



Social Security Pensions Act 1975

1975 CHAPTER 60

PART III

CONTRACTING-OUT

[^{F1} Protection of pensions]

Textual Amendments

F1 Ss. 41A–41E inserted by [Health and Social Security Act 1984 \(c. 48\)](#), [Sch. 6](#)

41A Earners' pensions.

(1) If—

- (a) there is an interval between—
 - (i) the date on which an earner ceases to be in employment which is contracted-out by reference to an occupational pension scheme [^{F2}which is not a money purchase contracted-out scheme] (“the termination of employment date”); and
 - (ii) the date on which his guaranteed minimum pension under that scheme commences (“the commencement of payment date”);
- (b) the relevant sum exceeds his guaranteed minimum on the day after the termination of employment date; and
- (c) on the commencement of payment date or at any time thereafter his guaranteed minimum pension under the scheme exceeds the amount of his guaranteed minimum under it on the day after the termination of employment date,

the weekly rate on the [^{F3}commencement of payment date] and at any time thereafter of the pension payable to him under the scheme shall be an amount not less

- [^{F4}(i) in a case where by virtue of paragraph 9(2)(b) of Schedule 16 to the Social Security Act 1973 a pension is provided by way of complete substitute for short service benefit, than the weekly rate of that pension; and

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(ii) in any other case, than the relevant aggregate.]

(1A)^{F5}

[^{F6}(1C) In subsection (1) above “the relevant aggregate” means the aggregate of the following—

- (a) the relevant sum;
- (b) the excess mentioned in subsection (1)(c) above; . . .^{F7}
- (c) any amount which is an appropriate addition at the time in question][^{F8} and
- (d) where the scheme provides that part of the earner’s pension shall accrue after the termination of employment date by reason of employment after that date, the later earnings addition.]

(2) In subsection [^{F9}(1C)] above “appropriate addition” means—

- (a) where a scheme provides that part of an earner’s pension shall accrue after the termination of employment date by reason of employment after that date, an amount equal to the part which has so accrued; and
- (b) where a scheme provides that an earner’s pension which has accrued before that date shall be enhanced after it if payment of the pension is postponed, the amount by which the excess of the pension on the day after the termination of employment date over the earner’s guaranteed minimum on the day after the termination of employment date has been enhanced by reason of the postponement.

[^{F10}(2A) In this section “the later earnings addition” means the amount (if any) by which (R2—G2) exceeds (R1—G1), where—

- R1 is the relevant sum;
- G1 is the earner’s guaranteed minimum on the day after his termination of employment date;
- R2 is the amount that would have been the relevant sum, had the weekly rate of the benefit which determines that sum been calculated by reference to the earner’s later earnings level; and
- G2 is that amount which bears to R2 the proportion which G1 bears to R1.

(2B) For the purposes of subsection (2A) above, the earner’s “later earnings level” is the level of earnings by reference to which the weekly rate of the benefit which determines the relevant sum would have been calculated, had the termination of employment date fallen on the earlier of—

- (a) the commencement of payment date, or
- (b) the date on which the earner ceased to be in pensionable service under the scheme.]
- (3) Subject to subsections (6) to (8) below, in this section “the relevant sum” means—
 - (a) if the earner reaches normal pensionable age on or before the termination of employment date, an amount equal to the weekly rate of his pension on the day after the termination of employment date; and
 - (b) if he reaches normal pension age after the termination of employment date, an amount equal to the weekly rate of—
 - (i) any short service benefit which has accrued to him on the termination of employment date; or

