



Statutory Document No. 151/03

## THE PENSION SCHEMES ACT 1995

### THE PENSION SCHEMES LEGISLATION (APPLICATION) (No. 2) ORDER 2003

*Approved by Tynwald 8<sup>th</sup> April 2003*

*Coming into operation in accordance with Article 1*

In exercise of the powers conferred on the Department of Health and Social Security by section 1 of the Pension Schemes Act 1995(a), and of all other enabling powers, the following Order is hereby made:-

#### **Citation and commencement**

1. (1) This Order may be cited as the Pension Schemes Legislation (Application) Order (No. 2) 2003 and shall, subject to section 1(4) of the Pension Schemes Act 1995, come into force as provided for in paragraph (2).

(2) This Article and Articles 2 and 3 shall come into force forthwith and each provision of the applied legislation, as modified, shall be deemed to have come into force on the same day as in Great Britain.

#### **Interpretation**

2. (1) In this Order "the applied legislation" means -

- (a) the Occupational and Personal Pension Schemes (Contracting-out) (Miscellaneous Amendments) Regulations 2002(b);
- (b) the Occupational and Personal Pension Schemes (Disclosure of Information) Amendment Regulations 2002(c); and
- (c) the Occupational Pensions (Revaluation) Order 2002(d).

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(a) 1995 c.11; (b) S.I. 2002/681; (c) S.I. 2002/1383; (d) S.I. 2002/2951.

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(2) Unless the context otherwise requires -

- (a) any reference in any of the applied legislation to any provision in an instrument of a legislative character which is not itself a provision of any of the applied legislation shall be construed as if the provision so referred to had been in force in the Island from the date on which that instrument of a legislative character had effect in Great Britain;
- (b) reference in any legislation applied by this Order to any provision of any such legislation or of any other legislation applied to the Island by an order under section 1 of the Pension Schemes Act 1995 or section 1 of the Social Security Act 2000(a) shall be construed as a reference to that legislation as it has effect in the Island.

### Application to the Island of the applied legislation

3. The applied legislation, as modified and shown in the Schedules to this Order, shall apply to the Island as part of the law of the Island.

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(a) 2000 c.5.

## SCHEDULE 1

This Schedule sets out the text of regulations 1 to 4 and 8 only of the Occupational and Personal Pension Schemes (Contracting-out) (Miscellaneous Amendments) Regulations 2002 (S.I. 2002/681) with such exceptions, adaptations and modifications made where necessary.

Note: modifications subject to which the legislation is applied to the Island are in *bold italic* type.

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### STATUTORY INSTRUMENTS

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2002 No. 681

### PENSIONS

#### **The Occupational and Personal Pension Schemes (Contracting-out) (Miscellaneous Amendments) Regulations 2002**

##### **Citation and commencement**

1. These Regulations may be cited as the Occupational and Personal Pension Schemes (Contracting-out) (Miscellaneous Amendments) Regulations 2002 and shall *be deemed to have* come into force on 6<sup>th</sup> April 2002.

##### **Amendment of the Occupational Pension Schemes (Contracting-out) Regulations 1996**

2. (1) The Occupational Pension Schemes (Contracting-out) Regulations 1996(a) shall be amended in accordance with the following paragraphs of this regulation.

(2) In regulation 3 (notices by employers of intended election for issue of contracting-out certificate), in paragraph (2) -

- (a) sub-paragraph (c) shall be omitted; and
- (b) in sub-paragraph (g) -
  - (i) after head (i) there shall be inserted the word "and", and
  - (ii) head (iii) shall be omitted.

(3) In regulation 6 (information to be included in an election), in paragraph (2), sub-paragraphs (e) and (f) shall be omitted.

(4) In regulation 9 (making of elections by employers for variation or surrender of contracting-out certificates) for paragraph (1) there shall be substituted the following paragraph: -

"(1) Subject to the provisions of paragraphs (2), (3) and (7) and regulation 10, an election with a view to the variation or surrender of a contracting-out certificate -

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(a) S.I. 1996/1172 (see S.D. 651/97)

- (a) may be made only after notices of intention have been given in accordance with paragraphs (4) and (5); and
- (b) shall be made in writing to the *Department*."

(5) In regulation 16 (requirement to confirm relevant requirements are satisfied), in paragraph (1) for the words "written confirmation and such" there shall be substituted the words "such written confirmation and any".

(6) *Omitted*.

(7) For regulation 19 (lump sum benefits and salary related contracted-out schemes) there shall be substituted the following regulation: -

**"Lump sum benefits and salary related contracted-out schemes**

19. A salary related contracted-out scheme may not provide for the payment of a lump sum instead of a pension except -

- (a) in accordance with -
  - (i) regulation 20 (trivial commutation of benefits derived from section 9(2B) rights), or
  - (ii) regulation 60 (trivial commutation of guaranteed minimum pension); or
- (b) to the extent permitted -
  - (i) in the case of a scheme which is exempt approved within the meaning of section 3(1) of the *Income Tax (Retirement Benefit Schemes) Act 1978 (an Act of Tynwald)* or a scheme in such respect of which an application for such approval has not yet been determined, under the rules of that scheme in accordance with that approval, or
  - (ii) in the case of a scheme which is a relevant statutory scheme within the meaning of section 4 of the *Income Tax (Retirement Benefit Schemes) Act 1978 (an Act of Tynwald)*, under the regulations or rules governing that scheme as a relevant statutory scheme."

(8) In regulation 20 (trivial commutation of benefits derived from section 9(2B) rights) -

- (a) the words from "For the purposes" to "commutation" shall be numbered as paragraph (1) of that regulation; and
- (b) after that paragraph there shall be *added* the following paragraphs: -

"(2) The condition specified in paragraph (1)(a) shall not apply where -

- (a) the scheme is being wound up; or
- (b) where the earner is a member of more than one scheme relating to the same employment, both or all of those schemes are being wound up;

but paragraph (3) shall apply instead.

(3) Where this paragraph applies, the aggregate amount of benefit which has accrued to the earner at the date of winding up shall be treated for the purposes of paragraph (1)(b) as the amount of all benefits payable to him under the scheme."

(9) *Omitted.*

(10) *Omitted.*

(11) In regulation 31 (deduction of minimum payments from earnings) -

- (a) in paragraph (1) for the word "Every" there shall be substituted the words "Subject to paragraph (3A), every";
- (b) in paragraph (3) for the words "paragraph (4)" there shall be substituted the words "paragraphs (3A) and (4)"; and
- (c) after paragraph (3) there shall be inserted the following paragraph: -

"(3A) Where the payment of emoluments in respect of which minimum payments are payable does not exceed the amount which is for the time being specified in regulations under section 5 of the Contributions and Benefits Act (earnings limits and thresholds for Class 1 contributions) as the primary threshold for the purposes of that Act (or the amount which is, in relation to that payment of emoluments, the amount prescribed under that section as the equivalent of that threshold) no amount shall be deducted from those emoluments under this regulation."

(12) In regulation 51 (election to pay a contributions equivalent premium) -

- (a) for paragraph (1) *and the heading to that regulation* there shall be substituted: -

**"Contributions equivalent premiums**

51. (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 otherwise enables him to elect to pay such a premium on termination of contracted-out employment) the prescribed person is the trustees of the scheme.

(1A) 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 paragraph (1B) or (1C) applies.

