

**2005 No.**

**PENSIONS**

**The Occupational and Personal Pension Schemes  
(Miscellaneous Amendments) Regulations 2005**

<i>Made</i> - - - -	2005
<i>Laid before Parliament</i>	2005
<i>Coming into force</i> - -	6th April 2006

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 9(5A), 12C(1)(c), 17(8), 19(4)(c) and (5), 21(1), 28(4), 32A(2)(c) and (d), 55(2B), 101C(2) and 182 (2) and (3) of the Pensions Schemes Act 1993(a), sections 91(5)(c)(ii) and (iii), 124(1) and 174(2) of the Pensions Act 1995(b) and section 83(4) of and paragraph 7(4) of Schedule 5 to the Welfare Reform and Pensions Act 1999(c), and of all other powers enabling him in that behalf, by this Instrument, after consultation with such persons as he considers appropriate(d), hereby makes the following Regulations:

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2005.

(2) These Regulations shall come into force on 6<sup>th</sup> April 2006.

(3) This regulation extends to England and Wales and Scotland.

(4) The extent of any amendment made by these Regulations is the same as that of the regulation it amends.

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

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

(2) Regulation 19(a) (lump sum benefits and salary-related contracted-out schemes) shall be renumbered paragraph (1) of regulation 19.

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(a) 1993 c.48; subsection (5A) was inserted in section 9 by section 283 of the Pensions Act 2004 (c. 35) and amended by the .....Order 2005 (S.I.2005/ ); section 12C(1)(c) was inserted by section 136(5) of the Pensions Act 1995 (c. 26); section 17(8) was inserted by section 284(2) of the Pensions Act 2004; section 21(1) was substituted by section 284(1) of that Act; section 28(4) was amended by section 284(3) of that Act; section 32A was inserted by section 146(1) of the Pensions Act 1995 ; section 55(2B) was inserted by the Welfare Reform and Pensions Act 1999 (c.30), section 18 and Schedule 2, paragraph 7(1); and section 101C(2) was inserted by section 37 of that Act.

(b) 1995 c.26; section 124(1) is cited because of the meaning given to “prescribed” and “regulations”.

(c) 1999 c.30.

(d) See section 185(1) of the Pensions Scheme Act 1993, as amended by the Pensions Act 1995, Schedule 5, paragraph 80(a), section 120(1) of the Pensions Act 1995 and section 83(11) of the Welfare Reform and Pensions Act 1999.

(e) S.I. 1996/1172.

- (3) In the re-numbered paragraph (1) for sub-paragraphs (a) and (b), substitute—
- “(a) in accordance with—
    - (i) regulation 20 (payment of a lump sum instead of a pension payable under a relevant scheme), or
    - (ii) regulation 60 (payment of a guaranteed minimum pension as a lump sum); or
  - (b) in accordance with paragraph (2).”
- (4) After the re-numbered paragraph (1), add—
- “(2) Subject to paragraph (3), a lump sum payment may be made in accordance with this paragraph to the extent permitted by the rules of the scheme if—
- (a) the scheme is authorised for the purposes of section 164 of the Finance Act 2004<sup>(b)</sup> to make such a payment to the members of the scheme;
  - (b) the payment is permitted by the lump sum rule in section 166 of that Act and either—
    - (i) qualifies as a pension commencement lump sum for the purposes of paragraphs 1 to 3 of Part 1 of Schedule 29 to that Act; or
    - (ii) qualifies as a serious ill-health lump sum for the purposes of paragraph 4 of Part 1 of that Schedule.
- (3) Where under the scheme—
- (a) an earner qualifies for a lump sum payment on the ground of serious ill-health; and
  - (b) the earner’s widow or widower qualifies for a pension (“a survivor’s pension”),
- then the scheme must continue to include provision for a survivor’s pension notwithstanding the payment of a lump sum to the earner.”
- (5) For regulation 20 (trivial commutation of benefits derived from section 9(2B) rights)<sup>(c)</sup>, substitute—

