



# 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

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

- C1** Pt. III: power to modify conferred (1.6.1996 for specified purposes, 6.4.1997 in so far as not already in force) by Pensions Act 1995 (c. 26), **ss. 149(1)**, 180(1); S.I. 1996/778, **art. 2(6)**; S.I. 1997/664, art. 2(3), **Sch. Pt. 2**
- C2** Pt. III applied (with modifications) (6.4.1997) by The Occupational Pension Schemes (Mixed Benefit Contracted-out Schemes) Regulations 1996 (S.I. 1996/1977), regs. 1(1), **2(4)(a)-(f)**
- C3** Pt. III applied (with modifications) (6.4.1997) by The Contracting-out (Transfer and Transfer Payment) Regulations 1996 (S.I. 1996/1462), regs. 1(1), 12, 13, **Sch. 2** (with reg. 14, Sch. 4)
- C4** Pt. III: power to amend conferred (1.4.1999) by Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), **ss. 23**, 28(3); S.I. 1999/527, art. 2(b), Sch. 2 (with arts. 3-6)
- C5** Pt. III: power to transfer functions conferred (1.4.1999) by Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), **ss. 23**, 28(3); S.I. 1999/527, art. 2(b), Sch. 2 (with arts. 3-6)

#### *Preliminary*

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

(1) Regulations shall provide for the <sup>F1</sup>... [<sup>F2</sup>Inland Revenue] to issue certificates stating—

*Status: Point in time view as at 24/02/2003.*

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- (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.
- [<sup>F3</sup>(2A) The regulations may provide, in the case of contracting-out certificates issued before the principal appointed day, for their cancellation by virtue of the regulations—
- (a) at the end of a prescribed period beginning with that day, or
  - (b) if prescribed conditions are not satisfied at any time in that period,
- but for them to continue to have effect until so cancelled; and the regulations may provide that a certificate having effect on and after that day by virtue of this subsection is to have effect, in relation to any earner’s service on or after that day, as if issued on or after that day.
- (2B) In this Part, “the principal appointed day” means the day designated by an order under section 180 of the Pensions Act 1995 as the principal appointed day for the purposes of Part III of that Act]
- (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 <sup>F4</sup>... 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 [<sup>F5</sup>Inland Revenue].
- (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.

#### Textual Amendments

- F1** Word in s. 7(1) substituted (6.4.1996 for specified purposes, 6.4.1997 in so far as not already in force) by *Pensions Act 1995 (c. 26)*, s. 180(1), **Sch. 5 para. 22(a)**; S.I. 1996/778, art. 2(5)(a), Sch. Pt. 5; S.I. 1997/664, art. 2(3), Sch. Pt. 2
- F2** Words in s. 7(1) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by *Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2)*, s. 28(2)(a), **Sch. 1 para. 33**; S.I. 1999/527, art. 2(b), Sch. 2 (with arts. 3-6)

*Status: Point in time view as at 24/02/2003.*

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- F3** S. 7(2A)(2B) inserted (6.4.1996 for specified purposes, 6.4.1997 in so far as not already in force) by Pensions Act 1995 (c. 26), ss. 136(1), 180(1); S.I. 1996/778, art. 2(5)(a)(7), Sch. Pt. 5
- F4** Words in s. 7(4) repealed (6.4.1997) by Pensions Act 1995 (c. 26), s. 180(1), Sch. 5 para. 22(b), Sch. 7 Pt. III; S.I. 1997/664, art. 2(3), Sch. Pt. 2
- F5** Words in s. 7(6) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), s. 28(2)(a), Sch. 1 para. 33; S.I. 1999/527, art. 2(b), Sch. 2 (with arts. 3-6)

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

- C6** S. 7(1)(a) extended (6.4.1997) by Occupational Pension Schemes (Contracting-out) Regulations 1996 (S.I. 1996/1172), regs. 1(1), 12(3), 13(2), 14
- C7** S. 7(2) extended (6.4.1997) by Occupational Pension Schemes (Contracting-out) Regulations 1996 (S.I. 1996/1172), regs. 1(1), 12(3), 13(2), 14
- C8** S. 7(7) extended (6.4.1997) by Occupational Pension Schemes (Contracting-out) Regulations 1996 (S.I. 1996/1172), regs. 1(1), 12(3), 13(2), 14

#### Commencement Information

- I1** Ss. 1-187 in force at 7.2.1994 by S.I. 1994/86, art. 2

## 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) [<sup>F6</sup>his service in the employment is for the time being service which qualifies him for a pension provided by an occupational pension scheme contracted out by virtue of satisfying section 9(2) (in this Act referred to as “a salary related contracted-out scheme”)]
  - (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 [<sup>F7</sup>Inland Revenue] 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);

[<sup>F8</sup>and for the purposes of this subsection “rebate percentage” means the appropriate flat rate percentage for the purposes of [<sup>F9</sup>section 42A]].

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- (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;
  - (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 [<sup>F10</sup>Inland Revenue], where [<sup>F10</sup>they are] 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.

<sup>F11</sup>(5) .....

#### Textual Amendments

- F6** S. 8(1)(a)(i) substituted (6.4.1996 for specified purposes, 6.4.1997 in so far as not already in force) by [Pensions Act 1995 \(c. 26\)](#), **ss. 136(2)**, 180(1); S.I. 1996/778, art. 2(5)(a)(7), Sch. Pt. 5
- F7** Words in s. 8(1)(b) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\)](#), s. 28(2)(a), **Sch. 1 para. 34(a)**; S.I. 1999/527, art. 2(b), Sch. 2 (with arts. 3-6)
- F8** Words in s. 8(2) substituted (6.4.1997) by [Pensions Act 1995 \(c. 26\)](#), s. 180(1), **Sch. 5 para. 23(a)**; S.I. 1997/664, art. 2(3), Sch. Pt. 2
- F9** Words in s. 8(2) substituted (6.4.1999) by [Social Security Act 1998 \(c. 14\)](#), s. 87(2), **Sch. 7 para. 126**; S.I. 1999/418, art. 2(3)(a)
- F10** Words in s. 8(3)(f) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\)](#), s. 28(2)(a), **Sch. 1 para. 34(b)**; S.I. 1999/527, art. 2(b), Sch. 2 (with arts. 3-6)
- F11** S. 8(5) repealed (6.4.1997) by [Pensions Act 1995 \(c. 26\)](#), s. 180(1), Sch. 5 para. 23(b), **Sch. 7 Pt. III**; S.I. 1997/664, art. 2(3), **Sch. Pt. 2**

#### Commencement Information

- I1** Ss. 1-187 in force at 7.2.1994 by S.I. 1994/86, **art. 2**

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### *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) <sup>F12</sup>An occupational pension scheme satisfies this subsection only if—
  - (a) in relation to any earner's service before the principal appointed day, it satisfies the conditions of subsection (2A), and
  - (b) in relation to any earner's service on or after that day, it satisfies the conditions of subsection (2B).
- (2A) The conditions of this subsection are that—
  - (a) the scheme complies in all respects with sections 13 to 23 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.
- (2B) The conditions of this subsection are that the <sup>F13</sup>Inland Revenue<sup>F14</sup>are satisfied] that—
  - (a) the scheme complies with section 12A,
  - (b) restrictions imposed under section 40 of the Pensions Act 1995 (restriction on employer-related investments) apply to the scheme and the scheme complies with those restrictions,
  - (c) the scheme satisfies such other requirements as may be prescribed (which—
    - (i) must include requirements as to the amount of the resources of the scheme and,
    - (ii) may include a requirement that, if the only members of the scheme were those falling within any prescribed class or description, the scheme would comply with section 12A); and
  - (d) the scheme does not fall within a prescribed class or description,and <sup>F14</sup>are satisfied] that the rules of the scheme are framed so as to comply with the relevant requirements.
- (2C) Regulations may modify subsection (2B)(a) and (b) in their application to occupational pension schemes falling within a prescribed class or description.]
- (3) An occupational pension scheme satisfies this subsection only if—
  - (a) the requirements imposed by or by virtue of sections <sup>F15</sup>... 26 to 32 and such other requirements as may be prescribed are satisfied in its case
  - <sup>F16</sup>(aa) the <sup>F17</sup>Inland Revenue are] satisfied that the scheme does not fall within a prescribed class or description]; 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 <sup>F18</sup>Inland Revenue 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—

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- (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 [F19Secretary of State] 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.