(1B) This paragraph applies where -

- (a) the earner's service in the employment ceases on the earner's death; and
- (b) the earner leaves a surviving spouse 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, or
  - (iv) a bereavement allowance under section 39B of that Act.

(1C) 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, which has not been revoked, that her liability in respect of primary Class 1 contributions shall be at a reduced rate.";

(b) in paragraph (2) -

(i) in sub-paragraph (a) the words "under section 20 (transfer of accrued rights) or" shall be omitted,

(ii) for sub-paragraph (b) there shall be substituted -

"(b) cases where paragraph (1C) applies"; and

(iii) for sub-paragraph (e) there shall be substituted -

"(e) cases where any liability to provide pensions to an earner has been discharged in accordance with regulations under section 12C of the 1993 Act,"; and

(c) after paragraph (2) of that regulation there shall be inserted -

"(2A) 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, the trustees of the scheme must notify the *Department* of that fact in such form as the *Department* may reasonably require for the purpose of identifying the earner.

(2B) Such a notification must be given -

(a) where the earner has ceased to serve in employment which is contracted-out employment by reference to the scheme because it is wound up, within two years of the cessation of the scheme; and

(b) where the earner has so ceased for any other reason mentioned in section 55(2A) of the 1993 Act within the period beginning one month before and ending six months after the date on which the person so ceases.

(2C) The *Department* may in any particular case or class of cases extend the period applicable under paragraph (2B) if it appears to *the Department* that the notification could not reasonably have been given within that period."

(13) In regulation 52(1) (time for payment of contributions equivalent premiums) after the words "the trustees", in the first place they occur, the words "are required or" shall be inserted.

(14) In regulation 60 (trivial commutation of guaranteed minimum pensions), in paragraph (4) -

(a) after the words "under Part VI" there shall be inserted the words "or the scheme has made the provisions mentioned in section 16(2) and (3) of the 1993 Act";

(b) in sub-paragraph (a) for the words "or in either case" there shall be substituted the words "or, in a case where that section 16(2) and (3) applies,"; and

(c) in sub-paragraph (c) after the word "premium" there shall be inserted the words "or have made the provisions mentioned in section 16(2) and (3) of the 1993 Act".

(15) In regulation 61 (suspension and forfeiture of guaranteed minimum pension), in paragraph (1)(a) -

(a) The words "or otherwise" shall be omitted; and

(b) for the words from "for sums equivalent" to the end of the sub-paragraph there shall be substituted the words -

"which requires that, in those circumstances, sums equivalent to the guaranteed minimum pension -

- (i) must, except insofar as such sums are not, in the opinion of the trustees, required for the maintenance of the pensioner, be paid or applied for his maintenance,
- (ii) may, insofar as such sums are not, in the opinion of the trustees, required for the maintenance of the pensioner, be paid or applied for the maintenance of any dependants of the pensioner,
- (iii) must, insofar as such sums are not, in the opinion of the trustees, required for the maintenance of the pensioner or of any dependant of his, be held by the trustees for the pensioner until he is again able to act or, if he should die before that happens, for his estate;"

(16) In regulation 62(2) (fixed rate revaluations for early leavers' guaranteed minimum pensions - prescribed increase) -

- (a) in sub-paragraph (d) for the words ", 6.25 per cent. compound." there shall be substituted the words "but before 6<sup>th</sup> April 2002, 6.25 per cent. compound;"; and
- (b) after that sub-paragraph there shall be inserted the following sub-paragraph: -
  - "(e) where that period of service terminates on or after 6<sup>th</sup> April 2002, 4.5 per cent. compound."

(17) In regulation 63 (provision of information about guaranteed minimum pensions) -

- (a) in paragraph (1) for the words from "The prescribed" to "that section)" there shall be substituted the following words: -

"As respects any occupational pension scheme, the persons prescribed for the purposes of section 156(2) of the 1993 Act (additional persons to whom information may be provided for the purpose of enabling them to comply with obligations under Part III of that Act) are"; and
- (b) in paragraph (2) after sub-paragraph (a), but before the word "or" there shall be inserted -
  - "(aa) whether the scheme is liable in respect of section 9(2B) rights, protected rights or safeguarded rights;"

(18) *Omitted.*

#### **Amendment of the Protected Rights (Transfer Payment) Regulations 1996**

3. (1) The Protected Rights (Transfer Payment) Regulations 1996(a) shall be amended in accordance with the following paragraphs of this regulation.

(2) After regulation 4 (transfer payments to salary-related contracted-out schemes) there shall be inserted the following regulation: -

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(a) S.I. 1996/1461 (see S.D. 23/98).

## "Transfer payments to section 53 schemes

4A. (1) A transfer payment may be made to a section 53 scheme in the circumstances specified in paragraph (2) and subject to the conditions specified in paragraph (3).

(2) The circumstances referred to in paragraph (1) are that -

- (a) the member consents in writing to the making of the transfer payment; and
- (b) either -
  - (i) the member has entered employment with an employer who is or was a contributor to the section 53 scheme, or
  - (ii) the member was previously a member of the receiving scheme.

(3) The conditions referred to in paragraph (1) are that -

- (a) the transfer payment (whether or not it forms part of a larger payment giving effect to both protected and other rights) is of an amount at least equal to the value of the protected rights to which effect is being given; and
- (b) the transfer payment is approved by the *Department*, whether or not subject to conditions.

(4) In this regulation "section 53 scheme" means an occupational pension scheme which was formerly a contracted-out scheme and which the *Department* is under a duty to supervise in accordance with section 53 of the 1993 Act."

(3) In regulation 5 (transfer payments to overseas schemes) -

- (a) after the words "overseas scheme" there shall be inserted the words "or an overseas arrangement";
- (b) in paragraph (b) for the words from "and has entered" to the end of the paragraph there shall be substituted the words "and, where the transfer payment is to be made to an overseas scheme, has entered employment to which that scheme applies;";
- (c) in paragraph (d) after the words "the scheme" there shall be inserted the words "or arrangement"; and
- (d) in paragraphs (d) and (e) after the words "receiving scheme" there shall be inserted the words "or arrangement".

## **Amendment of the Personal and Occupational Pension Schemes (Protected Rights) Regulations 1996**

4. (1) The Personal and Occupational Pension Schemes (Protected Rights) Regulations 1996(a) shall be amended in accordance with the following paragraphs of this regulation.

(2) In regulation 4(2) (conditions applying to rates of pensions and annuities which give effect to protected rights - marital status) for sub-paragraph (b) there shall be substituted the following sub-paragraph: -

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(a) S.I. 1996/1537 (see S.D. 23/98).

"(b) except where, in the case of an unmarried member, the member has agreed to the rate being determined on his or her life only, on the basis that the member will, in the event of his or her death, leave a widow or widower.";

(3) For regulation 5 (circumstances in which and periods for which pension or annuity is to be paid to widow or widower after being paid to member) there shall be substituted the following regulation: -

**"Circumstances in which and period for which pension or annuity is to be paid to widow or widower after being paid to member**

5. (1) For the purposes of section 29(1)(b)(i) of the 1993 Act (pension or annuity to be paid to member's widow or widower in prescribed circumstances and for the prescribed period) -

- (a) the prescribed circumstances are that the rate of the pension or annuity paid to the member has not, by virtue of regulation 4(2)(b), been determined by reference to his or her life only; and
- (b) the prescribed period is, subject to paragraph (2), the remainder of the widow's or widower's life.