**“Payment of a lump sum instead of a pension payable under a relevant scheme**

**20.**—(1) For the purposes of section 12C(1)(c) of the 1993 Act (regulations may prohibit or restrict the payment of a lump sum instead of a pension under a relevant scheme except in prescribed circumstances or on prescribed conditions), a relevant scheme may not provide for the payment of a lump sum instead of a pension unless the scheme is authorised for the purposes of section 164 of the Finance Act 2004 to make lump sum payments to or in respect of its members and the payment is permitted either—

- (a) by the lump sum rule in section 166 of the Finance Act 2004 and qualifies as—
    - (i) a trivial commutation lump sum for the purposes of paragraphs 7 to 9 of Part 1 of Schedule 29 to that Act; or
    - (ii) a winding-up lump sum for the purposes of paragraph 10 of Part 1 of Schedule 29 to that Act; or
  - (b) by the lump sum death benefit rule in section 168 of that Act and qualifies as—
    - (i) a trivial commutation lump sum death benefit for the purposes of paragraph 20 of Part 2 of Schedule 29 to that Act; or
    - (ii) a winding-up lump sum death benefit for the purposes of paragraph 21 of Part 2 of Schedule 29 to that Act.”
- (6) In regulation 51 (election to pay a contributions equivalent premium)<sup>(d)</sup>—
- (a) in paragraph (1A) for “paragraph (1B) or (1C)”, substitute “paragraph (1B), (1C) or (1D)”; and

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(a) Relevant amending Instrument is S.I. 2002/681.  
 (b) 2004 c.12.  
 (c) The relevant amending instrument is S.I.2002/681.  
 (d) Regulation 51(1) to (1C) was substituted by S.I.2002/681.

(b) after paragraph (1C), add—

“(1D) This paragraph applies where, on the termination of his 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 (a)(right to cash transfer sum and contribution refund).”

(7) For regulation 60(b) (trivial commutation of guaranteed minimum pension), substitute—

**“Payment of a guaranteed minimum pension as a lump sum**

**60.**—(1) Subject to paragraph (2), for the purposes of section 21(1) of the 1993 Act (payment of a lump sum instead of a pension in prescribed circumstances and subject to prescribed restrictions and conditions) a scheme may provide for the payment of a lump sum instead of a guaranteed minimum pension if the scheme is authorised for the purposes of section 164 of the Finance Act 2004 to make lump sum payments to or in respect of members of the scheme and the payment is permitted either—

(a) by the lump sum rule in section 166 of that Act and qualifies as—

- (i) a serious ill-health lump sum for the purposes of paragraph 4 of Part 1 of Schedule 29 to that Act;
- (ii) a trivial commutation lump sum for the purposes of paragraphs 7 to 9 of Part 1 of Schedule 29 to that Act; or
- (iii) a winding-up lump sum for the purposes of paragraph 10 of Part 1 of Schedule 29 to that Act; or

(b) by the lump sum death benefit rule in section 168 of that Act and qualifies as—

- (i) a trivial commutation lump sum death benefit for the purposes of paragraph 20 of Part 2 of Schedule 29 to that Act; or
- (ii) a winding-up lump sum death benefit for the purposes of paragraph 21 of Part 2 of Schedule 29 to that Act.

(2) Where—

- (a) under the scheme, an earner qualifies for a lump sum payment on the ground of serious ill-health; and
- (b) the scheme also provides for the payment of a guaranteed minimum pension to the widow or widower of the earner (“a survivor’s pension”),

then the scheme must continue to include provision for a survivor’s pension notwithstanding the payment of a lump sum to the earner.”.

**Amendment of the Occupational Pension Schemes (Discharge of Protected Rights on Winding Up) Regulations 1996**

**3.**—(1) The Occupational Pension Schemes (Discharge of Protected Rights on Winding Up) Regulations 1996(c) shall be amended in accordance with the following provisions of this regulation.

(2) For regulation 5, substitute—

**“Conditions upon which appropriate policies of insurance may be commuted**

**5.** The requirements referred to in section 32A(2)(c) of the Act (policy of insurance appropriate where commutation conditional on satisfying prescribed requirements) are that the amount secured by the policy of insurance which may be commuted does not exceed the amount for the time being permitted for a lump sum payment either—

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(a) Section 101AB was inserted by section 264 of the Pensions Act 2004 (c. 35).