#### Textual Amendments

- F12** S. 9(2)-(2C) substituted for s. 9(2) (6.4.1996 for specified purposes, 6.4.1997 in so far as not already in force) by [Pensions Act 1995 \(c. 26\), ss. 136\(3\), 180\(1\)](#); S.I. 1996/778, art. 2(5)(a)(7), [Sch. Pt. V](#)
- F13** Words in s. 9(2B) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\), s. 28\(2\)\(a\), Sch. 1 para. 35\(2\)\(a\)](#); S.I. 1999/527, art. 2(b), [Sch. 2](#) (with arts. 3-6)
- F14** Words in s. 9(2B) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\), s. 28\(2\)\(a\), Sch. 1 para. 35\(2\)\(b\)](#); S.I. 1999/527, art. 2(b), [Sch. 2](#) (with arts. 3-6)
- F15** Words in s. 9(3) repealed (6.4.1997) by [Pensions Act 1995 \(c. 26\), s. 180\(1\), Sch. 5 para. 24, Sch. 7 Pt. III](#); S.I. 1997/664, art. 2(3), [Sch. Pt. 2](#)
- F16** S. 9(3)(aa) inserted (6.4.1996 for specified purposes, 6.4.1997 in so far as not already in force) by [Pensions Act 1995 \(c. 26\), ss. 136\(4\), 180\(1\)](#); S.I. 1996/778, art. 2(5)(a)(7), [Sch. Pt. 5](#)
- F17** Words in s. 9(3)(aa) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\), s. 28\(2\)\(a\), Sch. 1 para. 35\(3\)](#); S.I. 1999/527, art. 2(b), [Sch. 2](#) (with arts. 3-6)
- F18** Words in s. 9(4) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\), s. 28\(2\)\(a\), Sch. 1 para. 35\(4\)](#); S.I. 1999/527, art. 2(b), [Sch. 2](#) (with arts. 3-6)
- F19** Words in s. 9 substituted (6.4.1997) by [Pensions Act 1995 \(c. 26\), s. 180\(1\), Sch. 5 para. 21](#); S.I. 1997/664, art. 2(3), [Sch. Pt. II](#)

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

- C9** S. 9 excluded (1.6.1996 for specified purposes, 6.4.1997 in so far as not already in force) by [Pensions Act 1995 \(c. 26\), ss. 149\(1\), 180\(1\)](#); S.I. 1996/778, art. 2(6); S.I. 1997/664, art. 2(3), [Sch. Pt. 2](#)
- C10** S. 9(2) excluded (6.4.1997) by [The Occupational Pension Schemes \(Mixed Benefit Contracted-out Schemes\) Regulations 1996 \(S.I. 1996/1977\), regs. 1\(1\), 2\(3\)](#)
- C11** S. 9(2B) modified (6.4.1997) by [Occupational Pension Schemes \(Contracting-out\) Regulations 1996 \(S.I. 1996/1172\), regs. 1\(1\), 27](#)
- C12** S. 9(2B)(b) modified (6.4.1997) by [Occupational Pension Schemes \(Contracting-out\) Regulations 1996 \(S.I. 1996/1172\), regs. 1\(1\), 48\(5\)\(d\)](#)
- C13** S. 9(3) excluded (6.4.1997) by [The Occupational Pension Schemes \(Mixed Benefit Contracted-out Schemes\) Regulations 1996 \(S.I. 1996/1977\), regs. 1\(1\), 2\(3\)](#)

#### Commencement Information

- I1** Ss. 1-187 in force at 7.2.1994 by S.I. 1994/86, [art. 2](#)

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## 10 Protected rights and money purchase benefits.

- (1) Subject to <sup>F20</sup>[the following provisions of this section], 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—
- his rights under the scheme which derive from the payment of minimum payments <sup>F21</sup>[together with any payments by the <sup>F22</sup>Inland Revenue] to the scheme under section 7 of the <sup>M1</sup>Social Security Act 1986 in respect of the member;
  - 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
  - such other rights as may be prescribed.
- (3) If the rules of a personal pension scheme so provide, a member's protected rights are—
- his rights under the scheme which derive from any payment of minimum contributions to the scheme; and
  - 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
  - such other rights as may be prescribed.
- <sup>F23</sup>(4) Where, in the case of a scheme which makes such provision as is mentioned in subsection (2) or (3), a member's rights under the scheme become subject to a pension debit, his protected rights shall exclude the appropriate percentage of the rights which were his protected rights immediately before the day on which the pension debit arose.
- (5) For the purposes of subsection (4), the appropriate percentage is—
- if the order or provision on which the pension debit depends specifies the percentage value to be transferred, that percentage;
  - if the order or provision on which the pension debit depends specifies an amount to be transferred, the percentage which the appropriate amount for the purposes of subsection (1) of section 29 of the Welfare Reform and Pensions Act 1999 (lesser of specified amount and cash equivalent of transferor's benefits) represents of the amount mentioned in subsection (3)(b) of that section (cash equivalent of transferor's benefits).]
- <sup>F24</sup>(6) Where, in the case of a scheme which makes such provision as is mentioned in subsection (2) or (3), any liability of the scheme in respect of a member's protected rights ceases by virtue of a civil recovery order, his protected rights are extinguished or reduced accordingly.]

### Textual Amendments

- F20** Words in s. 10(1) substituted (11.11.1999 for specified purposes, 1.12.2000 in so far as not already in force) by Welfare Reform and Pensions Act 1999 (c. 30), ss. 32(2), 89(5)(a); S.I. 2000/1047, art. 2(2)(d), Sch. Pt. 4

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- F21** Words in s. 10(2)(a) inserted (6.4.1997) by Pensions Act 1995 (c. 26), s. 180(1), **Sch. 5 para. 25**; S.I. 1997/664, art. 2(3), Sch. Pt. 2
- F22** Words in s. 10(2)(a) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), s. 28(2)(a), **Sch. 1 para. 36**; S.I. 1999/527, art. 2(b), Sch. 2 (with arts. 3-6)
- F23** S. 10(4)(5) added (11.11.1999 for specified purposes, 1.12.2000 in so far as not already in force) by Welfare Reform and Pensions Act 1999 (c. 30), **ss. 32(2)**, 89(5)(a); S.I. 2000/1047, art. 2(2)(d), Sch. Pt. 4
- F24** S. 10(6) inserted (24.2.2003) by Proceeds of Crime Act 2002 (c. 29), s. 458(1), **Sch. 11 para. 22(2)**; S.I. 2003/120, art. 2, Sch. (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

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

- C14** S. 10(4)(5) applied (with effect in accordance with art. 1(2) of the amending S.S.I.) by SI 1992/129 Sch. 2 rule N6 (as inserted by The Firemens Pension Scheme (Pension Sharing on Divorce) (Scotland) Order 2001 (S.S.I. 2001/310), arts. 1(2), 3)
- C15** S. 10(4)(5) applied (with effect in accordance with reg. 1(2) of the amending S.S.I.) by SI 1995/365 reg. W6 (as inserted by The National Health Service (Scotland) (Superannuation Scheme and Additional Voluntary Contributions) (Pension Sharing on Divorce) Amendment Regulations 2001 (S.S.I. 2001/465), reg. 1(2), **sch. 1 para. 3**)

#### Commencement Information

- I1** Ss. 1-187 in force at 7.2.1994 by S.I. 1994/86, **art. 2**

#### Marginal Citations

- M1** 1986 c. 50.

## 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 [<sup>F25</sup>Inland Revenue consider] that an employer is contravening subsection (3) in relation to any scheme, [<sup>F26</sup>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;



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- (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 [<sup>F27</sup>Inland Revenue] to refuse to give effect to an election made by an employer unless <sup>F28</sup>... [<sup>F27</sup>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.

#### Textual Amendments

- F25** Words in s. 11(4) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\), s. 28\(2\)\(a\), Sch. 1 para. 37\(2\)\(a\)](#); S.I. 1999/527, art. 2(b), Sch. 2 (with arts. 3-6)
- F26** Word in s. 11(4) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\), s. 28\(2\)\(a\), Sch. 1 para. 37\(2\)\(b\)](#); S.I. 1999/527, art. 2(b), Sch. 2 (with arts. 3-6)
- F27** Words in s. 11(5)(d) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\), s. 28\(2\)\(a\), Sch. 1 para. 37\(3\)](#); S.I. 1999/527, art. 2(b), Sch. 2 (with arts. 3-6)
- F28** Words in s. 11(5)(d) substituted (6.4.1996 for specified purposes, 6.4.1997 in so far as not already in force) by [Pensions Act 1995 \(c. 26\), s. 180\(1\), Sch. 5 para. 21](#); S.I. 1996/778, art. 2(5)(a), Sch. Pt. 5; S.I. 1997/664, art. 2(3), Sch. Pt. 2

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

- C16** S. 11 extended (6.4.1997) by [Occupational Pension Schemes \(Contracting-out\) Regulations 1996 \(S.I. 1996/1172\), regs. 1\(1\), 12\(3\), 13\(2\), 14](#)

#### Commencement Information

- I1** Ss. 1-187 in force at 7.2.1994 by S.I. 1994/86, art. 2

## 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.

*Status: Point in time view as at 24/02/2003.*

*Changes to legislation: Pension Schemes Act 1993, Chapter I is up to date with all changes known to be in force on or before 06 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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

**C17** S. 12 excluded (1.6.1996 for specified purposes, 6.4.1997 in so far as not already in force) by [Pensions Act 1995 \(c. 26\)](#), [ss. 149\(1\)](#), [180\(1\)](#); [S.I. 1996/778](#), art. 2(6); [S.I. 1997/664](#), art. 2(3), Sch. Pt. 2

#### **Commencement Information**

**II** Ss. 1-187 in force at 7.2.1994 by [S.I. 1994/86](#), [art. 2](#)

*[<sup>F29</sup> Requirements for certification of occupational pension schemes  
applying from the principal appointed day of the Pensions Act 1995*

#### **Textual Amendments**

**F29** Ss. 12A-12D and cross-heading inserted (6.4.1996 for specified purposes, 6.4.1997 in so far as not already in force) by [Pensions Act 1995 \(c. 26\)](#), [ss. 136\(5\)](#), [180\(1\)](#); [S.I. 1996/778](#), art. 2(5)(a)(7), Sch. Pt. 5

## **12A The statutory standard**

- (1) Subject to the provisions of this Part, the scheme must, in relation to the provision of pensions for earners in employed earner’s employment, and for their widows or widowers, satisfy the statutory standard.
- (2) Subject to regulations made by virtue of section 9(2B)(c)(ii), in applying this section regard must only be had to—
  - (a) earners in employed earner’s employment, or
  - (b) their widows or widowers,
collectively, and the pensions to be provided for persons falling within paragraph (a) or (b) must be considered as a whole.
- (3) For the purposes of this section, a scheme satisfies the statutory standard if the pensions to be provided for such persons are broadly equivalent to, or better than, the pensions which would be provided for such persons under a reference scheme.
- (4) Regulations may provide for the manner of, and criteria for, determining whether the pensions to be provided for such persons under a scheme are broadly equivalent to, or better than, the pensions which would be provided for such persons under a reference scheme.
- (5) Regulations made by virtue of subsection (4) may provide for the determination to be made in accordance with guidance prepared from time to time by a prescribed body and approved by the Secretary of State.
- (6) The pensions to be provided for such persons under a scheme are to be treated as broadly equivalent to or better than the pensions which would be provided for such persons under a reference scheme if and only if an actuary (who, except in prescribed circumstances, must be the actuary appointed for the scheme in pursuance of section 47 of the Pensions Act 1995) so certifies.