(2) There is excluded from the period prescribed in paragraph (1)(b) any period after the widow's or widower's remarriage under pensionable age."

(4) For paragraphs (2) and (3) of regulation 7 (payments made under interim arrangements) there shall be substituted the following paragraphs: -

"(2) For the purposes of section 28A(5)(a) of the 1993 Act (the annual amount of the annuity which would have been purchasable by a person on any date shall be calculated in the prescribed manner) the prescribed manner is -

- (a) in the case of payments to be made to a member who is married on the relevant reference date by reference to the current published table prepared by the Government Actuary in accordance with paragraph (3)(a) and (d);
- (b) in the case of payments to be made to a member who is unmarried on the relevant reference date by reference to the current published table prepared by the Government Actuary in accordance with paragraph (3)(b) and (d);
- (c) in the case of payments to be made to a widow or widower by reference to the current published table prepared by the Government Actuary in accordance with paragraph (3)(c) and (d).

(3) For the purposes of section 28A(5)(a)(ii) of the 1993 Act (the current published tables of rates of annuities prepared in the prescribed manner by the Government Actuary) the prescribed manner is -

- (a) in the case referred to in paragraph (2)(a), on the basis -
  - (i) that no distinction shall be made by reference to the sex of the member,
  - (ii) that in respect of a member who has died, the rate of the annuity is one-half of the rate at which it would have been payable if the member had been living,

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(a) S.I. 1996/1537 (see S.D. 23/98).

- (iii) of a deduction of an amount which the Government Actuary considers reasonable from the purchase price of the annuity to allow for the initial expenses of the insurance company, and
- (iv) that the frequency of the payment is monthly in arrears;
- (b) in the case referred to in paragraph (2)(b), on the basis -
  - (i) that no distinction shall be made by reference to the sex of the member,
  - (ii) that there is no person other than the member with any rights to an annuity,
  - (iii) of a deduction of an amount which the Government Actuary considers reasonable from the purchase price of the annuity to allow for the initial expenses of the insurance company, and
  - (iv) that the frequency of the payment is monthly in arrears;
- (c) in the case referred to in paragraph (2)(c), on the basis -
  - (i) that no distinction shall be made by reference to the sex of the widow or widower,
  - (ii) that the widow or widower is the last survivor with rights to an annuity,
  - (iii) of a deduction of an amount which the Government Actuary considers reasonable from the purchase price of the annuity to allow for the initial expenses of the insurance company, and
  - (iv) that the frequency of the payment is monthly in arrears;
- (d) in all cases referred to in paragraph (2), on the basis that -
  - (i) in the case of payments in respect of protected rights which derive from minimum contributions and other amounts payable to the scheme in respect of any tax year up to and including the tax year 1996-1997, the rate of annuity would be increased on each of its anniversaries in accordance with the requirements in regulation 4(3),
  - (ii) in the case of payments in respect of protected rights which derive from minimum contributions and other amounts payable to the scheme in respect of any tax year after the tax year 1996-1997, the rate of annuity would be increased on each of its anniversaries in accordance with the requirements of section 162(2) of the Pensions Act 1995."

(5) In regulation 9 (suspension and forfeiture of payments giving effect to protected rights), in paragraph (1)(a) -

- (a) the words "or otherwise" shall be omitted; and
- (b) for the words from ", so however" to the end of the sub-paragraph there shall be substituted the words -

"and that there is provision in the scheme which requires that, in those circumstances, sums equivalent to such payments -

- (i) must, except insofar as such sums are not, in the opinion of the trustees and managers, required for the maintenance of the pensioner, be paid or applied for his maintenance,
- (ii) may, insofar as such sums are not, in the opinion of the trustees and managers, required for the maintenance of the pensioner, be paid or applied for the maintenance of any dependants of the pensioner,
- (iii) must, insofar as such sums are not, in the opinion of the trustees and managers, required for the maintenance of the pensioner or of any dependant of his, be held by the trustees for the pensioner until he is again able to act or, if he should die before that happens, for his estate;".

(6) In regulation 12 (death of member before effect given to protected rights) -

(a) paragraph (1) shall be omitted;

*(aa) paragraph (8) shall be renumbered paragraph (9);*

*(ab) after paragraph (7) there shall be inserted the following paragraph -*

*"(8) In the case referred to in paragraph (6), the pension or annuity may be increased, not more frequently than on the first date mentioned in regulation 4(3) and on each of its anniversaries, but by larger percentages than paragraph (6) requires, so however that no increase is by more than 3 per cent."*

(b) in paragraphs (2), (3), (5), (9), (11) and (14), for the words "qualifying widow or widower" (in each place where those words occur) there shall be substituted the words "widow or widower"; and

(c) in paragraphs (5) and (9), sub-paragraph (c), and the word "or" immediately preceding it, shall be omitted.

(7) In regulation 13 (death before effect given to protected rights: interim arrangements for widow or widower) -

(a) in paragraph (1) for the words from "survived by" to "effect" there shall be substituted the words "survived by a widow or widower, effect", and

(b) paragraph (3) shall be omitted.

#### **Amendment of the Occupational Pension Schemes (Modification of Schemes) Regulations 1996**

*5. Omitted.*

#### **Amendment of the Occupational Pension Schemes (Investment) Regulations 1996**

*6. Omitted.*

#### **Amendment of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996**

*7. Omitted.*

**Amendment of the Personal Pension Schemes (Appropriate Schemes) Regulations 1997**

8. After regulation 6 of the Personal Pension Schemes (Appropriate Schemes) Regulations 1997(a) (requirement to give the *Department* information) there shall be inserted the following regulation -

**"Provision of information for purposes of contracting-out**

6A. As respects any personal pension scheme, the persons prescribed for the purposes of section 156(2) of the 1993 Act (additional persons to whom information may be provided for the purposes of enabling *them* to comply with obligations under Part III of that Act) are:

- (a) the earner or the widow or widower to whom the information relates; and
- (b) any person who is, or who in the opinion of the *Department* is likely to become, the person responsible for making payments derived from the protected rights."

**Amendment of the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997**

9. *Omitted.*

**Amendment of the Occupational Pension Schemes (Contracting-out) (Payment and Recovery of Remaining Balances) Regulations 2000**

10. *Omitted.*

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(a) S.I. 1997/470 (see S.D. 144/99).

SCHEDULE

PROVISIONS CONFERRING POWERS EXERCISED IN MAKING THESE REGULATIONS

<i>Column (1)</i>		<i>Column (2)</i>
<i>Provision</i>		<i>Relevant amendments</i>
Pension Schemes Act 1993	section 8(3)(b)	
	section 9(2B)(c)	Pensions Act 1995 ("1995 Act"), section 136(3)
	section 9(3)(aa)	1995 Act, section 136(4)
	section 21	
	section 28(1A)	1995 Act, section 142(3); Welfare Reform and Pensions Act 1999 ("WRAP Act"), Schedule 2, paragraph 5
	section 28(2)	Child Support, Pensions and Social Security Act 2000 ("2000 Act"), Schedule 5, paragraph 2(2)
	section 28(4)	2000 Act, Schedule 5, paragraph 3(2)
	section 28A	1995 Act, section 143
	section 32	
	section 32A(2)	1995 Act, section 146(1)
	section 34(1)	1995 Act, Schedule 5, paragraph 37
	section 55(2), (2B) and (2C)	1995 Act, section 141(1) WRAP Act, Schedule 2, paragraph 7(1)
	section 56(2)	1995 Act, Schedule 5, paragraph 51(a)

Pension Schemes Act 1993	section 156(2)	2000 Act, Schedule 5, paragraph 9
	section 181(1)	WRAP Act, Schedule 2, paragraph 3; 2000 Act, Schedule 5, paragraph 2(3)
	section 182(2) and (3)	
Pensions Act 1995	section 40(1) and (2)	
	section 124(1)	
	section 174(2) and (3)	

## SCHEDULE 2

This Schedule sets out the text of regulations 1, 2 and 3 of the Occupational and Personal Pension Schemes (Disclosure of Information) Amendment Regulations 2002 (S.I. 2002/1383) with such exceptions, adaptations and modifications made where necessary.

