

THE NATIONAL SOCIAL SECURITY FUND ACT

(No. 45. of 2013)

IN EXERCISE of the powers conferred by section 68 of the National Social Security Fund Act, 2013, the Cabinet Secretary for Labour, Social Security and Services makes the following Regulations—

THE NATIONAL SOCIAL SECURITY FUND

(CONTRACTING OUT BY EMPLOYERS) REGULATIONS, 2014

PART I – PRELIMINARY

1. These Regulations may be cited as the National Social Security Fund (Contracting Out by Employers) Regulations, 2014. Citation.

2. These Regulations shall apply to—

Application.

(a) an employer who wishes to opt to pay Tier II contributions to a contracted out scheme; and

(b) a contracted-out scheme.

3. (1) In these Regulations unless the context otherwise requires—

Interpretation.

“Authority” means the Retirement Benefits Authority established under section 3 of the Retirement Benefits Act;

“Contracting-out Certificate” means the certificate issued by the Authority to an employer authorising the employer to remit Tier II Contributions to a contracted-out scheme;

“Contracted-out employment” means in relation to an employee any period in which—

(a) the employee is under pensionable age;

(b) the employer makes minimum payments in respect of his employment to a contracted-out scheme; and

(c) there is in force a contracting-out certificate issued by the Authority in accordance with these Regulations stating that the

employment is contracted-out employment by reference to the scheme.

“Minimum payments” mean an amount equal to the employer’s and employee’s Tier II Contributions which an employer must pay into a contracted-out scheme for the benefit of each employee who is contracted-out by reference to that scheme;

“Reference Scheme Test Certificate” means a certificate signed by an actuary for a defined benefit scheme or an actuary or an administrator for a defined contribution scheme confirming compliance with the scheme-based Reference Scheme Test;

“Reference Scheme Certificate” means the certificate issued by the Authority to a scheme which meets the Reference Scheme Test to qualify it to receive Tier II Contributions.

PART II—APPLICATION FOR CONTRACTING-OUT BY THE EMPLOYER

4. (1) An application for contracting-out by an employer shall be made in writing to the Authority and shall include the particulars specified in regulation 7. Application for Contracting-Out by employer.

(2) Subject to paragraph (3) and (4), an employer may elect that the application for contracting-out by reference to a scheme shall apply in relation to all employees in its employment or in relation only to a particular description of employees.

(3) An employer shall not, in making or abstaining from making any election under this section, discriminate between different employees on any grounds other than the nature of their employment.

(4) If the Authority considers that an employer is contravening paragraph (3) in relation to any scheme, it may—

- (a) refuse to give effect to any election made by the employer in relation to that scheme; or
- (b) cancel any contracting-out certificate held by the employer in respect to it.

5. (1) The employer who opts to contract out shall notify—

- (a) the employees in respect of whose employment the election is proposed to be made and those whom the employer is not electing; Notification by employer of intended application to contract out.
- (b) the trustees and administrator of the scheme to which the election is to relate; and
- (c) all independent trade unions recognised in relation to the employees concerned of its intention to apply to contract out in the manner prescribed in paragraph (3).

(2) Notification given under this Regulation shall be in writing and shall—

- (a) specify the scheme and the categories or descriptions of the employees affected;
- (b) specify effective date of the intended contracting out;
- (c) describe the contributions by and benefits payable to the employees by the scheme and the changes which would be made to those benefits and contributions as a result of contracting-out;
- (d) explain where further information about the scheme and the benefits and contributions provisions mentioned in paragraph (c) can be obtained.

(3) A notification under this regulation shall be given—

- (a) to any employee concerned by—
 - (i) sending or delivering it to him, or
 - (ii) exhibiting it conspicuously at the place of work or employment where it may be read conveniently by him and by drawing the employee's attention to it in writing;
- (b) to any other person, by sending or delivering it to that person.

6. The application for the issue of a contracting-out certificate shall be submitted to the Authority at least sixty days prior to the intended date of contracting-out.

Time for making an application.