(b) Relevant amending Instruments are S.I. 1997/786 and 2002/681.

(c) S.I.1996/775.

- (a) by the lump sum rule in section 166 of the Finance Act 2004 for a lump sum which is a trivial commutation lump sum for the purposes of paragraphs 7 to 9 of Part 1 of Schedule 29 to that Act ; or
- (b) by the lump sum death benefit rule in section 168 of that Act for a lump sum which is a trivial commutation lump sum death benefit for the purposes of paragraph 20 of Part 2 of Schedule 29 to that Act”

(3) In regulation 6 (certain requirements applying to policies of insurance), in paragraph (1)(b), omit the words “, not being earlier than the age of 60,”.

#### **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 provisions of this regulation.

(2) In regulation 8 (giving effect to protected rights by provision of a lump sum) for paragraph (1) substitute—

“(1) For the purposes of section 28(4) of the 1993 Act (effect may be given to protected rights by the provision of a lump sum but subject to prescribed restrictions), the restrictions are that the scheme under which the lump sum payment is provided must be authorised to make lump sum payments to its members under section 164 of the Finance Act 2004 and either paragraph (1A) or (1B) must be satisfied, together with paragraph (1C) where appropriate.

(1A) This paragraph is satisfied if the lump sum payment is permitted by the lump sum rule in section 166 of the Finance Act 2004 and qualifies as—

- (a) a pension commencement lump sum for the purposes of paragraphs 1 to 3 of Part 1 of Schedule 29 to that Act;
- (b) a serious ill-health lump sum for the purposes of paragraph 4 of that Part;
- (c) a trivial commutation lump sum for the purposes of paragraphs 7 to 9 of that Part; or
- (d) a winding-up lump sum for the purposes of paragraph 10 of that Part.

(1B) This paragraph is satisfied if the lump sum payment is permitted by the lump sum death benefit rule in section 168 of the Finance Act 2004 and qualifies as—

- (a) a trivial commutation lump sum death benefit for the purposes of paragraph 20 of Part 2 of Schedule 29 to that Act; or
- (b) a winding-up death benefit lump sum for the purposes of paragraph 21 of that Part.

(1C) Where—

- (a) under the scheme, a member qualifies for a lump sum payment on the ground of serious ill-health;
- (b) on the date he qualifies for the payment, the member has a spouse; and
- (c) the scheme also provides for the payment of a pension to a member’s widow or widower (a “survivor’s pension”),

then this paragraph is satisfied if the scheme retains a sum sufficient to secure the payment of the survivor’s pension.”

(3) In regulation 10 (choice of insurance company by annuitant), in paragraph (a), in both sub-paragraph (i) and sub-paragraph (ii), omit “if that age is not less than 60 years”.

(4) In regulation 12 (death of member before effect given to protected rights), for paragraph (14), substitute—

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(a) S.I. 1996/1537; the relevant amending Instrument is S.I. 2002/681.

“(14) The lump sum referred to in paragraph (3) is one which—

- (a) is permitted by the lump sum death benefit rule in section 168 of the Finance Act 2004 and qualifies as a trivial commutation lump sum death benefit for the purposes of paragraph 20 of Part 2 of Schedule 29 to that Act; and
- (b) is paid to the widow or widower in the following circumstances—
  - (i) effect is given to all the member’s protected rights by the payment of a lump sum; and
  - (ii) either the member, when he died, had no rights under the scheme other than his protected rights, or effect is given to all those of his rights under the scheme which are not protected rights by the payment of a lump sum.”

#### **Amendment of the Occupational Pension Schemes (Discharge of Liability) Regulations 1997**

**5.**—(1) The Occupational Pension Schemes (Discharge of Liability) Regulations 1997(a) shall be amended in accordance with the following provisions of this regulation.

