

Status: Point in time view as at 07/02/1994.

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SCHEDULES

SCHEDULE 2

Section 39.

CERTIFICATION REGULATIONS

Commencement Information

II Schs. 1-4 in force at 7.2.1994 by S.I. 1994/86, art. 2

PART I

OCCUPATIONAL PENSION SCHEMES

General regulations: beginning and ending of employment

- 1 (1) In relation to employments which are or at any time have been contracted-out employments, and to the operation of schemes by reference to which employments are or have been contracted-out, regulations may make provision generally as to the circumstances in which an earner's employment is or is not to be treated as having begun, or as having come to an end and, in particular, as to the matters mentioned in sub-paragraphs (2) to (4).
- (2) Regulations may make provision for treating an earner's employment which ends before a person succeeds to the business of the earner's employer as having been employment under the employer's successor.
- (3) Regulations may make provision—
 - (a) for changes in an earner's employment due to the death of an employer or another cause, or any cesser of contracted-out employment so due, to be disregarded; or
 - (b) for employment under one employer to be treated as a continuation of that under another and any contracting-out certificate issued to, or election made by, the former employer to be treated as issued to or made by the latter.
- (4) Regulations may also make provision—
 - (a) for temporary interruptions in an earner's employment or contracted-out employment to be disregarded; and
 - (b) for the employment in either case to be treated as continuing during the interruption.
- (5) References in this paragraph to an earner's employment beginning or ending shall include references to his employment becoming or ceasing to be contracted-out employment.
- 2 (1) Subject to sub-paragraph (2), regulations may enable the Board to determine in prescribed circumstances that an earner, or any group of earners whose employment

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falls within a particular category or description of contracted-out employments, has been in such employment from a date (“the determined date”) earlier than would otherwise be the case.

- (2) The determined date for any earner may not be earlier than—
- (a) the date on which his relevant employment began, or
 - (b) the date on which a contracting-out certificate was issued in respect of it,
- whichever is the later.
- 3 Provision may be made by regulations for requiring an employer to give notice to the Secretary of State—
- (a) when an earner’s employment becomes or ceases to be contracted-out employment; and
 - (b) when an earner’s employment in contracted-out employment begins or ends.

Power to modify Part III etc.

- 4 (1) Regulations may modify the provisions of Part III (other than sections 18, 19 and 66 to 68), Chapter III of Part IV and Chapter II of Part V (except, so far as they relate to personal pension schemes, the members of such schemes or rights in respect of them) in their application to cases in which—
- (a) a person is employed at the same time in two or more employments (whether or not under the same employer); and
 - (b) at least one but not all of those employments is contracted-out employment, with a view to enabling the employments to be treated either separately or together for the purposes of those provisions.
- (2) Regulations may also modify those provisions in their application to cases in which—
- (a) any description of benefit under a scheme is subject to a limit (however imposed) operating so as to prevent service beyond a particular length from qualifying for further benefits; or
 - (b) earners qualify for the benefits of a scheme by reference to both—
 - (i) service in employment which is contracted-out in relation to them by reference to the scheme; and
 - (ii) service in the same employment or another employment (whether or not contracted-out employment) before the scheme was contracted-out in relation to them or their employment.
- (3) Regulations under this paragraph may include provision for securing that in the cases to which they apply an earner’s employment does not cease to be contracted-out employment only because his service for the time being does not qualify him for a guaranteed minimum pension.

State scheme premiums

- 5 (1) Regulations may make provision for requiring persons to furnish the Secretary of State or the Board with such information as he or, as the case may be, the Board may require for the purposes of sections 37, 38, 50 to 65, 139(1), 142(5) and (6) and 159(1) to (3), (5) and (6) (except as they apply to personal pension schemes, the members of such schemes or rights in respect of them).