7. An application shall include the following —

- (a) a duly completed application in the prescribed form;
- (b) the name and address of the employer;
- (c) the name of the scheme to which the application relates;
- (d) the categories or descriptions of the employees intended to be included in the certificate and those intended to be excluded and the reasons thereof;
- (e) confirmation that a notification was given under regulation 5;
- (f) a list of employees together with their National Social Security Fund registration numbers;
- (g) the effective date of the intended contracting out;
- (h) the names and addresses of the trustees and administrator of the scheme to which the application relates;
- (i) a resolution by the employer's board or governing body of the application for contracting-out and the desired date of contracting-out;
- (j) an undertaking by the employer that it will comply with the obligations concerning minimum payments;
- (k) a resolution by the trustees of the scheme accepting to receive Tier II Contributions into the scheme as assets of the

Information and documents to accompany application.

scheme and to exercise fiduciary responsibility over the discharge of the obligations in respect of Tier II Contributions as provided for in the Act;

- (l) an undertaking by the administrator that it will comply with the provisions of the Act and these Regulations in relation to the administration of Protected Rights in the scheme;
- (m) for a scheme existing prior to the date of making the application, a deed of amendment to the trust deed and rules amending the rules to conform with the requirements of the Act and these Regulations in relation to contracting-out;
- (n) for a new scheme which the employer wishes to establish for the purposes of contracting-out, a trust deed and rules with the rules conforming with the requirements of the Act and these Regulations in relation to contracting-out;
- (o) a reference Scheme Test Certificate in respect of the scheme to which the application relates; and
- (p) the employer's National Social Security Fund registration number.

8. (1) The Authority shall within thirty days from the date of receipt of an application for contracting-out from an employer, determine whether the employer has fulfilled the requirements for contracting-out, and in such case, it shall issue and send to the employer concerned a contracting-out certificate with a copy to the National Social Security Fund.

Determination of contracting-out by the Authority.

(2) The contracting-out certificate shall specify—

- (a) the name and address of the employer;
- (b) the name of the scheme;
- (c) the categories or descriptions of the employees to whom it relates; and
- (d) the effective date.

9. Where an employer fails to fulfill the requirements for contracting-out, the Authority shall within thirty days of receipt of the application, decline to issue the Contracting Out and give the applicant the reasons in writing.

Rejection of a contracting-out application.

10. (1) An election by an employer to vary or surrender a contracting-out certificate shall be made in writing to the Authority, after giving thirty days notice.

Variation or surrender of contracting-out certificate.

(2) The provisions of paragraph 4 shall not apply where a proposed variation is a change in—

- (a) the name of the employer;
- (b) the address of the employer; or

- (c) the name of the scheme.
- (3) The provisions of paragraph 4 shall apply where a proposed variation is a change in—
 - (a) the categories or descriptions of the employees affected by the certificate;
 - (b) the Protected Rights or the benefits provided by the scheme; or
 - (c) the contributions payable by those employees to the scheme.
- (4) Notices given under this regulation shall be given in writing and shall—
 - (a) specify the scheme and the employments concerned and, if the election is not intended to be in relation to all employees in those employments, the categories or descriptions of the employees to be so affected;
 - (b) specify the date from which it is intended that the variation or surrender is to have effect;
 - (c) specify the name and business address of the person to whom enquiries may be made with respect to the matters included in the notice; and
 - (d) explain whether or not by reference to another document how, if the proposed variation or surrender took place, the benefits and rates at which contributions payable by those employees would be affected.
- (2) The Authority shall within thirty days from the date of receipt of the election for variation or surrender of contracting-out certificate grant approval in writing to the employer or decline and advise in writing of its reasons.

11. (1) These Regulations shall also apply where employees are employed by—

- (a) one of a group of companies consisting of a holding company and one or more subsidiaries, or
- (b) one of a group of employers who are associated employers.

(2) A notice by a holding company shall be deemed to have been issued on behalf of its subsidiaries unless stated otherwise.

