
STATUTORY INSTRUMENTS

1984 No. 380**PENSIONS****The Occupational Pension Schemes (Contracting-out)
Regulations 1984**

Made - - - - - 13th March 1984
Laid before Parliament 27th March 1984
Coming into Operation 17th April 1984

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The Secretary of State for Social Services, in exercise of the powers conferred upon him by section 168(1) of, and Schedule 20 to, the Social Security Act 1975(a), sections 30(4), 31(1), (2) and (4) to (7), 32(2), 38(1), 39(1) and (4)(b), 40, 41(1A), 43(4) and (6), 44(2), (3) and (6), 45(1) to (3), 47(7) and (11), 51, 51A(12), 52, 62(4) and 66(3) and (4) of and paragraphs 1 to 3, 5 to 7 and 9 of Schedule 2 to, the Social Security Pensions Act 1975(b) and sections 21(1) and (2), 22(9) and (13) and 24(1) of the Social Security (Miscellaneous Provisions) Act 1977(c), and of all other powers enabling him in that behalf and for the purpose only of consolidating the regulations hereby revoked, hereby makes the following regulations:—

PART I

PRELIMINARY

Citation, commencement and interpretation

1.— (1) These regulations may be cited as the Occupational Pension Schemes (Contracting-out) Regulations 1984, and shall come into operation on 17th April 1984.

(2) In these regulations, unless the context otherwise requires—

“the Act” means the Social Security Pensions Act 1975;

“the 1977 Act” means the Social Security (Miscellaneous Provisions) Act 1977;

“administrator”, in relation to an occupational pension scheme, means the person or persons resident in the United Kingdom having the management of the scheme;

“the Board” means the Occupational Pensions Board;

(a) 1975 c. 14. See definitions of “prescribe” and “regulations” in Schedule 20. Section 168(1) applies, by virtue of section 66(2) of the Social Security Pensions Act 1975 (c.60), to the exercise of certain powers conferred by that Act.

(b) 1975 c.60; subsection (1A) was inserted into section 41 by the Social Security Act 1980 (c.30), section 3(6); section 44(6) was substituted by the Social Security Act 1980, section 3(8); section 45(1) was amended by the Social Security (Miscellaneous Provisions) Act 1977 (c.5), section 22(7); section 45(3) was amended by the Social Security Act 1980, section 3(9); section 51A was inserted by the Social Security and Housing Benefits Act 1982 (c.24), section 40; paragraph 6 of Schedule 2 was amended by the Social Security Act 1980, section 3(12).

(c) 1977 c.5; section 21(1) was amended by the Social Security Act 1980, section 3(4), and the Social Security Act 1981 (c.33), section 8 and Schedule 2, paragraph 3; section 22(13) was amended by the Social Security Act 1980, section 20 and Schedule 4, paragraph 12.

“employer” includes a person who, by virtue of paragraphs (4) and (5) and regulations 14 to 16, is treated as an employer for the purposes of these regulations;

“relevant year”, in relation to an earner, means any tax year in his working life (not being earlier than the first tax year for which lower and upper earnings limits are specified under section 1);

“responsible paying authority” means—

- (a) in relation to a public service scheme, the authority responsible for paying the benefits of that scheme;
- (b) in relation to a scheme where the benefits, or so much of the benefits as represents guaranteed minimum pensions, are secured by means of a policy of insurance or annuity contract in accordance with regulation 30, and at least one of the following conditions is fulfilled, namely—
 - (i) the policy of insurance or annuity contract satisfies the conditions specified in regulation 39,
 - (ii) the policy of insurance is taken out or the annuity contract entered into in accordance with arrangements approved by the Board under section 44, and
 - (iii) the scheme is not set up or established under an irrevocable trust,
 - the insurance company or friendly society with which the policy of insurance is taken out or the contract entered into;
- (c) in relation to any other scheme, the trustees of the scheme;

“scheme” means an occupational pension scheme;

“trustees”, in relation to a scheme which is not set up or established under a trust, and except in Part II of these regulations, means the administrator of the scheme;

and other expressions have the same meaning as in the Act.

(3) Except in so far as the context otherwise requires, any reference—

- (a) in these regulations to a numbered section or Schedule is to the section of, or Schedule to, the Act bearing that number;
- (b) in these regulations to a numbered regulation is to the regulation in these regulations bearing that number;
- (c) in a regulation to a numbered or lettered paragraph is to the paragraph of that regulation bearing that number or letter;
- (d) in a paragraph to a lettered sub-paragraph is to the sub-paragraph of that paragraph bearing that letter.

(4) For the purposes of these regulations, any person, government department, public authority or body of persons who, under Part I of the Social Security Act 1975 is, or is to be treated as, the secondary Class 1 contributor shall be treated as the employer of the earner in respect of whom the Class 1 contributions are payable.

(5) For the purposes of these regulations and without prejudice to paragraph

(4), there shall be treated as the employer of a self-employed earner to whom a scheme applies any person (other than that self-employed earner), government department, public authority or body of persons who makes or is to make payments towards the resources of the scheme in respect of that self-employed earner (either under actual or contingent legal obligation or in the exercise of power conferred, or duty imposed, on a Minister of the Crown, government department or any other person, being a power or duty which extends to the disbursement or allocation of public money).

(6) For the purposes of these regulations, any person is to be regarded as a member of a scheme during a period when his service in relevant employment is such that at the time when it is given it either—

- (a) qualifies him for benefits (in the form of a pension or otherwise, payable on the termination of his service or on his retirement or his death) under the scheme which in the opinion of the Board are referable to that period; or
- (b) is certain so to qualify him subsequently if it continues for a sufficiently long time and the rules of the scheme and the terms of his contract of service remain unaltered during that time.

(7) Any document required or authorised under the provisions of these regulations to be sent to any person or body shall be deemed to have been sent if it was sent by registered post or by recorded delivery service to that person's or that body's usual or last known address or (in the case only of a document required or authorised to be sent to an employer) to the address of the principal place at which any employment to which the document relates is last known to have been carried on.

PART II

CERTIFICATION OF EMPLOYMENTS

Making of elections for the issue of contracting-out certificates

2.— (1) Subject to the provisions of regulation 11, every election with a view to the issue of a certificate that employment is contracted-out employment (a contracting-out certificate) shall be made—

- (a) only after notices to make such an election have been given by the employer in accordance with regulation 3;
- (b) within the period after the expiry of those notices which is specified in regulation 5; and
- (c) in writing to the Board;

and shall include the particulars specified in regulation 6.

(2) In a case where it is possible for some of the earners in an employment who are members of a scheme to be unable to complete 5 years' service in that employment as members of that scheme before reaching the normal pension age of that scheme, the employer of those earners may elect that that employment shall be contracted-out by reference to that scheme in relation only to those earners whose length of service (consisting of service in that

employment as a member of that scheme, or linked qualifying service in relation to such service, or both) is as great as, or greater than, a minimum length of service (not exceeding 5 years) specified in the rules of the scheme, and to those earners who can (so far as is known when the contracting-out certificate is issued, or if later in the case of a particular earner, when he enters the employment) complete such a minimum length of service before reaching the normal pension age of the scheme.

Notices by employers of intended election

3.— (1) Notices of intention to make an election such as is mentioned in regulation 2 shall be given by the employer, in the manner specified in paragraph (3), to—

- (a) the earners in respect of whose employment the election is proposed to be made, including those (if any) in relation to whom the employer is not electing that the employment shall be treated as contracted-out;
- (b) the trustees (if any) and administrator of the scheme to which the election is to relate;
- (c) where there is a policy of insurance or annuity contract as a means of securing the guaranteed minimum pensions to be payable under the scheme, the insurance company or friendly society concerned; and
- (d) all independent trade unions recognised to any extent for the purpose of collective bargaining in relation to the earners concerned.

(2) Notices given under this regulation shall—

- (a) specify the scheme and the employments concerned and, if the election is not intended to be in relation to all earners in those employments, the categories or descriptions of the earners to be so affected;
- (b) specify the date from which it is intended that the contracting-out certificate shall have effect;
- (c) give a description (which may be a description by reference to another document) of the benefits payable under the scheme to, and the contributions (if any) payable to the scheme by, the earners to be covered by the election, and of the changes (if any) which would be made to those benefits and contributions if the employment were contracted-out;
- (d) specify the date of expiry of the notice, which shall be at least 3 months (subject to paragraph (4)) after the date on which the notice is given;
- (e) specify by description or otherwise a person or persons to whom representations may be made with respect to the matters included in the notice by or on behalf of the persons to whom the notice is given;
- (f) contain a statement that—
 - (i) such representations may also be made to the Board,
 - (ii) the Board cannot, until at least 14 days after the expiry of the notice, determine whether to issue a certificate,
 - (iii) the Board have power to defer their determination beyond that time to enable the election to be further considered in the light of representations made by or on behalf of the persons to whom the notice is given,

- (iv) the Board have power to refuse to give effect to an election if they are not satisfied that the employer has undertaken consultations about the matters covered by the notice with all independent trade unions recognised to any extent for the purpose of collective bargaining in relation to the earners concerned; and
 - (g) explain (whether or not by reference to another document) how, if the employment were contracted-out, the additional components of retirement pensions and widows' benefits payable to or in respect of the earners in that employment under the Social Security Act 1975(a), and the rates at which contributions payable by those earners under Part I of that Act, would be affected.
- (3) A notice under this regulation shall be given—
- (a) to any earner concerned by—
 - (i) sending or delivering it in writing to him, or
 - (ii) exhibiting it conspicuously at the place of work or employment so that it may be read conveniently by him and by drawing his attention to it in writing, or
 - (iii) giving it in such other manner as the Board may consider to be reasonable in the circumstances of the case;
 - (b) to any other person or body, by sending or delivering it to that person or body in writing.
- (4) A notice may specify an earlier date of expiry than the date 3 months after that on which the notice is given, in a case where—
- (a) the employer has applied in writing to the Board, before giving the notice, for permission to serve a notice specifying that earlier date; and
 - (b) the Board have given that permission, having satisfied themselves—
 - (i) that it is reasonable to do so, and
 - (ii) that all independent trade unions (if any) recognised to any extent for the purpose of collective bargaining in relation to the earners concerned have assented to that earlier date.

Consultations with independent trade unions

4.— (1) An employer who has given such a notice as is mentioned in regulation 3 shall undertake consultations, if he has not already done so, about the matters covered by the notice with all independent trade unions recognised to any extent for the purpose of collective bargaining in relation to the earners concerned.

(2) Any question whether an organisation is an independent trade union recognised to any extent for the purpose of collective bargaining in relation to earners may be referred by the employer of those earners, or by the organisation, to an industrial tribunal.

(3) Any question whether an employer has complied with the requirements

(a) 1975 c.14.

as to consultation of paragraph (1) may be referred by the employer, or by an independent trade union recognised to any extent for the purpose of collective bargaining in relation to the earners concerned, to an industrial tribunal.

Time for making an election

5. An election may be made only after the date of the expiry of the notice given in accordance with the provisions of regulation 3 and within 3 months of that date (or such longer period as the Board may in their discretion allow), so however that nothing in this regulation shall prevent an election from being made after the giving of further notices which comply with the requirements of that regulation.

