

## 1978 No. 891

## PENSIONS

**The Parliamentary and other Pensions (Contracted-Out Provisions) Order 1978**

*Made* - - - 20th June 1978

*Coming into Operation* 28th June 1978

The Lord President of the Council, in exercise of the powers conferred on him by section 65 of the Social Security Act 1973(a) as the appropriate authority designated for the purpose by the Minister for the Civil Service in accordance with the provisions of the said section, hereby makes the following Order:—

1. This Order may be cited as the Parliamentary and other Pensions (Contracted-Out Provisions) Order 1978 and shall come into operation on 28th June 1978 but shall have effect from 6th April 1978.

2.—(1) In this Order, unless the context otherwise requires—

“the Act of 1972” means the Parliamentary and other Pensions Act 1972(b) as amended by the Parliamentary and other Pensions and Salaries Act 1976(c);

“the Act of 1973” means the Social Security Act 1973;

“the Act of 1975” means the Social Security Pensions Act 1975(d);

“contracted-out scheme” means an occupational pensions fund or scheme which is for the time being specified in a contracting-out certificate issued by the Occupational Pensions Board under Regulations made in accordance with the Act of 1975;

“contributions equivalent premium” has the same meaning as in section 42(1) of the Act of 1975;

“final salary” for the purposes of section 34(2)(b) and 36(2)(b) of the Act of 1975 shall mean—

(1) in the case of the Prime Minister, the Speaker, and the Lord Chancellor, their final salary for the time being;

(2) in any other case, the relevant terminal salary as defined in sections 7(5) and 10(6) of the Act of 1972 as appropriate;

“guaranteed minimum” has the same meaning as in section 35 and section 36(3) of the Act of 1975;

“guaranteed minimum pension” has the same meaning as in section 26(2) of the Act of 1975;

“qualifying office” has the same meaning as in section 2(1) of the Act of 1972;

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(a) 1973 c. 38.

(b) 1972 c. 48.

(c) 1976 c. 48.

(d) 1975 c. 60.

“qualifying service” means service, including reckonable service, which may be taken into account in determining eligibility for benefits under the Act of 1972;

“requisite benefit requirements” means the requisite benefits as defined in section 26(2) of the Act of 1975 with the annual rate of the earner’s pension being determined in accordance with sections 34(2)(b) and 36(2)(b) of the Act of 1975;

“tax year” means a year beginning on 6th April in a year and ending on the following 5th April;

“Trustees” means the Trustees of the Parliamentary Contributory Pensions Fund.

(2) The Interpretation Act 1889(a) shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament.

3. The following provisions shall apply notwithstanding any inconsistency between those provisions and any of the provisions of the Act of 1972:

(1) In any case where the rate of pension—

(i) which a person may be paid under either section 26, 27 or 28 of the Act of 1972 or under the Administration of Justice (Pensions) Act 1950(b) or under section 10 of the Administration of Justice Act 1973(c) is less than the minimum rate calculated in accordance with the requisite benefit requirements, that person shall be entitled to a pension at not less than the minimum rate calculated in accordance with the requisite benefit requirements;

(ii) to which a woman who has either—

(a) ceased to be a Member of the House of Commons is entitled under section 7(4) of the Act of 1972 or

(b) ceased to hold a qualifying office is entitled under section 10(4) of the Act of 1972

is less than the minimum rate calculated in accordance with the requisite benefit requirements, the annual rate of pension to which she is entitled shall be increased to the minimum annual rate calculated in accordance with the requisite benefit requirements.

(2) If any person to whom either Part I or Part II of the Act of 1972 applies is contracted-out under Part III of the Act of 1975 by reference to the Act of 1972 and has a guaranteed minimum under the Act of 1972 as modified by this Order:

(i) that person shall be entitled to receive, subject to the provisions of section 12(2) of the Act of 1972, from the age of 65 in the case of a man and from the age of 60 in the case of a woman a pension payable for the remainder of his or her life, at a rate equivalent to a weekly rate of not less than the guaranteed minimum unless his or her rights thereto are extinguished by payment of a contributions equivalent premium under section 42 of the Act of 1975;

(ii) a widow of that person shall upon his death, subject to the provisions of section 13(3) and (4) of the Act of 1972 as modified by this Order, be entitled to a pension for the remainder of her life at a rate equivalent to a weekly rate of not less than half the guaranteed minimum of that person;

(a) 1889 c. 63.

(b) 1950 c.11 (14 & 15 Geo 6)

(c) 1973 c. 15.