12. A Contracting out Certificate issued in respect of a scheme shall be valid from the date of issue and shall remain in force until the scheme is deregistered, wound up or the contracting out certificate is cancelled in accordance with regulations, the scheme rules or the provisions of the written law under which the scheme is established.

Duration of certificates.

13. (1) Where the Authority has reason to believe that any employment to which a contracting-out certificate applies should not continue to be contracted-out employment and the employer has not shown to the satisfaction of the Authority that it should continue, the

Circumstances in which the Authority may cancel a contracting-out

Authority shall, subject to paragraph (2), cancel the certificate with ^{certificate.} effect from such date as it may specify, subject to paragraph (2) and shall notify the employer in writing of its determination and reasons.

(2) The cancellation date shall be the effective date, save where—

- (a) in a case where the Authority discovers that the scheme did not satisfy the contracting out requirements the effective date of the contracting out certificate shall be the date of cancellation; or
- (b) in a case where the Authority considers that the scheme has ceased to satisfy the requirements for being a contracted-out scheme, the cancellation date shall be the date the scheme ceased to satisfy the requirements.

(3) In any case where the Authority has cancelled a certificate under the provisions of paragraph (1) it may require the employer to give notice of the cancellation, in the manner specified in regulation 5 to—

- (a) the employees in relation to whom the employment was contracted-out by virtue of the certificate immediately before its cancellation;
- (b) the trustees and administrator of the scheme by reference to which the employment was contracted-out immediately before the cancellation of the certificate.

(4) The Authority may require any such notice to include such particulars as it may consider appropriate.

PART III—REFERENCE SCHEMES PRESCRIBED REQUIREMENTS

14. A scheme shall be a Reference Scheme for the purposes of contracting-out if it satisfies the conditions stipulated in the Fourth Schedule of the Act and regulations 16,17,18,19 and 20.

15. The rules of the Reference Scheme shall provide for—

- (a) the trustees of the scheme to accept minimum payments in respect of tier II Contributions as forming part of the assets of the scheme and to exercise fiduciary responsibility over the discharge of the obligations in respect of tier II Contributions as provided for in the Act;
- (b) an undertaking from the employer to the trustees to make minimum payments to the scheme within thirty days after the end of the month in which the minimum payments relate;
- (c) payment of penalties for default in payment and incorrect contributions as provided under section 27 of the Act;
- (d) an employer is not entitled to recover any minimum payments paid by it on behalf of an employee otherwise than by deduction in accordance with the Act;
- (e) separate identification of Protected Rights in respect of each member in each individual member's account in the scheme;

Further prescribed requirements for Reference Schemes. Requirements as to Reference Scheme rules.

- (f) full and immediate vesting of minimum payments in the members account in the scheme;
 - (g) the value of Protected Rights to be calculated in a manner no less favourable than that in which the value of any other rights of the member to benefits under the scheme are calculated;
 - (h) interest to be allocated on Protected Rights at least annually having regard to the income on the scheme's assets;
 - (i) that the discharge of members rights only in accordance with the Act and these Regulations;
 - (j) any liabilities in respect of Protected Rights and accrued rights to Protected Rights to be accorded priority on a winding up over other liabilities under the scheme in respect of benefits attributable to any period of service after the rules have taken effect.
16. For a defined benefit scheme, the amount of the resources of the scheme must be sufficient either to enable the scheme to meet the minimum funding requirement provided for in the Retirement Benefits Act, or the actuary to the scheme must have certified that in his opinion the rates of contributions are adequate for the purpose of securing that the minimum funding requirement will be met by the end of the period prescribed in the Retirement Benefits Act.
17. (1) The rules of a defined benefit contracted-out scheme shall not be altered unless—
- (a) The trustees of the scheme have informed the actuary in writing of the proposed alteration to the scheme rules;
 - (b) The actuary has considered the proposed alteration and has confirmed to the trustees of the scheme in writing that he is satisfied that the scheme will continue to satisfy the statutory standard in accordance with rule 16 of the Retirement Benefit Authority (Occupational Retirement Benefits Scheme) Rules, 2000, and these Regulations after the alteration is made, and
 - (c) The alteration is not one which would otherwise prevent the scheme from satisfying the conditions of the Fourth Schedule of the Act.
- (2) The rules of a defined contribution contracted-out scheme cannot be altered in relation to any protected rights to contravene the provisions of the Fourth Schedule of the Act or any Regulations made there under.
18. An employer who has been issued with a Contracting-out Certificate will make an application in writing to the National Social Security Fund for transfer of Tier II Fund Credits from the National Social Security Fund to the contracted-out scheme and on receipt of the application the Fund shall transfer the Tier II Fund Credits in respect of each of the employees in the contracted-out scheme; and-