Information to be included in an election

6.— (1) Every election shall include the following particulars—

- (a) the name and address of the employer;
- (b) the name by which the scheme to which the election relates is known;
- (c) a description of the employments to which the contracting-out certificate is intended to relate and, if the certificate is not intended to be in relation to all earners in those employments, the categories or descriptions of the earners intended to be included in the certificate;
- (d) the date from which it is desired that the certificate shall have effect;
- (e) the names and addresses of the trustees (if any) and administrator of the scheme to which the election relates; and
- (f) the persons or bodies to whom notices were given under regulation 3(1)(b), (c) and (d).

(2) Every election shall be accompanied by—

- (a) a copy of the instruments or agreements comprising the scheme (except where the Board in their discretion dispense with this requirement);
- (b) a copy of the notice of the intention to make that election given to the earners under regulation 3(1)(a); and
- (c) a statement of how that notice was given.

(3) Every employer who makes an election shall supply such other documents and information, and shall supply them in such manner and at such times, as the Board may reasonably require.

Amendment of election

7. An employer may amend his election at any time before the issue of a contracting-out certificate if the Board consider that it is reasonable to allow him to do so and if the amendment does not alter the categories or descriptions of the earners to which the election relates.

Issue of contracting-out certificates

8.— (1) Subject to the provisions of this regulation, when the Board have determined that an employment should be treated, either in relation to all

earners in it or in relation to any specified category or description of earners, as contracted-out employment, they shall issue and send to the employer concerned a contracting-out certificate.

- (2) The contracting-out certificate shall specify—
- (a) the name and address of the employer;
 - (b) the name of the scheme by reference to which that employment is to be so treated;
 - (c) the employments to which the certificate relates or, if the contracting-out certificate does not relate to all earners in those employments, the categories or descriptions of the earners to whom it relates; and
 - (d) the date from which the certificate is to have effect, which may, where the Board consider it appropriate, be earlier than the date on which the certificate is issued, so however that it shall not be earlier than 6th April 1978.

Determination of questions

9. Any question—

- (a) whether an employment is to be treated as contracted-out employment;
 - (b) as to the persons in relation to whom an employment is to be so treated; or
 - (c) as to the period for which an employment is to be so treated,
- shall be determined by the Board.

Making of elections by employers for the variation or surrender of contracting-out certificates

10.— (1) Subject to the provisions of regulation 11, every election with a view to the variation or surrender of a contracting-out certificate shall be made—

- (a) only after notices of intention to make such an election have been given by the employer in accordance with paragraphs (2) and (3);
- (b) within the period after the expiry of those notices which is specified in paragraph (5); and
- (c) in writing to the Board,

so however that in such cases as the Board may approve, where a proposed variation would not alter the categories or descriptions of the earners affected by the certificate, or the benefits provided by, or the contributions (if any) payable by those earners to, the relevant scheme, an election with a view to the variation of a certificate may be made without compliance with paragraphs (1)(a) and (b) and (2) to (5).

(2) Notices of intention to make an election such as is mentioned in paragraph (1) shall be given to the persons and bodies referred to in regulation 3(1)(a) to (d) in the manner mentioned in regulation 3(3).

- (3) Notices given under this regulation shall—
- (a) specify the scheme and the employments concerned and, if the intention does not relate to all earners in those employments, the categories or descriptions of the earners to be affected;
 - (b) specify the date from which it is intended that the variation or surrender is to have effect;
 - (c) specify the date of expiry of the notice, which shall be at least 3 months after the date on which the notice is given or such shorter period as the Board may allow in a case where the employer has made application as mentioned in regulation 3(4)(a) and the Board have satisfied themselves as mentioned in regulation 3(4)(b);
 - (d) specify by description or otherwise a person or persons to whom representations may be made with respect to the matters included in the notice by or on behalf of the persons to whom the notice is given;
 - (e) contain a statement that—
 - (i) such representations may also be made to the Board,
 - (ii) the Board cannot, until at least 14 days after the expiry of the notice, determine whether to allow the variation or accept the surrender of the certificate,
 - (iii) the Board have power to defer their determination beyond that time to enable the election to be further considered in the light of representations made by or on behalf of persons to whom the notice is given, and
 - (iv) the Board have power to refuse to give effect to an election if they are not satisfied that the employer has undertaken consultations about the matters covered by the notice with all independent trade unions recognised to any extent for the purpose of collective bargaining in relation to the earners concerned;
 - (f) explain (whether or not by reference to another document) how, if the proposed variation or surrender took place, the additional components of retirement pensions and widows' benefits payable to or in respect of the earners concerned under the Social Security Act 1975(a), and the rates at which contributions payable by those earners under Part I of that Act, would be affected; and
 - (g) describe (whether or not by reference to another document) any changes which would be made to the benefits provided under, and the contributions (if any) payable by earners concerned to, the scheme concerned if the proposed variation or surrender took place.

(4) An employer who has given such a notice as is mentioned in this regulation shall undertake consultations, if he has not already done so, about the matters covered by the notice with all independent trade unions recognised to any extent for the purpose of collective bargaining in relation to the earners concerned; and any question whether an employer has complied with this requirement may be referred to an industrial tribunal.

(5) An election under this regulation may be made only after the date of the expiry of the notice given in accordance with paragraphs (2) and (3) and within

(a) 1975 c.14.

3 months of that date (or such longer period as the Board may in their discretion allow), so however that nothing in this paragraph shall prevent an election from being made after the giving of further notices which comply with the requirements of this regulation.

(6) Every employer who makes an election under this regulation shall supply such documents and information, and shall supply them in such manner and at such times, as the Board may reasonably require.

(7) An employer may amend his election under this regulation at any time before the variation or surrender of the certificate if the Board consider that it is reasonable to allow him to do so and if the amendment does not alter the categories or descriptions of the earners affected by the certificate.

Special provision with regard to elections for the issue, variation or surrender of certificates where the employment remains contracted-out

11.— (1) Subject to the provisions of this regulation, where in the case of an election with a view to the issue, variation or, as the case may be, surrender of a contracting-out certificate the Board are satisfied that—

- (a) an earner in respect of whose employment the election is proposed to be made will continue to qualify for requisite benefits under the scheme of which he is a member when the election takes effect;
- (b) the rights to requisite benefits of that earner under that scheme will be unaffected; and
- (c) the employment of that earner will continue to be contracted-out employment by reference to that same scheme,

then that election may be made without compliance with regulations 2(1)(a) and (b), 4 and 5 and paragraphs (1)(a) and (b) and (2) to (5) of regulation 10.

(2) Where, in accordance with paragraph (1), an election is made without compliance with the said provisions, the Board may require that a notice of explanation of the reasons why those provisions have not been complied with shall be given by the employer in the manner mentioned in regulation 3(3) to—

- (a) the earners to whose employment the election relates; and
- (b) the persons and bodies referred to in regulation 3(1)(b) to (d).

Special circumstances in which the Board may determine earners to have been in contracted-out employment

12. Where an earner has been employed in an employment during a period during which that employment was contracted-out but was not (apart from this regulation) contracted-out in relation to him, and the Board are satisfied—

- (a) that it was not contracted-out in relation to him solely because he was not during that period a member of the relevant scheme; and
- (b) that he was not during that period a member of that scheme solely because of inadvertence,

they may determine that that earner was in contracted-out employment by reference to that scheme during that period.

Employers not intending to elect for the issue of contracting-out certificates for some or any employments to which a scheme relates

13.— (1) Where a scheme (being neither a scheme under which benefits have ceased to accrue nor a scheme which does not provide benefit in the form of pensions) applies, or where it is proposed that a scheme (providing benefit in the form of pensions) should apply, to any employment, and the employer of the earners in that employment intends to abstain from making an election with a view to the issue of a contracting-out certificate that that employment is contracted-out employment by reference to that scheme, the employer shall, within 3 months of the setting up of the scheme, give notice of his intention so to abstain, in the manner mentioned in regulation 3(3), to—

- (a) the earners in that employment;
- (b) the trustees (if any) and administrator of the scheme; and
- (c) the persons or bodies mentioned in regulation 3(1)(c) and (d).

(2) Notices given under this regulation shall—

- (a) describe (whether or not by reference to another document) any changes which it is intended to make to the benefits provided by, and the contributions (if any) payable by the earners in that employment to, the scheme as a result of its not being contracted-out;
- (b) describe (whether or not by reference to another document) the additional components of retirement pensions and widows' benefits which will be payable to or in respect of the earners in that employment under the Social Security Act 1975, and the rates at which contributions will be payable by those earners under Part I of that Act, if the employment is not contracted-out; and
- (c) specify by description or otherwise a person or persons to whom representations may be made with respect to the matters included in the notice by or on behalf of the persons to whom the notice is given.

(3) An employer who has given or intends to give such a notice as is mentioned in this regulation shall undertake consultations about the matters covered by the notice with all independent trade unions recognised to any extent for the purpose of collective bargaining in relation to the earners concerned; and any question whether an employer has complied with this requirement may be referred to an industrial tribunal.

Special provision for holding companies and subsidiaries

14.— (1) This regulation applies to cases where—

- (a) earners employed in employments under different employers qualify by virtue of their respective service in those employments for the benefits of the same scheme; and
- (b) each of those employers is either—
 - (i) one of a group of companies consisting of a holding company and one or more subsidiaries within the meaning of section 154 of the Companies Act 1948(a), or

(a) 1948 c.38.

- (ii) one of a group of companies whose financial arrangements for the scheme are such that the Board consider it appropriate to treat the group as consisting of a holding company and one or more subsidiaries for the purpose of this regulation;

and in this regulation the expressions “holding company” and “subsidiary” include a company which is so treated by the Board as a holding company or, as the case may be, its subsidiary.

(2) In a case to which this regulation applies, any notice which is required or authorised to be given under these regulations shall be treated as properly given if given by the holding company on behalf of any of its subsidiaries, and where this is done the holding company shall, subject to paragraphs (3) and (4), be treated as the employer of the earners for the purposes of section 31 and of regulations made thereunder.

(3) The duty of an employer to undertake the consultations mentioned in regulations 3(2)(f)(iv), 4, 10(3)(e)(iv) and (4) and 13(3) shall be carried out by each subsidiary in respect of the earners employed by it, unless all the independent trade unions recognised to any extent for the purpose of collective bargaining in relation to those earners have signified in writing to the holding company that they agree that those consultations may be conducted on the subsidiary's behalf by the holding company.

(4) The Board may refuse to give effect to an election made by a holding company if they are not satisfied either that each subsidiary has undertaken those consultations in respect of the earners employed by it, or that the holding company has undertaken them with the agreement of those trade unions.

Special provision for public service pension schemes

15.— (1) This regulation applies to cases where earners employed in employments under different employers qualify by virtue of their respective service in those employments for the benefits of the same public service pension scheme.

(2) In a case to which this regulation applies, any notice which is required or authorised to be given under these regulations shall be treated as properly given if given either by the Secretary of State or by the Minister of the Crown having responsibility for the scheme; and where this is done the Secretary of State or that Minister, as the case may be, shall be treated as the employer of the earners for the purposes of section 31 and of regulations made thereunder.

Special provision for holders of full-time judicial office

16. In respect of earners who are holders of full-time judicial office, any notice which is required or authorised to be given under these regulations shall be treated as properly given if given either by the Lord Chancellor or by the Secretary of State; and where this is done the Lord Chancellor or the Secretary of State, as the case may be, shall be treated as the employer of the earners for the purposes of section 31 and of regulations made thereunder.