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- (ii) where no short service benefit has then accrued to him, any other benefit to which this paragraph applies and which has then accrued to him.
- (4) The benefit other than short service benefit to which subsection (3)(b) above applies is benefit—
 - (a) which would have been provided, as either the whole or part of the earner's short service benefit; or
 - (b) of which the earner's short service benefit would have formed part, if paragraph 6(1) of Schedule 16 to the Social Security Act 1973 had effect with the substitution—
 - (i) ^{F11}
 - (ii) in paragraph (b), of a reference to the service which the earner had on that date for the reference to [^{F12}2] years' qualifying service.
- (5) Any such benefit is only to be included in the relevant sum to the extent that it does not exceed the amount which the scheme would have had to provide as short service benefit if paragraph 6(1) of Schedule 16 to the Social Security Act 1973 had effect as mentioned in subsection (4) above.
- (6) To the extent that amounts attributable to transfer credits have accrued by reason of any transfer before the commencement of this section they are to be disregarded for the purposes of [^{F13}subsections (1)(c) and (1C)(b)] above.
- (7) If any part of the earner's pension is postponed beyond the termination of employment date, the relevant sum is an amount equal to what would have been the weekly rate of his pension on the day after the termination of employment date if there had been no such postponement.
- (8) If—
 - (a) an earner's employment ceases to be contracted-out by reference to an occupational pension scheme but the scheme continues to apply to it; or
 - (b) an earner transfers from employment which is contracted-out by reference to an occupational pension scheme to employment to which the scheme applies but which is not contracted-out by reference to it,the amount of any short service or other benefit which has accrued to the earner shall be computed for the purposes of subsection (3)(b) above as it would be computed if he had ceased on the termination of employment date to be in employment to which the scheme applies.
- (9) An earner shall be treated for the purpose of this section as if benefit under a scheme had accrued to him—
 - (a) if—
 - (i) one of the events mentioned in subsection (8) above occurs before he has attained the age at which, if he had attained it, that benefit would have accrued to him; and
 - (ii) he continues to be in employment to which the scheme applies until he attains that age; or
 - (b) if—
 - (i) one of those events occurs before he has a particular period of service; and
 - (ii) that benefit would have accrued to him if he had that period; and

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(iii) he continues to be in employment to which the scheme applies until he has it.

(10) Nothing in this section shall be construed as entitling an earner who has not reached normal pension age to any portion of a pension under a scheme to which he would not otherwise be entitled.

(11) In this section, [^{F14}“pensionable service” and “short service benefit” are] to be construed in accordance with Schedule 16 to the Social Security Act 1973.

Textual Amendments

- F2** Words inserted (with effect from 6.4.1988) by [Social Security Act 1986 \(c. 50\)](#), [Sch. 2](#), para. 6(1)(d)
- F3** Words substituted (with effect from 13.7.1990) by [Social Security Act 1990 \(c. 27\)](#), [Sch. 4](#), para. 8(8)
- F4** Words substituted by [Social Security Act 1985 \(c. 53\)](#), [s. 6\(1\)](#)
- F5** [S. 41A\(1A\)](#) and (1B) repealed (with effect from 13.7.1990) by [Social Security Act 1990 \(c. 27\)](#), [Sch. 4](#), para. 8(8) and Sch. 7
- F6** [S. 41A\(1C\)](#) inserted by [Social Security Act 1985 \(c. 53\)](#), [s. 6\(2\)](#)
- F7** Word repealed (with effect from 21.7.1989) by [Social Security Act 1989 \(c. 24\)](#), [Sch. 9](#)
- F8** Word and s. 41A(1C)(d) added by [Social Security Act 1990 \(c. 27\)](#), [Sch. 4](#), para. 8(2), with effect from 21.7.1989 by virtue of para. 8(1) Social Security Act 1990, and subject to savings in para. 8(10)
- F9** Reference substituted by Social Security Act 1985, Sch. 5, para. 23(a)
- F10** [S. 41A\(2A\)](#) and (2B) added by [Social Security Act 1990 \(c. 27\)](#), [Sch. 4](#), para. 8(3), with effect from 21.7.1989 by virtue of para. 8(1) Social Security Act 1990, and subject to savings in para. 8(10).
- F11** [S. 41A\(4\)\(i\)](#) repealed by [Social Security Act 1985 \(c. 53\)](#), [Sch. 6](#)
- F12** Figure substituted (with effect from 6.4.1988) by [Social Security Act 1986 \(c. 50\)](#), [Sch. 10](#), para. 20
- F13** Words substituted by [Social Security Act 1985 \(c. 53\)](#), [Sch. 5](#), para. 23(b)
- F14** Words substituted by [Social Security Act 1990 \(c. 27\)](#), [Sch. 4](#), para. 8(4), with effect from 21.7.1989 by virtue of para. 8(1) of Social Security Act 1990, and subject to savings in para. 8(10).

