



# Social Security Pensions Act 1975

## 1975 CHAPTER 60

### PART III

#### CONTRACTING-OUT

##### *Requirements for contracting-out*

#### **33 Requisite benefit for earner.**

- (1) Subject to the provisions of this Part of this Act, for an occupational pension scheme [<sup>F1</sup>which is not a money purchase contracted-out scheme] to be contracted-out in relation to an earner's employment it must provide for him to be entitled to a pension under the scheme if he attains pensionable age and contain—
- (a) .....<sup>F2</sup>
  - (b) a rule to the effect that if the earner has a guaranteed minimum under section 35 below the weekly rate of the pension will be not less than his guaranteed minimum under that section.

[<sup>F3</sup>(1A) 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 [<sup>F4</sup>section 19(4) of the Contributions and Benefits Act], subject to the provisions of this Part of the Act, for a scheme to be contracted-out in relation to her employment it must—

- (a) provide for her to be entitled to a pension under the scheme if she attains pensionable age [<sup>F5</sup>and does not have a guaranteed minimum under section 35 below]; and
  - (b) satisfy such other conditions as may be prescribed.]
- (2) Subject to subsections (3) . . . <sup>F6</sup> below, 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.
- (3) 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 but so that his consent is required—

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- (a) for any postponement by virtue of employment to which the scheme does not relate; and
  - (b) for any postponement after the expiration of five years from the date on which he attains pensionable age.
- (4) ..... F7
- (5) 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.
- (6) The benefits referred to in subsection (5) above 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 (5) excludes so much only of those benefits as (and no more than) had to be provided in order that the employment should for that period be treated as non-participating.
- (7) In this section “the former legislation” means Part III of the <sup>M1</sup>National Insurance Act 1965 and the previous corresponding enactments.

**Textual Amendments**

**F1** Words inserted (with effect from 6.4.1988) by [Social Security Act 1986 \(c. 50\)](#), **Sch. 2**, para. 6(1)(a)

**F2** [S. 33\(1\)\(a\)](#) repealed by [Social Security Act 1986 \(c. 50\)](#), **Sch. 11**

**F3** [S. 33\(1A\)](#) inserted by [Social Security Act 1986 \(c. 50\)](#), **Sch. 10 para. 17**

**F4** Words substituted (with effect from 1.7.1992) by [Social Security \(Consequential Provisions\) Act 1992 \(c. 6\)](#) Sch. 2, para. 26

**F5** Words inserted (*prosp.*) by [Social Security Act 1990 \(c. 27\)](#), **Sch. 4**, para. 7(1)

**F6** Words repealed (with effect from 1.10.1990) by [Social Security Act 1990 \(c. 27\)](#), **Sch. 7**

**F7** [S. 33\(4\)](#) repealed by [Social Security Act 1986 \(c. 50\)](#), **Sch. 11**

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**Marginal Citations**

**M1** [1965 c. 51.](#)

34 ..... F8

**Textual Amendments**

**F8** [S. 34](#) repealed by [Social Security Act 1986 \(c. 50\)](#), **Sch. 11**(and expressed to be repealed (7.2.1994) by [1993 c. 48, s. 188](#), **Sch. 5 Pt. I**; [S.I. 1994/86, art. 2](#))

**35 Earner’s guaranteed minimum.**

- (1) An earner has a guaranteed minimum in relation to the pension provided by a scheme in accordance with section 33 above if, in any tax week in a relevant year, earnings have been paid to or for the benefit of the earner in respect of contracted-out employment by reference to the scheme, being earnings in excess of the current lower earnings limit or the prescribed equivalent if he is paid otherwise than weekly.

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(2) Where an earner has a guaranteed minimum as aforesaid, that minimum shall, subject to subsection (6) below, be the weekly equivalent of an amount equal to the appropriate percentage of the total of his earnings factors for the relevant years so far as derived from [F<sup>9</sup>earnings such as are mentioned in subsection (1) above upon which primary Class 1 contributions have been paid or treated as paid].