Further information and change of circumstances

17. An employer to whom a contracting-out certificate has been issued shall, in such manner and at such times as the Board may reasonably require, furnish to the Board such reports, accounts and other documents and information relating to the scheme to which the certificate relates as the Board may reasonably require, and, in particular, shall notify the Board of any such change of circumstances affecting the scheme as they may have required him to notify as soon as practicable after its occurrence.

PART III

STATE SCHEME PREMIUMS

Liability for payment of state scheme premiums

18.— (1) For the purposes of section 44(2) (payment of accrued rights premiums and pensioner's rights premiums) the prescribed person is—

- (a) in a case where a person to whom regulation 23(7)(a), (b) and (d)(ii) applies chooses to pay the premium, that person; and
- (b) in any other case, the trustees of the scheme.

(2) For the purposes of sections 42 to 45 the person to be treated as the employer of an employed earner is—

- (a) subject to sub-paragraphs (b) to (f), in the case of an employed earner, including an employed earner such as is mentioned in paragraph 6(2) of Schedule 2, any person, government department, public authority or body of persons who, under Part I of the Social Security Act 1975(a) is, or is to be treated as, the secondary Class 1 contributor in respect of that earner;
- (b) in a case where the employer (within the meaning of sub-paragraph (a)) of an employed earner in contracted-out employment is insolvent, the trustees of the scheme by reference to which the earner's employment is contracted-out employment, so however that except in the case of a premium under section 42(3) the trustees of the scheme shall be liable by virtue of this sub-paragraph only for so much of any state scheme premium as is not recovered from the insolvent employer as a priority debt by virtue of the provisions of paragraph 3 of Schedule 3;
- (c) in a case where a scheme ceases to be contracted-out, and by virtue of arrangements approved by the Board under section 44(1) a limited revaluation premium is payable under section 45(1)(b), the trustees of that scheme;
- (d) in a case where an employed earner's employer (within the meaning of sub-paragraph (a)) dies or otherwise ceases to be his employer and the business is taken over by a new employer and the earner's employment

(a) 1975 c.14.

(b) Section 45(1) is amended by the Social Security (Miscellaneous Provisions) Act 1977 (c.5), section 22(7).

in contracted-out employment is to be treated as continuing under the new employer by virtue of regulation 36(5), that new employer;

- (e) in a case where a holding company within the meaning of section 154 of the Companies Act 1948 or a company which is treated by the Board under regulation 14(1)(b)(ii) as a holding company, has made an election to contract out in respect of earners employed by one or more subsidiary companies of that company, that holding company or, as the case may be, that company which is treated as a holding company; and
- (f) in a case where section 45(1) as modified by regulation 44(e) applies, the employer of the earner in the employment by reference to the scheme from which the earner's accrued rights to requisite benefits have been transferred.

(3) Where the amount of a state scheme premium payable under the Act does not exceed £5 the person who would otherwise be liable to pay that premium shall not be so liable, but may nevertheless choose to pay it; and if any such premium is not paid, then for the purpose of extinguishing the earner's entitlement to the guaranteed minimum pension to which the premium relates the premium shall be treated as if it had been paid.

(4) For the purposes of section 44 (accrued rights premiums and pensioner's rights premiums) and section 45 (limited revaluation premiums) the Board shall certify to the Secretary of State—

- (a) in the event of a contracted-out scheme ceasing to be contracted-out, whether or not an earner's accrued rights to or a pensioner's rights to guaranteed minimum pension (not being a pension which is the subject of a certificate issued by the Secretary of State under section 22(9) of the 1977 Act and still in force) are subject to approved arrangements as mentioned in section 44;
- (b) in the event of a contracted-out scheme ceasing to be contracted-out and in the event thereafter of the withdrawal of such a certificate issued by the Secretary of State as aforesaid, whether or not the accrued rights or rights to the guaranteed minimum pension which was the subject of the certificate are subject to approved arrangements as mentioned in section 44; and
- (c) in the event of rights which are subject to approved arrangements as mentioned in section 44 ceasing to be so subject, the date on which those rights ceased to be so subject.

(5) Any liability for the payment of a state scheme premium which is, by any provision of these regulations, imposed on the trustees of a scheme shall be a liability to make that payment out of the resources of the scheme.

Elections to pay state scheme premiums

19.— (1) An employer's obligation under section 43(4) (not to discriminate between different earners when making or abstaining from making elections to pay contributions equivalent premiums) shall not apply to—

- (a) cases where an earner's accrued rights are transferred under section 38;

- (b) married women and widows who, by virtue of regulations made under section 3(2), have elected to pay primary Class 1 contributions under the Social Security Act 1975 at a reduced rate;
- (c) cases where, on the death of an earner, his widow becomes entitled to a widow's pension which comprises an amount of pension which has accrued by reference to the earner's service in employment which was not contracted-out employment and a widow's guaranteed minimum pension by reference to the earner's service in contracted-out employment;
- (d) cases where the earner is under the age of 26 or has completed less than 5 years' qualifying service for the purposes of Schedule 16 to the Social Security Act 1973(a) (preservation) but where, nevertheless, he is entitled under the rules of the scheme to elect, and he has elected, that his accrued rights shall be preserved; and
- (e) cases where an earner's accrued rights to guaranteed minimum pensions are secured by means of a policy of insurance or annuity contract which satisfies the conditions specified in regulation 39,

so however that in respect of any of the classes of case mentioned in this paragraph an employer shall not discriminate between different earners falling within the same class of case.

(2) An election under section 42(2) or (3) or 44(6)(b) or 45(3)(c) shall be notified to the Secretary of State in writing in such form as the Secretary of State may reasonably require for the purpose of identifying the earner to whom the election relates, and such notification shall be given—

- (a) in the case of an election under section 42(2), within the period beginning one month before the date of termination of a contracted-out employment to which the election relates and ending 6 months after that date;
- (b) in the case of an election under section 42(3), within a period of 6 months from the date of death in respect of which the election is made;
- (c) in the case of an election under section 44(6), within a period ending 6 months after the date on which the Board certify to the Secretary of State, under regulation 18(4), that the earner's accrued rights to guaranteed minimum pension, or, as the case may be, the pensioner's rights to guaranteed minimum pension are not, or, as the case may be, have ceased to be, subject to approved arrangements; and
- (d) in the case of an election under section 45(3), within a period ending 6 months after the date on which the Board certify to the Secretary of State that the earner's accrued rights to guaranteed minimum pension are subject to approved arrangements.

(3) On application being made to him for that purpose the Secretary of State may, in any particular case or class of case, extend the periods mentioned in paragraph (2) for the making of an election to pay a state scheme premium if it appears to him that the circumstances are such that an election could not reasonably be made within the specified period.

(a) 1973 c.38.

(b) Section 44(6) was substituted by the Social Security Act 1980 (c.30), section 3(8).

(c) Section 45(3) was amended by the Social Security Act 1980, section 3(9).

Time for payment of state scheme premiums

20.— (1) Subject to paragraph (3), any state scheme premium payable under the Act shall be paid on or before whichever is the later of the following days—

- (a) the day 6 months after the date of termination of contracted-out employment in respect of which the premium is payable; and
- (b) the day one month after the day on which the Secretary of State sends to the person liable to pay the premium a notice certifying the amount of the premium payable.

(2) On application made to him for that purpose the Secretary of State may, in any particular case or class of case, extend the period within which, under paragraph (1), a state scheme premium is required to be paid—

- (a) by up to 6 months if he is satisfied that the circumstances are such that payment of the premium could not reasonably be required to be made within that period; and
- (b) by such further period as he considers reasonable if he is satisfied that to require earlier payment of the premium would be prejudicial to the interests of the earner in respect of whom the premium is payable or of the generality of members of the scheme.

(3) In cases where a state scheme premium has become payable by reason of the fact that a contracted-out scheme has ceased to be contracted-out and an earner's accrued rights to guaranteed minimum pension or a pensioner's rights to guaranteed minimum pension under that scheme are not the subject of approved arrangements under section 44 or, having been so subject, have ceased to be so subject, references in paragraph (1)(a) to the date of termination of contracted-out employment shall be read as references to the date on which the Board certify under regulation 18(4) that the earner's rights are not subject to approved arrangements or have ceased to be so subject.

(4) In cases where a state scheme premium has become payable by reason of the fact that a contracted-out scheme has ceased to be contracted-out and an earner's rights to guaranteed minimum pension are the subject of approved arrangements under section 44, references in paragraph (1)(a) to the date of termination of contracted-out employment shall be read as references to the date on which the Board certify under regulation 18(4) that the earner's rights are subject to such approved arrangements.

Payment in lieu of benefit and delay in refund for purposes of employer's right of recovery

21.— (1) For the purposes of section 47(10) (payments in lieu of benefit) a payment in lieu of benefit shall include a payment made or to be made out of the resources of the scheme in or towards the provision of deferred benefits for the earner.

(2) Where on the coming to an end of an employed earner's service in contracted-out employment he (or, by virtue of a connection with him, any other person) is or may be entitled to a refund of any payments made under a contracted-out scheme by or in respect of him towards the provision of benefits under the scheme, the following provisions of this regulation shall apply for the purpose of enabling any right of recovery conferred by section 47 to be exercised.

(3) Where in such a case a state scheme premium falls to be paid in respect of the earner under the Act, the person liable for the refund shall not, after he has been given such notice for the purpose of this regulation as is hereinafter described (in this regulation called a "notice of delay"), make the refund in whole or in part until the expiration of the period of delay specified in paragraph (4), so however that this paragraph shall not apply to so much, if any, of the refund as exceeds the amount certified by the Secretary of State under section 47(2).

(4) The period of delay referred to in paragraph (3) shall be the period beginning with the giving of the notice of delay and ending with the expiration of 4 weeks after the payment of the state scheme premium or any part of it, or 4 weeks after the end of the prescribed period for the payment of the state scheme premium, whichever first occurs.

(5) A notice of delay shall be a notice in writing given by the person who is liable for the payment of the state scheme premium (hereafter in this regulation called "the liable person"), relating either to a particular case or to a class or classes of case and containing the following particulars:—

- (a) the name of the earner or such particulars as will sufficiently identify the class or classes of cases concerned;
- (b) such particulars as will sufficiently identify the refund or refunds concerned; and
- (c) a memorandum in a form approved by the Secretary of State giving brief particulars of the effect of paragraphs (3) and (4).

(6) Every liable person who has given a notice of delay shall from time to time inform any person to whom he has given that notice of the ending of the period of delay in relation to any refund affected by the notice.

Alternative to limited revaluation premium

22.— (1) Paragraph (2) applies to a case where a scheme provides, under section 35(7)(a), for the earnings factors of an earner whose service in contracted-out employment by reference to the scheme is terminated before he attains pensionable age to be determined without reference to any order that comes into force under section 21 after the relevant year in which his service is terminated.

(2) For the purposes of section 45(1)(b) (exclusion from liability to pay a limited revaluation premium), and subject to the following provisions of this regulation, in a case to which this paragraph applies there shall be no liability to pay a limited revaluation premium in respect of the earner if the provisions made by the scheme under section 35(7) conform with the additional requirement specified in paragraph (3).

(3) The additional requirement mentioned in paragraph (2) is that the rate of increase specified by the scheme for the purposes of section 35(7) is at least $8\frac{1}{2}$ per cent. compound for each relevant year after the year in which the earner's service is terminated, notwithstanding that the amount by which an earnings factor for that year equal to that weekly equivalent would be increased by the last order that comes into force under section 21 before the end of the final relevant year is less than the amount produced by that rate.