- (iii) if the payment of the guaranteed minimum pension of that person is postponed in circumstances to which section 33(3) of the Act of 1975 applies the guaranteed minimum pension of that person shall be increased to the extent, if any, specified in section 35(6) of the Act of 1975 as amended from time to time.
- (3) The reference in section 1(6) of the Act of 1972 to the sums payable under that Act by the Trustees shall include a reference to payments by the Trustees of contributions equivalent premiums in respect of contributors in the Parliamentary Contributory Pension Fund.
- (4) (i) Section 7(1)(c) of the Act of 1972 shall not be a condition which is required to be fulfilled for entitlement to a pension under that section by a Member of the House of Commons who in the case of a man ceases to be a Member of the House of Commons during, or on a date after the end of, the tax year in which he attains the age of 65 years or in the case of a woman, ceases to be a Member of the House of Commons during, or on a date after the end of, the tax year in which she attains the age of 60 years.
- (ii) Section 7(1)(c) of the Act of 1972 shall not be a condition which is required to be fulfilled for entitlement to a pension under section 9(1) of that Act by a person who ceases to be the holder of a qualifying office in the case of a man during, or on a date after the end of, the financial year in which he attains the age of 65 years or in the case of a woman, during or on a date after the end of the financial year in which she attains the age of 60.
- (iii) A person who fulfils the conditions specified in section 18(3) of the Act of 1972 shall not be entitled to request the Trustees to refund the contributions paid by him if that person is a person to whom either subparagraph (i) or (ii) of this paragraph applies but that person shall be entitled to receive a pension in accordance with either section 7 or section 9 of the Act of 1972 as modified by this Order, whichever shall be applicable.
- (5) In determining the amount of the lump sum under section 11(2) of the Act of 1972 the annual amount of pension shall not be reduced below the rate of the guaranteed minimum pension.
- (6) During any period specified in section 36(6) of the Act of 1975 the widow of a man who has died on or after 6th April 1978 shall, notwithstanding the provisions of section 13(3) and (4) of the Act of 1972, be entitled to the appropriate pension but if after she has attained the age of 60 years she remarries or lives with a man as his wife the pension may be restricted by the Trustees to the guaranteed minimum pension to which she is entitled.
- (7) If a man has died on or after 6th April 1978 in circumstances in which apart from the provisions of section 13(5) of the Act of 1972 a widow's pension would be payable to a woman married by him, a widow's pension shall notwithstanding the provisions of that subsection be payable to her but if—
- (i) the man was married to her after the termination of his service in contracted-out employment in respect of which the widow's pension is payable; and
  - (ii) the date of the marriage was within the six months ending with his death; and

(iii) the rate of the widow's pension payable to her is in excess of the widow's guaranteed minimum pension;

the Trustees may direct that any part of the widow's pension which is in excess of the widow's guaranteed minimum pension shall not be payable.

(8) The Trustees shall deduct from the amount of any contributions which may be paid to a person in accordance with the provisions of section 18 of the Act of 1972 the amount certified by the Secretary of State in accordance with section 47(2) of the Act of 1975 in respect of that person.

(9) A person to whom section 21(1) of the Act of 1972 applies shall not be deemed to have become entitled to a pension under Part I of that Act by reason only of an entitlement to a guaranteed minimum pension arising under paragraph 3(2) of this Order.

(10) Section 21 of the Act of 1972 shall apply to a fund or scheme described in subsection (2) of that section provided that the fund or scheme described in paragraph (a) or (b) of that section is a contracted-out scheme or, in the case of a fund or scheme which is not a contracted-out scheme, provided that a contributions equivalent premium has been paid by the Trustees in respect of the person making the request under subsection (1) of that section.

(11) For the purpose of calculating a person's aggregate period of qualifying service account shall be taken of any period in respect of which contributions paid by that person have been refunded to him under section 18 of the Act of 1972 and not subsequently repaid by him to the Trustees if that person, after an interval of not more than one month after having ceased to be a person liable to pay contributions under section 3 or section 4 of the Act of 1972, again becomes liable to pay such contributions.

(12) In any case where the Trustees receive, by way of transfer value in respect of a person to whom section 22 of the Act of 1972 applies, any sums out of or out of moneys held for the purposes of any fund or scheme to which section 21 of the Act of 1972 (without the modifications contained in paragraph 3(10) of this Order) applies, the actual period of the reckonable service of that person under that fund or scheme shall be taken into account for the purposes of calculating the aggregate period of qualifying service.

Dated 20th June 1978.

*Michael Foot,*  
Lord President of the Council.

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#### EXPLANATORY NOTE

*(This Note is not part of the Order.)*

This Order modifies the Parliamentary and other Pensions Act 1972 to the extent necessary to enable the provisions of the Act to become a contracted-out pension scheme for the purposes of the Social Security Pensions Act 1975. The provisions of the Order follow the proposals set out in the Notice of Intention to Contract-out dated 30th November 1977 which was circulated to the Prime Minister, the Speaker of the House of Commons, the Lord Chancellor and all contributors to the Parliamentary Contributory Pensions Fund.



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