(2) In regulation 4 (conditions on which policies of insurance and annuity contracts may be commuted)—

(a) for paragraph (1), substitute—

“(1) The requirements referred to in section 19(4)(c) of the 1993 Act (policy of insurance or annuity contract appropriate where commutation conditional on satisfying prescribed requirements) are that—

- (a) the amount secured by the policy of insurance or annuity contract does not exceed the amount for the time being permitted for a lump sum payment by—
  - (i) the lump sum rule in section 166 of the Finance Act 2004 and qualifies as a trivial commutation lump sum for the purposes of paragraphs 7 to 9 of Part 1 of Schedule 29 to that Act; or
  - (ii) by the lump sum death benefit rule in section 168 of that Act and qualifies as a trivial commutation lump sum death benefit for the purposes of paragraph 20 of Part 2 of Schedule 29 to that Act,and that all the earner’s interest under the policy of insurance or annuity contract is discharged on payment of the lump sum; or
- (b) subject to paragraph (2), the earner requests or consents to the amount secured by the policy of insurance or annuity contract being paid as a lump sum and that payment does not exceed the amount for the time being permitted for a lump sum payment by the lump sum rule in section 166 of that Act and qualifies as a serious ill-health lump sum for the purposes of paragraph 4 of Part 1 of Schedule 29 to that Act.”;

(b) in paragraph (2), omit “the earner’s and”;

(c) in paragraph (3), omit sub-paragraph (a); and

(d) omit paragraph (4).

(3) In regulation 11 (conditions on which liability to provide pensions under a relevant scheme may be discharged), in paragraph (3)(d)(i), omit “has attained the age of 50 and”.

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

**6.**—(1) Regulation 2 of the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc) Regulations 1997(b) (commutation of a pension under an occupational pension scheme) shall be amended in accordance with the following provisions of this regulation.

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(a) S.I. 1997/784; the relevant amending instrument is S.I. 1999/3198.

(b) S.I. 1997/785; paragraph (1A) was inserted by S.I. 2002/681.

(2) For paragraphs (1) and (1A), substitute—

“(1) For the purposes of section 91(5)(c)(ii) and (iii) of the 1995 Act (inalienability of occupational pension does not apply to commutation in prescribed circumstances) the prescribed circumstances are that—

- (a) the aggregate amount of all benefits payable as a lump sum to—
  - (i) the earner is permitted by the lump sum rule in section 166 of the Finance Act 2004 and qualifies as a trivial commutation lump sum for the purposes of paragraphs 7 to 9 of Part 1 of Schedule 29 to that Act; or, as the case may be,
  - (ii) the earner’s widow or widower is permitted by the lump sum death benefit rule in section 168 of that Act and qualifies as a trivial commutation lump sum death benefit for the purposes of paragraph 20 of Part 2 of Schedule 29 to that Act; or
- (b) the scheme is being wound up and the aggregate amount of all benefits payable as a lump sum to—
  - (i) the earner is permitted by the lump sum rule in section 166 of that Act and qualifies as a winding-up lump sum for the purposes of paragraph 10 of Part 1 of Schedule 29 to that Act; or, as the case may be,
  - (ii) the earner’s widow or widower is permitted by the lump sum death benefit rule in section 168 of that Act and qualifies as a winding-up lump sum death benefit for the purposes of paragraph 21 of Part 2 of Schedule 29 to that Act.

(1A) In paragraph (1), “the aggregate amount of all benefits” means the amount payable under all the schemes relating to employment with the same employer as the employment in respect of which the benefit is payable.

(1B) There are also prescribed for the purposes of section 91(5)(c)(iii) of the 1995 Act the circumstances where—

- (a) the rights of the member consist only of rights derived from equivalent pension benefits under Part III of the National Insurance Act 1965(a); and
- (b) either—
  - (i) the member has consented to the commutation; or
  - (ii) he has not consented but the conditions in paragraph (4) are satisfied.”

(3) Paragraph (2) shall be omitted.

(4) In paragraph (3), for “paragraph (1)(a)(ii)”, substitute “paragraph (1)(b)”.

(5) After paragraph (3) add the following paragraph—

“(4) For the purposes of paragraph (1B)(b)(ii), the conditions are that—

- (a) the trustees or managers of the scheme have sent to the member’s last known address written notice of their intention to commute his rights; and
- (b) no response has been received from the member before the end of the period of 2 months beginning with the date on which the notice was sent.”

### **Amendment of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000**

7.—(1) Regulation 15(5) of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000(b) (disqualification as a destination for pension credit-annuity contracts and insurance policies) shall be amended in accordance with the following provisions of this regulation.