Note: modifications subject to which the legislation is applied to the Island are in *bold italic* type.

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### STATUTORY INSTRUMENTS

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2002 No. 1383

#### PENSIONS

#### The Occupational and Personal Pension Schemes (Disclosure of Information) Amendment Regulations 2002

##### Citation, commencement and interpretation

1. (1) These Regulations may be cited as the Occupational and Personal Pension Schemes (Disclosure of Information) Amendment Regulations 2002 and shall *be deemed to have* come into force on 6<sup>th</sup> April 2003.

(2) In these Regulations -

"the 1987 Regulations" means the Personal Pension Schemes (Disclosure of Information) Regulations 1987(a); *and*

"the 1996 Regulations" means the Occupational Pension Schemes (Disclosure of Information) Regulations 1996(b).

##### Amendment of the 1987 Regulations

2. (1) The 1987 Regulations shall be amended in accordance with the following paragraphs of this regulation.

(2) In regulation 1(2) (interpretation) -

(a) after the definition of "beneficiary" there shall be inserted the following definition -

"'contracted-out employment' shall be construed in accordance with section 8 of the Act;";

(b) after the definition of "excluded person" there shall be inserted the following definition -

"'illustration date' means, in relation to any information provided, or to be provided, under paragraph 2A(1) of Schedule 2, the date specified by the trustees as the date by reference to which amounts are calculated for the purpose of providing the information;";

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(a) S.I. 1987/1110 (see G.C. 109/88); (b) S.I. 1996/1655 (see S.D. 192/88).

- (c) after the definition of "member" there shall be inserted the following definitions -

"non-contributing member' means a member in respect of whom no further contributions to the scheme are due or expected after the illustration date;

'pension credit' means a credit under section 29(1)(b) of the Welfare Reform and Pensions Act 1999;"; and

- (d) after the definition of "pensionable age" there shall be inserted the following definitions -

"the relevant guidance' means the document entitled "Technical Memorandum TM1: Statutory Money Purchase Illustrations" which -

(a) is published, and from time to time revised, by the Faculty of Actuaries and the Institute of Actuaries and

(b) is for the time being approved by the Secretary of State;

'retirement date' means, in relation to a member -

(a) the date which he has specified to the trustees, and which is acceptable under the rules of the scheme, for the purpose of paragraph 2A(1) of Schedule 2; or

(b) where no acceptable date has been specified for that purpose, the date specified by the trustees as being the appropriate date for the purpose of paragraph 2A(1);".

- (3) In regulation 5 (information to be made available to individuals) -

(a) in paragraph (2) after the words "Schedule 2" there shall be inserted the words "and, subject to paragraph (2A) below, the information mentioned in paragraph 2A of that Schedule";

- (b) after paragraph (2) there shall be inserted the following paragraphs -

"(2A) The requirement under paragraph (2) above to furnish the information mentioned in paragraph 2A of Schedule 2 shall not apply -

(a) in respect of a person who is in receipt of pension benefits under the scheme; or

(b) where the specified date referred to in paragraph 2(a) of Schedule 2 is not more than 2 years before the date which is the member's retirement date for the purpose of paragraph 2A of Schedule 2; or

(c) where, in relation to the member -

(i) the value, determined by reference to the relevant guidance, of his accrued rights to money purchase benefits under the scheme was less than £5,000 on the illustration date in respect of which such information was last furnished to him;

(ii) no contributions, including transfers of pension rights or pension credits, have been made to the scheme by him or on his behalf in respect of money purchase benefits since that date; and

- (iii) the trustees previously gave notice to the member that no further such information would be furnished to him unless further contributions to the scheme in respect of money purchase benefits had first been made by him or on his behalf; or
- (d) where, in relation to the member -
  - (i) the value, determined by reference to the relevant guidance, of his accrued rights to money purchase benefits under the scheme is less than £5,000 on the first illustration date falling after 5<sup>th</sup> April 2003;
  - (ii) no contributions, including transfers of pension rights or pension credits, have been made to the scheme by him or on his behalf after 5<sup>th</sup> April 2003; and
  - (iii) no further contributions are, in the opinion of the trustees, likely to be made to the scheme by him or on his behalf after that illustration date; or
- (e) where the specified date referred to in paragraph 2(a) of Schedule 2 is before 6<sup>th</sup> April 2003.

(2B) Where paragraph (2A) applies but the trustees of the scheme nevertheless choose to furnish the information described in paragraph 2A(1) of Schedule 2 and the amount comprising that information is calculated in accordance with sub-paragraphs (2) to (5) of that paragraph, then that information shall be accompanied by the additional information specified in sub-paragraph (6)(a) and (c) to (k) of that paragraph as if the information had been provided under sub-paragraph (1) of that paragraph."

(4) In Schedule 2 (information to be made available to individuals), after paragraph 2 there shall be inserted the following paragraph -

"2A. (1) The information to be provided under this sub-paragraph is an illustration of the amount, calculated in accordance with sub-paragraphs (2) to (5), of the pension an entitlement to which would be likely to accrue to the member, or be capable of being secured by him, at his retirement date in respect of rights that may arise under the scheme.

(2) The amount referred to in sub-paragraph (1) above shall be determined by reference to -

- (a) the relevant guidance; and
- (b) the assumptions about contributions specified in sub-paragraph (3) and about annuities specified in sub-paragraphs (4) and (5), and such other assumptions as may be specified for the purpose in the relevant guidance,

having regard to the value of the member's accrued rights to money purchase benefits under the scheme on the illustration date.