Requirement as to resources of the scheme.

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Alteration of rules of contracted-out schemes.

L.N. No. 119 of 2000.

Transfers of Tier II Fund Credits and Protected Rights.

- (a) The transfer shall be accompanied with a schedule showing each individual employee's breakdown of Tier II contributions and Tier II Fund credit;
- (b) The transfer will be made within sixty days of the application for transfer; and
- (c) The transfer payment shall not include interest.

(2) An employee in a contracted-out employment may on termination of employment with an employer apply to have his Protected Rights in the contracted-out scheme transferred to another contracted-out scheme as a Protected Rights credit in that scheme or to the National Social Security Fund Pension Fund as a Tier II Credit and on receipt of the application the trustees of the contracted-out scheme shall after confirmation of the contracted-out status of the alternative contracted-out scheme from the Authority transfer the Protected Rights in respect of the employee to that contracted-out scheme; and—

- (a) the transfer shall be accompanied with a schedule showing a breakdown of the Protected Rights;
- (b) the transfer shall be made within ninety days of the application for transfer; and
- (c) the transfer payment shall include interest to the date of transfer.

(3) The provisions of paragraph 2 shall apply to bulk transfer of Protected Rights from a contracted-out scheme which may be made to another contracted-out scheme or to the Pension Fund;

(4) The provisions of paragraph 2 shall apply to transfer of Protected Rights to an alternative contracted-out scheme or to the Pension Fund upon winding up of a contracted-out scheme or the cancellation of a contracting-out certificate.

19.(1)A Contracted out scheme or an employer to whom a contracting-out certificate has been issued including any certificate which has been surrendered or cancelled provide written confirmation and such other evidence as the Authority may require pursuant to the provisions of the Retirement Benefits Act, the Act and these Regulations shall include—

Information and submissions to Authority.

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- (a) a quarterly record of contributions showing the aggregate Tier II contributions received by the scheme; and
- (b) a quarterly confirmation either that the Tier II contributions were received by the scheme by the due date or that interest at the applicable rates was received on delayed Tier II contributions to the scheme.

(2) The Authority shall provide a quarterly report to the Fund advising it of the status of Tier II contributions and arrears if any.

(3) A contracted out employer to whom a contracting-out certificate has been issued shall allow the National Social Security Fund compliance officers to inspect records relating to Tier II contributions and the provisions of section 17 of the Act shall, apply.

(4) The National Social Security Fund shall provide a list of all contracted out employers to the Cabinet Secretary.

20. The administrator of a contracted-out scheme shall —

Requirements in
relation to
administration of
protected rights

- (a) ensure it has systems capable of maintaining an accurate record of Protected Rights in respect of each member of the scheme including a record of Tier II Contributions received, Tier II Fund Credits and Protected Rights transfer credits if any;
- (b) ensure it is able based on earnings records furnished by the employer to verify that Tier II Contributions received are based on the correct earnings;
- (c) show the Tier II amounts separately on the annual benefit statement issued to members of the scheme;
- (d) provide a benefit statement to a member on request and upon being given sufficient notice in writing;
- (e) ensure obligations in respect of Protected Rights are discharged in the manner provided in the Act and these Regulations; and
- (f) advise and provide details to the Authority and the National Social Security Fund of any arrears in remittance of Tier II contributions to a contracted-out scheme on a monthly basis .

Made on the 10th June, 2014.

KAZUNGU KAMBI,
*Cabinet Secretary for Labour,
Social Security and Services.*