*Status: Point in time view as at 24/02/2003.*

*Changes to legislation: Pension Schemes Act 1993, Chapter I is up to date with all changes known to be in force on or before 06 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## 12B Reference scheme

- (1) This section applies for the purposes of section 12A.
- (2) A reference scheme is an occupational pension scheme which—
  - (a) complies with each of subsections (3) and (4), and
  - (b) complies with any prescribed requirements.
- (3) In relation to earners employed in employed earner's employment, a reference scheme is one which provides—
  - (a) for them to be entitled to a pension under the scheme commencing at a normal pension age of 65 and continuing for life, and
  - (b) for the annual rate of the pension at that age to be—
    - (i) 1/80th of average qualifying earnings in the last three tax years preceding the end of service,  
multiplied by
    - (ii) the number of years service, not exceeding such number as would produce an annual rate equal to half the earnings on which it is calculated.
- (4) In relation to widows or widowers, a reference scheme is one which provides—
  - (a) for the widows or widowers of earners employed in employed earner's employment (whether the earners die before or after attaining the age of 65) to be entitled, except in prescribed circumstances, to pensions under the scheme, and
  - [<sup>F30</sup>(b) for entitlements to those pensions to commence on the day following the death of the earners, and
  - (c) except in prescribed circumstances, for the annual rate of those pensions to be—
    - (i) if the earners die on or after their normal pension age, 50 per cent. of the annual rate which a reference scheme was required to provide to the deceased earners immediately before their death, or
    - (ii) if the earners die before their normal pension age, 50 per cent. of the annual rate which a reference scheme would have been required to provide to the deceased earners if the date of their death had been their normal pension age, and
  - (d) if those pensions are payable in respect of earners who die—
    - (i) otherwise than in pensionable service under the scheme, and
    - (ii) before their own entitlements to pensions under the scheme have commenced,for those pensions to be revalued in accordance with section 84 as though they were such benefits as are mentioned in section 83(1)(a).]
- (5) For the purposes of this section, an earner's qualifying earnings in any tax year are 90 per cent. of the amount by which the earner's earnings—
  - (a) exceed the qualifying earnings factor for that year, and
  - (b) do not exceed the upper earnings limit for that year multiplied by fifty-three.
- (6) Regulations may modify subsections (2) to (5).
- (7) In this section—

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“normal pension age”, in relation to a scheme, means the age specified in the scheme as the earliest age at which pension becomes payable under the scheme (apart from any special provision as to early retirement on grounds of ill-health or otherwise),

“qualifying earnings factor”, in relation to a tax year, has the meaning given by section 122(1) of the Social Security Contributions and Benefits Act 1992, and

“upper earnings limit”, in relation to a tax year, means the amount specified for that year by regulations made by virtue of section 5(3) of that Act as the upper earnings limit for Class 1 contributions.

#### **Textual Amendments**

**F30** Ss. 12B(4)(b)-(d) substituted for s. 12B(4)(b) (6.4.1997) by [The Occupational Pension Schemes \(Reference Scheme and Miscellaneous Amendments\) Regulations 1997 \(S.I. 1997/819\)](#), regs. 1(1), **2**

### **12C Transfer, commutation, etc**

- (1) Regulations may prohibit or restrict—
- (a) the transfer of any liability—
    - (i) for the payment of pensions under a relevant scheme, or
    - (ii) in respect of accrued rights to such pensions,
  - (b) the discharge of any liability to provide pensions under a relevant scheme, or
  - (c) the payment of a lump sum instead of a pension payable under a relevant scheme,
- except in prescribed circumstances or on prescribed conditions.
- (2) In this section “relevant scheme” means a scheme contracted out by virtue of section 9(2B) of this Act and references to pensions and accrued rights under the scheme are to such pensions and rights so far as attributable to an earner’s service on or after the principal appointed day.
- (3) Regulations under subsection (1) may provide that any provision of this Part shall have effect subject to such modifications as may be specified in the regulations.

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

- C18** S. 12C applied (1.4.1998) by [The Local Government Pension Scheme \(Scotland\) Regulations 1998 \(S.I. 1998/366\)](#), regs. 1, **58(5)(6)**
- C19** S. 12C(1) extended (with modifications) (6.4.1997) by [The Occupational Pension Schemes \(Discharge of Liability\) Regulations 1997 \(S.I. 1997/784\)](#), regs. 1(1), **11(3)(e)(6)**

### **12D Entitlement to benefit**

In the case of a scheme contracted out by virtue of section 9(2B) of this Act, regulations may make provision as to the ages by reference to which benefits under the scheme are to be paid]

*Status: Point in time view as at 24/02/2003.*

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*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 <sup>M2</sup>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<sup>F31</sup>...; 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 <sup>M3</sup>National Insurance Act 1965 and the previous corresponding enactments.

#### Textual Amendments

**F31** Words in s. 13(2)(a) repealed (6.4.1997) by [Pensions Act 1995 \(c. 26\), s. 180\(1\), Sch. 5 para. 26, Sch. 7 Pt. III](#); [S.I. 1997/664](#), art. 2(3), Sch. Pt. 2

#### Commencement Information

**I1** Ss. 1-187 in force at 7.2.1994 by [S.I. 1994/86, art. 2](#)

*Status: Point in time view as at 24/02/2003.*

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#### **Marginal Citations**

**M2** 1992 c. 4.

**M3** 1965 c. 51.

## **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.
- <sup>F32</sup>(2A) Where any liability of a scheme in respect of an earner’s guaranteed minimum pension ceases by virtue of a civil recovery order, his guaranteed minimum in relation to the scheme is extinguished or reduced accordingly.]
- <sup>F33</sup>(3) .....
- (4) Where the amount of a person’s earnings for any period is relevant for any purpose of subsection (1) or (2) and the <sup>F34</sup>Inland Revenue are] satisfied that records of those earnings have not been maintained or retained or are otherwise unobtainable, <sup>F35</sup>they] may for that purpose—
  - (a) compute, in such manner as <sup>F35</sup>they][<sup>F36</sup>think] fit, an amount which shall be regarded as the amount of those earnings; or
  - (b) take their amount to be such sum as <sup>F35</sup>he][<sup>F35</sup>they] 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.

*Status: Point in time view as at 24/02/2003.*

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- (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 [<sup>F37</sup> or later than the tax year ending immediately before the principal appointed day]).

#### Textual Amendments

- F32** S. 14(2A) inserted (24.2.2003) by [Proceeds of Crime Act 2002 \(c. 29\)](#), s. 458(1), **Sch. 11 para. 22(3)**; [S.I. 2003/120](#), art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)
- F33** S. 14(3) repealed (6.4.1997) by [Pensions Act 1995 \(c. 26\)](#), s. 180(1), **Sch. 5 para. 27(a)**, **Sch. 7 Pt. III**; [S.I. 1997/664](#), art. 2(3), **Sch. Pt. 2**
- F34** Words in s. 14(4) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\)](#), s. 28(2)(a), **Sch. 1 para. 38(a)**; [S.I. 1999/527](#), art. 2(b), **Sch. 2** (with arts. 3-6)
- F35** Word in s. 14(4) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\)](#), s. 28(2)(a), **Sch. 1 para. 38(b)**; [S.I. 1999/527](#), art. 2(b), **Sch. 2** (with arts. 3-6)
- F36** Word in s. 14(4)(a) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\)](#), s. 28(2)(a), **Sch. 1 para. 38(c)**; [S.I. 1999/527](#), art. 2(b), **Sch. 2** (with arts. 3-6)
- F37** Words in s. 14(8) inserted (6.4.1997) by [Pensions Act 1995 \(c. 26\)](#), s. 180(1), **Sch. 5 para. 27(b)**; [S.I. 1997/664](#), art. 2(3), **Sch. Pt. 2**

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

- C20** S. 14(1) applied (with modifications) (6.4.1997) by [The Protected Rights \(Transfer Payment\) Regulations 1996 \(S.I. 1996/1461\)](#), regs. 1(1), **6(4)**
- C21** S. 14(2) modified (1.4.1998) by [The Local Government Pension Scheme \(Scotland\) Regulations 1998 \(S.I. 1998/366\)](#), regs. 1, **36(1)**

#### Commencement Information

- I1** Ss. 1-187 in force at 7.2.1994 by [S.I. 1994/86](#), art. 2

## 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

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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.