(3) The assumptions about contributions referred to in sub-paragraph (2)(b) above are -

- (a) where the calculation relates to the rights of a non-contributing member, that no contributions will be made to the scheme by him or on his behalf after the illustration date; and
- (b) in any other case, that, until the member's retirement date -
  - (i) contributions to the scheme will be made by him or on his behalf;

- (ii) the treatment of the scheme under sections 13 to 22 of the Income Tax Act 1989 (*an Act of Tynwald*) as for the time being in force will continue; and
  - (iii) where a member is in contracted-out employment, sums will continue to be paid by the *Department* in respect of him under section 43 of the Act (payment of minimum contributions to personal pension schemes) in the amounts to be determined by reference to the relevant guidance.
- (4) The assumptions about annuities referred to in sub-paragraph (2)(b) above are -
- (a) that the rate of pension is to be increased annually by the relevant percentage for the time being specified in the relevant guidance; and
  - (b) that, subject to sub-paragraph (5) below, irrespective of whether or not the member is married at the time when the information referred to in sub-paragraph (1) above is furnished, the annuity will include provision for the payment, to a surviving spouse of the member, of a pension of an amount equal to one half of the pension which was payable to him immediately before his death.
- (5) Sub-paragraph (4)(b) above does not apply where -
- (a) the trustees decide to use a different assumption in substitution for that specified in sub-paragraph (4)(b) on the basis that the scheme records indicate that the member is not married; or
  - (b) the trustees and the member agree to use a different assumption.
- (6) The additional information which is to accompany the information provided under sub-paragraph (1) above is -
- (a) a statement to the effect that -
    - (i) the information provided under that sub-paragraph is provided only for the purposes of illustration,
    - (ii) it does not represent any promise or guarantee as to the amount of benefit which may be receivable by the member or a beneficiary under the scheme, and
    - (iii) it should not be regarded as the only consideration by reference to which the member should make decisions as to his pension arrangements;
  - (b) a statement to the effect that the provision of the information mentioned in that sub-paragraph is required by law;
  - (c) a statement specifying the means by which the person to whom the information relates may obtain from the trustees further information about the information provided under sub-paragraph (1) above;
  - (d) a statement to the effect that the information has been prepared by reference to the assumptions required by this paragraph or specified in the relevant guidance;

- (e) a statement to the effect that certain general assumptions have been made about the nature of the investments made for the purposes of that person's money purchase benefits and their likely performance, which may not correspond with the investments actually made for those purposes, or their actual performance;
- (f) a statement to the effect that the amount referred to in sub-paragraph (1) above is expressed in today's prices;
- (g) a statement to the effect that the actual amount of any pension payable to that person or beneficiary under the scheme will depend on considerations, including the actual performance of investments and the cost of buying an annuity at the time the pension becomes payable, which may be different from the assumptions made for the purpose of providing the information under sub-paragraph (1) above;
- (h) a statement specifying any assumptions made in relation to future contributions to the scheme;
- (i) a statement of the assumptions made in accordance with sub-paragraphs (3)(b)(iii) and (4) above, or as mentioned in sub-paragraph (5) above;
- (j) a statement of the member's retirement date for the purpose of sub-paragraph (1) above; and
- (k) a statement of the illustration date used for the purpose of calculating the amount referred to in sub-paragraph (1) above."

#### **Amendment of the 1996 Regulations**

3. (1) The 1996 Regulations shall be amended in accordance with the following paragraphs of this regulation.

(2) In regulation 1(2) (interpretation) -

(a) after the definition of "beneficiary" there shall be inserted the following definition -

"'contracted-out employment' shall be construed in accordance with section 8 of the 1993 Act;";

(b) after the definition of "funded" there shall be inserted the following definition -

"'illustration date' means, in relation to any information provided, or to be provided, under paragraph 6ZA(1) of Schedule 2, the date specified by the trustees as the date by reference to which amounts are calculated for the purpose of providing the information;";

(c) after the definition of "relevant employment" there shall be inserted the following definition -

"'the relevant guidance' means the document entitled "Technical Memorandum TM1: Statutory Money Purchase Illustrations" which -

- (a) is published, and from time to time revised, by the Faculty of Actuaries and the Institute of Actuaries; and
- (b) is for the time being approved by the Secretary of State;"; and

(d) after the definition of "request" there shall be inserted the following definition -

"retirement date' means, in relation to a member -

- (a) the date which he has specified to the trustees, and which is acceptable under the rules of the scheme, for the purpose of paragraph 6ZA(1) of Schedule 2; or
- (b) where no acceptable date has been specified for that purpose, the date specified by the trustees as being the appropriate date for the purpose of paragraph 6ZA(1);".

(3) In regulation 5 (information to be made available to individuals) -

(a) in paragraph (5) -

- (i) *at the start* there shall be inserted the words "*Subject to* paragraph (5ZA) below"; and
- (ii) for the words "paragraphs 5, 6 and 6AA" there shall be substituted the words "paragraphs 5 to 6AA";

(b) after paragraph (5) there shall be inserted the following paragraphs -

"(5ZA) The requirement under paragraph (5) above to furnish the information mentioned in paragraph 6ZA of Schedule 2 shall not apply -

- (a) in respect of a person who is in receipt of pension benefits under the scheme; or
- (b) where the specified date referred to in paragraph 6(a)(ii) of Schedule 2 is not more than 2 years before the date which is the member's retirement date for the purpose of paragraph 6ZA of Schedule 2; or
- (c) where, in relation to the member -
  - (i) the value, determined by reference to the relevant guidance, of his accrued rights to money purchase benefits under the scheme was less than £5,000 on the illustration date in respect of which such information was last furnished to him;
  - (ii) no contributions, including transfers of pension rights or pension credits, have been made to the scheme by him or on his behalf in respect of money purchase benefits since that date; and
  - (iii) the trustees previously gave notice to the member that no further such information would be furnished to him unless further contributions to the scheme in respect of money purchase benefits had first been made by him or on his behalf; or
- (d) where, in relation to the member -
  - (i) the value, determined by reference to the relevant guidance, of his accrued rights to money purchase benefits under the scheme is less than £5,000 on the first illustration date falling after 5<sup>th</sup> April 2003;
  - (ii) no contributions, including transfers of pension rights or pension credits, have been made to the scheme by him or on his behalf after 5<sup>th</sup> April 2003; and

- (iii) no further contributions are, in the opinion of the trustees, likely to be made to the scheme by him or on his behalf after that illustration date; or
- (e) where -
  - (i) the member's benefit is calculated by reference to the greater of the result of a money purchase and a defined benefit formula; and
  - (ii) in the opinion of the trustees, the benefit calculated in accordance with a money purchase formula is not likely to affect the pension payable; or
- (f) where the specified date referred to in paragraph 6(a)(ii) of Schedule 2 is before 6<sup>th</sup> April 2003.

(5ZB) For the purposes of paragraph (5ZA) a scheme which provides additional money purchase benefits by virtue of the payment by the member of voluntary contributions shall be regarded as a separate scheme from any other part of that scheme.

(5ZC) Where paragraph (5ZA) applies but the trustees of the scheme nevertheless choose to furnish the information described in paragraph 6ZA(1) of Schedule 2 and the amount comprising that information is calculated in accordance with sub-paragraphs (2) to (5) of that paragraph, then that information shall be accompanied by the additional information specified in sub-paragraph (6)(a) and (c) to (k) of that paragraph as if the information had been provided under sub-paragraph (1) of that paragraph."

(4) In Schedule 2 (information to be made available to individuals), after paragraph 6 there shall be inserted the following paragraph -

"6ZA. (1) The information to be provided under this sub-paragraph is an illustration of the amount, calculated in accordance with sub-paragraphs (2) to (5), of the pension an entitlement to which would be likely to accrue to the member, or be capable of being secured by him, at his retirement date in respect of rights to money purchase benefits that may arise under the scheme.

(2) The amount referred to in sub-paragraph (1) above shall be determined by reference to -

- (a) the relevant guidance; and
- (b) the assumptions about contributions specified in sub-paragraph (3) and about annuities specified in sub-paragraphs (4) and (5), and such other assumptions as may be specified for the purpose in the relevant guidance,

having regard to the value of the member's accrued rights to money purchase benefits under the scheme on the illustration date.

