



# Pension Schemes Act 1993

## 1993 CHAPTER 48

### PART III

#### CERTIFICATION OF PENSION SCHEMES AND EFFECTS ON MEMBERS' STATE SCHEME RIGHTS AND DUTIES

### CHAPTER I

#### CERTIFICATION

#### *Preliminary*

#### **7 Issue of contracting-out and appropriate scheme certificates**

- (1) Regulations shall provide for the Board to issue certificates stating—
  - (a) that the employment of an earner in employed earner's employment is contracted-out employment by reference to an occupational pension scheme;  
or
  - (b) that a personal pension scheme is an appropriate scheme;and in this Act a certificate under paragraph (a) is referred to as "a contracting-out certificate" and a certificate under paragraph (b) as "an appropriate scheme certificate".
- (2) The regulations shall provide for contracting-out certificates to be issued to employers and to specify—
  - (a) the employments which are to be treated, either generally or in relation to any specified description of earners, as contracted-out employments; and
  - (b) the occupational pension schemes by reference to which those employments are to be so treated.
- (3) An occupational pension scheme is a contracted-out scheme in relation to an earner's employment if it is for the time being specified in a contracting-out certificate in

relation to that employment; and references in this Act to the contracting-out of a scheme are references to its inclusion in such a certificate.

- (4) A personal pension scheme is an appropriate scheme if there is in force an appropriate scheme certificate issued by the Board in accordance with this Chapter that it is such a scheme.
- (5) An appropriate scheme certificate for the time being in force in relation to a scheme shall be conclusive that the scheme is an appropriate scheme.
- (6) Regulations shall provide that any question whether a personal pension scheme is or at any time was an appropriate scheme shall be determined by the Board.
- (7) Except in prescribed circumstances, no contracting-out certificate or appropriate scheme certificate shall have effect from a date earlier than that on which the certificate is issued.

## **8 Meaning of “contracted-out employment”, “guaranteed minimum pension” and “minimum payment”**

- (1) The employment of an earner in employed earner’s employment is “contracted-out employment” in relation to him during any period in which he is under pensionable age and—
  - (a) either—
    - (i) his service in the employment is for the time being service which qualifies him for a guaranteed minimum pension provided by an occupational pension scheme, or
    - (ii) his employer makes minimum payments in respect of his employment to an occupational pension scheme which is contracted-out by virtue of satisfying section 9(3) (in this Act referred to as “a money purchase contracted-out scheme”); and
  - (b) there is in force a contracting-out certificate issued by the Board in accordance with this Chapter stating that the employment is contracted-out employment by reference to the scheme.
- (2) In this Act—
 

“guaranteed minimum pension” means any pension which is provided by an occupational pension scheme in accordance with the requirements of sections 13 and 17 to the extent to which its weekly rate is equal to the earner’s or, as the case may be, the earner’s widow’s or widower’s guaranteed minimum as determined for the purposes of those sections respectively; and

“minimum payment”, in relation to an earner’s employment in any tax week, means the rebate percentage of so much of the earnings paid to or for the benefit of the earner in that week as exceeds the current lower earnings limit but not the current upper earnings limit (or the prescribed equivalents if he is paid otherwise than weekly);

and for the purposes of this subsection “rebate percentage” means the sum of the percentages for the time being mentioned in paragraphs (a) and (b) of section 41(1).
- (3) Regulations may make provision—
  - (a) for the manner in which, and time at which or period within which, minimum payments are to be made;

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*Status: This is the original version (as it was originally enacted).*

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- (b) for the recovery by employers of amounts in respect of the whole or part of minimum payments by deduction from earnings;
  - (c) for calculating the amounts payable according to a scale prepared from time to time by the Secretary of State or otherwise adjusting them so as to avoid fractional amounts or otherwise facilitate computation;
  - (d) for requiring that the liability in respect of a payment made in a tax week, in so far as the liability depends on any conditions as to a person's age on retirement, shall be determined as at the beginning of the week or as at the end of it;
  - (e) for securing that liability is not avoided or reduced by the payment of earnings being made in accordance with any practice which is abnormal for the employment in respect of which the earnings are paid;
  - (f) without prejudice to paragraph (e), for enabling the Secretary of State, where he is satisfied as to the existence of any practice in respect of the payment of earnings whereby the incidence of minimum payments is avoided or reduced by means of irregular or unequal payments of earnings, to give directions for securing that minimum payments are payable as if that practice were not followed;
  - (g) for the intervals at which, for the purposes of minimum payments, payments of earnings are to be treated as made; and
  - (h) for this section to have effect, in prescribed cases, as if for any reference to a tax week there were substituted a reference to a prescribed period.
- (4) Any contracting-out certificate for the time being in force in respect of an employed earner's employment shall be conclusive that the employment is contracted-out employment.
- (5) Regulations shall provide for the determination by the Board of any question whether an employment is to be treated as contracted-out employment or as to the persons in relation to whom, or the period for which, an employment is to be so treated.

*General requirements for certification*

**9 Requirements for certification of schemes: general**

- (1) Subject to subsection (4), an occupational pension scheme can be contracted-out in relation to an earner's employment only if it satisfies subsection (2) or (3).
- (2) An occupational pension scheme satisfies this subsection only if—
  - (a) it complies in all respects with sections 13 to 24 or, in such cases or classes of case as may be prescribed, with those sections as modified by regulations; and
  - (b) the rules of the scheme applying to guaranteed minimum pensions are framed so as to comply with the relevant requirements.
- (3) An occupational pension scheme satisfies this subsection only if—
  - (a) the requirements imposed by or by virtue of sections 22 and 26 to 32 and such other requirements as may be prescribed are satisfied in its case; and
  - (b) the rules of the scheme applying to protected rights are framed so as to comply with the relevant requirements.