[F<sup>10</sup>(2ZA) In determining the guaranteed minimum in a case where—

- (a) earnings such as are mentioned in subsection (1) above 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 [F<sup>11</sup>section 19(4) of the Contributions and Benefits Act], 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.]

[F<sup>12</sup>(2A) Where the amount of a person's earnings for any period is relevant for any purpose of subsection (1) or (2) above 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.]

[F<sup>13</sup>(3) In subsection (2) above— “the appropriate percentage” means—

- (a) in respect of the earner's earnings factors for any tax year not later than the tax year 1987-1988—
  - (i) if the earner was not more than 20 years under pensionable age on 6th April 1978, 1¼ per cent.;
  - (ii) in any other case

$$\frac{25}{N}$$

per cent.;

- (b) in respect of the earner's earnings 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

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$$\frac{20}{N}$$

per cent.;

where N is the number of years in the earner's working life (assuming that he will attain pensionable age) which fall after 5th April 1978; and—

“derived” means derived in accordance with the rules to be embodied in regulations.]

- (4) For the purposes of subsection (2) above the weekly equivalent of the amount there mentioned shall be calculated by dividing that amount by 52 . . . <sup>F14</sup>.
- (5) For the purposes of subsection (2) above the earner's earnings factor for any relevant year (so far as derived as mentioned in that subsection) shall, subject to subsection (7) below, be taken to be that factor as increased by [<sup>F15</sup>the same percentage as that described for the increase of earnings factors by][<sup>F16</sup>the last order under [<sup>F17</sup>section 148 of the Administration Act] to come into force] before the end of the final relevant year.
- (6) Where in accordance with section 33(3) above the commencement of an earner's guaranteed minimum pension is postponed for any period and there are at least [<sup>F18</sup>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 [<sup>F18</sup>1/7th] 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.

In this subsection “week” means any period of seven consecutive days.

- <sup>F19</sup>(6A) Where an earner's guaranteed minimum pension is increased under subsection (6) above, 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.
- (6B) Where one or more orders have come into force under section 37A below during the period for which the commencement of a guaranteed minimum pension is postponed, the amount of the pension 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.]
- (7) 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 [<sup>F20</sup>the final relevant year shall be determined for the purposes of subsection (2) above by reference to the last order under [<sup>F21</sup>section 148 of the Administration Act] to come into force before the end of the tax year in which the service in question is terminated and without reference to the last such order to come into force before the end of the final relevant year]; but in that event the scheme shall provide for the weekly equivalent mentioned in that subsection to be increased by at least—
  - (a) 5 per cent. compound for each relevant year after that year; or

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- (b) the amount by which an earnings factor for that year equal to that weekly equivalent would be increased by [<sup>F22</sup>the last order under the said section 21 to come into force] before the end of the final relevant year,  
whichever makes the lesser increase (so however that this subsection is not to be taken as preventing the scheme from providing increases above those alternative minima).
- (8) Subsection (7) above applies [<sup>F23</sup>, except in such cases or classes of case as may be prescribed,] only so as to permit the same such provision to be made for all members of the scheme.
- [<sup>F24</sup>(8A) An occupational pension scheme which—
- (a) at any time before the coming into operation of the first regulations made under subsection (8) above did not satisfy that subsection; but
  - (b) would have satisfied it if those regulations had been in operation at that time.]
- (9) In this section “relevant year” means any tax year in the earner’s working life (not being earlier than the first tax year for which lower and upper earnings limits are specified under section 1 above) and “final relevant year” means the last tax year which is a relevant year in relation to the earner.