(3) The assumptions about contributions referred to in sub-paragraph (2)(b) above are -

- (a) where the calculation relates to the rights of a deferred member, that no contributions will be made to the scheme by him or on his behalf after the illustration date; or
- (b) where the calculation relates to the rights of a member who is in pensionable service under the scheme, that, until the member's retirement date -
  - (i) contributions to the scheme will be made by him or on his behalf;

(ii) the treatment of the scheme under sections *3 and 4 of the Income Tax (Retirement Benefit Schemes) Act 1978* or, as the case may be, sections *13 to 22 of the Income Tax Act 1989 (both Acts of Tynwald)* as for the time being in force will continue; and

(iii) where a member is in contracted-out employment, sums will continue to be paid by the *Department* in respect of him under section 42A(3) of the 1993 Act (rebates) in the amounts to be determined by reference to the relevant guidance.

(4) The assumptions about annuities referred to in sub-paragraph (2)(b) above are -

(a) that the rate of pension is to be increased annually by the relevant percentage for the time being specified in the relevant guidance; and

(b) that, subject to sub-paragraph (5) below, irrespective of whether or not the member is married at the time when the information referred to in sub-paragraph (1) above is furnished, the annuity will include provision for the payment, to a surviving spouse of the member, of a pension of an amount equal to one half of the pension which was payable to him immediately before his death.

(5) Sub-paragraph (4)(b) above does not apply where -

(a) the trustees decide to use a different assumption in substitution for that specified in sub-paragraph (4)(b) on the basis that the scheme records indicate that the member is not married; or

(b) the trustees and the member agree to use a different assumption.

(6) The additional information which is to accompany the information provided under sub-paragraph (1) above is -

(a) a statement to the effect that -

(i) the information provided under that sub-paragraph is provided only for the purposes of illustration,

(ii) it does not represent any promise or guarantee as to the amount of benefit which may be receivable by the member or a beneficiary under the scheme, and

(iii) it should not be regarded as the only consideration by reference to which the member should make decisions as to his pension arrangements;

(b) a statement to the effect that the provision of the information mentioned in that sub-paragraph is required by law;

(c) a statement specifying the means by which the person to whom the information relates may obtain from the trustees further information about the information provided under sub-paragraph (1) above;

(d) a statement to the effect that the information has been prepared by reference to the assumptions required by this paragraph or specified in the relevant guidance;

- (e) a statement to the effect that certain general assumptions have been made about the nature of the investments made for the purposes of that person's money purchase benefits and their likely performance, which may not correspond with the investments actually made for those purposes, or their actual performance;
- (f) a statement to the effect that the amount referred to in sub-paragraph (1) above is expressed in today's prices;
- (g) a statement to the effect that the actual amount of any pension payable to that person or beneficiary under the scheme will depend on considerations, including the actual performance of investments and the cost of buying an annuity at the time the pension becomes payable, which may be different from the assumptions made for the purpose of providing the information under sub-paragraph (1) above;
- (h) a statement specifying any assumptions made in relation to future contributions to the scheme;
- (i) a statement of the assumptions made in accordance with sub-paragraphs (3)(b)(iii) and (4) above, or as mentioned in sub-paragraph (5) above;
- (j) a statement of the member's retirement date for the purpose of sub-paragraph (1) above; and
- (k) a statement of the illustration date used for the purpose of calculating the amount referred to in sub-paragraph (1) above."

**Amendment of the 2000 Regulations**

**4. Omitted.**

### SCHEDULE 3

This Schedule sets out the text of the Occupational Pension (Revaluation) Order 2002 (S.I. 2002/2951) with such exceptions, adaptations and modifications made where necessary.

Note: modifications subject to which the legislation is applied to the Island are in *bold italic* type.

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#### STATUTORY INSTRUMENTS

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2002 No. 2951

#### PENSIONS

#### The Occupational Pensions (Revaluation) Order 2002

##### Citation and commencement

1. (1) This Order may be cited as the Occupational Pensions (Revaluation) Order 2002.

(2) This Order shall *be deemed to have* come into force on 1<sup>st</sup> January 2003.

##### The revaluation percentage for each revaluation period

2. For the purposes of paragraph 2(1) of Schedule 3 to the Pension Schemes Act 1993, the revaluation percentage for each revaluation period specified in column 1 below is the percentage specified in column 2 in relation to that period.

<i>Column 1</i>	<i>Column 2</i>
<i>Revaluation period</i>	<i>Revaluation percentage</i>
1 <sup>st</sup> January 1986 - 31 <sup>st</sup> December 2002	86.3%
1 <sup>st</sup> January 1987 - 31 <sup>st</sup> December 2002	80.7%
1 <sup>st</sup> January 1988 - 31 <sup>st</sup> December 2002	73.4%
1 <sup>st</sup> January 1989 - 31 <sup>st</sup> December 2002	64.0%
1 <sup>st</sup> January 1990 - 31 <sup>st</sup> December 2002	52.4%
1 <sup>st</sup> January 1991 - 31 <sup>st</sup> December 2002	37.5%
1 <sup>st</sup> January 1992 - 31 <sup>st</sup> December 2002	32.0%
1 <sup>st</sup> January 1993 - 31 <sup>st</sup> December 2002	27.5%
1 <sup>st</sup> January 1994 - 31 <sup>st</sup> December 2002	25.2%
1 <sup>st</sup> January 1995 - 31 <sup>st</sup> December 2002	22.5%
1 <sup>st</sup> January 1996 - 31 <sup>st</sup> December 2002	17.9%
1 <sup>st</sup> January 1997 - 31 <sup>st</sup> December 2002	15.5%
1 <sup>st</sup> January 1998 - 31 <sup>st</sup> December 2002	11.5%

1 <sup>st</sup> January 1999 - 31 <sup>st</sup> December 2002	8.0%
1 <sup>st</sup> January 2000 - 31 <sup>st</sup> December 2002	6.8%
1 <sup>st</sup> January 2001 - 31 <sup>st</sup> December 2002	3.4%
1 <sup>st</sup> January 2002 - 31 <sup>st</sup> December 2002	1.7%

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Made 11/03/2003



Minister for Health and Social Security

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### EXPLANATORY NOTE

(This note is not part of the Order)

1. Section 1 of the Pension Schemes Act 1995 enables the Department by Order to apply to the Island, as part of the law of the Island and incorporating such exceptions, adaptations and modifications as may be specified by the Order, any legislation relating to pension schemes to which that Act applies.
2. *Inter alia*, that Act applies to the Pension Schemes Act 1993, the Pensions Act 1995, the Welfare Reform and Pensions Act 1999 and the Child Support, Pensions and Social Security Act 2000 (all Acts of Parliament) and to any statutory instrument relating to pension schemes made or having effect as if made under any of those Acts.
3. This Order applies to the Island the legislation referred to in Article 2(1) of the Order, the provisions of which are summarised in the following paragraphs. Each provision of the applied legislation shall be deemed to have come into force on the same date as it came into force in Great Britain and have been applied to the Island administratively pending their formal application by order.

4. The Occupational and Personal Pension Schemes (Contracting-out) (Miscellaneous Amendments) Regulations 2002 (S.I. 2002/681) (regulations 1 to 4 and 8 only)

4.1 These Regulations amend various instruments which govern the arrangements whereby occupational and personal pension schemes are contracted-out of the state additional retirement pensions ("SERPS" until 6<sup>th</sup> April 2002 when the State Second Pension ("S2P") was introduced), and associated matters, including those relating to -

- transfer payments;
- benefits for widows and widowers;
- contributions equivalent premiums; and
- the provision of information relating to pension schemes and state scheme rights and duties.