- (4) Where there are two or more occupational pension schemes in force in relation to an earner's employment, none of which can by itself be a contracted-out scheme, the Board may, if they think fit, treat them for contracting-out purposes as a single scheme.
- (5) A personal pension scheme can be an appropriate scheme only if—
  - (a) the requirements imposed by or by virtue of sections 26 to 32 and such other requirements as may be prescribed are satisfied in its case; and
  - (b) the rules of the scheme applying to protected rights are framed so as to comply with the relevant requirements.
- (6) In this section “relevant requirements” means—
  - (a) the requirements of any regulations prescribing the form and content of rules of contracted-out or, as the case may be, appropriate schemes; and
  - (b) such other requirements as to form and content (not inconsistent with regulations) as may be imposed by the Board as a condition of contracting-out or, as the case may be, of being an appropriate scheme, either generally or in relation to a particular scheme.

## **10 Protected rights and money purchase benefits**

- (1) Subject to subsections (2) and (3), the protected rights of a member of a pension scheme are his rights to money purchase benefits under the scheme.
- (2) If the rules of an occupational pension scheme so provide, a member's protected rights are—
  - (a) his rights under the scheme which derive from the payment of minimum payments together with any payments by the Secretary of State to the scheme under section 7 of the Social Security Act 1986 in respect of the member;
  - (b) any rights of the member to money purchase benefits which derive from protected rights under another occupational pension scheme or under a personal pension scheme which have been the subject of a transfer payment; and
  - (c) such other rights as may be prescribed.
- (3) If the rules of a personal pension scheme so provide, a member's protected rights are—
  - (a) his rights under the scheme which derive from any payment of minimum contributions to the scheme; and
  - (b) any rights of his to money purchase benefits which derive from protected rights under another personal pension scheme or protected rights under an occupational pension scheme which have been the subject of a transfer payment; and
  - (c) such other rights as may be prescribed.

## **11 Elections as to employments covered by contracting-out certificates**

- (1) Subject to the provisions of this Part, an employment otherwise satisfying the conditions for inclusion in a contracting-out certificate shall be so included if and so long as the employer so elects and not otherwise.
- (2) Subject to subsections (3) and (4), an election may be so made, and an employment so included, either generally or in relation only to a particular description of earners.

- (3) Except in such cases as may be prescribed, an employer shall not, in making or abstaining from making any election under this section, discriminate between different earners on any grounds other than the nature of their employment.
- (4) If the Board consider that an employer is contravening subsection (3) in relation to any scheme, they may—
- (a) refuse to give effect to any election made by him in relation to that scheme; or
  - (b) cancel any contracting-out certificate held by him in respect of it.
- (5) Regulations may make provision—
- (a) for regulating the manner in which an employer is to make an election with a view to the issue, variation or surrender of a contracting-out certificate;
  - (b) for requiring an employer to give a notice of his intentions in respect of making or abstaining from making any such election in relation to any existing or proposed scheme—
    - (i) to employees in any employment to which the scheme applies or to which it is proposed that it should apply;
    - (ii) to any independent trade union recognised to any extent for the purpose of collective bargaining in relation to those employees;
    - (iii) to the trustees and managers of the scheme; and
    - (iv) to such other persons as may be prescribed;
  - (c) for requiring an employer, in connection with any such notice, to furnish such information as may be prescribed and to undertake such consultations as may be prescribed with any such trade union as is mentioned in paragraph (b)(ii);
  - (d) for empowering the Board to refuse to give effect to an election made by an employer unless they are satisfied that he has complied with the requirements of the regulations;
  - (e) for referring to an industrial tribunal any question—
    - (i) whether an organisation is such a trade union as is mentioned in paragraph (b)(ii), or
    - (ii) whether the requirements of the regulations as to consultation have been complied with.

## **12 Determination of basis on which scheme is contracted-out**

- (1) A contracting-out certificate shall state whether the scheme is contracted-out by virtue of subsection (2) or (3) of section 9.
- (2) Where a scheme satisfies both of those subsections the employers, in their application for a certificate, shall specify one of those subsections as the subsection by virtue of which they wish the scheme to be contracted-out.
- (3) A scheme which has been contracted-out by virtue of one of those subsections may not become contracted-out by reason of the other except in prescribed circumstances.

*Requirements for certification of occupational pension  
schemes providing guaranteed minimum pensions*

**13 Minimum pensions for earners**

- (1) Subject to the provisions of this Part, the scheme must—
  - (a) provide for the earner to be entitled to a pension under the scheme if he attains pensionable age; and
  - (b) contain a rule to the effect that the weekly rate of the pension will be not less than his guaranteed minimum (if any) under sections 14 to 16.
- (2) In the case of an earner who is a married woman or widow who is liable to pay primary Class 1 contributions at a reduced rate by virtue of section 19(4) of the Social Security Contributions and Benefits Act 1992, subject to the provisions of this Part, the scheme must—
  - (a) provide for her to be entitled to a pension under the scheme if she attains pensionable age and does not have a guaranteed minimum under sections 14 to 16; and
  - (b) satisfy such other conditions as may be prescribed.
- (3) Subject to subsection (4), the scheme must provide for the pension to commence on the date on which the earner attains pensionable age and to continue for his life.
- (4) Subject to subsection (5), the scheme may provide for the commencement of the earner's guaranteed minimum pension to be postponed for any period for which he continues in employment after attaining pensionable age.
- (5) The scheme must provide for the earner's consent to be required—
  - (a) for any such postponement by virtue of employment to which the scheme does not relate; and
  - (b) for any such postponement after the expiration of five years from the date on which he attains pensionable age.
- (6) Equivalent pension benefits for the purposes of the former legislation are not to be regarded as constituting any part of the earner's guaranteed minimum pension.
- (7) The benefits referred to in subsection (6) are any to which the earner may be immediately or prospectively entitled in respect of a period of employment which—
  - (a) was for him non-participating employment under that legislation; and
  - (b) was not on its termination the subject of any payment in lieu of contributions;
but subsection (6) excludes only so much of those benefits as had to be provided in order that the employment should for that period be treated as non-participating.
- (8) In this section "the former legislation" means Part III of the National Insurance Act 1965 and the previous corresponding enactments.