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

- C22** S. 15: sums amended (with effect in accordance with arts. 1(3), 6 of the amending S.I.) by [The Social Security Benefits Up-rating Order 1999 \(S.I. 1999/264\)](#), **art. 5** (which amending S.I. is revoked (1.4.2000) by [S.I. 2000/440](#), **art. 24**)
- C23** S. 15(1) sums amended (with effect in accordance with arts. 1(3), 6 of the amending S.I.) by [The Social Security Benefits Up-rating Order 1994 \(S.I. 1994/542\)](#), **arts. 1(2)(d), 5** (which amending S.I. is revoked (1.4.1995) by [S.I. 1995/559](#), **art. 24**)
- C24** S. 15(1) sums amended (with effect in accordance with arts. 1(3), 6 of the amending S.I.) by [The Social Security Benefits Up-rating Order 1995 \(S.I. 1995/559\)](#), **arts. 1(2)(d), 5** (which amending S.I. is revoked (1.4.1996) by [S.I. 1996/599](#), **art. 24**)
- C25** S. 15(1) sums amended (with effect in accordance with arts. 1(3), 6 of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), **arts. 1(2)(d), 5**
- C26** S. 15(1): sums amended (with effect in accordance with arts. 1(3), 6 of the amending S.I.) by [The Social Security Benefits Up-rating Order 1997 \(S.I. 1997/543\)](#), **arts. 1(2)(d), 5** (which amending S.I. is revoked (1.4.1998) by [S.I. 1998/470](#), **art. 27**)
- C27** S. 15(1): sums amended (with effect in accordance with arts. 1(3), 6 of the amending S.I.) by [The Social Security Benefits Up-rating Order 1998 \(S.I. 1998/470\)](#), **arts. 1(2)(d), 5** (which amending S.I. is revoked (1.4.1999) by [S.I. 1999/264](#), **art. 27**)
- C28** S. 15(1): sums amended (with effect in accordance with arts. 1(3), 6 of the amending S.I.) by [The Social Security Benefits Up-rating Order 2000 \(S.I. 2000/440\)](#), **arts. 1(2)(c), 5** (which amending S.I. is revoked (1.4.2001) by [S.I. 2001/207](#), **art. 24**)
- C29** S. 15(1): sums amended (with effect in accordance with arts. 1(3), 6 of the amending S.I.) by [The Social Security Benefits Up-rating \(No. 2\) Order 2000 2001 \(S.I. 2001/207\)](#), **arts. 1(2)(c), 5** (which amending S.I. is revoked (1.4.2002) by [S.I. 2002/668](#), **art. 24**)
- C30** S. 15(1): sums amended (with effect in accordance with arts. 1(3), 6 of the amending S.I.) by [The Social Security Benefits Up Rating Order 2002 \(S.I. 2002/668\)](#), **arts. 1(2)(c), 5** (which amending S.I. is revoked (1.4.2003) by [S.I. 2003/526](#), **art. 26**)

**Commencement Information**

- II** Ss. 1-187 in force at 7.2.1994 by [S.I. 1994/86](#), **art. 2**

**<sup>F38</sup>15A Reduction of guaranteed minimum in consequence of pension debit.**

- (1) Where—
  - (a) an earner has a guaranteed minimum in relation to the pension provided by a scheme, and
  - (b) his right to the pension becomes subject to a pension debit,
 his guaranteed minimum in relation to the scheme is, subject to subsection (2), reduced by the appropriate percentage.
- (2) Where the earner is in pensionable service under the scheme on the day on which the order or provision on which the pension debit depends takes effect, his guaranteed minimum in relation to the scheme is reduced by an amount equal to the appropriate percentage of the corresponding qualifying benefit.
- (3) For the purposes of subsection (2), the corresponding qualifying benefit is the guaranteed minimum taken for the purpose of calculating the cash equivalent by reference to which the amount of the pension debit is determined.



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- (4) For the purposes of this section the appropriate percentage is—
- (a) if the order or provision on which the pension debit depends specifies the percentage value to be transferred, that percentage;
  - (b) if the order or provision on which the pension debit depends specifies an amount to be transferred, the percentage which the appropriate amount for the purposes of subsection (1) of section 29 of the Welfare Reform and Pensions Act 1999 (lesser of specified amount and cash equivalent of transferor’s benefits) represents of the amount mentioned in subsection (3)(b) of that section (cash equivalent of transferor’s benefits).]

**Textual Amendments**

**F38** S. 15A inserted (11.11.1999 for specified purposes, 1.12.2000 in so far as not already in force) by Welfare Reform and Pensions Act 1999 (c. 30), ss. 32(3), 89(5)(a); S.I. 2000/1047, art. 2(2)(d), Sch. Pt. 4

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

**C31** S. 15A applied (with effect in accordance with art. 1(2) of the amending S.S.I.) by SI 1992/129 Sch. 2 rule N6 (as inserted by The Firemens Pension Scheme (Pension Sharing on Divorce) (Scotland) Order 2001 (S.S.I. 2001/310), arts. 1(2), 3)

**C32** S. 15A applied (with effect in accordance with reg. 1(2) of the amending S.S.I.) by the National Health Service Superannuation Scheme (Scotland) Regulations 1995 (S.I. 1995/365), reg. W6 (as inserted by S.S.I. 2001/465, reg. 1(2), sch. 1 para. 3)

**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 <sup>M4</sup>Social Security Pensions Act 1975 or section 148 of the <sup>M5</sup>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 <sup>F39</sup>...
- <sup>F39</sup> .....
- <sup>F39</sup> .....
- [<sup>F39</sup>the prescribed percentage for each relevant year after the last service tax year; and the provisions included by virtue of this subsection may also conform with such additional requirements as may be prescribed].
- (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—

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[<sup>F40c</sup>“relevant year” means any tax year in the earner’s working life,]

[<sup>F41c</sup>“final relevant year” means the last tax year in the earner’s working life].

#### Textual Amendments

- F39** Words in s. 16(3) substituted (6.4.1996 for specified purposes, 6.4.1997 in so far as not already in force) by [Pensions Act 1995 \(c. 26\)](#), s. 180(1), [Sch. 5 para. 28\(a\)](#); [S.I. 1996/778](#), art. 2(5)(a), [Sch. Pt. 5](#); [S.I. 1997/664](#), art. 2(3), [Sch. Pt. 2](#) (with art. 3)
- F40** Words in s. 16(5) substituted (11.11.1999 for specified purposes, 25.4.2000 in so far as not already in force) by [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), s. 89(5)(a), [Sch. 2 para. 4](#); [S.I. 2000/1047](#), art. 2(2)(b), [Sch. Pt. 2](#)
- F41** Words in s. 16(5) substituted (6.4.1997) by [Pensions Act 1995 \(c. 26\)](#), s. 180(1), [Sch. 5 para. 28\(b\)](#); [S.I. 1997/664](#), art. 2(3), [Sch. Pt. 2](#)

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

- C33** S. 16 modified (6.4.1997) by [Occupational Pension Schemes \(Contracting-out\) Regulations 1996 \(S.I. 1996/1172\)](#), regs. 1(1), [65](#), [66](#)
- C34** S. 16(1) applied (with modifications) (6.4.1997) by [The Protected Rights \(Transfer Payment\) Regulations 1996 \(S.I. 1996/1461\)](#), regs. 1(1), [6\(5\)](#)
- C35** S. 16(2) applied (6.4.1997) by [The Protected Rights \(Transfer Payment\) Regulations 1996 \(S.I. 1996/1461\)](#), regs. 1(1), [6\(6\)](#)

#### Commencement Information

- I1** Ss. 1-187 in force at 7.2.1994 by [S.I. 1994/86](#), [art. 2](#)

#### Marginal Citations

- M4** 1975 c. 60.  
**M5** 1992 c. 5.

## 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.
- [<sup>F42</sup>(4A) The scheme must provide for the widow or widower’s pension to be payable to the widow or widower—

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- (a) for any period for which a Category B retirement pension is payable to the widow or widower by virtue of the earner's contributions or 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);
  - (b) for any period for which widowed parent's allowance or bereavement allowance is payable to the widow or widower by virtue of the earner's contributions; and
  - (c) in the case of a widow or widower whose entitlement by virtue of the earner's contributions to a widowed parent's allowance or bereavement allowance has come to an end at a time after the widow or widower attained the age of 45, for so much of the period beginning with the time when the entitlement came to an end as neither—
    - (i) comprises a period during which the widow or widower and a person of the opposite sex are living together as husband and wife; nor
    - (ii) falls after the time of any remarriage by the widow or widower.]
- (5) The scheme [<sup>F43</sup>must also make provision] for the widow's pension to be payable to her for any period for which a <sup>F44</sup>... widowed mother's allowance or widow's pension is payable to her by virtue of the earner's contributions<sup>F44</sup>....
- (6) The scheme [<sup>F45</sup>must also make provision] 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 [<sup>F46</sup>Inland Revenue] any such information as [<sup>F46</sup>the Inland Revenue] may require relating to the payment of pensions under the scheme to widowers [<sup>F47</sup>or widows].

#### Textual Amendments

- F42** S. 17(4A) inserted (1.1.2001) by Child Support, Pensions and Social Security Act 2000 (c. 19), s. 86(1)(b)(2), **Sch. 5 para. 1(1)** (with s. 83(6)); S.I. 2000/3166, art. 2(3)(b)(i)
- F43** Words in s. 17(5) substituted (1.1.2001) by Child Support, Pensions and Social Security Act 2000 (c. 19), s. 86(1)(b)(2), **Sch. 5 para. 1(2)(a)** (with s. 83(6)); S.I. 2000/3166, art. 2(3)(b)(i)
- F44** Words in s. 17(5) repealed (1.1.2001) by Child Support, Pensions and Social Security Act 2000 (c. 19), s. 86(1)(b)(2), **Sch. 5 para. 1(2)(b)**, **Sch. 9 Pt. III(4)** (with s. 83(6)); S.I. 2000/3166, art. 2(3)(b)(i)
- F45** Words in s. 17(6) substituted (1.1.2001) by Child Support, Pensions and Social Security Act 2000 (c. 19), s. 86(1)(b)(2), **Sch. 5 para. 1(3)** (with s. 83(6)); S.I. 2000/3166, art. 2(3)(b)(i)
- F46** Words in s. 17(7) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), s. 28(2)(a), **Sch. 1 para. 39**; S.I. 1999/527, art. 2(b), Sch. 2 (with arts. 3-6)
- F47** Words in s. 17(7) added (6.4.1997) by Pensions Act 1995 (c. 26), s. 180(1), **Sch. 5 para. 29**; S.I. 1997/664, art. 2(3), Sch. Pt. 2

#### Commencement Information

- II** Ss. 1-187 in force at 7.2.1994 by S.I. 1994/86, **art. 2**

## 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

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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.