41B

(1) If—

- (a) there is an interval between the earner’s termination of employment date and whichever of the following is the earlier—
- (i) the date of his death;
 - (ii) his commencement of payment date; and
- (b) the relevant sum exceeds one half of the earner’s guaranteed minimum on the day after the termination of employment date; and
- (c) at any time when a pension under the occupational pension scheme is required to be paid to his widow her guaranteed minimum pension under the scheme exceeds one half of his guaranteed minimum on the day after the termination of employment date,

the weekly rate of the pension to be paid to her at the time shall be an amount not less

[^{F15}(i) in a case where by virtue of paragraph 9(2)(b) of Schedule 16 to the Social Security Act 1973 a pension is provided by way of complete substitute for a widow’s pension, than the weekly rate of pension so provided; and

(ii) in any other case, than the relevant aggregate.]

[^{F16}(1A) In subsection (1) above “the relevant aggregate” means the aggregate of the following—

- (a) the relevant sum;

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- (b) the excess mentioned in subsection (1)(c) above; . . . ^{F17}
 - (c) any amount which is an appropriate addition at the time in question] ^{F18} and
 - (d) where the scheme provides that part of the widow’s pension shall accrue after the termination of employment date by reason of the earner’s employment after that date, the later earnings addition.]
- (2) In subsection ^{F19}(1A) above “appropriate addition” means—
- (a) where a scheme provides that a widow’s pension shall accrue after the termination of employment date by reason of the earner’s employment after that date, an amount equal to the part which has so accrued; and
 - (b) where a scheme provides that a widow’s pension which has accrued before that date shall be enhanced after it if payment of the earner’s pension is postponed, the amount by which the excess of the widow’s pension on the day after the termination of employment date over one half of the earner’s guaranteed minimum on the day after the termination of employment date has been enhanced by reason of the postponement.
- (3) Subject to subsection (5) below, in this section “the relevant sum” means an amount equal to the weekly rate at which, on the ^{F20}prescribed assumptions], a pension would have commenced to be paid to the widow if she had satisfied the conditions for entitlement to a pension which are specified in the scheme.
- ^{F21}(3A) In this section “the later earnings addition” means the amount (if any) by which (R2—G2) exceeds (R1—G1), where—
- R1 is the relevant sum;
 - G1 is one half of the earner’s guaranteed minimum on the day after his termination of employment date;
 - R2 is the amount that would have been the relevant sum, had the weekly rate of the pension which determines that sum been calculated by reference to the earner’s later earnings level; and
 - G2 is that amount which bears to R2 the proportion which G1 bears to R1.
- (3B) For the purposes of subsection (3A) above, the earner’s “later earnings level” is the level of earnings by reference to which the weekly rate of the pension which determines the relevant sum would have been calculated, had the termination of employment date fallen on the earlier of—
- (a) the earner’s commencement of payment date, or
 - (b) the date on which the earner ceased to be in pensionable service under the scheme.]
- (4) ^{F22}
- (5) To the extent that amounts attributable to transfer credits have accrued by reason of any transfer before the commencement of this section they are to be disregarded for the purposes of ^{F23}subsections (1)(c) and (1A)(b)] above.
- ^{F24}(6) In this section “pensionable service” shall be construed in accordance with Schedule 16 of the Social Security Act 1973.]