**14 Earner's guaranteed minimum**

- (1) An earner has a guaranteed minimum in relation to the pension provided by a scheme if in any tax week in a relevant year, earnings in excess of the current lower earnings limit (or the prescribed equivalent if he is paid otherwise than weekly) have been paid to or for his benefit in respect of employment which is contracted-out by reference to the scheme.

- (2) Subject to section 15(1), the guaranteed minimum shall be the weekly equivalent of an amount equal to the appropriate percentage of the total of the earner's earnings factors for the relevant years, so far as derived from earnings such as are mentioned in subsection (1) upon which primary Class 1 contributions have been paid or treated as paid.
- (3) In determining the guaranteed minimum in a case where—
- (a) earnings such as are mentioned in subsection (1) have been paid to a married woman or widow who is liable to pay primary Class 1 contributions at a reduced rate by virtue of section 19(4) of the Social Security Contributions and Benefits Act 1992, and
  - (b) the tax week in which those earnings are paid falls in the tax year 1991-92 or any subsequent tax year,
- the married woman or widow shall be treated for the purposes of this section as having such earnings factors derived from those earnings as she would have had if primary Class 1 contributions had been payable, and paid, upon them otherwise than at a reduced rate.
- (4) Where the amount of a person's earnings for any period is relevant for any purpose of subsection (1) or (2) and the Secretary of State is satisfied that records of those earnings have not been maintained or retained or are otherwise unobtainable, he may for that purpose—
- (a) compute, in such manner as he thinks fit, an amount which shall be regarded as the amount of those earnings; or
  - (b) take their amount to be such sum as he may specify in the particular case.
- (5) In subsection (2) the "appropriate percentage" means—
- (a) in respect of the earner's earnings factors for any tax year not later than the tax year 1987-88—
    - (i) if the earner was not more than 20 years under pensionable age on 6th April 1978, 1.25 per cent.;
    - (ii) in any other case 25/N per cent.;
  - (b) in respect of the earner's earnings factors for the tax year 1988-89 and for subsequent tax years—
    - (i) if the earner was not more than 20 years under pensionable age on 6th April 1978, 1 per cent.;
    - (ii) in any other case 20/N per cent.;
- where N is the number of years in the earner's working life (assuming he will attain pensionable age) which fall after 5th April 1978.
- (6) Regulations may prescribe rules as to the circumstances in which earnings factors are derived from earnings for the purposes of subsection (2).
- (7) For the purposes of subsection (2) the weekly equivalent of the amount there mentioned shall be calculated by dividing that amount by 52.
- (8) In this section "relevant year" means any tax year in the earner's working life (not being earlier than the tax year 1978-79).

## **15 Increase of guaranteed minimum where commencement of guaranteed minimum pension postponed**

- (1) Where in accordance with section 13(4) the commencement of an earner's guaranteed minimum pension is postponed for any period and there are at least seven complete weeks in that period, his guaranteed minimum in relation to the scheme shall, for each complete week in that period, be increased by one-seventh per cent.—
  - (a) of the amount of that minimum apart from this subsection; or
  - (b) if for that week (or a period which includes that week) a pension is paid to him under the scheme at a weekly rate less than that minimum, of the difference between that pension and that minimum.
- (2) In subsection (1) "week" means any period of seven consecutive days.
- (3) Where an earner's guaranteed minimum is increased under subsection (1), the increase of that part of it which is attributable to earnings factors for the tax year 1987-88 and earlier tax years shall be calculated separately from the increase of the rest.
- (4) Where one or more orders have come into force under section 109 during the period for which the commencement of a guaranteed minimum pension is postponed, the amount of the guaranteed minimum for any week in that period shall be determined as if the order or orders had come into force before the beginning of the period.

## **16 Revaluation of earnings factors for purposes of s. 14: early leavers etc**

- (1) Subject to subsection (2), for the purpose of section 14(2) the earner's earnings factor for any relevant year (so far as derived as mentioned in that section) shall be taken to be that factor as increased by the same percentage as that prescribed for the increase of that factor by the last order under section 21 of the Social Security Pensions Act 1975 or section 148 of the Social Security Administration Act 1992 to come into force before the end of the final relevant year.
- (2) The scheme may provide that the earnings factors of an earner whose service in contracted-out employment by reference to the scheme is terminated before the final relevant year shall be determined for the purposes of section 14(2) by reference to the last such order to come into force before the end of the tax year in which that service ends ("the last service tax year").
- (3) Where a scheme provides as mentioned in subsection (2) the scheme shall provide for the weekly equivalent mentioned in section 14(2) to be increased by at least—
  - (a) 5 per cent. compound for each relevant year after the last service tax year; or
  - (b) the amount by which an earnings factor for that year equal to that weekly equivalent would be increased by the last order under section 21 of the Social Security Pensions Act 1975 or section 148 of the Social Security Administration Act 1992 to come into force before the end of the final relevant year,
 whichever makes the lesser increase; and the provisions included by virtue of this subsection may also conform with such additional requirements as may be prescribed for the purposes of section 55(5).
- (4) Except in such cases or classes of case as may be prescribed, the provision made by virtue of subsections (2) and (3) must be the same for all members of the scheme.
- (5) In this section—



“relevant year” has the meaning given in section 14(8), and  
“final relevant year” means the last tax year which is a relevant year in  
relation to the earner.