#### Commencement Information

**II** Ss. 1-187 in force at 7.2.1994 by [S.I. 1994/86, art. 2](#)

### **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 [<sup>F48</sup>insurer] with which it is or was taken out or entered into—
    - (i) is, or was at the relevant time, carrying on <sup>F49</sup>... 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.

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- (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.

<sup>F50</sup>(7) . . . . .

**Textual Amendments**

- F48** Word in s. 19(4)(a) substituted (1.12.2001) by [The Financial Services and Markets Act 2000 \(Consequential Amendments and Repeals\) Order 2001 \(S.I. 2001/3649\)](#), arts. 1, **116(2)(a)**
- F49** Word in s. 19(4)(a)(i) repealed (1.12.2001) by [The Financial Services and Markets Act 2000 \(Consequential Amendments and Repeals\) Order 2001 \(S.I. 2001/3649\)](#), arts. 1, **116(2)(b)**
- F50** S. 19(7) repealed (1.12.2001) by [The Financial Services and Markets Act 2000 \(Consequential Amendments and Repeals\) Order 2001 \(S.I. 2001/3649\)](#), arts. 1, **116(3)**

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

- C36** S. 19 applied (1.4.1998) by [The Local Government Pension Scheme \(Scotland\) Regulations 1998 \(S.I. 1998/366\)](#), regs. 1, **58(5)(6)**

**Commencement Information**

- I1** Ss. 1-187 in force at 7.2.1994 by [S.I. 1994/86](#), **art. 2**

**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,

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- may be made by an occupational pension scheme to another such scheme [<sup>F51</sup>, to a personal pension scheme or to an overseas arrangement];
- (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 [<sup>F52</sup>, a personal pension scheme or an overseas arrangement].
- (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.

#### Textual Amendments

- F51** Words in s. 20(1)(a) substituted (1.1.2001) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), s. 86(1)(b)(2), [Sch. 5 para. 2\(1\)\(a\)](#) (with s. 83(6)); S.I. 2000/3166, art. 2(3)(b)(ii)
- F52** Words in s. 20(1)(b) substituted (1.1.2001) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), s. 86(1)(b)(2), [Sch. 5 para. 2\(1\)\(b\)](#) (with s. 83(6)); S.I. 2000/3166, art. 2(3)(b)(ii)

#### Commencement Information

- I1** Ss. 1-187 in force at 7.2.1994 by [S.I. 1994/86](#), [art. 2](#)

## 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.

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

**C37** S. 21 applied (1.4.1998) by [The Local Government Pension Scheme \(Scotland\) Regulations 1998 \(S.I. 1998/366\)](#), regs. 1, **58(5)(6)**

**Commencement Information**

**II** Ss. 1-187 in force at 7.2.1994 by [S.I. 1994/86](#), **art. 2**

<sup>F53</sup>**22 Financing of benefits.**

**Textual Amendments**

**F53** S. 22 repealed (6.4.1997) by [Pensions Act 1995 \(c. 26\)](#), s. 180(1), Sch. 5 para. 30, **Sch. 7 Pt. III**; [S.I. 1997/664](#), art. 2(3), Sch. Pt. 2

**Commencement Information**

**II** Ss. 1-187 in force at 7.2.1994 by [S.I. 1994/86](#), **art. 2**

**23 Securing of benefits.**

<sup>F54</sup>(1) .....

(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 [<sup>F55</sup>(2) and (3)] do not apply to public service pension schemes.

<sup>F56</sup>(5) .....

(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.

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(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.

**Textual Amendments**

**F54** S. 23(1) repealed (6.4.1997) by [Pensions Act 1995 \(c. 26\)](#), s. 180(1), Sch. 5 para. 31(a), **Sch. 7 Pt. III**; [S.I. 1997/664](#), art. 2(3), Sch. Pt. 2

**F55** Words in s. 23(4) substituted (6.4.1997) by [Pensions Act 1995 \(c. 26\)](#), s. 180(1), **Sch. 5 para. 31(b)**; [S.I. 1997/664](#), art. 2(3), **Sch. Pt. 2**

**F56** S. 23(5) repealed (6.4.1997) by [Pensions Act 1995 \(c. 26\)](#), s. 180(1), Sch. 5 para. 31(a), **Sch. 7 Pt. III**; [S.I. 1997/664](#), art. 2(3), **Sch. Pt. 2**

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

**C38** S. 23(2)(3) excluded (6.4.1997) by [Pensions Act 1995 \(c. 26\)](#), s. 180(1), **Sch. 5 para. 31**; [S.I. 1997/664](#), art. 2(3), **Sch. Pt. 2**

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**Commencement Information**

**I1** Ss. 1-187 in force at 7.2.1994 by [S.I. 1994/86](#), **art. 2**

**F57 24 Sufficiency of resources.**

.....

**Textual Amendments**

**F57** S. 24 repealed (6.4.1997) by [Pensions Act 1995 \(c. 26\)](#), s. 180(1), Sch. 5 para. 32, **Sch. 7 Pt. III**; [S.I. 1997/664](#), art. 2(3), **Sch. Pt. 2**

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**Commencement Information**

**I1** Ss. 1-187 in force at 7.2.1994 by [S.I. 1994/86](#), **art. 2**

*Discretionary requirements*

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

**F58** (1) .....

(2) **F59** ...  
**F59F60** .....  
**F59F61** .....

[**F59**A salary related contracted-out scheme must, in relation to any earner’s service before the principal appointed day, comply with any requirements prescribed for the purpose of securing that—

- (a) the [**F60**Inland Revenue are] kept informed about any matters affecting the security of the minimum pensions guaranteed under the scheme, and



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- (b) the resources of the scheme are brought to and are maintained at a level satisfactory to the <sup>F61</sup>[Inland Revenue]]

<sup>F62</sup>(3) .....

**Textual Amendments**

- F58** S. 25(1) repealed (6.4.1997) by Pensions Act 1995 (c. 26), s. 180(1), Sch. 5 para. 33(a), **Sch. 7 Pt. III**; S.I. 1997/664, art. 2(3), Sch. Pt. 2
- F59** S. 25(2) substituted (6.4.1996 for specified purposes, 6.4.1997 in so far as not already in force) by Pensions Act 1995 (c. 26), s. 180(1), **Sch. 5 para. 33(b)**; S.I. 1996/778, art. 2(5)(a), Sch. Pt. 5; S.I. 1997/664, art. 2(3), Sch. Pt. 2
- F60** Words in s. 25(2)(a) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), s. 28(2)(a), **Sch. 1 para. 40(a)**; S.I. 1999/527, art. 2(b), Sch. 2 (with arts. 3-6)
- F61** Words in s. 25(2)(b) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), s. 28(2)(a), **Sch. 1 para. 40(b)**; S.I. 1999/527, art. 2(b), Sch. 2 (with arts. 3-6)
- F62** S. 25(3) repealed (6.4.1997) by Pensions Act 1995 (c. 26), s. 180(1), Sch. 5 para. 33(a), **Sch. 7 Pt. III**; S.I. 1997/664, art. 2(3), Sch. Pt. 2

**Commencement Information**

- I1** Ss. 1-187 in force at 7.2.1994 by S.I. 1994/86, **art. 2**

*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.

**Commencement Information**

- I1** Ss. 1-187 in force at 7.2.1994 by S.I. 1994/86, **art. 2**

**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.

*Status: Point in time view as at 24/02/2003.*

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### Commencement Information

**II** Ss. 1-187 in force at 7.2.1994 by S.I. 1994/86, art. 2

## 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

<sup>F63</sup>(aa) .....

(b) in any other case, in such of the ways [<sup>F64</sup>provided for] 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.

(1A) [<sup>F65</sup>Where the scheme is a personal pension scheme which provides for the member to elect to receive payments in accordance with this subsection, and the member so elects, effect shall be given to his protected rights during the interim period by the making of payments under an interim arrangement which—

(a) complies with section 28A, and

(b) satisfies such conditions as may be prescribed;

and in such a case subsections (2) to (4) accordingly apply as regards giving effect to his protected rights as from the end of that period.]

(2) Effect may be given to protected rights—

(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 [<sup>F66</sup>, to a personal pension scheme or to an overseas arrangement], and

(ii) in the case of a personal pension scheme, to another personal pension scheme [<sup>F67</sup>, to an occupational pension scheme or to an overseas arrangement],

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 [<sup>F68</sup>or, where section 28A(2) applies, the member’s widow or widower] so elects,

then, except to the extent that effect is given to protected rights in accordance with subsection [<sup>F69</sup>(1A)][<sup>F70</sup>, (4) or (4A)], effect shall be given to them by the purchase by the scheme of an annuity which—

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- (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 <sup>F71</sup>... [<sup>F71</sup>65 or such later date as has been agreed by him, or
    - <sup>F71</sup>.....
    - <sup>F71</sup>.....
    - (ii) in the case of a personal pension scheme, where the member has elected to receive payments under an interim arrangement, the date by reference to which the member elects to terminate that arrangement, and otherwise such date as has been agreed by him and is not earlier than his 60th birthday nor later than his 75th birthday.]
  - (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
  - [<sup>F72</sup>(d) the amount of the lump sum is equal to the value on that date of the protected rights to which effect is being given.]

