



# 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

##### *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>[F1]</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>[F2]</sup>Inland Revenue<sup>[F3]</sup>are satisfied] that—
  - (a) the scheme complies with section 12A,

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- (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>F3</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>F4</sup>... 26 to 32 and such other requirements as may be prescribed are satisfied in its case
    - <sup>F5</sup>(aa) the <sup>F6</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>F7</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—
    - (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 <sup>F8</sup>Secretary 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

- F1** 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](#)
- F2** 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 \(with arts. 3-6\)](#)

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- F3** 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)
- F4** 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
- F5** 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
- F6** 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)
- F7** 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)
- F8** 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)

- 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)
- C6** 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
- C7** 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)**
- C8** S. 9(2B) modified (6.4.1997) by Occupational Pension Schemes (Contracting-out) Regulations 1996 (S.I. 1996/1172), regs. 1(1), **27**
- C9** 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)**
- C10** 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**

## 10 Protected rights and money purchase benefits.

- (1) Subject to [F<sup>9</sup>subsections (2) and (3)] [F<sup>9</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—
- (a) his rights under the scheme which derive from the payment of minimum payments [F<sup>10</sup>and payments under section 42A(3)] together with any payments

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- by the <sup>F11</sup>[Inland Revenue] to the scheme under section 7 of the <sup>M1</sup>Social Security Act 1986 in respect of the member;
- (b) any rights of the member to money purchase benefits which derive from protected rights under another occupational pension scheme or under a personal pension scheme which have been the subject of a transfer payment; and
- (c) such other rights as may be prescribed.
- (3) If the rules of a personal pension scheme so provide, a member's protected rights are—
- (a) his rights under the scheme which derive from any payment of minimum contributions to the scheme; and
- (b) any rights of his to money purchase benefits which derive from protected rights under another personal pension scheme or protected rights under an occupational pension scheme which have been the subject of a transfer payment; and
- (c) such other rights as may be prescribed.
- <sup>F12</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—
- (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

- F9** Words in s. 10(1) substituted (11.11.1999 for specified purposes) 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
- F10** 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
- F11** 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)
- F12** S. 10(4)(5) added (11.11.1999 for specified purposes) 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

#### 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.

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## 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>F13</sup>Inland Revenue consider] that an employer is contravening subsection (3) in relation to any scheme, [<sup>F14</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;
    - (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>F15</sup>Inland Revenue] to refuse to give effect to an election made by an employer unless <sup>F16</sup>... [<sup>F15</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

- F13** 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)
- F14** 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)

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**F15** 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)

**F16** 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)**

**C11** 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.

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

**C12** 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**

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

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