(a) Section 35(7) was amended by the Social Security (Miscellaneous Provisions) Act 1977 (c.5), section 22(7), and by the Social Security Act 1979 (c.18), section 21(4) and Schedule 3, paragraph 18(b).

(4) Paragraph (2) applies only so as to permit the same provision to be made for all members of the scheme, so however that separate provision may be made for members as regards their accrued rights transferred in accordance with section 38(1).

(5) Paragraph (6) applies to a case where—

- (a) regulation 44 applies, and
- (b) a scheme provides under section 35(7) for earnings factors of an earner whose accrued rights to requisite benefits, including such rights derived from linked qualifying service, have been transferred under section 38(1) from another scheme to be determined without reference to any order that comes into force under section 21 after the relevant year in which his service in the contracted-out employment to which that other scheme related was terminated.

(6) In a case to which this paragraph applies there shall be no liability to pay a limited revaluation premium in respect of such an earner if the provisions made by the scheme under section 35(7) conform with the additional requirement specified in paragraph (7).

(7) The additional requirement mentioned in paragraph (6) is that the rate of increase specified by the scheme for the purposes of section 35(7) is at least $8\frac{1}{2}$ per cent. compound for each relevant year—

- (a) after the year in which the termination mentioned in paragraph (5) occurred, in any case where the earnings factors mentioned in paragraph (5) or their weekly equivalent have previously fallen to be determined by reference to orders under section 21, or
- (b) from and including the year in which that termination occurred, in any other case,

notwithstanding that the amount by which an earnings factor for any such relevant year equal to that weekly equivalent would be increased by the last order that comes into force under section 21 before the end of the final relevant year is less than the amount produced by that rate.

Miscellaneous provisions affecting state scheme premiums and guaranteed minimum pension rights

23.— (1) Subject to paragraphs (3) and (4), where—

- (a) an employer has elected to pay a contributions equivalent premium under section 42(2) or (3), or
- (b) an accrued rights premium or a pensioner's rights premium is payable under section 44(2) pursuant to certification by the Board to the Secretary of State under regulation 18(4),

the premium shall, for the purpose of extinguishing the earner's accrued rights to or, as the case may be, the pensioner's rights to guaranteed minimum pensions under a scheme, be treated as having been paid, or paid in part in a case to which either paragraphs (6) to (8) apply or paragraph (9) applies, on the date specified in paragraph (2).

(2) The date mentioned in paragraph (1) is—

- (a) in the case of a contributions equivalent premium, the date on which

the earner ceased to be in contracted-out employment by reference to the scheme;

(b) in the case of an accrued rights premium or pensioner's rights premium, whichever is the later of—

(i) the date on which the scheme ceased to be contracted-out, and

(ii) any date certified by the Board under regulation 18(4)(c) in relation to the rights mentioned in paragraph (1).

(3) Where a premium has been treated as paid under paragraph (1), the effect of that paragraph shall, except as provided in paragraph (5), be disregarded if—

(a) the Board subsequently approve arrangement for the preservation or transfer of the earner's accrued rights to or, as the case may be, pensioner's rights to guaranteed minimum pensions, or

(b) the person who is liable to pay that premium fails to do so within the period prescribed by regulation 20(1) or such longer period as the Secretary of State may allow under regulation 20(2).

(4) Where by virtue of the operation of paragraphs (1) and (3) in relation to a person entitled to a benefit specified in section 29(1)(a) an amount of that benefit, as certified by the Secretary of State, was paid to that person which would not otherwise have been paid—

(a) the Secretary of State shall be entitled to recover that amount from the scheme and any amount so recovered shall be paid into the National Insurance Fund, and

(b) the sums payable under the scheme to that person may be reduced by the amount so recovered by the Secretary of State.

(5) Paragraph (3)(b) shall not apply where the Secretary of State is satisfied that the failure to pay was not with the consent or connivance of, or attributable to any negligence on the part of, the person in respect of whom the premium is payable, and—

(a) where, subject to paragraphs (6) and (8), the scheme, being a scheme which is or has been contracted-out, is being or has been wound up; or

(b) where—

(i) a person, having elected to pay a contributions equivalent premium, has been sent a notice certifying that an increased amount of that premium is payable, and

(ii) that increased amount either does not exceed £5 or, if it exceeds £5, remains unpaid to an extent not exceeding any such part of the increased amount as that person may be entitled to recover by virtue of section 47 (deduction of premium from refund of contributions).

(6) In a case where the circumstances specified in paragraph (7)(a) and (b) and either (c) or (d) obtain, the premium in question shall be treated as paid under paragraph (1) only in accordance with the provisions of paragraph (8).

(7) The circumstances mentioned in paragraph (6) are that—

(a) a person's accrued rights to, or rights to receive, guaranteed minimum

pension under a contracted-out scheme have been secured wholly or, to the extent of the scheme's resources, in part by an insurance policy or annuity contract which meets the approval of the Board or the conditions prescribed in regulation 39;

- (b) a state scheme premium has become payable in respect of him by reason of—
 - (i) the withdrawal by the Board of their approval of, or their inability to give their approval to, arrangements for the preservation or transfer of those rights of that person in pursuance of section 44, or
 - (ii) the cancellation by the Secretary of State of his certificate under section 22(10) of the 1977 Act (a);
- (c) the scheme is being or has been wound up and those rights cannot be extinguished by payment of that premium because the resources of the scheme are insufficient to meet the cost of that premium;
- (d) the scheme has been wound up and the Policyholders Protection Board, under the provisions of the Policyholders Protection Act 1975(b), have—
 - (i) secured a substituted policy of insurance or annuity contract for the benefit of that person, or
 - (ii) paid to him or for his benefit a cash sum in lieu of the benefits previously secured as specified in sub-paragraph (a).

(8) In a case to which paragraph (6) applies where the Secretary of State is satisfied that—

- (a) the amount of benefit secured as in paragraph (7)(a) or (d)(i) is less than the amount of the guaranteed minimum pension to which the relevant person is, or will be, entitled, or
- (b) the amount of the cash sum referred to in paragraph (7)(d)(ii) is less than the amount of the premium payable,

such part of the premium as represents, in the opinion of the Secretary of State, the difference in either case between the lesser and greater amounts shall be treated as having been paid.

(9) Where a person in respect of whom a premium is payable is a person to whom regulation 18(1)(a) applies and that person pays part only of that premium, that part of the premium shall be treated as having been paid under paragraph (1).

(10) Where part of the premium falls to be treated as having been paid under paragraph (1)—

- (a) sections 43(7) and 44(9) shall be modified so as to have effect as if there were inserted, in each case, at the end thereof the words “and payment of part of the premium in either case or of a premium calculated in accordance with section 44(5)(a) or (b) of this Act as modified by regulation 23(10)(b)(iii) or (iv) respectively of the Occupational Pension Schemes (Contracting-out) Regulations 1984

(a) Section 22(10) was amended by the Social Security Act 1980 (c.30), section 3(7).
 (b) 1975 c.75.

shall operate to extinguish such part of those rights or, as the case may be, accrued rights to guaranteed minimum pension as corresponds, in the opinion of the Secretary of State, to that part of the premium or that premium"; and

- (b) in a case to which sub-paragraphs (a), (b) and (c) of paragraph (7) apply, section 44 shall be modified so as to have effect as if—
- (i) in each of paragraphs (a) and (b) of subsection (1) there were inserted after the words "guaranteed minimum pensions" the words "or part thereof",
 - (ii) in each of paragraphs (a) and (b) of subsection (2) there were inserted after the words "are not" the words, "or are in part only",
 - (iii) in subsection (5)(a) there were inserted immediately after the words "the scheme" the words "to the extent that those rights are not subject to approved arrangements", and
 - (iv) in subsection (5)(b) there were inserted immediately after the words "his widow" the words "to the extent that that pension is not provided under approved arrangements".

(11) For the purposes of paragraphs (5)(a) and (7)(c) a scheme shall be treated as if it is being wound up at any time when there is in force an order of the Board under section 49(6) requiring or directing that the scheme be wound up.

Re-allocation and refund of state scheme premiums

24.— (1) Where a state scheme premium is wrongly paid, or paid as to the wrong amount, the Secretary of State may treat all or part of that premium as paid (wholly or in part) in discharge of a liability for another premium or (where the premium was paid by the employer within the meaning of regulation 18(2)(a)) for contributions under Part I of the Social Security Act 1975(a).

(2) Where a state scheme premium has been paid in connection with an earner's accrued rights to guaranteed minimum pension derived from a period of service in contracted-out employment and another such premium subsequently becomes payable in connection with such rights of his derived from the same period or a period inclusive of it, the Secretary of State may treat all or part of the first premium as paid (wholly or in part) in discharge of a liability for the second premium.

(3) Subject to paragraphs (1), (2) and (4) the Secretary of State shall refund a state scheme premium if—

- (a) that premium was paid in error; or
- (b) he is satisfied that the employment to which the premium relates will be linked with another employment in the circumstances set out in regulation 36(2) and (3) or 37(1); or
- (c) he is satisfied that the earner in respect of whom the premium was paid has entered into employment which is contracted-out employment by reference to the same contracted-out scheme as that by which the

(a) 1975 c.14.

employment to which the premium relates was contracted-out employment, and that for the purpose of calculating the earner's accrued rights under the scheme the 2 employments will be linked; or

- (d) he is satisfied that a transfer of the earner's accrued rights will be made in accordance with section 38, except in the case of a limited revaluation premium where those accrued rights are being or will be revalued under the provisions of section 35(7) as modified by regulation 44(b) by the scheme to which they have been or are to be transferred; or
- (e) the premium being a contributions equivalent premium, the scheme is one under which a member may qualify for benefits by virtue of service either in employed earner's employment or as a self-employed earner for the purposes of the Social Security Act 1975 or both, and he is satisfied that the earner in respect of whom the premium was paid has completed a period of membership of the scheme as a self-employed earner which, when aggregated with his service in employed earner's employment, amounts to not less than 5 years,

and where a premium is refunded under the provisions of this paragraph the earner's accrued rights under the scheme, which were extinguished by payment of the premium, shall be restored.

(4) Where a limited revaluation premium has been paid and a transfer under section 38(1) of the accrued rights of the earner in respect of whom that premium was paid is made thereafter in circumstances conforming with those specified in regulation 45(d)(iii), the Secretary of State shall repay the amount of the premium to the trustees of the contracted-out scheme to which those accrued rights have been transferred.

(5) A refund under paragraph (3) or a repayment under paragraph (4) shall be made only if an application is made in writing, in such form as the Secretary of State may reasonably require for the purpose.

- (6) In paragraph (3) "error" means, and means only, an error which—
 - (a) is made at the time of the payment, and
 - (b) relates to some present or past matter.

(7) Where an earner has been employed concurrently in 2 or more contracted-out employments, on the termination of one or more of which one or more contributions equivalent premiums are paid, the amount, or the aggregate amount, of which has the effect that the National Insurance Fund has gained in all, by reference to the employment or employments in respect of which the premium or premiums have been paid, a greater amount than it would have gained from Class 1 contributions under the Social Security Act 1975 if the employment or employments had not been contracted-out, there shall be paid out of the National Insurance Fund to the earner (or his estate) an amount equal to that amount which bears the same proportion to the amount of the excess as the reduction, under section 27(2), in the normal percentage of primary Class 1 contributions bears to the total reduction under that subsection in the total normal percentage of Class 1 contributions.