#### Textual Amendments

- F9** Words substituted (with effect from 6.4.1987) by [Social Security Act 1986 \(c. 50\)](#), **Sch. 8**, para. 8
- F10** [S. 35\(2ZA\)](#) inserted (*prosp.*) by [Social Security Act 1990 \(c. 27\)](#), **Sch. 4**, para. 7(2)
- F11** Words substituted (with effect from 1.7.1992) by [Social Security \(Consequential Provisions\) Act 1992 \(c. 6\)](#), **Sch. 2 para. 27(1)**
- F12** [S. 35\(2A\)](#) inserted (with effect from 1.10.1989) by [Social Security Act 1989 \(c. 24\)](#), **Sch. 6**, para. 5
- F13** [S. 35\(3\)](#) substituted (with effect from 6.4.1988) by [Social Security Act 1986 \(c. 50\)](#), **s. 9(1)**
- F14** Words repealed by [Social Security Act 1979 \(c. 18\)](#), **Sch. 3 para. 13**
- F15** Words inserted (with effect from 6.4.1979) by [Social Security Act 1988 \(c. 7\)](#), **Sch. 2**, para. 1(2) and (3)
- F16** Words substituted by [Social Security Act 1979 \(c. 18\)](#), **Sch. 3 para. 18(a)**
- F17** Words substituted (with effect from 1.7.1992) by [Social Security \(Consequential Provisions\) Act 1992 \(c. 6\)](#), **Sch. 2**, para. 27(2)
- F18** Figure substituted by [Social Security \(Miscellaneous Provisions\) Act 1977 \(c. 5\)](#), **s. 3(2)**
- F19** [S. 35\(6A\)\(6B\)](#) inserted (with effect from 6.4.1988) by [Social Security Act 1986 \(c. 50\)](#), **s. 9(2)**
- F20** Words substituted by [Social Security Act 1985 \(c. 53\)](#), **Sch. 3**, paras. 2 and 7 with effect from 6.4.1979, subject to para 2(2) [Social Security Act 1985](#).
- F21** Words substituted (with effect from 1.7.1992) by [Social Security \(Consequential Provisions\) Act 1992 \(c. 60\)](#), **Sch. 2**, para. 27(2)
- F22** Words substituted by [Social Security Act 1979 \(c. 18\)](#), **Sch. 3 para. 18(b)**
- F23** Words inserted by [Social Security Act 1985 \(c. 53\)](#), **Sch. 3**, Pt. II, para 8
- F24** [S. 35\(8A\)](#) inserted by [Social Security Act 1985 \(c. 53\)](#), **Sch. 3**, Pt. II, para 8

#### Modifications etc. (not altering text)

- C2** [S. 35\(1\)](#) modified, where guaranteed minimum pension rights have been transferred from schemes which are or were contracted-out salary schemes, by [S.I. 1985/1323](#), **Sch. 3**, para. 3, with effect from 23.9.1985, and where such rights have been transferred from appropriate policies, by [S.I. 1985/1323](#), **Sch. 3A**, para. 2. with effect from 27.7.1987
- C3** [S. 35\(1\)](#) modified, for payments transferring protected rights to schemes which are or were salary related contracted-out schemes, by reg. 4(4) of [S.I. 1987/1118](#) with effect from 27.7.1987 for personal pension schemes and 6.4.1988 otherwise

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- C4 S. 35(5) modified, for certain schemes ceasing to be contracted-out, by [Social Security \(Miscellaneous Provisions\) Act 1977 \(c. 5\), s. 21](#)
- C5 S. 35(5) modified, for certain transfers of guaranteed minimum pension rights, by [S.I. 1984/380, reg. 44\(a\)](#)
- C6 S. 35(5) modified, for payments transferring protected rights to schemes which are or were salary related contracted-out schemes where minimum contributions have been paid, by reg. 4(5) of [S.I. 1987/1118](#) with effect from 27.7.1987 for personal pension schemes and 6.4.1988 otherwise
- C7 S. 35(7) modified, for certain transfers of guaranteed minimum pension rights, by [S.I. 1984/380, reg. 44\(b\)](#)
- C8 S. 35(7) modified, for payments transferring protected pension rights to schemes which are or were salary related contracted-out schemes, by reg. 4(6) of [S.I. 1987/1118](#) with effect from 27.7.1987 for personal pension schemes and 6.4.1988 otherwise
- C9 On 1.7.1992, the said s. 21 was repealed and re-enacted in s. 148 of the [Social Security Administration Act 1992 \(c. 5\)](#)
- C10 S. 35(8) modified, where guaranteed minimum pension rights have been transferred from schemes which are or were contracted-out salary related schemes, by [S.I. 1985/1323, Sch. 3, para. 4](#), with effect from 23.9.1985, and, where such rights have been transferred from appropriate policies, by [S.I. 1985/1323, Sch. 3A, para. 3](#), with effect from 27.7.1987
- C11 S. 35(8) modified, for payments transferring protected rights to schemes which are or were salary related contracted-out schemes, by reg. 4(7) of [S.I. 1987/1118](#) with effect from 27.7.1987 for personal pension schemes and 6.4.1988 otherwise

