This Statutory Instrument has been made in consequence of a defect in S.I. 2015/1452 and is being issued free of charge to all known recipients of that Statutory Instrument.

STATUTORY INSTRUMENTS

2015 No. 1677

PENSIONS

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

Made - - - - 9th September 2015

Laid before Parliament 16th September 2015

Coming into force in accordance with regulation 1(2)

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers set out in the Schedule.

The Secretary of State has consulted such persons as the Secretary of State considers appropriate, in accordance with section 185(1) of the Pension Schemes Act 1993(**1**).

PART 1

GENERAL

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Schemes that were Contracted-out) (No.2) Regulations 2015.

(2) These Regulations come into force—

(a) for the purposes of regulation 45, on 31st October 2015;

(b) for all purposes, other than that of regulation 33 and 45, on 6th April 2016; and

(c) for the purposes of regulation 33, on 6th April 2019.

(3) These Regulations, except for Part 8, extend to England and Wales and Scotland.

(**1**) 1993 c.48. Relevant amendments are made by paragraph 46 of Schedule 3 to, paragraph 80 of Schedule 5 to, and Part I of Schedule 7 to, the Pensions Act 1995 (c.26). A draft of S.I. 2015/1452 was consulted on and these Regulations are materially identical to S.I. 2015/1452 except for the removal of the provisions in regulation 28 of that Instrument, and that regulation 69B of the Occupational Pension Schemes (Contracting-out) Regulations 1996 is not revoked by this instrument.

(4) Parts 8 and 9, and this regulation and regulation 2 in so far as they relate to those Parts, extend to Northern Ireland.

Interpretation

2.—(1) In these Regulations—

"the 1993 Act" means the Pension Schemes Act 1993;

"the 1995 Act" means the Pensions Act 1995;

"the 2004 Act" means the Pensions Act 2004;

"the 1996 Regulations" means the Occupational Pension Schemes (Contracting-out) Regulations 1996;

"administrator" means the person resident in the United Kingdom having responsibility for the management of an occupational pension scheme or, in the case of an overseas scheme (within the meaning of regulation 6), the person who is appointed in accordance with section 270 of the Finance Act;

[[F1]"bereavement support payment" means the benefit described in section 30 (bereavement support payment) of the Pensions Act 2014;**]**

"the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs;

"the Contributions and Benefits Act" means the Social Security Contributions and Benefits Act 1992;

"the Finance Act" means the Finance Act 2004;

[[F2]"scheme reconciliation service" means the service set up by the Commissioners which allows schemes to compare the scheme's records of members who have been contracted-out, and the value of members' guaranteed minimum pensions, with the Commissioner's records of the same, with a view to removing any errors in the scheme's or the Commissioner's records;**]**

"section 9(2B) rights" are—

(a) **[**[F3]rights to the payment of pensions and accrued rights to pensions (other than rights attributable to voluntary contributions)—

(i) under a scheme that was a salary-related contracted-out scheme, or

(ii) under a salary-related scheme, as defined in regulation 1(2) of the Contracting-out (Transfer and Transfer Payment) Regulations 1996, that has never been a contracted-out scheme, following a transfer in accordance with regulation 9 of those Regulations,

so far as attributable to an earner's service in contracted-out employment on or after 6th April 1997; and**]**

(b) where a transfer payment has been made **[**[F4](other than a payment made in accordance with regulation 10 (transfers payments to occupational and personal pension schemes in respect of section 9(2B) rights) of the Contracting-out (Transfer and Transfer Payment) Regulations 1996)**]** to such a scheme, **[**[F5]whether before or after the second abolition date,**]** any rights arising under the scheme as a consequence of that payment which are derived directly or indirectly from—

(i) such rights as are referred to in paragraph (a) under **[**[F6]another salary-related scheme**]**; or

(ii) protected rights under another occupational pension scheme or under a personal pension scheme attributable to payments or contributions in respect of employment

on or after the principal appointed day where that transfer payment was made before the first abolition date;

"trustees" in relation to a scheme which is not set up or established under a trust, means the managers or administrators of the scheme.

(2) For the purposes of these Regulations—

(a) any person, government department or public authority who, under or by virtue of Part 1 of the Contributions and Benefits Act is, or is to be treated as, the secondary Class 1 contributor, is to be treated as the employer of the earner in respect of whom the Class 1 contributions are payable;

(b) without prejudice to sub-paragraph (a), there is to be treated as the employer of a self-employed earner to whom a scheme that was a salary related contracted-out scheme applies any person (other than the self-employed earner), government department or public authority who makes or is liable to make payments towards the resources of the scheme in respect of the self-employed earner (either under actual or contingent legal obligation or in the exercise of power conferred, or duty imposed, on a Minister of the Crown, government department or any other person, being a power or duty which extends to the disbursement or allocation of public money).

F1 Words in reg. 2 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(2)(a)**

F2 Words in reg. 2 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(2)(b)**

F3 Words in reg. 2(1) substituted (6.4.2018) by The Contracting-out (Transfer and Transfer Payment) (Amendment) Regulations 2018 (S.I. 2018/234), regs. 1, **3(2)(a)**

F4 Words in reg. 2(1)(b) inserted (6.4.2016) by The Pensions Act 2014 (Abolition of Contracting-out for Salary Related Pension Schemes) (Consequential Amendments and Savings) Order 2016 (S.I. 2016/200), arts. 1(2), **28(b)(i)**

F5 Words in reg. 2(1)(b) inserted (6.4.2016) by The Pensions Act 2014 (Abolition of Contracting-out for Salary Related Pension Schemes) (Consequential Amendments and Savings) Order 2016 (S.I. 2016/200), arts. 1(2), **28(b)(ii)**

F6 Words in reg. 2(1) substituted (6.4.2018) by The Contracting-out (Transfer and Transfer Payment) (Amendment) Regulations 2018 (S.I. 2018/234), regs. 1, **3(2)(b)**

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 sub-paragraph (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 **[**F7United 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.

F7 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—