(8) The Secretary of State shall refund a state scheme premium if he is satisfied that it ought to be refunded—

- (a) where it was paid under section 42(2), 44(2) or 45(1) and the person in

respect of whom it was paid has died, without leaving a widow, on or before the later of the days first mentioned in sub-paragraphs (a) and (b) respectively of regulation 20(1);

- (b) where it was paid under section 42(3) and there are no accrued rights to guaranteed minimum pensions under the scheme in question in respect of the widow in question.

Parts of state scheme premiums to be treated as paid in certain cases

25.— (1) In this regulation and regulation 26, and except where the context otherwise requires, “premium” means an accrued rights premium, limited revaluation premium or pensioner’s rights premium.

(2) In a case where the amount of a premium (including a premium calculated in accordance with section 44(5)(a) or (b) as modified by regulation 23(10)(b)(iii) or (iv)) is payable and its amount exceeds $\frac{3}{4}X$, the amount of the excess shall be treated for all purposes as having been paid.

(3) In paragraph (2), X means that amount which would be the amount of the premium under the State Scheme Premiums (Actuarial Tables) Regulations 1978(a) if the amendments made to those regulations by the State Scheme Premiums (Actuarial Tables) Amendment Regulations 1982(b) were disregarded.

(4) Where the premium is an accrued rights premium or a pensioner’s rights premium, the amount of the excess referred to in paragraph (2) shall, for the purpose of extinguishing the accrued rights of the earner in question or the rights of the pensioner in question to guaranteed minimum pensions under a scheme, be treated as having been paid on whichever is the later of—

- (a) the date on which the scheme ceased to be contracted-out, and
(b) any date certified by the Board under regulation 18(4)(c) in relation to those rights.

(5) Where a premium has been treated as paid under paragraph (2), the effect of that paragraph shall be disregarded if—

- (a) the Board subsequently approve arrangements for the preservation or transfer of the earner’s accrued rights to or, as the case may be, pensioner’s rights to guaranteed minimum pensions, or
(b) except in a case to which regulation 23(5) applies, the person who is liable to pay that premium fails to do so within the period prescribed by regulation 20(1), or such longer period as the Secretary of State may allow under regulation 20(2).

Continued effect of provisions for treating state scheme premiums as paid or paid in part

26. In a case in which regulation 25(2) has effect—

- (a) regulation 18(3) shall have effect as if the reference to the amount of a

(a) S.I. 1978/134, amended by S.I. 1982/492.
(b) S.I. 1982/492.

state scheme premium were a reference to the amount of that part of the premium which is not treated as paid under regulation 25(2);

- (b) paragraph (1) of regulation 23 shall have effect as if the reference to treating a premium as paid or paid in part (for the purpose specified in that paragraph) were a reference to treating as paid or paid in part (for that purpose) that part of the premium which is not treated as paid under regulation 25(2); and
- (c) regulations 23(3) to (10) (including the additional words for sections 43(7) and 44(9) set out in regulation 23(10)) and 24(1) to (4) shall have effect as if the word “premium”, where the amount of a premium is in question, meant that part of the premium which is not treated as paid under regulation 25(2).

PART IV

MISCELLANEOUS

Sufficiency of the resources of schemes

27. In a case where the Board are unable to be satisfied, for the purposes of subsection (1) of section 41, that the resources of a scheme are sufficient for meeting the requirements specified in that subsection but they are satisfied (subject to such conditions as they may impose or otherwise) that the resources of the scheme are sufficient for meeting the requirements specified in paragraph (a) (claims in respect of guaranteed minimum pensions) and paragraph (c) (liabilities and expenses on winding up) thereof, that subsection shall have effect as if paragraph (b) thereof (payments in respect of state scheme premiums) were omitted.

Specific scheme rules about guaranteed minimum pensions

28.— (1) For a scheme to be contracted-out in relation to an earner's employment it must include a specific rule to the effect that if an earner has a guaranteed minimum under section 35 the weekly rate of his pension under the scheme at pensionable age shall not be less than that guaranteed minimum, and also to the effect that if a male earner has a guaranteed minimum under section 35 the weekly rate of pension payable to his widow under the scheme shall be not less than half that guaranteed minimum, these rules to be expressed to override all other provisions of the scheme, except any that are in accordance with the provisions of the Act.

(2) In paragraph (1) “weekly rate” means, in cases where the pension is paid otherwise than at weekly intervals, a rate which is equivalent to the earner's guaranteed minimum having regard to the period in respect of which the pension is paid.

Derivation of resources of schemes

29. For the purposes of section 40(1)(b) (a scheme can be contracted out only if the derivation of its resources satisfies certain requirements) the following are the prescribed payments:—

- (a) in the case of a scheme whose members include persons employed by

Her Majesty in Her private capacity, payments made by Her Majesty out of Her private resources; and

- (b) in the case of a scheme relating to persons employed by the Duke of Lancaster or by the Duke of Cornwall, payments made out of the revenues of the Duchy of Lancaster or of the Duchy of Cornwall.

Means of securing guaranteed minimum pensions

30.— (1) Subject to the provisions of this regulation, for the purposes of section 40(2)(a) (means by which guaranteed minimum pensions are secured), guaranteed minimum pensions under contracted-out schemes shall be secured by one or more of the following means, that is to say, irrevocable trust, policy of insurance or annuity contract which is a trust, policy or contract, as the case may be, established, taken out or entered into by a person resident, or having a place of business, in the United Kingdom, and which satisfies the conditions specified in paragraph (2).

(2) The conditions referred to in paragraph (1) are—

- (a) in the case of an irrevocable trust, that the trust is subject to the laws of any part of the United Kingdom;
- (b) in the case of a policy of insurance or annuity contract, that the policy is taken out, or the contract is entered into, with either—
- (i) an insurance company to which Part II of the Insurance Companies Act 1982(a) applies and which is authorised under section 3 or 4 of that Act to carry on ordinary long-term insurance business as defined in that Act, or
- (ii) a friendly society enabled under regulations made under section 71(1) of the Social Security Act 1973(b) or article 67 of the Social Security Pensions (Northern Ireland) Order 1975(c) to conduct such business as is described in that section or that article.

(3) The provisions of paragraph (1) and of section 40(3) (priority on winding-up) shall not apply to a scheme which is administered wholly or primarily outside the United Kingdom, but such a scheme shall not be capable of being contracted-out unless such part of the benefits of the scheme as represents guaranteed minimum pensions is secured in such a manner and subject to such conditions as the Board consider to be suitable.

Payment out of surrender values of policies of insurance

31. For the purposes of section 40(4) a payment out of a sum representing the surrender value of a policy of insurance taken out for the purposes of a contracted-out scheme shall be admissible in relation to the guaranteed minimum pensions payable under the scheme if in all the circumstances the Board are satisfied that such a payment out would not prejudice the payment of those pensions.

(a) 1982 c.50.

(b) 1973 c.38; section 71(1) was amended by the Social Security Amendment Act 1974 (c.58), section 4 (which was repealed by the Social Security (Consequential Provisions) Act 1975 (c.18), section 1(2) and Schedule 1).

(c) S.I. 1975/1503 (N.I. 15).

Transfer of accrued rights between schemes

32. For the purposes of section 38(1)(a) (accrued rights to requisite benefits not to be transferred without member's consent and only to another scheme which is contracted-out in relation to an employment of his at the time of the transfer, except where regulations otherwise provide) the prescribed exceptions are—

- (a) that any part of the earner's accrued rights to requisite benefits which exceeds his or his widow's guaranteed minimum pension may, with his consent, be transferred to any other scheme whether contracted-out or not;
- (b) that an earner's accrued rights to requisite benefits may be transferred without his consent—
 - (i) where the transfer of accrued rights to requisite benefits is to another contracted-out scheme which relates to employment with the same employer, or
 - (ii) where the accrued rights to requisite benefits of all of the members of the scheme, or of a specified group of members (of whom the earner is one) are being transferred to another contracted-out scheme,where the rights allowed to the earner in the scheme to which the transfer is made are, in the opinion of the trustees of the scheme from which the transfer is made, at least equal in value to the rights transferred; and
- (c) that an earner's accrued rights to requisite benefits may, with his consent, be transferred to a scheme administered wholly or primarily outside the United Kingdom if the Board (whether or not subject to conditions) approve the arrangements made for the transfer.

Service that does not qualify for requisite benefits

33.— (1) This regulation applies in cases in which any description of benefit under a scheme is subject to a limit (however imposed) operating so as to prevent service beyond a particular length from qualifying for further benefits.

(2) Subject to the following provisions of this regulation, in cases to which this regulation applies the employment of an earner in employed earner's employment shall be treated as contracted-out employment in relation to him, notwithstanding that his further service in the employment did not, does not, or will not qualify him for further benefits under the scheme, where the following conditions are satisfied, namely that—

- (a) the earner's service in employed earner's employment has qualified him for benefit up to a limit imposed by the scheme; and
- (b) the annual rate of the benefit by way of pension for which that service has qualified him is not less than half the salary on which it is calculated; and
- (c) the total benefits payable under the scheme on termination of the employment to which the scheme applies include or comprise benefits which are in all respects (as to rate or amount or otherwise) the same as or more favourable than the guaranteed minimum pension to which the earner would be entitled having regard to the aggregate of the

(a) Section 38(1) was amended by the Social Security Act 1980 (c.30), section 3(5).

periods of service in that employment or in linked qualifying service during which the earner was in contracted-out employment and any periods of service in that employment which would be contracted-out employment by virtue of this regulation.

(3) For the purposes of paragraph (2)(c) "total benefits" may include benefits which have accrued to the earner in respect of service in employment whether or not contracted-out employment and whether with the same or another employer, except any part of such benefits which consists of equivalent pension benefits for the purposes of Part III of the National Insurance Act 1965(a) and the previous corresponding enactments.

Commutation of pension

34.— (1) For the purposes of section 39(1) (admissible provisions of a scheme relating to commutation), the prescribed circumstances are—

- (a) that the Board are satisfied that the scheme provides a reasonable basis for ascertaining the sum to be paid on commutation;
- (b) that a guaranteed minimum pension has become payable; and
- (c) that the aggregate amount of all benefits currently payable to the earner or, as the case may be, the amount of the pension payable to his widow under all schemes relating to employment with the same employer as the employment in respect of which the guaranteed minimum pension is payable, does not exceed £104 per annum.

(2) Where, under paragraph (1), a scheme permits an earner to commute benefit in accordance with this regulation it may also permit him to commute any prospective widow's benefit payable under the scheme (provided that the aggregate amount of such benefit prospectively payable under all schemes relating to employment with the same employer as the employment in respect of which the benefit is payable does not exceed £104 per annum) and the value of any such widow's benefit shall not be taken into account for the purpose of the limit of £104 per annum mentioned in paragraph (1).

(3) For the purposes of paragraph (1)(c), any benefit in lump sum form payable to the earner (but excluding for this purpose any benefit by way of a refund of the earner's contributions to the scheme) shall be treated as the annual amount of benefit in pension form which, in the opinion of the trustees or administrator of the scheme, is its equivalent.