**36 Requisite benefit for widow.**

[<sup>F25</sup>(1) Subject to the provisions of this Part of this Act, for an occupational pension scheme [<sup>F26</sup>which is not a money purchase contracted-out scheme] to be contracted-out in relation to an earner’s employment it must provide, in the event of the earner dying (whether before or after attaining pensionable age) and leaving a widow or widower, for the widow or widower to be entitled to a guaranteed minimum pension under the scheme.

(1A) A scheme need not provide for widowers of earners who die before 6th April 1989 to be entitled to guaranteed minimum pensions.]

(2) ..... <sup>F27</sup>

[<sup>F28</sup>(3) To comply with this section the scheme must also contain a rule to the effect that—

- (a) if the earner is a man who had a guaranteed minimum under section 35 above, the weekly rate of the widow’s pension will be not less than her guaranteed minimum, which shall be half that of the earner.
- (b) if the earner is a woman who had such a guaranteed minimum, the weekly rate of the widower’s pension will be not less than his guaranteed minimum, which 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.]

(4) ..... <sup>F27</sup>

(6) ..... <sup>F29</sup>the scheme must provide for the widow’s pension to be payable 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 [<sup>F30</sup>section 43(1) of the Contributions and Benefits Act].

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(7) ..... F27

[<sup>F31</sup>(7A) The scheme must provide for the widower’s pension to be payable in prescribed circumstances and for the prescribed period.

(7B) The trustees or managers of the scheme shall supply to the Secretary of State such information as he may require relating to the payment of pensions under the scheme to widowers.]

(8) The widow’s guaranteed minimum pension must be payable to her; . . . F32

(9) ..... F27

#### Textual Amendments

- F25 S. 36(1) and (1A) substituted for s. 36(1) (6.4.1988) by Social Security Act 1986 (c. 50), s. 9(3)(a)
- F26 Words inserted (with effect from 6.4.1988) by Social Security Act 1986 (c. 50), Sch. 2 para. 6(1)(b)
- F27 S. 36(2),(4),(5),(7),(9) repealed by Social Security Act 1986 (c. 50), Sch. 11
- F28 S. 36(3) substituted (6.4.1988) by Social Security Act 1986 (c. 50), s. 9(3)(b)
- F29 Words repealed (1.11.1986) by Social Security Act 1986 (c. 50), Sch. 11
- F30 Words substituted (with effect from 1.7.1992) by Social Security (Consequential Provisions) Act 1992, (c. 6), Sch. 2, para. 28
- F31 S. 36(7A) and (7B) inserted by Social Security Act 1986 (c. 50), s. 9(3)(c)
- F32 Words repealed (with effect from 1.11.1986) by Social Security Act 1986 (c. 50), Sch. 11

#### Modifications etc. (not altering text)

- C12 S. 36(3): power to amend conferred (1.7.1992) by Social Security Administration Act 1992 (c. 5), ss. 150(1)(e)(i), 192(4).
- C13 S. 36(3) amended (12.4.1993) by S.I. 1993/349, arts. 1(2)(d), 5(2)
- C14 S. 36(8) to be construed (with effect from 6.4.1988) as if reference to “widow” included reference to widower (and with consequent modification) by virtue of Social Security Act 1986 (c. 50), s. 9(4)

37 ..... F33

#### Textual Amendments

- F33 S. 37 repealed by Social Security Act 1986 (c. 50), Sch. 11 (and expressed to be repealed (7.2.1994) by 1993 c. 48, s. 188, Sch. 5 Pt. I; S.I. 1994/86, art. 2)

[<sup>F34</sup>37A Annual increases of guaranteed minimum pensions.