## **17 Minimum pensions for widows and widowers**

- (1) Subject to the provisions of this Part, the scheme must provide that if the earner dies leaving a widow or widower (whether before or after attaining pensionable age), the widow or widower will be entitled to a guaranteed minimum pension under the scheme.
- (2) The scheme must contain a rule to the effect that—
  - (a) if the earner is a man who has a guaranteed minimum under section 14, the weekly rate of the widow’s pension will be not less than the widow’s guaranteed minimum;
  - (b) if the earner is a woman who has a guaranteed minimum under that section, the weekly rate of the widower’s pension will be not less than the widower’s guaranteed minimum.
- (3) The widow’s guaranteed minimum shall be half that of the earner.
- (4) The widower’s guaranteed minimum shall be one-half of that part of the earner’s guaranteed minimum which is attributable to earnings factors for the tax year 1988-89 and subsequent tax years.
- (5) The scheme must provide for the widow’s pension to be payable to her for any period for which a Category B retirement pension, widowed mother’s allowance or widow’s pension is payable to her by virtue of the earner’s contributions or for which a Category B retirement pension would be so payable but for section 43(1) of the Social Security Contributions and Benefits Act 1992 (persons entitled to more than one retirement pension).
- (6) The scheme must provide for the widower’s pension to be payable to him in the prescribed circumstances and for the prescribed period.
- (7) The trustees or managers of the scheme shall supply to the Secretary of State any such information as he may require relating to the payment of pensions under the scheme to widowers.

## **18 Treatment of insignificant amounts**

- (1) Where an amount is required to be calculated in accordance with the provisions of sections 14(7), 15(1) or 17(2), (3) or (4) and, apart from this subsection, the amount so calculated is less than 0.5p, then, notwithstanding any other provision of this Act, that amount shall be taken to be zero, and other amounts so calculated shall be rounded to the nearest whole penny, taking 0.5p as nearest to the next whole penny above.
- (2) Where a guaranteed minimum pension is attributable in part to earnings factors for the period before the tax year 1988-89 and in part to earnings factors for that tax year or for that tax year and subsequent tax years, the pension shall be calculated by—
  - (a) applying subsection (1) separately to the amount attributable to the period before the tax year 1988-89 and to the amount attributable to that and subsequent tax years, and
  - (b) aggregating the two amounts so calculated.

**19 Discharge of liability where guaranteed minimum pensions secured by insurance policies or annuity contracts**

- (1) A transaction to which this section applies discharges the trustees or managers of an occupational pension scheme from their liability to provide for or in respect of any person guaranteed minimum pensions—
- (a) if it is carried out not earlier than the time when that person's pensionable service terminates; and
  - (b) if and to the extent that it results in guaranteed minimum pensions for or in respect of that person being appropriately secured; and
  - (c) if and to the extent that the requirements set out in paragraph (a), (b) or (c) of subsection (5) are satisfied.
- (2) This section applies to the following transactions—
- (a) the taking out of a policy of insurance or a number of such policies;
  - (b) the entry into an annuity contract or a number of such contracts;
  - (c) the transfer of the benefit of such a policy or policies or such a contract or contracts.
- (3) In this section “appropriately secured” means secured by an appropriate policy of insurance or an appropriate annuity contract, or by more than one such policy or contract.
- (4) A policy of insurance or annuity contract is appropriate for the purposes of this section if—
- (a) the insurance company with which it is or was taken out or entered into—
    - (i) is, or was at the relevant time, carrying on ordinary long-term insurance business in the United Kingdom or any other member State; and
    - (ii) satisfies, or at the relevant time satisfied, prescribed requirements; and
  - (b) it may not be assigned or surrendered except on conditions which satisfy such requirements as may be prescribed; and
  - (c) it contains or is endorsed with terms whose effect is that the amount secured by it may not be commuted except on conditions which satisfy such requirements as may be prescribed; and
  - (d) it satisfies such other requirements as may be prescribed.
- (5) The requirements referred to in subsection (1) are—
- (a) that the arrangement for securing the amount by means of the policy or contract was made—
    - (i) at the written request of the earner or, if the earner has died, of the earner's widow or widower; or
    - (ii) with the consent of the earner or the widow or widower given in writing in a prescribed form;
  - (b) that—
    - (i) the case is one such as is mentioned in section 96(2); and
    - (ii) the policy or contract only secures guaranteed minimum pensions;
  - (c) that—
    - (i) the case is not one such as is mentioned in section 96(2); and
    - (ii) such conditions as may be prescribed are satisfied.

- (6) In subsection (4)(a), “the relevant time” means the time when the policy of insurance was taken out or the annuity contract was entered into or, as the case may be, when the benefit of the policy or contract was transferred.
- (7) In this section “ordinary long-term insurance business” has the same meaning as in the Insurance Companies Act 1982.

## **20 Transfer of accrued rights**

- (1) Regulations may prescribe circumstances in which and conditions subject to which—
  - (a) a transfer of or a transfer payment in respect of—
    - (i) an earner’s accrued rights to guaranteed minimum pensions under a contracted-out scheme;
    - (ii) an earner’s accrued rights to pensions under an occupational pension scheme which is not contracted-out, to the extent that those rights derive from his accrued rights to guaranteed minimum pensions under a contracted-out scheme; or
    - (iii) the liability for the payment of guaranteed minimum pensions to or in respect of any person who has become entitled to them,may be made by an occupational pension scheme to another such scheme or to a personal pension scheme;
  - (b) a transfer of or a transfer payment in respect of an earner’s accrued rights to guaranteed minimum pensions which are appropriately secured for the purposes of section 19 may be made to an occupational pension scheme or a personal pension scheme.
- (2) Any such regulations may be made so as to apply to earners who are not in employment at the time of the transfer.
- (3) Regulations under subsection (1) may provide that any provision of this Part (other than sections 18, 19 and 43 to 45, and sections 26 to 33 so far as they apply to personal pension schemes) or of Chapter III of Part IV or Chapter II of Part V shall have effect, where there has been a transfer to which they apply, subject to such modifications as may be specified in the regulations.
- (4) Regulations under subsection (1) shall have effect in relation to transfers whenever made unless they provide that they are only to have effect in relation to transfers which take place after they come into force.
- (5) The power conferred by subsection (1) is without prejudice to the generality of section 182(2).
- (6) In the provisions mentioned in subsection (3) “accrued rights”, in relation to an earner, means the rights conferring prospective entitlement under the scheme in question to the pensions to be provided for the earner and the earner’s widow or widower in accordance with sections 13 and 17, and references to an earner’s accrued rights to guaranteed minimum pensions shall be construed accordingly.