Textual Amendments

F15 Words substituted by [Social Security Act 1985 \(c. 53\), s. 6\(3\)](#)

F16 [S. 41B\(1A\)](#) inserted by [Social Security Act 1985 \(c. 53\), s. 6\(4\)](#)

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- F17** Word repealed (with effect from 21.7.1989) by **Social Security Act 1989 (c. 24), Sch. 9**
- F18** Word and S. 41B(1A)(d) added by **Social Security Act 1990 (c. 27), Sch. 4, para. 8(5)**, with effect from 21.7.1989 by virtue of para. 8(1) Social Security Act 1990, and subject to savings in para. 8(10).
- F19** Reference substituted by **Social Security Act 1985 (c. 53), Sch. 5, para. 24**
- F20** Words substituted by **Social Security Act 1985 (c. 53), s. 6(5)** and (6)
- F21** S.41B(3A) and (3B) inserted by **Social Security Act 1990 (c. 27), Sch. 4, para. 8(6)**, with effect from 21.7.1989 by virtue of para. 8(1) *ibid.*, and subject to savings in para. 8(10).
- F22** S. 41B(4) repealed by **Social Security Act 1985 (c. 53), Sch. 6**
- F23** Words substituted by **Social Security Act 1985 (c. 53), Sch. 5, para. 24**
- F24** S. 41B(6) inserted by **Social Security Act 1990 (c. 27), Sch. 4, para. 8(7)**, with effect from 21.7.1989 by virtue of para. 8(1) Social Security Act 1990, and subject to savings in para. 8(10).

Modifications etc. (not altering text)

- C1** S. 41B(1)(c) (but not s. 41B(1)(c)(i)), (2) and (3) to be construed (6.4.1988) as if references to “widow” included references to widower (and with consequential modifications) by virtue of **Social Security Act 1986 (c. 50), s. 9(4)(f)**
- C2** S. 41B(1)(c)(i) to be construed (with effect from 21.7.1989) as if references to “widow” included references to widower (and with consequential modifications) by virtue of **Social Security Act 1986 (c. 50), s. 9(4)(f)**

41C

- (1) Subject to subsection (2) below, sections 41A and 41B above override any provision of a scheme to the extent that it conflicts with them.
- (2) Sections 41A and 41B do not override a protected provision of a scheme.
- (3) In subsection (2) above “protected provision” means—
- (a) any provision contained in a scheme by virtue of—
 - (i) paragraph 9(2), 15(2), (3) or (4), 16(2), (3) or (4), 17(2) or 18 of Schedule 16 to the Social Security Act 1973; ^{F25}and]
 - (ii) ^{F26}
 - (b) any provision of a scheme to the extent that it deals with priorities on a winding-up; and
 - (c) any provision of a scheme which is included in it for the purpose of effecting a transfer of rights or liabilities authorised by regulations under section 38(1) above ^{F27}and
 - (d) any provision of a scheme to the extent that it deals with ^{F28}the commutation, suspension or forfeiture] ^{F29}and
 - (e) any provision of a scheme whereby, as respects so much of a widow’s or widower’s pension as exceeds the guaranteed minimum pension—
 - (i) no pension, or a pension at a reduced rate, is payable if the earner and the widow or widower married not more than six months before the earner’s death;
 - (ii) the whole or any part of the pension is not paid to the widow or widower, but instead comparable benefits are provided for one or more dependants of the deceased earner; or
 - (iii) no pension, or a pension at a reduced rate, is payable to the widow or widower (or, where a provision such as is mentioned in subparagraph (ii) above operates, to another dependant of deceased earner) who was more than ten years younger than the deceased earner.]

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- (4) In making any calculation for the purposes of section 41A or 41B above—
- (a) any commutation, forfeiture or surrender of the whole or part of a pension;
 - (b) any charge or lien on the whole or part of a pension; and
 - (c) any set-off against the whole or part of a pension,
- shall be disregarded.

[^{F30}(4A) In calculating an earner's guaranteed minimum for the purposes of sections 41A and 41B above his earnings factor shall be taken to be that factor as increased, except as provided by subsection (4B) below, by the last order under [^{F31}section 148 of the Administration Act] to come into force before the end of the tax year in which termination of employment date falls.