- (1) The Secretary of State shall in the tax year 1989-90 review the general level of prices obtaining in Great Britain for a period of twelve months commencing in the previous tax year.
- (2) The Secretary of State shall in each subsequent tax year review the general level of prices obtaining in Great Britain for the period of twelve months commencing at the end of the period last reviewed under this section.
- (3) Where it appears to the Secretary of State that the general level of prices is greater at the end of that period, he shall lay before Parliament the draft of an order specifying

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a percentage by which there is to be an increase of the rate of that part of guaranteed minimum pensions which is attributable to earnings factors for the tax year 1988-89 and subsequent tax years for—

- (a) earners who have attained pensionable age; and
- (b) widows and widowers.

(4) The percentage shall be—

- (a) the percentage by which the general level of prices is greater at the end of the period under review than it was at the beginning of that period; or
  - (b) 3 per cent.,
- whichever is less.

(5) If a draft order laid before Parliament in pursuance of this section is approved by a resolution of each House, the Secretary of State shall make the order in the form of the draft.

(6) An order under this section shall be so framed as to bring the alterations to which it relates into force on the first day of the tax year next following the making of the order.

(7) Where the benefits mentioned in [<sup>F35</sup>sections 29(1), 29A(1) and (2), 29B(1) and (2) and 29C(1) and (2) above] are not increased on the day on which an order under this section takes effect, the order shall be treated for the purposes of those subsections as not taking effect until the day on which the benefits mentioned in them are next increased.

(8) Except as permitted by subsection (13), (14) or (15) below, the trustees or managers of a scheme may not make an increase in a person's pension which is required by virtue of this section out of money which would otherwise fall to be used for the payment of benefits under the scheme to or in respect of that person unless—

- (a) the payment is to an earner in respect of the tax year in which he attains pensionable age and the increase is the one required to be made in the following year; or
- (b) the payment is to a person as the widow or widower of an earner who died before attaining pensionable age in respect of the tax year in which the person became a widow or widower and the increase is the one required to be made in the next following tax year.

(9) Subsection (8) above overrides any provision of a scheme to the extent that it conflicts with it.

(10) The Occupational Pensions Board may at any time, and shall if requested by the trustees and managers of a scheme, advise on any question whether or not subsection (8) above overrides any provision of the scheme.

(11) On an application made to them in respect of a scheme (other than a public service pension scheme) by persons competent to make such an application in respect of it, the Board shall issue a determination on any such question as is mentioned in subsection (10) above.

(12) The persons competent to make an application under subsection (11) above 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;



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- (c) any person who was an employer of persons in service in an employment to which the scheme applies;
  - (d) any member or prospective member of the scheme; and
  - (e) such other persons as may be prescribed, 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 that category.
- (13) Where in the tax year 1989-90 the trustees or managers of an occupational pension scheme make an increase in the rate of pensions currently payable to the members of the scheme who have attained pensionable age or to the widows or widowers of members, they may deduct the amount of the increase from any increase which, but for this subsection, they would be required to make under this section in the tax year 1990-1991.
- (14) Where the trustees or managers of such a scheme make an increase otherwise than in pursuance of this section in a tax year subsequent to 1989-90, they may deduct the amount of the increase from any increase which, but for this subsection, they would be required to make under this section in the next following tax year.
- (15) Where in any tax year subsequent to 1989-90 the trustees or managers of a scheme make an increase which is partly made otherwise than in pursuance of this section, they may deduct the part of the increase made otherwise than in pursuance of this section from any increase which, but for this subsection, they would be required to make under this section in the next following year.
- (16) Where by virtue of subsection (13), (14) or (15) above guaranteed minimum pensions are not required to be increased in pursuance of this section, their amount shall be calculated for any purpose as if they had been so increased.
- (17) Where by virtue of any of those subsections guaranteed minimum pensions are required to be increased in pursuance of this section by an amount less than they otherwise would be, their amount shall be calculated for any purpose as if they had been increased by that full amount.]