## **21 Commutation, surrender and forfeiture**

- (1) Where the annual rate of a pension required to be provided by a scheme in accordance with section 13 or 17 would not exceed the prescribed amount and the circumstances

are such as may be prescribed, the scheme may provide for the payment of a lump sum instead of that pension.

- (2) Neither section 13 nor section 17 shall preclude a scheme from providing for the earner's or the earner's widow's or widower's guaranteed minimum pension to be suspended or forfeited in such circumstances as may be prescribed.

## **22 Financing of benefits**

The resources of the scheme must be derived in whole or in part from—

- (a) payments made or to be made by one or more employers of earners to whom the scheme applies, being payments either—
  - (i) under an actual or contingent legal obligation; or
  - (ii) in the exercise of a power conferred, or the discharge of a duty imposed, on a Minister of the Crown, government department or any other person, being a power or duty which extends to the disbursement or allocation of public money; or
- (b) such other payments by the earner or his employer, or both, as may be prescribed for different categories of scheme.

## **23 Securing of benefits**

- (1) The Board must be satisfied that the scheme complies with—

- (a) regulations prescribing the means by which guaranteed minimum pensions under contracted-out schemes are to be secured (whether irrevocable trust, policy of insurance, annuity contract or other means); and
- (b) the conditions which are required by the regulations to be satisfied in relation to any means adopted;

and generally as to the arrangements in force or to be in force from time to time for securing those pensions.

- (2) Subject to subsection (3), the scheme must contain a rule by which any liabilities of the scheme in respect of—

- (a) guaranteed minimum pensions and accrued rights to guaranteed minimum pensions;
- (b) any such benefits as are excluded by section 13(6) from earners' guaranteed minimum pensions;
- (c) pensions and other benefits (whether or not within paragraph (a) or (b)) in respect of which entitlement to payment has already arisen; and
- (d) state scheme premiums,

are accorded priority on a winding up over other liabilities under the scheme in respect of benefits attributable to any period of service after the rule has taken effect.

- (3) The rule may also accord priority, on a winding up occurring after an earner has attained normal pension age, to liabilities of the scheme in respect of pensions and other benefits to which—

- (a) he will be entitled on ceasing to be in employment, or
- (b) the earner's widow or widower or any dependant of the earner's will be entitled on the earner's death.

- (4) Subsections (1) to (3) do not apply to public service pension schemes.

- (5) The duties imposed on the Board by subsection (1) shall cease to subsist in relation to guaranteed minimum pensions for a member and the member's widow or widower where a scheme has ceased by virtue of section 19 to be liable to provide those pensions.
- (6) Subsections (2) and (3) do not apply to schemes falling within any category or description prescribed as being exempt from the requirements of those subsections.
- (7) If the scheme provides for the payment out of any sum representing the surrender value of a policy of insurance taken out for the purposes of the scheme, it must make provision so that there may be no payment out in relation to guaranteed minimum pensions except in such circumstances as may be prescribed.

## **24 Sufficiency of resources**

- (1) The Board must be satisfied that the resources of the scheme are sufficient—
  - (a) for meeting from time to time all claims in respect of guaranteed minimum pensions so far as falling to be met out of those resources, having regard to the expected extent of the scheme's resources and its other liabilities at any time when claims may be expected to arise; and
  - (b) for paying state scheme premiums in respect of all persons at any time entitled to, or having accrued rights to, guaranteed minimum pensions under the scheme; and
  - (c) for meeting in full in the event of an immediate winding up—
    - (i) the liabilities accorded priority in accordance with section 23(2) and (3), and
    - (ii) the expenses of administration so far as those expenses are payable out of the resources of the scheme.
- (2) Subsection (1) does not apply to public service schemes and the duties imposed on the Board by that subsection shall cease to subsist in relation to guaranteed minimum pensions for a member and the member's widow or widower where a scheme has ceased by virtue of section 19 to be liable to provide those pensions.
- (3) Regulations may provide for subsection (1) to have effect in prescribed cases—
  - (a) with the omission of paragraphs (b) and (c), or
  - (b) with the omission of either of those paragraphs, or
  - (c) with the substitution for both or either of those paragraphs of provisions specified in the regulations.
- (4) In considering a scheme by reference to the considerations of subsection (1), the Board shall have regard to any investments held for the purposes of the scheme.

### *Discretionary requirements*

## **25 Power for Board to impose conditions as to investments and resources**

- (1) The Board may by reference to the considerations of section 24(1) make it a condition of the contracting-out or continued contracting-out of a scheme to which that section applies that—

- (a) no part, or no more than a specified proportion, of the scheme's resources shall be invested in investments of a specified class or description; or
  - (b) the whole or a specified proportion of investments of a specified class or description forming part of the scheme's resources when the condition is imposed shall be realised before the end of a specified period.
- (2) Where contracting-out or continued contracting-out depends on the Board's being satisfied as mentioned in section 24(1), the scheme may be contracted-out or continue to be contracted-out, as the case may be, in relation to any employment subject to such conditions as the Board think fit to impose for securing—
- (a) that they are kept informed about any matters affecting the security of the minimum pensions guaranteed under the scheme;
  - (b) that the resources of the scheme are brought to and maintained at a level satisfactory to the Board.
- (3) Conditions imposed by the Board for the purpose mentioned in subsection (2)(b) may require steps to be taken, at the instance of the Board, to increase the scheme's resources at any time after contracting-out, including a time when the scheme has ceased to be contracted-out.

*Requirements for certification of occupational and personal money purchase schemes*

**26 Persons who may establish scheme**

The Secretary of State may prescribe descriptions of persons by whom or bodies by which the scheme may be established and, if he does so, the scheme may only be established by a person or body of a prescribed description.