(4B) If an earner's termination of employment date falls in the tax year in which he attains pensionable age, subsection (4A) above shall have effect in relation to him as if for the words from "tax year" onwards there were substituted the word "final relevant year".

(4C) In subsection (4B) above "final relevant year" has the same meaning as in section 35 above.]

(5) Any reference in section 41A and 41B above to the weekly rate of a pension is to be construed, in relation to a pension payable otherwise than weekly, as a reference to the weekly sum which would be payable in respect of a pension of that amount payable weekly.

(6) Sections 41A and 41B above do not apply to a pension to which an earner or his widow is entitled in respect of employment if before the commencement of this section—

- (a) he left the employment, or left it for the last time; or
- (b) the employment ceased, or ceased for the last time, to be contracted-out in relation to him.

(7) The Secretary of State may by regulations direct that sections 41A and 41B above and this section shall have effect, in such cases as he may there specify.

(8) In subsection (7) above "modification" includes, without prejudice to the generality of that subsection, addition, omission and amendment.

Textual Amendments

F25 Word substituted by [Social Security Act 1990 \(c. 27\)](#), [Sch. 4](#), para. 9(1)(a) and Sch. 7, with effect from 1.11.1986 by virtue of para. 9(4) of Sch. 4 Social Security Act 1990.

F26 [S. 41C\(3\)\(a\)\(ii\)](#) repealed by [Social Security Act 1990 \(c. 27\)](#), [Sch. 4](#), para. 9(1)(a) and Sch. 7, with effect from 1.1.1986 by virtue of para. 9(4) of Sch. 4 Social Security Act 1990.

F27 Word and s. 41C(3)(d) added by [Social Security Act 1989 \(c. 24\)](#), [Sch. 6](#), para. 8(1)(b) as from 1.11.1986 (by paragraph 8(2) Social Security Act 1989.)

F28 Words substituted by [Social Security Act 1990 \(c. 27\)](#), [Sch. 4](#), para. 9(1)(b) with effect from 1.11.1986 by virtue of para. 9(4) Social Security Act 1990.

F29 Word and s. 41C(3)(e) inserted (with effect from 13.7.1990) by [Social Security Act 1990 \(c. 27\)](#), [Sch. 4](#), para. 9(2)

F30 [S. 41C\(4A\)–\(4C\)](#) inserted by [Social Security Act 1985 \(c. 53\)](#), [Sch. 3](#), paras. 3 and 7 with effect from 1.1.1985

F31 Words substituted (with effect from 1.7.1992) by [Social Security \(Consequential Provisions\) Act 1992 \(c. 6\)](#), [Sch. 2](#), para. 30

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41D

The Occupational Pensions Board may at any time, and shall if requested by the trustees or managers of an occupational pension scheme, advise on any question whether . . . ^{F32} any provision of section 41A or 41B above (including, without prejudice to section 20(2) of the Interpretation Act 1978, any such provision as modified by regulations under section 41C(7) above) does or does not override any provisions of the scheme.

Textual Amendments

F32 Words repealed by [Social Security Act 1985 \(c. 53\)](#), [Sch. 6](#)

41E

- (1) On an application made to them in respect of an occupational pension scheme (other than a public service pension scheme [^{F33} or a money purchase contracted-out scheme]) by persons competent to make such an application in respect of it, the Occupational Pensions Board shall issue a determination on any such question as is mentioned in section 41D above.
- (2) The persons competent to make an application under this section in respect of a scheme are—
 - (a) the trustees or managers of the scheme;
 - (b) any person other than the trustees or managers who has power to alter any of the rules of the scheme;
 - (c) any person who is an employer of persons in service in an employment to which the scheme applies;
 - (d) any member or prospective member of the scheme;
 - (e) such other persons as regulations may specify, in relation to any category of schemes into which the scheme falls, as being proper persons to make an application for the purposes of this section in respect of a scheme of that category.

Textual Amendments

F33 Words inserted (with effect from 6.4.1988) by [Social Security Act 1986 \(c. 50\)](#), [Sch. 2](#), para. 6(3)(c)

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