet the liabilities specified in section 24(1)(c) of the 1993 Act (as it had effect on the day the scheme began winding up), such resources being calculated, determined and verified in a manner approved by the Commissioners.

Continuation of savings in respect of state scheme premiums

16. The following continue to have effect in relation to any state scheme premium (payment required to be made under section 55(1) of the 1993 Act) which was paid before the principal appointed day—

- (a) regulations 18 to 26, 34, 44, 45, 47, 48 and 49 of the Occupational Pension Schemes (Contracting-out) Regulations 1984;
- (b) the Occupational Pension Schemes (Contracted-out Protected Rights Premiums) Regulations 1987.

Changes to legislation:

There are currently no known outstanding effects for the The Occupational Pension Schemes (Schemes that were Contracted-out) (No.2) Regulations 2015, PART 2.