**27 Identification and valuation of protected rights**

- (1) Where the rules of the scheme make such provision as is mentioned in section 10(2) or (3), they must also make provision for the identification of the protected rights.
- (2) The value of such protected rights as are mentioned in section 10(2) or (3) must be calculated in a manner no less favourable than that in which the value of any other rights of the member to money purchase benefits under the scheme are calculated.
- (3) Subject to subsection (2), the value of protected rights must be calculated and verified in such manner as may be prescribed.

**28 Ways of giving effect to protected rights**

- (1) The rules of the scheme must provide for effect to be given to the protected rights of a member—
  - (a) in any case where subsection (3) so requires, by the purchase of such an annuity as is mentioned in that subsection, and
  - (b) in any other case, in such of the ways permitted by the following subsections as the rules may specify,
 and they must not provide for any part of a member's protected rights to be discharged otherwise than in accordance with those subsections.
- (2) Effect may be given to protected rights—

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- (a) by the provision by the scheme of a pension which—
    - (i) complies with the pension requirements (within the meaning of section 29(1)), and
    - (ii) satisfies such conditions as may be prescribed; or
  - (b) in such circumstances and subject to such conditions as may be prescribed, by the making of a transfer payment—
    - (i) in the case of an occupational pension scheme, to another occupational pension scheme or to a personal pension scheme, and
    - (ii) in the case of a personal pension scheme, to another personal pension scheme or to an occupational pension scheme,where the scheme to which the payment is made satisfies such requirements as may be prescribed.
- (3) Subject to subsections (5) and (7), if—
- (a) the rules of the scheme do not provide for a pension; or
  - (b) the member so elects,
- then, except to the extent that effect is given to protected rights in accordance with subsection (4), effect shall be given to them by the purchase by the scheme of an annuity which—
- (i) complies with the annuity requirements (within the meaning of section 29(3)), and
  - (ii) satisfies such conditions as may be prescribed.
- (4) Effect may be given to protected rights by the provision of a lump sum if—
- (a) the lump sum is payable on a date which is—
    - (i) in the case of an occupational pension scheme, a date not earlier than that on which the member attains the age of 60 nor later than that on which he attains the age of 65, or
    - (ii) in the case of a personal pension scheme, the date on which the member attains pensionable age, or
    - (iii) in either case, such later date as has been agreed by him;
  - (b) the annual rate of a pension under subsection (2) or an annuity under subsection (3) giving effect to the protected rights and commencing on the date on which the lump sum is payable would not exceed the prescribed amount;
  - (c) the circumstances are such as may be prescribed; and
  - (d) the amount of the lump sum is calculated in a manner satisfactory to the Board by reference to the amount of the pension or annuity.
- (5) If the member has died without effect being given to protected rights under subsection (2), (3) or (4), effect may be given to them in such manner as may be prescribed.
- (6) No transaction is to be taken to give effect to protected rights unless it falls within this section.
- (7) Effect need not be given to protected rights if they have been extinguished—
- (a) in the case of an occupational pension scheme, by the payment of a contracted-out protected rights premium under section 55; or
  - (b) in the case of a personal pension scheme, by the payment of a personal pension protected rights premium under that section.

## **29 The pension and annuity requirements**

- (1) For the purposes of section 28 a pension complies with the pension requirements if—
- (a) it commences—
    - (i) in the case of an occupational pension scheme, on a date not earlier than that on which the member attains the age of 60 nor later than that on which he attains the age of 65, or
    - (ii) in the case of a personal pension scheme, on the date on which the member attains pensionable age, or
    - (iii) in either case, on such later date as has been agreed by him,
 and continues until the date of his death; and
  - (b) in a case where the member dies while it is payable to him and is survived by a widow or widower—
    - (i) it is payable to the widow or widower in prescribed circumstances and for the prescribed period at an annual rate which at any given time is one-half of the rate at which it would have been payable to the member if the member had been living at that time; or
    - (ii) where that annual rate would not exceed a prescribed amount and the circumstances are such as may be prescribed, a lump sum calculated in a manner satisfactory to the Board is provided in lieu of it.
- (2) As respects the period of 5 years beginning with the commencement of the pension referred to in subsection (1), that subsection shall have effect in relation to that pension as if the words “at least” were inserted immediately before the words “one-half” in paragraph (b)(i).
- (3) For the purposes of section 28 an annuity complies with the annuity requirements if—
- (a) it satisfies the requirements mentioned in subsections (1) and (2) (taking the references in those subsections to pensions as references to annuities); and
  - (b) it is provided by an insurance company which—
    - (i) satisfies prescribed conditions;
    - (ii) complies with such conditions as may be prescribed as to the calculation of annuities provided by it and as to the description of persons by or for whom they may be purchased; and
    - (iii) subject to subsection (4), has been chosen by the member.
- (4) A member is only to be taken to have chosen an insurance company if he gives notice of his choice to the trustees or managers of the scheme within the prescribed period and in such manner and form as may be prescribed, and with any such supporting evidence as may be prescribed; and, if he does not do so, the trustees or managers may themselves choose the insurance company instead.

## **30 Securing of liability for protected rights**

- (1) The Board must be satisfied that the scheme complies with any such requirements as may be prescribed for meeting the whole or a prescribed part of any liability in respect of protected rights under the scheme which the scheme is unable to meet from its own resources—
- (a) by reason of the commission by any person of a criminal offence;
  - (b) in such other circumstances as may be prescribed.
- (2) Subsection (1) does not apply to a public service pension scheme.