*Amendment of the Occupational Pension Schemes (Contracting-out) Regulations 1996*

4.2.1 Regulation 2 amends the Occupational Pension Schemes (Contracting-out) Regulations 1996 ("the Contracting-out Regulations") in relation to contracting-out certificates and elections and the circumstances in which trivial amounts of pension benefits may be paid in the form of a lump sum rather than as a series of periodical payments, as follows.

4.2.2 In paragraph (2) -

- sub-paragraph (a) removes the obligation on employers who wish to elect to contract-out of the state additional retirement pension scheme to provide to their employees and others a description of -
  - \* the benefits currently payable under the occupational pension scheme and the level of contributions the employees are required to make (if any) to it; and
  - \* the effect on those benefits and contributions if the employees' employment were to be contracted-out;
- sub-paragraph (b) removes the obligation for employers to advise their employees where they might find further information about -
  - \* the scheme of which they are currently a member; and
  - \* the effect on their entitlement to State benefits and the level of contributions payable if the election to contract-out were to be successful.

4.2.3 Paragraph (3) similarly removes the obligation on employers to include in the election for a scheme to be contracted-out confirmation that -

- the scheme has an actuary; and
- the trustees of the scheme are complying with certain obligations as to record-keeping and the custody of money.

4.2.4 Paragraph (4) simplifies the language found in relation to the way in which employers can elect to vary or surrender an existing contracting-out certificate.

The changes in paragraphs (2) to (4) mean that employers will now be obliged to provide the information referred to in paragraphs 4.2.2 and 4.2.3 only once, rather than twice but under different Regulations.

4.2.5 Paragraph (5) removes the obligation for employers who have contracted-out of the State additional pension scheme to confirm every 3 years that they continue to meet the conditions they originally had to satisfy in order to be allowed to do so, and to provide other assurances. Employers are under wider obligations in this matter by virtue of the Pensions Act 1995, which make the information-providing requirements of regulation 16 of the Contracting-out Regulations redundant.

4.2.6.1 Paragraph (7) provides a substituted version of regulation 19 of the Contracting-out Regulations, which provides the circumstances in which a contracted-out salary related occupational pension scheme may provide for the payment of benefits built up under that scheme (or benefits transferred into such a scheme) in the form of a lump sum rather than as periodical pension benefits other than where those benefits are mentioned in regulation 20 of the same Regulations.

4.2.6.2 The new version of regulation 19 is designed to remove ambiguity which has arisen in interpreting the legislation - in particular when it was read in conjunction with regulation 20.

4.2.7.1 Regulation 20 of the Contracting-out Regulations specifies the conditions which must be satisfied before the benefits built up under (or transferred into) a salary related occupational pension scheme attributable to the employment of the person in question on or after 6<sup>th</sup> April 1997 may be paid in the form of a lump sum rather than as a pension. They are where -

- those benefits (and any rights attributable to a pension credit to which a person becomes entitled under the Welfare Reform and Pensions Act 1999 following divorce) are payable in accordance with the scheme rules;
- the amount involved is £260 or less; and
- the Department is satisfied that the way in which the lump sum payable is calculated is reasonable.

4.2.7.2 Paragraph (8) provides that the first of the conditions mentioned in 4.2.7.1 shall not apply where the scheme(s) in question *is being wound up*, in which case the benefits accrued up to the date of winding up shall be treated as being the total amount of benefits payable under the scheme.

- 4.2.8.1 An employer who provides his employees with a contracted-out money purchase scheme must make minimum payments to the scheme in respect of each member. Those minimum payments are equal to the contracted-out rebate, i.e., the difference between the full rate and the lower contracted-out rate of contributions that would be payable by the employer and the employee on earnings between the lower earnings limit (£75 per week) and the upper earnings limit (£595 per week). Currently the rebates are 1.0% for employers and 1.6% for employees, so the employer pays a minimum of 2.6% of those earnings to the scheme.
- 4.2.8.2 The employer may recover the employee's share of the rebate from the employee's pay - but does not have to.
- 4.2.8.3 Even though employees are not liable to pay contributions on earnings between the lower earnings limit and the primary threshold (£89 per week), they are still entitled to a contracted-out rebate of National Insurance contributions in respect of that amount.
- 4.2.8.4 Where the employee's earnings exceed the primary threshold - so they are liable to pay National Insurance contributions - then they can gain the benefit of the rebate on their earnings between the lower earnings limit and the primary threshold  $((£89 - £75) \times 1\% = £0.14 \text{ per week})$  by offsetting that amount against their National Insurance contribution liability.
- 4.2.8.5 However, where the employee's earnings exceed the primary threshold but are so low that their National Insurance liability is below £0.14 per week, then the employer may claim whatever balance of the employee's rebate is left after extinguishing the employee's contribution liability.
- 4.2.8.6 Where the employee earns between the lower earnings limit and the primary threshold, then they are not liable to pay any National Insurance contributions - so the employer can claim the whole of the employee's rebate on earnings between those two amounts. Now, by virtue of paragraph (11), the employer may not then recover any amount from the employee's pay to offset that part of the minimum payment they have paid into the pension scheme representing the employee's rebate (so they may not benefit twice). This practice was always *contra* to the policy intention in the matter.
- 4.2.9.1 Paragraph (12)(a) - by way of new paragraphs (1A) to (1C) of regulation 51 of the Contracting-out Regulations - sets out the circumstances in which the trustees of a contracted-out salary related occupational pension scheme are *not* obliged to pay a contributions equivalent premium (which "buys" the member back into the state's additional pension scheme) in respect of a former member of that pension scheme who has spent less than 2 years as a member of that scheme.

Those circumstances are -

- where the person dies while a member of that pension scheme and their widow or widower (as the case may be) is not entitled to certain Social Security benefits relating to the death of their spouse; or
- where the person was a woman who had elected to pay a reduced rate of National Insurance contributions and she had not subsequently revoked that election.

4.2.9.2 Paragraph (12)(b) amends the obligations on the trustees of an occupational pension scheme not to discriminate between different earners when deciding whether or not to elect to pay a contributions equivalent premium on behalf of a particular earner (other than on the grounds of the length of that earner's employment) by -

- no longer allowing discrimination -
  - \* where the earner's accrued pension rights have been transferred into the pension scheme in question; and
  - \* where the trustees of a pension scheme are not obliged to provide for a guaranteed minimum pension to be payable to an earner because that person's rights to such a pension are instead secured against an insurance policy or annuity; and
- clarifying that women who had elected to pay a reduced rate of National Insurance contributions can be discriminated against in the matter provided at that time they had not subsequently revoked that election.

4.2.9.3 Paragraph (12)(c) requires the trustees of a pension scheme who are obliged to pay a contributions equivalent premium in respect of any person to notify the Department of that fact (within prescribed times).

4.2.10 Paragraph (13) makes a minor textual clarification regarding the payment of contributions equivalent premiums by trustees of pension schemes.

4.2.11.1 Section 21 of the Pension Schemes Act 1993 provides that if the amount of a guaranteed minimum pension would not be more than a prescribed, trivial amount per year, then a pension scheme may pay that pension in the form of a one-off lump sum to the former scheme member rather than as a series of periodical benefits.