(4) The condition in paragraph (1)(b) shall not apply in cases where the scheme is being wound up or an earner retires before pensionable age, and a premium under section 42 (contributions equivalent), section 44 (accrued rights) or section 45 (limited revaluation) has been paid, or treated under regulation 18(3) as having been paid, or where provision has been made under regulation 22, provided that—

- (a) for the purpose of paragraph (1)(c) the aggregate amount of benefit which has accrued to the earner at the date of winding up or, as the case may be, of his retirement, increased, where appropriate, in accordance with section 35(7) or in accordance with provision made under regulation 22, in either case to the amount that would have been

(a) 1965 c.51. The relevant provisions were repealed by the Social Security Act 1973 (c.38) but continued in force by S.I. 1974/2057.

payable at pensionable age, shall be treated as the amount of benefit currently payable to him under the scheme;

- (b) in the case of early retirement commutation is not permitted before the date on which the pension would otherwise become payable; and
- (c) in cases where the earner is a member of more than one scheme relating to the same employment, all those schemes are being wound up or, as the case may be, he is treated by all those schemes as having retired and, in each case, all those schemes have paid a contributions equivalent premium, an accrued rights premium or a limited revaluation premium, or have made provision under regulation 22.

Suspension and forfeiture of benefit

35.— (1) For the purposes of section 39(4)(b) (suspension and forfeiture of guaranteed minimum pension) the circumstances in which a scheme may provide for an earner's or widow's guaranteed minimum pension to be suspended are—

- (a) that the pensioner is, in the opinion of the trustees of the scheme, unable to act by reason of mental disorder or otherwise, so however that there is provision in the scheme for sums equivalent to the guaranteed minimum pension to be paid or applied, while the pensioner is so unable, for the maintenance of the pensioner or, at the discretion of the trustees, of the pensioner together with his dependants or of his dependants only, to the extent that they are not so applied, to be held for the pensioner until he is again able to act or, as the case may be, for his estate;
- (b) that the pensioner is undergoing a period of imprisonment or detention in legal custody, so however that there is provision in the scheme for sums equivalent to the guaranteed minimum pension to be paid or applied during such a period for the maintenance of such one or more of the pensioner's dependants as the trustees of the scheme may in their discretion determine; and
- (c) that the earner is re-employed by the employer who had previously employed him in contracted-out employment in respect of which the guaranteed minimum pension became payable or in any other employment to which the scheme paying the guaranteed minimum pension applies, so however that there is provision in the scheme for the guaranteed minimum pension which becomes payable when the suspension is lifted to be increased in accordance with section 35(6).

(2) For the purposes of section 39(4)(b) the circumstances in which a scheme may provide for an earner's or widow's guaranteed minimum pension (whether current or prospective) to be forfeited are—

- (a) that the person entitled to that pension has been convicted of—
 - (i) an offence of treason, or
 - (ii) one or more offences under the Official Secrets Acts 1911–1939 for which he has been sentenced on the same occasion to a term of imprisonment of, or to 2 or more consecutive terms amounting in the aggregate to, at least 10 years;
- (b) in the case of a widow's guaranteed minimum pension, that the earner by reference to whose contracted-out employment that pension is

payable has been convicted of an offence of treason, or has been convicted of offences and has been sentenced to terms of imprisonment as set out in sub-paragraph (a)(ii);

- (c) in the case of a guaranteed minimum pension payable under a scheme for members of Her Majesty's forces, being a scheme for which the Secretary of State is responsible, that the person entitled to that pension or as the case may be the member of the forces whose widow is currently or prospectively entitled to that pension has in the opinion of the Secretary of State committed an act which is gravely prejudicial to the defence, security or other interests of the state; and
- (d) in the case of any payment of guaranteed minimum pension for which a claim has not been made, that a period of at least 6 years has elapsed from the date on which that payment became due.

Termination of periods of contracted-out employment

36.— (1) Subject to paragraphs (2) and (8), an earner's employment shall be treated as having ceased to be contracted-out employment when any of the following circumstances applies:—

- (a) the earner's contract of service has expired or been terminated;
- (b) in the absence of a contract of service, the service itself has ended;
- (c) cancellation or surrender of the contracting-out certificate by virtue of which his employment was contracted-out employment has taken effect, except in a case where, within 6 months of the cancellation or surrender, or such longer period as the Secretary of State may allow in a particular case, he becomes a member in contracted-out employment of another contracted-out scheme under the same employer to which his accrued rights to requisite benefits are transferred;
- (d) a variation of the contracting-out certificate by virtue of which his employment was contracted-out employment has taken effect such that the certificate no longer applies to his employment, except in a case where, within 6 months of the variation, or such longer period as the Secretary of State may allow in a particular case, he again comes within the description of earners in relation to which the said contracting-out certificate applies or he becomes a member in contracted-out employment of another contracted-out scheme under the same employer to which his accrued rights to requisite benefits are transferred;
- (e) the earner has ceased to be within the description of earners in relation to which the contracting-out certificate applies or has ceased to be a member of the scheme, except in a case where, within 6 months of the ceasing, or such longer period as the Secretary of State may allow in a particular case, he again comes within the description of earners in relation to which the said contracting-out certificate applies or he becomes a member in contracted-out employment of another contracted-out scheme under the same employer to which his accrued rights to requisite benefits are transferred;
- (f) the earner's employer dies or disposes of the whole or part of his business so that the earner ceases to be employed by that employer and the contracted-out employment is not, or cannot be, treated as continuing under the new employer under paragraph (5).

(2) In such cases as are specified in paragraph (3), an earner's employment shall not be treated as having ceased to be contracted-out employment by reason only of the circumstances mentioned in paragraph (1)(a) and (b) where the service in question is one (other than the last) of a series of employments to all of which the same scheme applies.

(3) The cases mentioned in paragraph (2) are—

(a) where all the employments are with the same employer and, in respect of the employment first mentioned in paragraph (2)—

(i) no state scheme premium has been paid or any that has been paid has been refunded,

(ii) the calculation of the earner's guaranteed minimum pension arising out of his service in that employment is not subject to any provision of the scheme prescribed by regulations made under section 45(1)(b), and

(iii) the earner's accrued rights to the requisite benefits under the scheme arising out of his service in that employment have not been transferred in accordance with the provisions of the scheme under section 38(1),

and any interval between one employment in the series and the next is no longer than 6 months or such longer period as the Secretary of State may allow in a particular case; and

(b) where a woman has a right to return to work under section 45(1) of the Employment Protection (Consolidation) Act 1978(a) (right to return to work following pregnancy or confinement) and does in fact return to work pursuant to that right.

(4) The total period of contracted-out employment which consists of a series of employments to which paragraph (2) applies shall not include any intervals between employments in the series.

(5) In cases where an earner's employer dies or otherwise ceases to be the employer in relation to the earner's contracted-out employment and his business is taken over by a new employer, the earner's service in contracted-out employment under the old employer may be treated as continuing under the new employer if—

(a) the earner's service after the change of employer continues to qualify him for requisite benefits under the contracted-out scheme by virtue of which he qualified for such benefits before the change, or if his service does not so qualify him the earner is nevertheless to be treated as being in contracted-out employment by virtue of the provisions of regulation 33;

(b) the new employer accepts all the responsibilities of the old employer for any contributions to the scheme and any state scheme premiums which are outstanding in respect of the scheme at the time of the change;

(c) the new employer notifies the Board of the change within one month of its taking place or such longer period as the Board may consider reasonable in the particular case and provides the Board or the

(a) 1978 c.44.

Secretary of State with such documents and information as they may reasonably require; and

- (d) in all the circumstances the Board consent to the employment being so treated.

(6) In a case where an earner's service in contracted-out employment is to be treated as continuing by virtue of paragraph (5) the contracting-out certificate issued to the old employer shall be treated as issued to the new employer and the Board may vary that certificate in such respects as may be necessary in the circumstances.

(7) For the purposes of this regulation a company which is a holding company within the meaning of section 154 of the Companies Act 1948(a), or which is treated by the Board under regulation 14(1)(b)(ii) as a holding company, and which has made an election to contract out in respect of earners employed by one or more subsidiary companies of that company, shall be treated as the employer of those earners.

(8) In cases where an earner is employed concurrently in 2 or more contracted-out employments by reference to the same scheme and with the same employer his employment in any one of those employments shall not be treated as having terminated by reason only of the circumstances mentioned in paragraph (1)(a) and (b) until both or all such employments are treated as having so terminated.

Contracted-out employment to be treated for certain purposes as not having terminated

37.— (1) Subject to paragraphs (2) and (4), where within 6 months (or such longer period as the Secretary of State may allow) of the happening of one of the following events, namely—

- (a) the expiry or termination of an earner's contract of service in contracted-out employment with an employer; or
 (b) in the absence of a contract of service, the ending of service in such employment,

the earner is employed by another employer in employment which is contracted-out by reference to the same scheme as the first employment, the earner's service in the first employment shall, notwithstanding the provisions of regulation 36, be treated, for the purposes of sections 35(7) (exclusion of guaranteed minimum pension from revaluation under section 21) and 42(1) (premium on termination of contracted-out employment), as not having terminated.

(2) Paragraph (1) shall not apply—

- (a) unless the scheme is one for which there is a common fund;
 (b) where a state scheme premium has been paid in respect of the first employment and has not been refunded;
 (c) where and for so long as provisions made by the scheme in conformity with the requirement specified in regulation 22(1) apply to the

(a) 1948 c.38.

calculation of the earner's guaranteed minimum pension arising out of his service in the first employment; or

- (d) where the earner's accrued rights to the requisite benefits under the scheme arising out of his service in the first employment have been transferred in accordance with the provisions of the scheme under section 38(1).

(3) In this regulation the expression "common fund" means a fund into which all contributions, however derived, are paid, and to the whole of which recourse may be had to meet any liabilities of the scheme for the payment of benefit.

(4) The total period of contracted-out employment where there is a series of employments to which paragraph (1) applies shall not include any intervals between employments in the series.

(5) Where an earner ceases to be liable for Class 1 contributions under the Social Security Act 1975(a) in respect of any contracted-out employment because he is employed outside Great Britain and where, and for so long as, service in the employment outside Great Britain continues to qualify him for benefits under the scheme by reference to which his employment was contracted-out employment, the earner's service in that employment shall, notwithstanding the provisions of regulation 36, be treated, for the purposes of sections 35(7) and 42(1), as not having terminated.

Provision of information about guaranteed minimum pensions

38.—(1) The prescribed persons to whom, under section 51, the Secretary of State may furnish information as to the amount of guaranteed minimum pension to which it appears to him a person is immediately or prospectively entitled under a scheme or as to any other matter required for calculating that amount, are (in addition to the persons mentioned in that section)—

- (a) the earner or widow to whom the information relates;
- (b) the employer in relation to the contracted-out employment of an earner to whom the information relates;
- (c) independent trade unions recognised to any extent for the purpose of collective bargaining in respect of earners who are members of a contracted-out scheme; and
- (d) the responsible paying authority.

(2) Paragraph (1)(c) has effect subject to the condition that the information to be furnished is either—

- (a) as to the total amount of the guaranteed minimum pensions to which it appears to the Secretary of State that all persons immediately or prospectively entitled under the scheme are so entitled; or
- (b) to be furnished with the written consent of the earner or widow to whom the information relates.

(a) 1975 c.14.