[<sup>F73</sup>(4A) Subject to subsection (4B), in the case of an occupational pension scheme, effect may be given to protected rights by the provision of a lump sum if—

- (a) the trustees or managers of the scheme are satisfied that the member is terminally ill and likely to die within the period of twelve months beginning with the date on which the lump sum becomes payable; and
- (b) the amount of the lump sum is equal to the value on that date of the protected rights to which effect is being given.

(4B) The value of the protected rights to which effect may be given under subsection (4A) in a case in which the member is a married person on the date on which the lump sum becomes payable shall not exceed one half of the value on that date of all the member’s protected rights.]

(5) If the member has died without effect being given to protected rights under subsection [<sup>F74</sup>(1A)] (2), (3) [<sup>F75</sup>, (4) or (4A)], 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.

<sup>F76</sup>(7) .....

[<sup>F77</sup>(8) In this section and sections 28A, 28B and 29—

“the interim period” means the period beginning with the starting date in relation to the member in question and ending with the termination date;

“the starting date” means the date, which must not be earlier than the member’s 60th birthday, by reference to which the member elects to begin to receive payments under the interim arrangement;

*Status: Point in time view as at 24/02/2003.*

*Changes to legislation: Pension Schemes Act 1993, Chapter I is up to date with all changes known to be in force on or before 06 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

“the termination date” means the date by reference to which the member (or, where section 28A(2) applies, the member’s widow or widower) elects to terminate the interim arrangement, and that date must be not later than—

- (i) the member’s 75th birthday, or
- (ii) where section 28A(2) applies, the earlier of the member’s widow or widower’s 75th birthday and the 75th anniversary of the member’s birth.]

[<sup>F78</sup>(9) This section is subject to section 32A]

### Textual Amendments

- F63** S. 28(1)(aa) repealed (11.11.1999 for specified purposes, 1.1.2002 in so far as not already in force) by [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), s. 89(5)(a), [Sch. 2 para. 5\(2\)\(a\)](#), **Sch. 13 Pt. I**; S.I. 2001/4049, art. 2(1)(a)
- F64** Words in s. 28(1)(b) substituted (11.11.1999 for specified purposes, 1.1.2002 in so far as not already in force) by [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), s. 89(5)(a), **Sch. 2 para. 5(2)(b)**; S.I. 2001/4049, art. 2(1)(a)
- F65** S. 28(1A) substituted (11.11.1999 for specified purposes, 1.1.2002 in so far as not already in force) by [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), s. 89(5)(a), **Sch. 2 para. 5(3)**; S.I. 2001/4049, art. 2(1)(a)
- F66** Words in s. 28(2)(b)(i) substituted (1.1.2001) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), s. 86(1)(b)(2), **Sch. 5 para. 2(2)(a)** (with s. 83(6)); S.I. 2000/3166, art. 2(3)(b)(ii)
- F67** Words in s. 28(2)(b)(ii) substituted (1.1.2001) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), s. 86(1)(b)(2), **Sch. 5 para. 2(2)(b)** (with s. 83(6)); S.I. 2000/3166, art. 2(3)(b)(ii)
- F68** Words in s. 28(3)(b) inserted (13.3.1996 for specified purposes, 1.4.1996 in so far as not already in force) by [Pensions Act 1995 \(c. 26\)](#), **ss. 142(4)(a)**, 180(1); S.I. 1996/778, art. 2(2), Sch. Pt. 2
- F69** Words in s. 28(3) substituted (11.11.1999 for specified purposes, 1.1.2002 in so far as not already in force) by [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), s. 89(5)(a), **Sch. 2 para. 5(4)**; S.I. 2001/4049, art. 2(1)(a)
- F70** Words in s. 28(3) substituted (1.1.2001) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), s. 86(1)(b)(2), **Sch. 5 para. 3(4)** (with s. 83(6)); S.I. 2000/3166, art. 2(3)(b)(iii)
- F71** Words in s. 28(4)(a) substituted (13.3.1996 for specified purposes, 1.4.1996 in so far as not already in force) by [Pensions Act 1995 \(c. 26\)](#), **ss. 142(5)**, 180(1); S.I. 1996/778, art. 2(2), Sch. Pt. 2
- F72** S. 28(4)(d) substituted (1.1.2001) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), s. 86(1)(b)(2), **Sch. 5 para. 3(2)** (with s. 83(6)); S.I. 2000/3166, art. 2(3)(b)(iii)
- F73** S. 28(4A)(4B) inserted (1.1.2001) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), s. 86(1)(b)(2), **Sch. 5 para. 3(3)** (with s. 83(6)); S.I. 2000/3166, art. 2(3)(b)(iii)
- F74** Word in s. 28(5) inserted (13.3.1996 for specified purposes, 1.4.1996 in so far as not already in force) by [Pensions Act 1995 \(c. 26\)](#), **ss. 142(6)**, 180(1); S.I. 1996/778, art. 2(2), Sch. Pt. 2
- F75** Words in s. 28(5) substituted (1.1.2001) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), s. 86(1)(b)(2), **Sch. 5 para. 3(4)** (with s. 83(6)); S.I. 2000/3166, art. 2(3)(b)(iii)
- F76** S. 28(7) omitted (6.4.1997) by virtue of [Pensions Act 1995 \(c. 26\)](#), s. 180(1), [Sch. 5 para. 34\(b\)](#), **Sch. 7 Pt. III**; S.I. 1997/664, art. 2(3), Sch. Pt. 2
- F77** S. 28(8) added (13.3.1996 for specified purposes, 1.4.1996 in so far as not already in force) by [Pensions Act 1995 \(c. 26\)](#), **ss. 142(7)**, 180(1); S.I. 1996/778, art. 2(2), Sch. Pt. 2
- F78** S. 28(9) inserted (13.3.1996 for specified purposes, 1.4.1996 in so far as not already in force) by [Pensions Act 1995 \(c. 26\)](#), **ss. 146(2)**, 180(1); S.I. 1996/778, art. 2(2), Sch. Pt. 2

### Modifications etc. (not altering text)

- C39** S. 28 extended (1.10.2000) by [The Stakeholder Pension Schemes Regulations 2000 \(S.I. 2000/1403\)](#), regs. 1(1), **3(7)**

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#### Commencement Information

**II** Ss. 1-187 in force at 7.2.1994 by S.I. 1994/86, art. 2

### [<sup>F79</sup>28A Requirements for interim arrangements

- (1) An interim arrangement must provide for payments to be made to the member, and, where subsection (2) applies, to the member's widow or widower, throughout the interim period, at intervals not exceeding twelve months.
- (2) This subsection applies where the member dies during the interim period and is survived by a widow or widower who at the date of the member's death has not yet attained the age of 75 years.
- (3) The aggregate amount of payments made to a person under an interim arrangement in each successive period of twelve months must not be—
  - (a) greater than the annual amount of the annuity which would have been purchasable by him on the relevant reference date, or
  - (b) less than the prescribed percentage of that amount.
- (4) The percentage prescribed under subsection (3)(b) may be zero.
- (5) For the purposes of this section—
  - (a) the annual amount of the annuity which would have been purchasable by a person on any date shall be calculated in the prescribed manner by reference to—
    - (i) the value on that date, determined by or on behalf of the trustees or managers of the scheme, of the person's protected rights, and
    - (ii) the current published tables of rates of annuities prepared in the prescribed manner by the Government Actuary for the purposes of this section, and
  - (b) the relevant reference date is—
    - (i) in relation to payments made to the member during the three years beginning with the member's starting date, that date, and in relation to such payments made during each succeeding period of three years, the first day of the period of three years in question, or
    - (ii) where subsection (2) applies, in relation to payments made to the member's widow or widower during the three years beginning with the date of the member's death, that date, and in relation to such payments made during each succeeding period of three years, the first day of the period of three years in question.

#### Textual Amendments

**F79** Ss. 28A, 28B inserted (13.3.1996 for specified purposes, 1.4.1996 in so far as not already in force) by Pensions Act 1995 (c. 26), ss. 143, 180(1); S.I. 1996/778, art. 2(2), Sch. Pt. 2

### 28B Information about interim arrangements

- (1) The trustees or managers of a personal pension scheme must, if required to do so by the [<sup>F80</sup>Inland Revenue], produce any document relevant to—

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- (a) the level of payments made under any interim arrangement, or
- (b) the value of protected rights to which such an arrangement gives effect, or otherwise connected with the making of payments under such an arrangement.

(2) In this section, “document” includes information recorded in any form, and the reference to the production of a document, in relation to information recorded otherwise than in legible form, is a reference to producing a copy of the information in legible form.]

**Textual Amendments**

- F79** Ss. 28A, 28B inserted (13.3.1996 for specified purposes, 1.4.1996 in so far as not already in force) by [Pensions Act 1995 \(c. 26\)](#), ss. **143**, 180(1); S.I. 1996/778, art. 2(2), Sch. Pt. 2
- F80** Words in s. 28B(1) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\)](#), s. 28(2)(a), **Sch. 1 para. 41**; S.I. 1999/527, art. 2(b), Sch. 2 (with arts. 3-6)

**29 The pension and annuity requirements.**

(1) For the purposes of section 28 a pension complies with the pension requirements if—

- (a) <sup>F81</sup> ...
  - F81 .....
  - F81 .....
  - F81 .....