4.2.11.2 Paragraph (14) extends the circumstances in which it is *not* a condition that a guaranteed minimum pension must first have become payable in order to commute trivial amounts of pension benefits into lump sums where revaluation of pension benefits has taken place in the manner prescribed in the legislation where the scheme is being wound up or the person in question retires before reaching pensionable age.

4.2.12 Paragraph (15) modifies the wording in regulation 61 of the Contracting-out Regulations, which specifies the circumstances in which a scheme may suspend or forfeit the payment of a guaranteed minimum pension where the pensioner is unable to act for themselves due to a mental disorder. There is no change in the effect of the legislation.

4.2.13 Paragraph (16) provides the rate at which the earnings factor of a person for any tax year - on which their final salary pension benefits under the scheme are calculated - is to be increased where they left that employment before reaching pensionable age on or after 6<sup>th</sup> April 2002. The rate of revaluation is 4.5% compounded year-on-year.

4.2.14 Paragraph (17) widens the powers of the Department to provide additional information to the administrators of occupational pension schemes to allow them to comply with their obligations under the contracting-out legislation. It also now allows the Department to advise trade unions whether the scheme is liable in respect of certain pension rights to pension members (and former members).

4.3 *Amendment of the Protected Rights (Transfer Payment) Regulations 1996*

4.3.1 Regulation 3 amends the Protected Rights (Transfer Payment) Regulations 1996 ("the Transfer Payment Regulations") as follows.

4.3.2 Paragraph (2) inserts new regulation 4A. That regulation provides the circumstances in which a transfer payment of protected rights benefits may be made to an occupational pension scheme which is no longer contracted-out and is now under the supervision of the Department. This provision is put back in place after having been previously removed because such transfers were thought to no longer take place. It turns out that this assumption was incorrect.

4.3.3 Paragraph (3) amends regulation 5 of the Transfer Payment Regulations by allowing guaranteed minimum pension rights accruing prior to April 1997 and protected rights to be transferred to any overseas pension arrangement - and not just to an overseas occupational pension scheme - providing proper procedures have been followed.

4.4 *Amendment of the Personal and Occupational Pension Schemes (Protected Rights) Regulations 1996*

4.4.1 Regulation 4 amends the Personal and Occupational Pension Schemes (Protected Rights) Regulations 1996 ("the Protected Rights Regulations"), as follows.

4.4.2 Paragraph (2) provides that pensions and annuities derived from protected rights accruing before 6<sup>th</sup> April 1997 will not have to provide for the payment of benefits to any dependants a person might have at the time they die if that person is not married at the time they buy an annuity. This is in line with the treatment of protected rights accruing on or after that date.

4.4.3 Paragraphs (3), (6) and (7) provide that any contracted-out money purchase pension scheme must now allow a widow/widower to inherit the contracted-out pension rights of their deceased spouse without first having to satisfy any statutory qualifying conditions. This is in line with the treatment in this matter of contracted-out salary-related pension rights.

4.4.4 Paragraph (4) simplifies the rate at which pensions or annuities which give effect to protected rights are to be calculated.

4.4.5 Paragraph (5) outlines the new circumstances in which a scheme member's protected rights may be forfeited or suspended where that member cannot act for themselves, on account of a mental disorder, in line with similar changes referred to paragraph 4.2.12.

4.5

*Amendment of the Personal Pension Schemes (Appropriate Schemes)  
Regulations 1997*

4.5.1 Regulation 8 amends the Personal Pension Schemes (Appropriate Schemes) Regulations 1997 by extending the categories of person to whom information may be given to enable them to comply with their obligations under the contracting-out legislation.

5. **The Occupational and Personal Pension Schemes (Disclosure of Information) Amendment Regulations 2002 (S.I. 2002/1383) (regulations 1, 2 and 3 only)**

5.1 These Regulations amend the Personal Pension Schemes (Disclosure of Information) Regulations 1987 ("the 1987 Regulations") and the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 ("the 1996 Regulations") following the amendment of section 113 of the Pension Schemes Act 1993 by section 52 of the Child Support, Pensions and Social Security Act 2000.

5.2 Section 52's amendment required that money purchase occupational pension schemes and personal pension schemes would in future have to inform pension scheme members (and their spouses) of the value of pension rights that they were likely to build up in the scheme if they continued in the same employment - and what level of pension this would provide in the future. Previously such schemes only had to provide a record of the contributions a person paid into the scheme in the previous year and the value of the pension rights accrued up to that date.

5.3 The effect of the amendments in these Regulations is that the information which has to be sent to members of schemes with money purchase benefits must include an illustration of the amount of future pension that might become payable under the scheme. The amount is to be determined by reference to guidance.

5.4 In detail the amendments are as follows.

5.5 Regulation 1 provides for citation, commencement and interpretation.

*Regulation 2: amendment of the 1987 Regulations*

5.6.1 Regulation 2 amends the 1987 Regulations as follows.

5.6.2 Paragraph (1) introduces the changes made by that regulation.

5.6.3 Paragraph (2) inserts a number of new definitions into the 1987 Regulations, including one for "the relevant guidance", which means the document entitled "Technical Memorandum TM1: Statutory Money Purchase Illustrations", prepared by the Faculty of Actuaries and the Institute of Actuaries.

5.6.4.1 Paragraphs (3) and (4) modify the existing obligations on the trustees of a personal pension scheme to supply information relating to the scheme to members of that scheme.

5.6.4.2 In particular, paragraph (4), by way of new Schedule 2A, requires that schemes provide pension members with an illustration of the likely pension benefits which might accrue (or could accrue) to them under that scheme when they come to

retire. That Schedule 2A sets out the way those potential benefits are to be calculated (and the assumptions to be used in doing so) and what explanatory information must accompany the illustration.

5.6.4.3 However, paragraph (3) relieves personal pension scheme trustees from having to provide that information where it would be of little practical use, e.g. -

- for those already receiving pension benefits under the scheme;
- for those nearing retirement age; and
- for those whose accrued money purchase benefits are less than £5,000 at the relevant date and no contributions are likely to be made to the scheme by that member in the future.

5.6.4.4 Where the trustees of the scheme are not obliged to provide the information referred to in new Schedule 2A - but they nevertheless choose to do so - then they must provide that information using the same rules as those obliged to provide the information.

*Regulation 3: amendment of the 1996 Regulations*

5.7 Regulation 3 requires the trustees of occupational pension schemes to provide information to pension scheme members by way of amendment to the 1996 Regulations in a similar manner to that in respect of personal pension schemes under regulation 2.

6. The Occupational Pensions (Revaluation) Order 2002 (S.I. 2002/2951)

6.1 This Order was made, as required by paragraph 2(1) of Schedule 3 to the Pension Schemes Act 1993, in the year beginning 1<sup>st</sup> January 2002 and specifies the percentages to be applied on or after 1<sup>st</sup> January 2003 in revaluing the preserved final salary pension benefits of a person -

- who was a member of their employer's final salary occupational pension scheme;
- but who left pensionable service with that employer on or after 1<sup>st</sup> January 1986,

until they reach the age at which pension benefits become payable to them under the scheme.

That percentage is always the lower of the retail price index during the period of revaluation and 5%, and is known *limited price indexation* (or LPI).