Conditions to be satisfied, for purposes of section 22(9) of the 1977 Act, by policies of insurance and annuity contracts

39. For the purposes of section 22(9) of the 1977 Act, which makes provisions dependent upon the existence in force of a certificate issued by the Secretary of State stating that in his opinion the payment of a guaranteed minimum pension to which a person is entitled or has accrued rights is secured by means of a policy of insurance or annuity contract which satisfies prescribed conditions, the prescribed conditions are—

- (a) that the policy is taken out, or the contract entered into, with an insurance company to which Part II of the Insurance Companies Act 1982(a) applies and which is authorised under section 3 or 4 of that Act to carry on ordinary long-term insurance business as defined in that Act; and
- (b) that the policy or contract contains, or is endorsed with, terms so as to provide—
 - (i) that the annuity to be paid thereunder to or for the benefit of that person will be at least equal to the guaranteed minimum pension due to him, or, as the case may be, prospectively due to him at pensionable age, subject to any revaluation or increase under section 35(7),
 - (ii) if that person is a man, that if he dies leaving a widow the annuity to be paid thereunder to her or for her benefit will be at least equal to the guaranteed minimum pension prospectively due to her in the event of her being left as that person's widow,
 - (iii) that the annuity or annuities (or such part of it or them as relates to the guaranteed minimum pensions of that person and, if he is a man, his widow) is or are (subject to the provisions of section 39(1) and regulations from time to time made thereunder (b)) non-commutable and non-assignable, and
 - (iv) that the insurance company assumes an enforceable obligation to pay the guaranteed minimum pensions either to that person and, if appropriate, his widow, or, as the case may be, to trustees of a trust for the benefit of that person, and if appropriate, his widow, under the terms of which the sums paid by the insurance company in respect of those guaranteed minimum pensions can be used for no other purpose.

Priorities on the winding-up of a scheme

40.— (1) A scheme (not being a public service scheme) which contains provision for the payment of pensions or other benefits (not being pensions or other benefits payable by reason of a death) to persons who have not attained normal pension age shall be exempt from the requirements of section 40(3)(c) to the following extent, namely that it shall not be required to accord priority on winding-up to the liabilities specified in paragraphs (a) to (d) of section 40(3) over liabilities of the scheme in respect of pensions and other benefits to which the widow or widower or any dependant of a person who is already

(a) 1982 c.50.

(b) See regulation 34.

(c) Section 40(3) was amended by the Social Security (Miscellaneous Provisions) Act 1977 (c.5), section 22(8).

entitled to payment of a pension or benefit under the scheme but has not attained normal pension age will be entitled on that person's death.

(2) A scheme (not being a public service scheme) which contains provision for the payment of pensions or other benefits to dependants of members shall be exempt from the requirements of section 40(3) (priorities on winding-up) to the following extent, namely that it shall not be required to accord priority on a winding-up to the liabilities specified in paragraphs (a) to (d) of section 40(3) over liabilities of the scheme in respect of pensions and other benefits to which any dependant of a deceased member will be entitled under the scheme on the death of the widow or widower or other dependant of that member.

(3) A scheme (not being a public service scheme) which contains provision enabling a member to qualify for additional pension or other benefits under the scheme by voluntarily paying to it contributions in addition to those, if any, which he must pay in order to qualify for the usual pension or other benefits provided by the scheme shall, if the Board (whether or not subject to conditions) so approve, be exempt from the requirements of section 40(3) (priorities on winding-up) to the following extent, namely that it shall not be required to accord priority on a winding-up to the liabilities specified in paragraphs (a) to (d) of section 40(3) over liabilities of the scheme in respect of any pension or other benefits arising from payment of such additional voluntary contributions.

Conditions in connection with alteration of rules of contracted-out schemes

41.— (1) Where the consent of the Board is required by section 50 (alteration of rules of contracted-out schemes), the Board may, as a condition of their consent, in the cases to which by virtue of paragraph (2) this regulation applies, require any employer of any member of the scheme to which the consent will relate to give notice of the intended alteration of the rules of the scheme in accordance with paragraphs (3) and (4).

(2) The cases to which this regulation applies are where the intended alteration of the rules of the scheme—

- (a) would have the effect of adding or removing the employment of any earner to or from the employments which are contracted-out employments by reference to that scheme, or
- (b) would, in the opinion of the Board, have the effect of significantly diminishing the requisite benefits provided by the scheme.

(3) Where in accordance with this regulation the Board require notice to be given of the intended alteration of the rules of the scheme, such notice shall be given, in the manner specified below, to—

- (a) the earners affected by the intended alteration of the rules by virtue of being within either of the cases referred to in paragraph (2);
- (b) the trustees of the scheme to which the consent will relate;
- (c) where there is a policy of insurance or an annuity contract as a means of securing the guaranteed minimum pensions to be payable under the scheme, the insurance company or friendly society concerned; and
- (d) all independent trade unions recognised to any extent for the purpose

of collective bargaining in relation to the earners to whom notice is required to be given.

- (4) Notices given under this regulation shall—
- (a) specify the purport of the intended alteration of the rules of the scheme and the date from which the alteration is intended to have effect, and give an explanation of the effect on the earners concerned;
 - (b) specify, by description or otherwise, a person or persons to whom representations may be made with respect to the matters included in the notice by or on behalf of the persons to whom the notice is given;
 - (c) specify a date by which such representations may be made, so however that a date earlier than 3 months from the date of the giving of the notice may be specified only if approved by the Board and assented to by all trade unions to whom notice must be given in accordance with paragraph (3)(d); and
 - (d) contain a statement that—
 - (i) such representations may also be made to the Board provided they are made not later than 14 days from the expiration of the period for making any representations in accordance with sub-paragraph (c) or within such shorter period as shall be approved by the Board;
 - (ii) the Board have power to consent or refuse to consent to the intended alteration to the rules of the scheme and that if the Board do not consent, the intended alteration will not be permitted to be made.
- (5) An employer who has given such a notice as is mentioned in this regulation shall undertake consultations, if he has not already done so, about the matters covered by the notice with all independent trade unions recognised to any extent for the purpose of collective bargaining in relation to those earners to whom notice is required to be given by virtue of this regulation; and any question whether an employer has complied with this requirement may be referred to an industrial tribunal.
- (6) A notice under this regulation shall be given—
- (a) to any earner concerned by—
 - (i) sending or delivering it in writing to him; or
 - (ii) exhibiting it conspicuously at his place of work or employment so that it may be read conveniently by him and by drawing his attention to it in writing; or
 - (iii) giving it in such other manner as the Board may consider to be reasonable in the circumstances of the case;
 - (b) to any other person or body, by sending or delivering it to that person or body in writing.

Meaning of the expression "connected employer"

42.— (1) The cases in which employers are to be treated as connected for the purposes of section 51A(a) are specified in paragraph (2).

(2) The cases referred to in paragraph (1) are those where any 2 employers are or were, at the relevant time—

- (a) a holding company and a subsidiary within the meaning of section 154 of the Companies Act 1948(b), or
- (b) subsidiaries of the same holding company within the meaning of that section, or
- (c) part of a group of companies whose financial arrangements for the scheme in question are such that the Board have considered or, if requested to do so, would consider it appropriate to treat the group as consisting of a holding company and one or more subsidiaries for the purpose of regulation 14(1), or
- (d) companies each having the same persons as at least half of its directors, or
- (e) companies in respect of each of which more than one half of the issued share capital is held, either directly or through a nominee, by the same person, or
- (f) partnerships each having the same persons as at least half of its partners.

(3) In this regulation an employer is to be regarded as an employer at the relevant time where, as the case may require, he is the employer at the time of the surrender or cancellation of the first certificate or the employer at the time of the making of an election with a view to the issue of a further contracting-out certificate.

(4) In this regulation "company" means a company within the meaning of section 455(1) of the Companies Act 1948 or a body corporate to which, by virtue of section 435 of that Act, any provision of that Act applies.

Notifications to the Secretary of State

43.— (1) Whenever an earner's service in contracted-out employment is treated as terminated under the provisions of regulation 36 the employer of that earner in that service shall, except where the termination is due to the death of the earner or occurs on a date later than the end of the tax year preceding that in which he attains pensionable age, or where the amount of a contributions equivalent premium in respect of that service would not exceed £5, notify the Secretary of State of that termination.

(2) A notification required to be given under paragraph (1) may be given at any time within the period of one month before the expected date of termination but if not so given shall be given within 6 months from the date on which the service terminated or, if the Secretary of State is satisfied that the

(a) Section 51A was inserted in the Social Security Pensions Act 1975 by the Social Security and Housing Benefits Act 1982 (c.24), section 40.
(b) 1948 c.38.

notification could not reasonably have been given within that period, such longer period as he may approve in a particular case or class of case.

(3) A notification required to be given under paragraph (1) shall be given in writing in such form as the Secretary of State may direct and shall contain such information as the Secretary of State may reasonably require for calculating guaranteed minimum pensions and state scheme premiums and for related purposes.

(4) In any case where, after the giving of a notification under paragraph (1), a responsible paying authority transfers its responsibility for a guaranteed minimum pension to another responsible paying authority, the responsible paying authority making the transfer shall, within one month from the date of the transfer, notify the Secretary of State in writing of the transfer, giving such particulars as the Secretary of State may reasonably require to enable him to identify the new responsible paying authority.

(5) An employer to whom a contracting-out certificate has been issued or the trustees of the scheme to which the certificate relates shall, if required to do so by the Secretary of State, in such manner and at such times as the Secretary of State may reasonably require, furnish to the Secretary of State such information relating to members of the scheme to which the contracting-out certificate relates as he may reasonably require for the purpose of calculating guaranteed minimum pensions and for related purposes.

Modification of sections 35(5), (7) and (8), 44 and 45

44. In such a case as is specified in regulation 45—

- (a) section 35(5) shall be modified so as to have effect as if there were added at the end thereof the words “or, in respect of the earner’s earnings factor or the weekly equivalent mentioned in subsection (2) above for any relevant year in a period of linked qualifying service, alternatively shall be taken to be that factor or weekly equivalent as increased in accordance with the provisions of the scheme under regulations made under section 45(1) below”, and
- (b) where earnings factors of an earner whose accrued rights to requisite benefits, including such rights derived from linked qualifying service, have been transferred under section 38(1) to another contracted-out scheme, section 35(7) shall be modified so as to have effect as if it permitted that scheme to provide for those earnings factors to be determined for the purpose of section 35(2) without reference to any order coming into force under section 21—
 - (i) after the relevant year in which his service in the contracted-out employment, by reference to the scheme from which those rights were transferred, was terminated where such earnings factors have previously fallen to be determined by reference to orders under section 21, or
 - (ii) in and after the relevant year in which that service was terminated in any other case,

and as if section 35(7)(a) and (b) had effect accordingly, save, in a case to which sub-paragraph (ii) applies, for treating the reference to the amount of the increase in section 35(7)(b) as a reference to the amount

by which the earnings factors relevant to the weekly equivalent would be increased, and

- (c) section 35(8) shall be modified so as to have effect as if there were added, at the end, the words “, so however that separate provision may be made for members as regards their accrued rights transferred in accordance with section 38(1) below”, and
- (d) section 44(6)(a)(a) shall be modified so as to have effect as if the requirement to disregard certain orders made under section 21 applied only to earnings factors arising from the earner’s service in the employment by reference to which the scheme ceasing to be contracted-out was contracted-out, including linked qualifying service the earnings factors relating to which are being increased by reference to orders made under section 21, and
- (e) section 45 shall be modified so as to have effect as if—
 - (i) the application of subsection (1) were extended to include cases where an earner’s accrued rights to requisite benefits have been transferred under section 38(1) to another contracted-out scheme, and
 - (ii) in such cases the requirement that the earner’s employer shall pay a limited revaluation premium in respect of the earner were a requirement that that premium shall be paid by the employer of the earner in the employment by reference to the scheme from which the transfer of accrued rights referred to in sub-paragraph (i) has been made unless, pursuant to arrangements made by that employer, the premium is paid by the trustees of the scheme to which the accrued rights have been transferred, and
 - (iii) the application of subsection (3) were extended to include the cases specified in sub-paragraph (i), and
 - (iv) in subsection (3)(a)(b) the requirement to disregard certain orders made under section 21 applied only to earnings factors arising from the earner’s service in the employment by reference to which the scheme in question was contracted-out, including linked qualifying service the earnings factors relating to which are being increased by reference to orders made under section 21.