<sup>F81</sup>in the case of an occupational pension scheme it commences on a date—

- (i) not earlier than the member’s 60th birthday, and
- (ii) not later than his 65th birthday,

or on such later date as has been agreed by him, and continues until the date of his death, or

- (aa) in the case of a personal pension scheme—
  - (i) where the member has elected under section 28(1A) to receive payments under an interim arrangement, it commences on the termination date, and continues until the date of the member’s death or, where section 28A(2) applies, until the death of the member’s widow or widower, or
  - (ii) otherwise, it commences on such a date as has been agreed by the member and is not earlier than his 60th birthday nor later than his 75th birthday, and continues until the date of his death;]
- (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 [<sup>F82</sup>a manner satisfactory to the Board][<sup>F82</sup>the prescribed manner] is provided in lieu of it.

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- (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 [<sup>F83</sup>insurer] 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 [<sup>F84</sup>or, where section 28A(2) applies, the member’s widow or widower].
- (4) A member [<sup>F85</sup>(or a member’s widow or widower)] is only to be taken to have chosen an [<sup>F86</sup>insurer] 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 [<sup>F86</sup>insurer] instead.

#### Textual Amendments

- F81** S. 29(1)(a)(aa) substituted for s. 29(1)(a) (13.3.1996 for specified purposes, 1.4.1996 in so far as not already in force) by [Pensions Act 1995 \(c. 26\), ss. 144\(2\), 180\(1\)](#); [S.I. 1996/778](#), art. 2(2), Sch. Pt. 2
- F82** Words in s. 29(1)(b)(ii) substituted (6.4.1996 for specified purposes, 6.4.1997 in so far as not already in force) by [Pensions Act 1995 \(c. 26\), s. 180\(1\), Sch. 5 para. 35](#); [S.I. 1996/778](#), art. 2(5)(a), Sch. Pt. 5; [S.I. 1997/664](#), art. 2(3), Sch. Pt. 2
- F83** Word in s. 29(3)(b) substituted (1.12.2001) by [The Financial Services and Markets Act 2000 \(Consequential Amendments and Repeals\) Order 2001 \(S.I. 2001/3649\)](#), arts. 1, [117\(2\)](#)
- F84** Words in s. 29(3)(b)(iii) inserted (13.3.1996 for specified purposes, 1.4.1996 in so far as not already in force) by [Pensions Act 1995 \(c. 26\), ss. 144\(3\), 180\(1\)](#); [S.I. 1996/778](#), art. 2(2), Sch. Pt. 2
- F85** Words in s. 29(4) inserted (13.3.1996 for specified purposes, 1.4.1996 in so far as not already in force) by [Pensions Act 1995 \(c. 26\), ss. 144\(4\), 180\(1\)](#); [S.I. 1996/778](#), art. 2(2), Sch. Pt. 2
- F86** Word in s. 29(4) substituted (1.12.2001) by [The Financial Services and Markets Act 2000 \(Consequential Amendments and Repeals\) Order 2001 \(S.I. 2001/3649\)](#), arts. 1, [117\(3\)](#)

#### Commencement Information

- I1** Ss. 1-187 in force at 7.2.1994 by [S.I. 1994/86, art. 2](#)

### 30 Securing of liability for protected rights.

- (1) The [<sup>F87</sup>Inland Revenue] 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.

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#### Textual Amendments

**F87** Words in s. 30(1) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\)](#), s. 28(2)(a), [Sch. 1 para. 42](#); [S.I. 1999/527](#), art. 2(b), Sch. 2 (with arts. 3-6)

#### Commencement Information

**II** Ss. 1-187 in force at 7.2.1994 by [S.I. 1994/86](#), art. 2

### 31 Investment and resources of schemes.

- (1) <sup>F88</sup>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 <sup>F89</sup>and payments under section 42A(3)] and any payments made by the <sup>F90</sup>Inland Revenue] under section 7 of the <sup>M6</sup>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.



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[<sup>F91</sup>(5) Any minimum contributions required by reason of this section to be applied so as to provide money purchase benefits for or in respect of a member of a scheme must be so applied in the prescribed manner and within the prescribed period]

#### Textual Amendments

- F88** S. 31(1) repealed (1.6.1996 for specified purposes, 6.4.1997 in so far as not already in force) by Pensions Act 1995 (c. 26), s. 180(1), Sch. 5 para. 36(a), **Sch. 7 Pt. III**; S.I. 1996/1412, art. 2(2), **Sch. Pt. II**; S.I. 1997/664, art. 2(3), **Sch. Pt. II**
- F89** Words in s. 31(3)(a) inserted (1.6.1996 for specified purposes, 6.4.1997 in so far as not already in force) by Pensions Act 1995 (c. 26), s. 180(1), **Sch. 5 para. 36(b)**; S.I. 1996/1412, art. 2(2), Sch. Pt. 2; S.I. 1997/664, art. 2(3), Sch. Pt. 2
- F90** Words in s. 31(3)(a) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), s. 28(2)(a), **Sch. 1 para. 43**; S.I. 1999/527, art. 2(b), Sch. 2 (with arts. 3-6)
- F91** S. 31(5) added (1.6.1996 for specified purposes, 6.4.1997 in so far as not already in force) by Pensions Act 1995 (c. 26), s. 180(1), **Sch. 5 para. 36(c)**; S.I. 1996/1412, art. 2(2); S.I. 1997/664, art. 2(3), Sch. Pt. 2

#### Commencement Information

- II** Ss. 1-187 in force at 7.2.1994 by S.I. 1994/86, **art. 2**

#### Marginal Citations

- M6** 1986 c. 50.

## 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.

#### Commencement Information

- II** Ss. 1-187 in force at 7.2.1994 by S.I. 1994/86, **art. 2**

## [<sup>F92</sup>32A Discharge of protected rights on winding up: insurance policies

- (1) Where an occupational pension scheme is being wound up and such conditions as may be prescribed are satisfied, effect may be given to the protected rights of a member of the scheme (in spite of section 28) by—
- taking out an appropriate policy of insurance, or a number of such policies, under which the member is the beneficiary, or
  - assuring the benefits of a policy of insurance, or a number of such policies, to the member, where the policy assured is an appropriate policy.
- (2) A policy of insurance is appropriate for the purposes of this section if—
- the [<sup>F93</sup>insurer] with which it is or was taken out or entered into—
    - is, or was at the time when the policy was taken out or (as the case may be) the benefit of it was assured, carrying on <sup>F94</sup>... long-term insurance business <sup>F94</sup>... in the United Kingdom or any other Member State, and

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- (ii) satisfies, or at that 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]

#### Textual Amendments

- F92** S. 32A inserted (13.3.1996 for specified purposes, 1.4.1996 in so far as not already in force) by [Pensions Act 1995 \(c. 26\)](#), **ss. 146(1), 180(1)**; S.I. 1996/778, art. 2(2), Sch. Pt. 2
- F93** Word in s. 32A(2)(a) substituted (1.12.2001) by [The Financial Services and Markets Act 2000 \(Consequential Amendments and Repeals\) Order 2001 \(S.I. 2001/3649\)](#), arts. 1, **118(a)**
- F94** Words in s. 32A(2)(a)(i) repealed (1.12.2001) by [The Financial Services and Markets Act 2000 \(Consequential Amendments and Repeals\) Order 2001 \(S.I. 2001/3649\)](#), arts. 1, **118(b)**

### 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.

#### Commencement Information

- II** Ss. 1-187 in force at 7.2.1994 by [S.I. 1994/86](#), **art. 2**

### [<sup>F95</sup>33A Appropriate schemes: “Blowing the whistle”

- (1) If any person acting as an auditor or actuary of an appropriate scheme has reasonable cause to believe that—
- (a) any requirement which, in the case of the scheme, is required by section 9(5) (a) to be satisfied is not satisfied, and
  - (b) the failure to satisfy the requirement is likely to be of material significance in the exercise by the [<sup>F96</sup>Inland Revenue] of any of [<sup>F97</sup>their] functions relating to appropriate schemes,
- that person must immediately give a written report of the matter to the [<sup>F96</sup>Inland Revenue].
- (2) No duty to which a person acting as auditor or actuary of an appropriate scheme is subject shall be regarded as contravened merely because of any information or opinion contained in a written report under this section.]

#### Textual Amendments

- F95** S. 33A inserted (6.4.1997) by [Pensions Act 1995 \(c. 26\)](#), **ss. 147, 180(1)**; S.I. 1997/664, art. 2(3), Sch. Pt. 2
- F96** Words in s. 33A(1) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\)](#), s. 28(2)(a), **Sch. 1 para. 44(a)**; S.I. 1999/527, art. 2(b), Sch. 2 (with arts. 3-6)

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**F97** Word in s. 33A(1) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\), s. 28\(2\)\(a\), Sch. 1 para. 44\(b\)](#); S.I. 1999/527, art. 2(b), Sch. 2 (with arts. 3-6)

### *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) <sup>F98</sup> ...
- <sup>F98</sup> in the case of a contracting-out certificate—
- (i) on any change of circumstances affecting the treatment of an employment as contracted-out employment, or
- (ii) where the scheme is a salary related contracted-out scheme and the certificate was issued on or after the principal appointed day, if any employer of persons in the description or category of employment to which the scheme in question relates, or the actuary of the scheme, fails to provide the <sup>F99</sup>Inland Revenue], at prescribed intervals, with such documents as may be prescribed for the purpose of verifying that the conditions of section 9(2B) are satisfied]
- (b) in the case of an appropriate scheme certificate, on any relevant change of circumstances.
- (2) <sup>F100</sup>Regulations may enable the <sup>F99</sup>Inland Revenue] to cancel or vary a contracting-out certificate where—
- (a) <sup>F101</sup>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 <sup>F99</sup>Inland Revenue] if <sup>F102</sup>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 <sup>F102</sup>they] would otherwise treat as proper to be contracted-out in relation to all earners in that employment.