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(a) 1965 c.51.  
(b) S.I. 2000/1053.

(2) In sub-paragraph (a), omit “, and the aggregate of those benefits does not exceed £260 per annum”.

(3) For sub-paragraph (b) substitute—

“(b) any lump sum payment—

- (i) is permitted by the lump sum rule in section 166 of the Finance Act 2004; and
- (ii) qualifies as a trivial commutation lump sum for the purposes of paragraphs 7 to 9 of Part 1 of Schedule 29 to that Act; and”.

### **Amendment of Pension Sharing (Pension Credit Benefit) Regulations 2000**

**8.**—(1) The Pension Sharing (Pension Credit Benefit) Regulations 2000(a) shall be amended in accordance with the following provisions of this regulation.

(2) In regulation 3(2) (commutation of the whole of pension credit benefit) for sub-paragraph (b) substitute—

“(b) the lump sum payment—

- (i) is permitted by the lump sum rule in section 166 of the Finance Act 2004; and
- (ii) qualifies as a trivial commutation lump sum for the purposes of paragraphs 7 to 9 of Part 1 of Schedule 29 to that Act.”

(3) In regulation 4(1)(a)(i) (commutation of part of pension credit benefit), at the end, for the word “or” substitute “and”.

Date

*Name*  
Parliamentary Under Secretary of State  
Department for Work and Pensions

### **EXPLANATORY NOTE**

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

These Regulations enable benefits payable under occupational and personal pension schemes to be commuted into lump sum payments if those payments satisfy requirements set out in the Finance Act 2004.

Regulation 1 provides for citation, commencement and extent.

Regulation 2 amends the Occupational Pension Schemes (Contracting-out) Regulations 1996 in relation to the commutation of benefits. Paragraph (4) amends regulation 19 (lump sum benefits and contracted out schemes), paragraph (5) substitutes a new regulation 20 (trivial commutation of benefits derived from section 9(2B) rights) and paragraph (7) amends regulation 60 (commutation of guaranteed minimum pension). Paragraph (6) amends regulation 51 in relation to contracting out elections.

Regulation 3 substitutes a new regulation 5 in the Occupational Pension Schemes (Discharge of Protected Rights on Winding Up) Regulations 1996 enabling the amount secured by a policy of insurance in respect of a member’s protected rights to be commuted where the payment satisfies requirements for lump sum payments by pension schemes contained in the Finance Act 2004.

Regulation 4 amends the Personal and Occupational Pension Schemes (Protected Rights) Regulations 1996. Commuting a member’s protected rights by the payment of a lump sum is

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(a) S.I. 2000/1054.

authorised if the payment satisfies the requirements for lump sum payments by pension schemes contained in the Finance Act 2004.

Regulation 5 amends the Occupational Pension Schemes (Discharge of Liability) Regulations 1997 and prescribes the requirements which must be satisfied before the amount secured by a policy of insurance or annuity contract may be commuted.

Regulation 6 amends the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc) Regulations 1997 and prescribes the circumstances in which an occupational pension may be commuted.

Regulation 7 amends the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000. For an annuity contract or insurance policy to be a destination for a pension credit, it must provide that benefits secured by the contract or policy may be commuted if the payment qualifies as a trivial commutation lump sum payment under the Finance Act 2004.

Regulation 8 amends the Pension Sharing (Pension Credit Benefit) Regulations 2000 and enables schemes to provide for the payment of a lump sum as a pension credit benefit before normal benefit age where the payment qualifies as a trivial commutation lump sum payment under the Finance Act 2004. It also provides for the payment of a pension credit benefit as a lump sum if the person entitled to the pension credit suffers from an incapacity prior to normal benefit age and has attained the age of 50.

An assessment of the impact on business, charities or the voluntary sector of the provisions in these regulations was included in the Regulatory Impact Assessment relating to the Pensions Act 2004. A copy of that assessment has been placed in the libraries of both Houses of Parliament. Copies may be obtained from the Department for Work and Pensions, Regulatory Impact Unit, level 3, Adelphi, 1-11 John Adam Street, London WC2N 6HT