#### Textual Amendments

**F34** S. 37A inserted (with effect from 6.4.1988) by [Social Security Act 1986 \(c. 50\)](#), s. 9(7)

**F35** Words substituted (with effect from 1.7.1992) by [Social Security \(Consequential Provisions\) Act 1992 \(c. 6\)](#), [Sch. 2](#), para. 29

### 38 Transfer of accrued rights.

- <sup>F36</sup> [Regulations may prescribe circumstances in which and conditions subject to which—
- <sup>F37</sup> (1) (a) there may be made by one occupational pension scheme to another or by an occupational pension scheme to a personal pension scheme 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

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- (iii) the liability for the payment of guaranteed minimum pensions to or in respect of any person who has become entitled to them;
  - (b) there may be made to an occupational pension scheme or a personal pension scheme 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 52C below.]
- (1A) Any such regulations may be made so as to apply to earners who are not in employment at the time of the transfer.
- (1B) Regulations under subsection (1) above may provide that any provision of this Part of this Act shall have effect, where there has been a transfer to which they apply, subject to such modifications as may be specified in the regulations.
- (1C) Regulations under subsection (1) above 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.
- (1D) The power conferred by subsection (1) above is without prejudice to the generality of section 166(2) of the principal Act.]
- (3) In this Part of this Act—  
 “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 him and his widow in accordance with sections 33 and 36 above, and references to an earner’s accrued rights to guaranteed minimum pensions shall be construed accordingly;
- F38  
 .....
- (4) .....
- F39

**Textual Amendments**

**F36** S. 38(1)–(1D) substituted for subsections (1) and (2) by [Health and Social Security Act 1984 \(c. 48\)](#), [s. 19\(1\)](#)

**F37** S. 38(1) substituted by [Social Security Act 1986 \(c. 50\)](#), [Sch. 10](#), para. 18

**F38** Definition repealed by [Health and Social Security Act 1984 \(c. 48\)](#), [Sch. 8](#), Pt. II

**F39** S. 38(4) repealed by [Health and Social Security Act 1984 \(c. 48\)](#), [Sch. 8 Pt. II](#)

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**Modifications etc. (not altering text)**

**C15** S. 38(3) modified, where guaranteed minimum pension rights have been transferred from schemes which are or were contracted-out salary schemes, by [S.I. 1985/1323](#), [Sch. 3](#), para. 5, with effect from 23.9.1985, and, where such rights have been transferred from appropriate policies, by [S.I. 1985/1323](#), [Sch. 3A](#), para. 4, with effect from 27.7.1987

**C16** Definition to be construed (with effect from 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\(4\)](#)

**39 Commutation, surrender and forfeiture.**

- (1) Where the annual rate of a pension required to be provided by a scheme in accordance with section 33 or 36 above would not exceed the prescribed amount and the

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

- (2) ..... <sup>F40</sup>
- (4) Neither section 33 nor section 36 above shall preclude a scheme from providing—
- (a) ..... <sup>F41</sup>
- (b) for the earner’s or widow’s guaranteed minimum pension to be suspended or forfeited in such circumstances as may be prescribed.

**Textual Amendments**

**F40** S. 39(2)(3) repealed (with effect from 1.11.1986) by [Social Security Act 1986 \(c. 50\)](#), [Sch. 11](#)

**F41** S. 39(4)(a) repealed by [Social Security Act 1986 \(c. 50\)](#), [Sch. 11](#)

**Modifications etc. (not altering text)**

**C17** S. 39(4)(b) to be construed (with effect from 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\(4\)](#)

**40 Financing and assurance of benefits.**

- (1) For an occupational pension scheme to be contracted out 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.
- (2) For an occupational pension scheme, other than a public service pension scheme [<sup>F42</sup>or a money purchase contracted-out scheme], to be contracted-out the Occupational Pensions Board must be satisfied [<sup>F43</sup>, except in the case mentioned in section 52D below,] 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.
- (3) For an occupational pension scheme [<sup>F44</sup>which is not a money purchase contracted-out scheme] to be contracted-out it must contain a rule whereby any liabilities of the scheme in respect of—
- (a) guaranteed minimum pensions and accrued rights to guaranteed minimum pensions;