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- (5) An appropriate scheme certificate may be withheld or cancelled by the [<sup>F99</sup>Inland Revenue] if [<sup>F103</sup>they consider] that there are circumstances which make it inexpedient that the scheme should be or continue to be an appropriate scheme, notwithstanding that [<sup>F103</sup>they] would otherwise issue such a certificate or not cancel such a certificate.
- <sup>F104</sup>(6) .....
- (7) <sup>F105</sup> ...  
<sup>F105</sup> .....  
<sup>F105</sup> .....
- [<sup>F105</sup>Without prejudice to the previous provisions of this section, failure of a scheme to comply with any requirements prescribed by virtue of section 25(2) shall be a ground on which the [<sup>F99</sup>Secretary of State][<sup>F99</sup>Inland Revenue] may, in respect of any employment to which the scheme relates, cancel a contracting-out certificate]
- (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.

#### Textual Amendments

- F98** S. 34(1)(a) substituted (6.4.1996 for specified purposes, 6.4.1997 in so far as not already in force) by [Pensions Act 1995 \(c. 26\)](#), s. 180(1), **Sch. 5 para. 37(a)**; S.I. 1996/778, art. 2(5)(a), Sch. Pt. 5; S.I. 1997/664, art. 2(3), Sch. Pt. 2
- F99** Words in s. 34 substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\)](#), s. 28(2)(a), **Sch. 1 para. 45(2)**; S.I. 1999/527, art. 2(b), Sch. 2 (with arts. 3-6)
- F100** Words in s. 34(2)(a) substituted (6.4.1996 for specified purposes, 6.4.1997 in so far as not already in force) by [Pensions Act 1995 \(c. 26\)](#), s. 180(1), **Sch. 5 para. 21**; S.I. 1996/778, art. 2(5)(a), Sch. Pt. 5; S.I. 1997/664, art. 2(3), Sch. Pt. 2
- F101** Words in s. 34(2)(a) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\)](#), s. 28(2)(a), **Sch. 1 para. 45(3)**; S.I. 1999/527, art. 2(b), Sch. 2 (with arts. 3-6)
- F102** Words in s. 34(4) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\)](#), s. 28(2)(a), **Sch. 1 para. 45(4)**; S.I. 1999/527, art. 2(b), Sch. 2 (with arts. 3-6)
- F103** Words in s. 34(5) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\)](#), s. 28(2)(a), **Sch. 1 para. 45(4)**; S.I. 1999/527, art. 2(b), Sch. 2 (with arts. 3-6)
- F104** S. 34(6) repealed (6.4.1996 for specified purposes, 6.4.1997 in so far as not already in force) by [Pensions Act 1995 \(c. 26\)](#), s. 180(1), Sch. 5 para. 37(b), **Sch. 7 Pt. III**; S.I. 1996/778, art. 2(5)(a), Sch. Pt. 5; S.I. 1997/664, art. 2(3), Sch. Pt. 2
- F105** S. 34(7) substituted (6.4.1996 for specified purposes, 6.4.1997 in so far as not already in force) by [Pensions Act 1995 \(c. 26\)](#), s. 180(1), **Sch. 5 para. 37(c)**; S.I. 1996/778, art. 2(5)(a), Sch. Pt. 5; S.I. 1997/664, art. 2(3), Sch. Pt. 2

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

- C40** S. 34(1)(a) extended (6.4.1997) by [Occupational Pension Schemes \(Contracting-out\) Regulations 1996 \(S.I. 1996/1172\)](#), regs. 1(1), **12(3)**, 13(2), 14
- C41** S. 34(2) extended (6.4.1997) by [Occupational Pension Schemes \(Contracting-out\) Regulations 1996 \(S.I. 1996/1172\)](#), regs. 1(1), **12(3)**, 13(2), 14

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**C42** S. 34(8) extended (6.4.1997) by [Occupational Pension Schemes \(Contracting-out\) Regulations 1996 \(S.I. 1996/1172\)](#), regs. 1(1), **12(3)**, 13(2), 14

**Commencement Information**

**II** Ss. 1-187 in force at 7.2.1994 by [S.I. 1994/86](#), **art. 2**

**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.

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

**C43** Ss. 35 36 modified (temp.) (6.4.1997) by [Occupational Pension Schemes \(Contracting-out\) Regulations 1996 \(S.I. 1996/1172\)](#), regs. 1(1), **75**

**Commencement Information**

**II** Ss. 1-187 in force at 7.2.1994 by [S.I. 1994/86](#), **art. 2**

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### **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 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 <sup>M7</sup>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.

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

**C43** Ss. 35 36 modified (temp.) (6.4.1997) by [Occupational Pension Schemes \(Contracting-out\) Regulations 1996 \(S.I. 1996/1172\)](#), regs. 1(1), **75**

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#### Commencement Information

**II** Ss. 1-187 in force at 7.2.1994 by S.I. 1994/86, **art. 2**

#### Marginal Citations

**M7** 1992 c. 4.

### *Alteration of scheme rules after certification*

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

- [<sup>F106</sup>(1) Except in prescribed circumstances, the rules of a contracted-out scheme cannot be altered unless the alteration is of a prescribed description.
- (2) Regulations made by virtue of subsection (1) may operate so as to validate with retrospective effect any alteration of the rules which would otherwise be void under this section.
- (3) References in this section to a contracted-out scheme include a scheme which has ceased to be contracted-out so long as any person is entitled to receive, or has accrued rights to, any benefits under the scheme attributable to a period when the scheme was contracted-out.
- (4) The reference in subsection (3) to a person entitled to receive benefits under a scheme includes a person so entitled by virtue of being the widower of an earner only in such cases as may be prescribed.]

#### Textual Amendments

**F106** S. 37 substituted (6.4.1996 for specified purposes, 6.4.1997 in so far as not already in force) by Pensions Act 1995 (c. 26), s. 180(1), **Sch. 5 para. 39**; S.I. 1996/778, art. 2(5)(a), **Sch. Pt. V**; S.I. 1997/664, art. 2(3), **Sch. Pt. II**

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

**C44** S. 37(2) modified (20.7.1998) by The Occupational Pension Schemes (Modification of the Pension Schemes Act 1993) Regulations 1998 (S.I. 1998/1466), regs. 1, 2

#### Commencement Information

**II** Ss. 1-187 in force at 7.2.1994 by S.I. 1994/86, **art. 2**

#### Marginal Citations

**M8** 1984 c. 48.

**M9** 1985 c. 53.

**M10** 1986 c. 50.

#### **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

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(b) to cause the scheme to take a different permitted form from that previously taken,

<sup>F107</sup>  
 ...  
<sup>F107</sup> .....

- (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<sup>F108</sup>....
- (4) [<sup>F109</sup>Regulations made by virtue of subsection (2) may] 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 <sup>M11</sup>Personal Pension Schemes (Appropriate Schemes) Regulations 1988 which [<sup>F110</sup>is an authorised unit trust scheme];
  - (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 <sup>M12</sup>Building Societies Act 1986));
  - [<sup>F111</sup>(d) an open-ended investment company within the meaning of the Open-Ended Investment Companies Regulations 2001.]

[<sup>F112</sup>(6A) “Authorised unit trust scheme” has the meaning given in Part 17 of the Financial Services and Markets Act 2000 and includes any scheme which is, as a result of an order made under section 426 of that Act making transitional provisions, treated as falling within that meaning.]

<sup>F113</sup>(7) .....

**Textual Amendments**

- F107** Words in s. 38(1) repealed (6.4.1997) by [Pensions Act 1995 \(c. 26\), s. 180\(1\), Sch. 5 para. 40\(a\), Sch. 7 Pt. III](#); [S.I. 1997/664](#), art. 2(3), Sch. Pt. 2
- F108** Words in s. 38(3) repealed (6.4.1997) by [Pensions Act 1995 \(c. 26\), s. 180\(1\), Sch. 5 para. 40\(b\), Sch. 7 Pt. III](#); [S.I. 1997/664](#), art. 2(3), Sch. Pt. 2
- F109** Words in s. 38(4) substituted (6.4.1997) by [Pensions Act 1995 \(c. 26\), s. 180\(1\), Sch. 5 para. 40\(c\)](#); [S.I. 1997/664](#), art. 2(3), Sch. Pt. 2
- F110** Words in s. 38(6)(b) substituted (1.12.2001) by [The Financial Services and Markets Act 2000 \(Consequential Amendments and Repeals\) Order 2001 \(S.I. 2001/3649\), arts. 1, 119\(2\)](#)
- F111** S. 38(6)(d) substituted (1.12.2001) by [The Open-Ended Investment Companies Regulations 2001 \(S.I. 2001/1228\), reg. 1\(2\)\(c\), Sch. 7 para. 10](#) (with reg. 1(3))
- F112** S. 38(6A) inserted (1.12.2001) by [The Financial Services and Markets Act 2000 \(Consequential Amendments and Repeals\) Order 2001 \(S.I. 2001/3649\), arts. 1, 119\(3\)](#)
- F113** S. 38(7) repealed (6.4.1997) by [Pensions Act 1995 \(c. 26\), s. 180\(1\), Sch. 5 para. 40\(d\), Sch. 7 Pt. III](#); [S.I. 1997/664](#), art. 2(3), Sch. Pt. 2



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**Commencement Information**

**II** Ss. 1-187 in force at 7.2.1994 by [S.I. 1994/86, art. 2](#)

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**Marginal Citations**

**M11** [S.I. 1988/137.](#)

**M12** [1986 c. 53.](#)

*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.

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**Commencement Information**

**II** Ss. 1-187 in force at 7.2.1994 by [S.I. 1994/86, art. 2](#)

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