### **31 Investment and resources of schemes**

- (1) The scheme must comply with such requirements as may be prescribed as regards the investment of its resources and with any direction of the Board—
  - (a) that no part, or no more than a specified proportion, of the scheme's resources shall be invested in investments of a specified class or description;
  - (b) that the whole or a specified proportion of investments of a specified class or description forming part of the scheme's resources when the direction is given shall be realised before the end of a specified period.
- (2) The scheme must comply with such requirements as may be prescribed as regards the part—
  - (a) of any payment that is made to the scheme by or on behalf of a member of the scheme;
  - (b) of any income or capital gain arising from the investment of such a payment; or
  - (c) of the value of rights under the scheme,  
that may be used—
    - (i) to defray the administrative expenses of the scheme;
    - (ii) to pay commission; or
    - (iii) in any other way which does not result in the provision of benefits for or in respect of members.
- (3) Subject to subsection (4)—
  - (a) in the case of an occupational pension scheme, all minimum payments and any payments made by the Secretary of State under section 7 of the Social Security Act 1986, and
  - (b) in the case of a personal pension scheme, all minimum contributions,  
which are paid to a scheme in respect of one of its members must be applied so as to provide money purchase benefits for or in respect of that member, except so far as they are used—
    - (i) to defray the administrative expenses of the scheme; or
    - (ii) to pay commission.
- (4) If regulations are made under subsection (2), the payments mentioned in paragraph (a) of subsection (3) and the contributions mentioned in paragraph (b) of that subsection may be used in any way which the regulations permit, but not in any way not so permitted except to provide money purchase benefits for or in respect of the member.

### **32 Suspension or forfeiture**

Except in such circumstances as may be prescribed, the rules of the scheme must not permit the suspension or forfeiture of a member's protected rights or of payments giving effect to them.

### **33 Tax requirements to prevail over certification requirements**

Nothing in sections 26 to 32 shall be taken to prejudice any requirements with which a scheme must comply if it is to qualify for tax-exemption or tax-approval.

*Cancellation, variation, surrender and refusal of certificates*

**34 Cancellation, variation, surrender and refusal of certificates**

- (1) Regulations shall provide for the cancellation, variation or surrender of any contracting-out certificate or appropriate scheme certificate, or the issue of an amended certificate—
  - (a) in the case of a contracting-out certificate, on any change of circumstances affecting the treatment of an employment as contracted-out employment; and
  - (b) in the case of an appropriate scheme certificate, on any relevant change of circumstances.
- (2) Regulations may enable the Board to cancel or vary a contracting-out certificate where—
  - (a) they have reason to suppose that any employment to which it relates ought not to be treated as contracted-out employment in accordance with the certificate; and
  - (b) the employer does not show that it ought to be so treated.
- (3) Where—
  - (a) by or by virtue of any provision of this Part the contracting-out of a scheme in relation to an employment depends on the satisfaction of a particular condition, or
  - (b) by or by virtue of any provision of sections 26 to 32 a scheme's being an appropriate scheme depends on the satisfaction of a particular condition,

the continued contracting-out of the scheme or, as the case may be, the scheme's continuing to be an appropriate scheme shall be dependent on continued satisfaction of the condition; and if the condition ceases to be satisfied, that shall be a ground (without prejudice to any other) for the cancellation or variation of the contracting-out or appropriate scheme certificate.
- (4) A contracting-out certificate in respect of any employment may be withheld or cancelled by the Board if they consider that there are circumstances which make it inexpedient that the employment should be or, as the case may be, continue to be, contracted-out employment by reference to the scheme, notwithstanding that the relevant scheme is one that they would otherwise treat as proper to be contracted-out in relation to all earners in that employment.
- (5) An appropriate scheme certificate may be withheld or cancelled by the Board if they consider that there are circumstances which make it inexpedient that the scheme should be or continue to be an appropriate scheme, notwithstanding that they would otherwise issue such a certificate or not cancel such a certificate.
- (6) Without prejudice to their powers apart from this subsection, the Board may withhold or cancel a contracting-out certificate in respect of a scheme if they consider that the rules of the scheme are such that persons over particular ages may be prevented from participating in the scheme.
- (7) Without prejudice to the previous provisions of this section—
  - (a) non-compliance with any such condition as is mentioned in subsection (1) of section 25 shall be a ground on which the Board may withhold or cancel a contracting-out certificate in respect of any employment within the application of the scheme; and

- (b) non-compliance with any such condition as is mentioned in subsection (2) of that section shall be a ground on which the Board may cancel a contracting-out certificate issued in respect of any such employment.
- (8) Except in prescribed circumstances, no cancellation, variation or surrender of a contracting-out certificate or appropriate scheme certificate shall have effect from a date earlier than that on which the cancellation, variation or surrender is made.

### **35 Surrender and cancellation of contracting-out certificates: issue of further certificates**

- (1) This section applies in any case where—
- (a) a contracting-out certificate (“the first certificate”) has been surrendered by an employer or cancelled by the Board; and
  - (b) at any time before the end of the period of 12 months beginning with the date of the surrender or cancellation, that or any connected employer makes an election under section 11 in respect of any employment which was specified by virtue of section 7(2)(a) in the first certificate, with a view to the issue of a further contracting-out certificate.
- (2) This section applies whether or not the scheme specified in the first certificate in relation to the employment concerned is the same as the scheme which would be specified in the further certificate if it were issued.
- (3) The Board shall not give effect to the election referred to in subsection (1) by issuing a further certificate unless they consider that, in all the circumstances of the case, it would be reasonable to do so.
- (4) Regulations may make such supplemental provision in relation to cases falling within this section as the Secretary of State considers necessary or expedient.
- (5) For the purposes of subsection (1)—
- (a) an employment (“the second employment”) in respect of which an election of the kind referred to in subsection (1)(b) has been made; and
  - (b) an employment (“the first employment”) which was specified by virtue of section 7(2)(a) in the first certificate,
- shall be treated as one employment if, in the opinion of the Board—
- (i) they are substantially the same, however described; or
  - (ii) the first employment falls wholly or partly within the description of the second employment or the second employment falls wholly or partly within the description of the first employment.
- (6) Regulations shall prescribe the cases in which employers are to be treated as connected for the purposes of this section.