Circumstances in which the modifications to the Act set out in regulation 44 apply

45. The case referred to in regulation 44 is where following the termination of an earner’s service in contracted-out employment by reference to a scheme the following conditions are satisfied, namely—

- (a) a transfer under section 38(1) of the earner’s accrued rights to requisite benefits under that scheme (in this regulation called the “transferring scheme”) to another contracted-out scheme (in this regulation called the “receiving scheme”) is made, or if already begun is completed, on or after 5th April 1983;
- (b) the earner commences or has commenced employment which is contracted-out by reference to the receiving scheme;

(a) Section 44(6) was substituted by the Social Security Act 1980 (c.30), section 3(8).
(b) Section 45(3) was amended by the Social Security Act 1980, section 3(9).

- (c) by virtue of section 38(2) the calculation, under the provisions of the receiving scheme, of the earner's guaranteed minimum pension for the purposes of section 35(2) falls to include earnings factors, or the weekly equivalent derived therefrom, arising out of contracted-out employment in any period of linked qualifying service which was contracted-out employment by reference to the transferring scheme; and
- (d) either—
- (i) the receiving scheme provides for the earnings factors or weekly equivalent derived therefrom to be increased at the rate by which they, or it, fell to be increased under the provisions of the transferring scheme or would have fallen to be increased under the provisions of that scheme relating to an earner whose service in contracted-out employment by reference to the scheme is terminated before he attains pensionable age, or
 - (ii) if the provisions of the transferring scheme provided for those earnings factors to be increased by reference to orders under section 21, the receiving scheme provides for those earnings factors or the weekly equivalent derived therefrom to be increased in accordance with the provisions of section 35(7) or of regulations made under section 45(1), or
 - (iii) if the transferring scheme provided for those earnings factors or the weekly equivalent derived therefrom to be increased in accordance with the provisions of either section 35(7) or of regulations made under section 45(1), the receiving scheme includes provision for those earnings factors to be increased by reference to orders under section 21 from the date of termination of the earner's service in the period of contracted-out employment from which those earnings factors arose, or
 - (iv) if a transfer of the earner's accrued rights to the receiving scheme is not one to which sub-paragraph (d)(iii) applies and those rights were previously being increased at a rate calculated by reference to orders under section 21, the receiving scheme includes provision for those earnings factors or the weekly equivalent derived therefrom to be increased at a rate calculated otherwise than by reference to orders under section 21.

Modification of sections 33, 34 and 36 to 39

46.— (1) This regulation applies to any case in which, with the earner's consent except where regulation 6(4)(a) of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1973(a) (discretion for Board to dispense with consent) applies, a scheme provides an alternative to short service benefit (as defined for the purposes of Schedule 16 to the Social Security Act 1973(b) (preservation requirements)) which is permitted under any of sub-paragraphs (a), (b), (e) and (f) of regulation 6(1) of those regulations (prescribed alternatives other than lump sums for, or linked to, service before 6th April 1975).

(a) S.I. 1973/1469; the relevant amending instrument is S.I. 1978/1089.
(b) 1973 c.38.

(2) In a case to which this regulation applies, sections 33, 34 and 36 to 39 (contracting-out requirements) shall have effect with the modification that, subject to any conditions which may be imposed by the Board in their discretion in any particular case of class or cases, to be contracted-out in relation to an earner's employment—

- (a) the scheme need not comply with—
 - (i) sections 33(1)(a) and 34 (annual rate of earner's pension to be not less than $1\frac{1}{4}$ per cent. of salary), or
 - (ii) sections 36(2) and 37 (annual rate of widow's pension to be not less than $\frac{3}{8}$ per cent. of earner's salary);
- (b) if the scheme does provide an earner's or widow's pension which exceeds the guaranteed minimum referred to in section 33(1)(b) or 36(3), as the case may be, it need not, in respect of the excess, comply with any other provision of section 33, 36, 38 or 39 which applies to any part of a pension in excess of the guaranteed minimum.

Modification of section 44(6) in cases of limited revaluation

47. Subject to the provisions of regulation 49, in relation to a scheme which has ceased to be contracted-out, and, immediately before it so ceased, contained provisions authorised by section 35(7), section 44(6) shall have effect with the modification that, where under the provisions authorised by section 35(7) an earner's earnings factors are determined for the purposes of section 35(2) without reference to any order made under section 21, that order shall also be disregarded for the purpose of calculating the costs, referred to in section 44(5)(a) and (b), of providing guaranteed minimum pensions for or in respect of that earner, so however that those costs shall be calculated on the basis that the weekly equivalent mentioned in section 35(2) has been increased, in the manner for which the scheme is required to provide by section 35(7), for each relevant year after the year in which the earner's service is terminated except those years (if any) for which his earnings factors are increased by 12 per cent. in accordance with section 44(6).

Modification of section 21(1) of the 1977 Act in cases of limited revaluation

48. Subject to the provisions of regulation 49, in relation to a scheme which has ceased to be contracted-out and, immediately before it so ceased, contained provisions authorised by section 35(7), section 21(1) of the 1977 Act shall be so modified as to provide that, in the case of an earner whose service in contracted-out employment by reference to the scheme is terminated before he attains pensionable age—

- (a) if it is so terminated before the period of 5 years ending with the tax year in which the scheme ceases to be contracted-out, the provision for taking his earnings factor for any relevant year to be that factor as increased by 12 per cent. for some or all of those tax years shall not apply; and
- (b) if it is so terminated within that period of 5 years and unless an election is made as provided in section 21(1) of the 1977 Act, the provision for taking his earnings factor for any relevant year to be that factor as increased by 12 per cent. for some or all of those tax years shall apply, so however that his weekly equivalent shall not be increased, pursuant to any provision required by section 35(7), for the years for which that factor is taken to be that factor as increased by 12 per cent.

Additional modifications relating to increases of earnings factors by 12 per cent.

49.— (1) Subject to the provisions of paragraph (2), so far as relates to any case where an earner's accrued rights to requisite benefits are or have been transferred under section 38(1) to another contracted-out scheme, references in regulations 47 and 48(b) to an increase of 12 per cent. of an earner's earnings factor for any year shall be construed as references only to the increase of earnings factors arising from the earner's service in the employment by reference to which the scheme ceasing to be contracted-out was contracted-out.

(2) For the purposes of paragraph (1), any service of the earner which is linked qualifying service shall be included in that service only where the earnings factors to which it relates are being increased by reference to orders under section 21.

Miscellaneous provisions affecting section 21 of the 1977 Act

50.— (1) For the purposes of section 21 of the 1977 Act(a) the prescribed person is the trustees of the scheme.

(2) An election under section 21 of the 1977 Act shall be notified to the Secretary of State in writing in such form as the Secretary of State may reasonably require for the purpose of identifying the earner to whom the election relates.

(3) Section 21 of the 1977 Act shall not apply where the arrangements approved by the Board in respect of an earner's accrued rights to guaranteed minimum pensions under the scheme which is ceasing to be contracted-out consist of or include the transfer of those rights to another contracted-out scheme, and the same employer is the earner's employer in relation to both the first and second schemes or the employers in relation to those schemes are connected employers.

(4) In paragraph (3), "connected employers" means employers who would fall within any of the cases referred to in regulation 42(2), if the words "at the relevant time" and regulation 42(3) were disregarded.

PART V

REVOCATIONS

Revocations

51. The regulations specified in column 1 of the Schedule hereto (some of which are spent) are revoked to the extent mentioned in column 3 of that Schedule.

Signed by authority of the Secretary of State for Social Services.

13th March 1984.

Rhodes Boyson,
Minister of State,
Department of Health and Social Security.

(a) Section 21 was amended by the Social Security Act 1980 (c.30), section 3(4), and by the Social Security Act 1981 (c.33), section 8(4) and Schedule 2, paragraph 3.

SCHEDULE

Regulation 51

REGULATIONS REVOKED

Column 1 <i>Regulations revoked</i>	Column 2 References	Column 3 Extent of revocation
The Occupational Pension Schemes (Certification of Employments) Regulations 1975	S.I. 1975/1927	The whole of the regulations.
The Occupational Pension Schemes (Contracting-out) Regulations 1975	S.I. 1975/2101	The whole of the regulations.
The Contracted-out Employment (Notifications, Premium Payment and Miscellaneous Provisions) Regulations 1976	S.I. 1976/143	The whole of the regulations.
The Contracted-out Employment (Miscellaneous Provisions) Regulations 1977	S.I. 1977/1188	The whole of the regulations.
The Contracted-out Employment (Transitional Arrangements) Regulations 1977	S.I. 1977/1615	The whole of the regulations.
The Contracted-out Employment (Miscellaneous Provisions) Regulations 1978	S.I. 1978/250	The whole of the regulations.
The Contracting-out and Preservation (Further Provisions) Regulations 1978	S.I. 1978/1089	Regulations 2 and 4.
The Contracted-out Employment (Miscellaneous Provisions)(No. 2) Regulations 1978	S.I. 1978/1827	Regulations 2 and 4.
The Contracting-out and Preservation (Further Provisions) Regulations 1981	S.I. 1981/129	Regulations 2, 3 and 5.
The Occupational Pension Schemes (Connected Employers) Regulations 1982	S.I. 1982/1032	The whole of the regulations.
The Contracted-out Employment (Miscellaneous Provisions) Regulations 1983	S.I. 1983/338	The whole of the regulations.
The Contracted-out Employment (State Scheme Premiums) Regulations 1983	S.I. 1983/380	The whole of the regulations.
The Contracting-out (Modification) Regulations 1983	S.I. 1983/722	The whole of the regulations.
The Occupational Pension Schemes (Contracting-out) (Miscellaneous Provisions) Regulations 1984	S.I. 1984/107	The whole of the regulations.
The Occupational Pension Schemes (Contracting-out) Amendment Regulations 1984	S.I. 1984/240	The whole of the regulations.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations consolidate the regulations hitherto in force relating to the contracting-out of employments and occupational pension schemes under Part III of the Social Security Pensions Act 1975.

Part II of these Regulations (regulations 2 to 17) provides for the procedure for the making of elections by employers for employment to be contracted-out employment under that Act, for the giving of notices to employees and trade unions representing them, and for the issue of contracting-out certificates by the Occupational Pensions Board.

Part III of these Regulations (regulations 18 to 26) makes provision about liability for, election to pay, and payment and refund of, state scheme premiums, and for treating certain premiums as paid, or paid in part.

The remainder of these Regulations make miscellaneous provisions relating to the contracting-out of employments and schemes.

SI 1984/380
ISBN 0-11-046380-3