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- (2) Regulations may provide that for the purposes of sections 50, 55 to 60 and 63 to 65 (except as they so apply) the prescribed person shall be treated as the employer—
- (a) of any employed earners who, in any period of service in contracted-out employment—
 - (i) have been paid earnings in any income tax week by more than one person in respect of different employments; or
 - (ii) have worked under the general control or management of a person other than their immediate employer, or
 - (b) of any other employed earners in the case of whom it appears to the Secretary of State that such provision is needed.
- (3) Regulations may, in relation to state scheme premiums, provide—
- (a) for dispensing with the payment of a premium where its amount would be inconsiderable;
 - (b) where there has been a failure to pay a premium and the failure is shown not to have been with the consent or connivance of, or attributable to any negligence on the part of, the person in respect of whom it is payable, for treating the premium as having been paid;
 - (c) for treating part of a premium payable in prescribed circumstances in respect of a person as having been paid and for modifying the provisions mentioned in paragraph 4(1) in relation to a case in which such a part is so treated;
 - (d) for treating a premium wrongly paid or an overpayment in respect of a premium as paid (wholly or in part) in discharge of a liability for another premium or for contributions under Part I of the ^{M1}Social Security Contributions and Benefits Act 1992;
 - (e) for the return of premiums paid in error or, in prescribed circumstances, of premiums which the Secretary of State is satisfied ought to be repaid;
 - (f) for the Secretary of State, in prescribed circumstances where a premium has been paid in respect of a person, to direct the payment out of the National Insurance Fund to that person or his estate of an amount equal to a prescribed part of the premium;
 - (g) for any other matters incidental to the payment, collection or return of premiums.
- (4) The Secretary of State may accept payments in connection with a case in which a premium or part of it is treated as having been paid.
- (5) Without prejudice to sub-paragraph (3), regulations may provide—
- (a) that—
 - (i) for the purpose of extinguishing accrued rights to guaranteed minimum pensions and rights to receive such pensions or,
 - (ii) in the case of a contracted-out protected rights premium, for the purpose of extinguishing protected rights and reducing any guaranteed minimum pension to which a person is treated as entitled, a state scheme premium is to be treated as having been paid on a date determined under the regulations;
 - (b) for disregarding the effect of regulations made by virtue of paragraph (a) in a case where the premium in question is not paid on or before the date when it becomes payable or such later date as may be determined under the regulations; and

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- (c) for obtaining repayment of benefits paid by virtue of regulations made by virtue of paragraph (a) in a case where the effect of the regulations is to be disregarded under paragraph (b), and, where the repayment is obtained from assets of the relevant scheme, for reducing the sums payable under the scheme to the beneficiary by the amount of the repayment.

Marginal Citations

M1 1992 c. 4.

Schemes covering different employers

- 6 (1) Regulations may modify Chapters I and III of Part III (other than sections 8, 18, 19, 35 to 39, and 66 to 68), Chapter III of Part IV and Chapter II of Part V (except so far as they relate to personal pension schemes, the members of such schemes or rights in respect of them) in their application to employments in the case of which earners under different employers qualify by virtue of their respective service in those employments for the benefits of the same occupational pension scheme.
- (2) Regulations under this paragraph may provide for the adjustment of rights and liabilities as between employers, earners and the trustees or managers.

Special provisions for certain public service pension schemes

- 7 (1) This paragraph applies to the following classes of employments, that is to say employments in which an earner's service qualifies him for benefit under—
- (a) section 26 of the ^{M2}Fire Service Act 1947;
 - (b) the ^{M3}Police Pensions Act 1976;
 - (c) sections 7 to 10 of the ^{M4}Superannuation Act 1972.
- (2) Where employment would fall within one of the classes specified in sub-paragraph (1) but for rules having effect under section 2 of the ^{M5}Superannuation (Miscellaneous Provisions) Act 1948 (persons transferring to and from certain employments), the employment shall be treated as falling within that class and not within any other class to which this paragraph applies.
- (3) Where a local Act contains a provision for the payment of benefits in respect of service which but for the provision would qualify a person for such benefits under the enactments specified in sub-paragraph (1), that provision shall be deemed to be included among the enactments so specified.
- (4) In relation to employments of any class (4) to which this paragraph applies, the Secretary of State may by regulations—
- (a) direct that elections with a view to the issue, variation or surrender of contracting-out certificates shall be made and revoked by him instead of by the employer;
 - (b) make provision for other things which by or under the provisions mentioned in paragraph 4(1) are required or authorised to be done by or to an employer to be done instead by or to the Secretary of State;
 - (c) make provision for treating any employments of the class in question as employments under a single employer different from the employer in any other employment;

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- (d) make provision for the recovery by the Secretary of State of any state scheme premium from any person where it has been paid by the Secretary of State instead of by that person.

Marginal Citations

- M2** 1947 c.41.
- M3** 1976 c.35.
- M4** 1972 c.11.
- M5** 1948 c. 33.

Incidental matters

- 8 Regulations may make provision—
 - (a) for any incidental matters connected with the provisions mentioned in paragraph 4(1) in relation to any employment which is, has been or may become contracted-out employment; and
 - (b) for any incidental matters otherwise connected with those provisions.

PART II

PERSONAL PENSION SCHEMES

- 9 (1) Subject to the following provisions, paragraph 5 applies in relation to personal pension schemes as it applies to occupational pension schemes.
- (2) In sub-paragraph (1) the words from “(except” onwards and in sub-paragraph (2) the words “(except as they so apply)” shall be omitted.
- (3) In sub-paragraph (3)(c) for the reference to the provisions there mentioned there shall be substituted a reference to Part III (other than sections 18, 19 and 66 to 68) so far as it relates to personal pension schemes, the members of such schemes or rights in respect of them.
- (4) In sub-paragraph (3)(d) the words “or for” onwards shall be omitted.
- (5) In sub-paragraph (5)(a) for the words from “that” to “state scheme premium” there shall be substituted the words “that for the purposes of extinguishing protected rights and reducing any guaranteed minimum pension to which a person is treated as entitled, a personal pension protected rights premium”.

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