### **36 Surrender and cancellation of contracting-out certificates: cancellation of further certificates**

- (1) This section applies in any case where—
- (a) a contracting-out certificate (“the first certificate”) has been surrendered by an employer or cancelled by the Board;
  - (b) a further contracting-out certificate (“the further certificate”) has been issued, after the surrender or cancellation of the first certificate but before the end

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- of the period of 12 months beginning with the date of the surrender or cancellation, in respect of any employment which was specified by virtue of section 7(2)(a) in the first certificate; and
- (c) the Board have formed the opinion that had they been aware of all the circumstances of the case at the time when the further certificate was issued they would have been prevented by section 35(3) from issuing it.
- (2) This section applies whether or not the scheme specified in the first certificate in relation to the employment concerned is the same as the scheme specified in the further certificate.
- (3) The Board may, before the end of the period of 12 months beginning with the date on which the further certificate was issued, cancel that certificate.
- (4) Where a contracting-out certificate is cancelled under subsection (3) the provisions of this Act and of any regulations and orders made under it shall have effect as if the certificate had never been issued.
- (5) Regulations may make such supplemental provision in relation to cases falling within this section as the Secretary of State considers necessary or expedient.
- (6) Without prejudice to subsection (5), regulations may make provision, in relation to any case in which the Board have cancelled a contracting-out certificate under subsection (3), preventing the recovery by the employer concerned (whether by deduction from emoluments or otherwise) of such arrears which he is required to pay to the Secretary of State in respect of an earner's liability under section 6(3) of the Social Security Contributions and Benefits Act 1992 as may be prescribed.
- (7) For the purposes of subsection (1)—
- (a) an employment (“the second employment”) in respect of which a further contracting-out certificate of the kind referred to in subsection (1)(b) has been issued; and
- (b) an employment (“the first employment”) which was specified by virtue of section 7(2)(a) in the first certificate,
- shall be treated as one employment if, in the opinion of the Board—
- (i) they are substantially the same, however described; or
- (ii) the first employment falls wholly or partly within the description of the second employment or the second employment falls wholly or partly within the description of the first employment.

#### *Alteration of scheme rules after certification*

### **37 Alteration of rules of contracted-out schemes**

- (1) Subject to subsection (2), where a contracting-out certificate has been issued, no alteration of the rules of the relevant scheme shall be made so as to affect any of the matters dealt with in this Part (other than sections 18, 19 and 43 to 45, and sections 26 to 33 so far as they apply to personal pension schemes) or Chapter III of Part IV or Chapter II of Part V without the consent of the Board.
- (2) Subsection (1) does not apply—

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- (a) to an alteration consequential on a provision of the Health and Social Security Act 1984, the Social Security Act 1985 or the Social Security Act 1986 (or any provision of this Act derived from any such provision); or
  - (b) to an alteration of a prescribed description.
- (3) Subject to subsection (4), any alteration to which subsection (1) applies shall be void if it is made without the consent of the Board.
- (4) A consent given by the Board for the purposes of this section shall, if and to the extent that the Board so direct, operate so as to validate with retrospective effect any alteration of the rules which would otherwise be void under this section.
- (5) This section shall continue in force in relation to a scheme after it has ceased to be contracted-out so long as—
- (a) any person is entitled to receive, or has accrued rights to, a guaranteed minimum pension under the scheme, or
  - (b) any person has protected rights under it or is entitled to any benefit giving effect to protected rights under it.
- (6) The reference in subsection (5) to a person entitled to receive a guaranteed minimum pension includes a reference to a person so entitled by virtue of being the widower of an earner only in such cases as may be prescribed.

### **38 Alteration of rules of appropriate schemes**

- (1) Where an appropriate scheme certificate has been issued, no alteration of the rules of the relevant scheme shall be made so as—
- (a) to affect any of the matters dealt with in sections 26 to 33; or
  - (b) to cause the scheme to take a different permitted form from that previously taken,
- unless—
- (i) the Board have given their consent to the alteration; and
  - (ii) notice of intention to apply for their consent was given in accordance with the requirements mentioned in subsection (7) or was so given except in so far as the Board dispenses with the necessity for such a notice.
- (2) Subsection (1) does not apply to an alteration of a prescribed description.
- (3) Subject to subsection (4), any alteration to which subsection (1) applies shall be void if it is made without the conditions mentioned in subsection (1) being satisfied.
- (4) A consent given by the Board for the purposes of this section shall, if and to the extent that the Board so direct, operate so as to validate with retrospective effect any alteration of the rules which would otherwise be void under this section.
- (5) This section shall continue in force in relation to a scheme after it has ceased to be an appropriate scheme so long as any person has protected rights under the scheme.
- (6) The reference in subsection (1)(b) to a permitted form is to one of the following forms, namely—
- (a) an arrangement for the issue of insurance policies or annuity contracts;
  - (b) a unit trust scheme of a kind mentioned in Part I of Schedule 1 to the Personal Pension Schemes (Appropriate Schemes) Regulations 1988 which has been

authorised under section 78(1) of or by virtue of paragraph 9 of Schedule 15 to the Financial Services Act 1986;

- (c) an arrangement for the investment of contributions in an interest-bearing account (including shares in or deposits with a building society (within the meaning of the Building Societies Act 1986)).

(7) The requirements referred to in subsection (1)(ii) are—

- (a) that the notice is given in writing—
  - (i) to any member of the scheme who has protected rights under it; and
  - (ii) to any earner who has given a notice under section 44(1) jointly with the managers or trustees of the scheme, being a notice which has not been cancelled,
 by sending it to his last known address; and
- (b) that the notice specifies—
  - (i) the name of the scheme,
  - (ii) the nature of the proposed alteration and its effect on the persons to whom the notice is given, and
  - (iii) the date on which it is proposed that the alteration should take effect (which must not be less than 3 months after that on which the notice is given).

*General regulations as to administration of Part III*

**39 General power to make regulations**

Schedule 2 shall have effect for enabling regulations to be made in relation to the operation and administration of this Part, and Part I of that Schedule has effect as respects occupational pension schemes, and Part II of that Schedule as respects personal pension schemes.