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- (b) any such benefits as are excluded by section 33(5) above from earners' guaranteed minimum pensions;
- (c) pensions and other benefits (whether or not within paragraph (a) or (b) above) 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 [<sup>F45</sup> except that 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 he will be entitled on ceasing to be in employment or to which the earner's widow or widower or any dependant of the earner's will be entitled on the earner's death].

This does not apply to public service pension schemes, nor to schemes falling within any category or description prescribed as being exempt from the requirements of this subsection.

- (4) For an occupational pension scheme [<sup>F44</sup> which is not a money purchase contracted-out scheme] to be contracted-out it must, if it 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, so provide that there shall be no payment out in relation to guaranteed minimum pensions except in such circumstances as may be prescribed.

#### Textual Amendments

- F42** Words inserted (with effect from 6.4.1988) by [Social Security Act 1986 \(c. 50\)](#), [Sch. 2](#), para. 6(3)(a)
- F43** Words inserted by [Social Security Act 1985 \(c. 53\)](#), [Sch. 5](#), para. 20(a)
- F44** Words inserted (with effect from 6.4.1988) by [Social Security Act 1986 \(c. 50\)](#), [Sch. 2](#), para. 6(1)(c)
- F45** Words inserted by [Social Security \(Miscellaneous Provisions\) Act 1977 \(c. 5\)](#), [s. 22\(8\)](#)

## 41 Sufficiency of resources.

- (1) For an occupational pension scheme, other than a public service scheme [<sup>F46</sup> or a money purchase contracted-out scheme], to be contracted-out the Occupational Pensions Board must be satisfied [<sup>F47</sup>, except in the case mentioned in section 52D(4) below.] 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, the liabilities accorded priority in accordance with section 40(3) above and the expenses of administration so far as those expenses are payable out of the resources of the scheme.

[<sup>F48</sup>(1A) Regulations may provide for subsection (1) above to have effect, in prescribed cases, with the omission of paragraphs (b) and (c) or either of them or with the substitution for both or either of them of provisions specified in the regulations.]

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(2) Where contracting-out or continued contracting-out depends on the Board being satisfied as mentioned in subsection (1) above, 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 the board are kept informed as to 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;

and non-compliance with any condition imposed by the Board under this subsection shall be grounds on which the Board may cancel a contracting-out certificate issued in respect of any employment within the application of the scheme.

(3) Conditions imposed by the Board for the purpose mentioned in subsection (2)(b) above 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.

(4) ..... **F49**

(5) In considering a scheme by reference to the considerations of subsection (1) above, the Board shall have regard to any investments held for the purposes of the scheme; and the Board may by reference to those considerations make it a condition of contracting-out or continued contracting-out 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;
- (b) there shall be realised, before the expiration of a specified period, 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;

and non-compliance with any such condition 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.

**Textual Amendments**

**F46** Words inserted (with effect from 6.4.1988) by [Social Security Act 1986 \(c. 50\)](#), [Sch. 2](#), para. 6(3)(b)

**F47** Words inserted by [Social Security Act 1985 \(c. 53\)](#), [Sch. 5](#), para. 20(b)

**F48** [S. 41\(1A\)](#) substituted by [Social Security Act 1985 \(c. 53\)](#), [Sch. 5](#), para. 21

**F49** [S. 41\(4\)](#) repealed by [Social Security Act 1986 \(c. 50\)](#), [Sch. 10](#), para. 19

**Status:**

Point in time view as at 28/02/1991.

**Changes to legislation:**

There are currently no known outstanding effects for the Social Security Pensions Act 1975,  
Cross Heading: Requirements for contracting-out.