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STATUTORY INSTRUMENTS

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**1996 No. 1172**

**PENSIONS**

**Occupational Pension Schemes  
(Contracting-out) Regulations 1996**

<i>Made</i>	- - - -	<i>25th April 1996</i>
<i>Laid before Parliament</i>		<i>29th April 1996</i>
<i>Coming into force</i>	- -	<i>6th April 1997</i>

The Secretary of State for Social Security in exercise of the powers set out in Schedule 1 and of all other powers enabling him in that behalf, after agreement with the Occupational Pensions Board that certain proposals within these Regulations need not be referred to it, by this instrument, which otherwise contains regulations made for the purpose of consolidating regulations revoked herein and regulations which are consequential upon enactments contained in Part III of the Pensions Act 1995<sup>(1)</sup> and are made before the end of the period of 6 months beginning with the coming into force of the enactments of that Part by virtue of which they are made<sup>(2)</sup>, 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 1996 and shall come into force on 6th April 1997.

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

“the 1993 Act” means the Pension Schemes Act 1993<sup>(3)</sup>;

“the 1995 Act” means the Pensions Act 1995;

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(1) 1995 c. 26.

(2) See section 185 of the Pension Schemes Act 1993 (c. 48) and section 173 of the Social Security Administration Act 1992 (c. 5), under which the requirement to consult does not apply where regulations are made only for the purpose of consolidating other regulations revoked by them or which are consequential upon a specified enactment and made before the end of six months from the coming into force of that enactment or where the Occupational Pensions Board agrees that regulations need not be referred to it.

(3) 1993 c. 48.

“the actuary” means the actuary appointed for the scheme in pursuance of section 47(1) of the 1995 Act or the actuary otherwise authorised by virtue of these Regulations to provide certification in accordance with section 12A(6) of the 1993 Act<sup>(4)</sup>;

“the Administration Act” means the Social Security Administration Act 1992<sup>(5)</sup>;

“administrator”, in relation to an occupational pension scheme, means the person resident in the United Kingdom having responsibility for the management of the scheme or, in the case of an overseas scheme, means the person resident in the United Kingdom appointed in accordance with section 590(2)(c) of the Taxes Act;

“age-related payment” means a payment made by the Secretary of State in accordance with section 42A(3) of the 1993 Act<sup>(6)</sup>;

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992<sup>(7)</sup>;

“earnings period” has the same meaning as in the Social Security (Contributions) Regulations 1979<sup>(8)</sup>;

“emoluments” means so much of a person’s remuneration or profit derived from employed earner’s employment as constitutes earnings for the purposes of the Contributions and Benefits Act;

“employer” includes a person who, by virtue of paragraphs (4) or (5) or regulations 12 to 14, is treated as an employer for the purposes of these Regulations;

“income tax month” means a period beginning on the 6th day of any calendar month and ending on the 5th day of the following calendar month;

“independent trade union” means an independent trade union recognised to any extent for the purpose of collective bargaining;

“insured scheme” means a scheme in which the benefits are secured by one or more policies of insurance or annuity contracts and which is managed by an insurance company which issued the policy or contract;

“minimum funding requirement” shall be construed in accordance with section 56 of the 1995 Act;

“the Occupational Pensions Board” means the Occupational Pensions Board established under section 66 of the Social Security Act 1973<sup>(9)</sup> and dissolved under section 150 of the 1995 Act;

“overseas scheme” means an occupational pension scheme which is—

- (a) established under irrevocable trust or by such other means as the Secretary of State may approve, and
- (b) administered wholly or primarily, outside the United Kingdom;

“principal appointed day” has the same meaning as in section 7(2B) of the 1993 Act<sup>(10)</sup>;

“scheme” means an occupational pension scheme;

“section 9(2B) rights” are rights (other than rights attributable to voluntary contributions within the meaning of section 111 of the 1993 Act) which are attributable to an earner’s service on or after the principal appointed day in employment which is contracted-out in accordance with section 9(2B) of the 1993 Act<sup>(11)</sup>;

(4) Section 12A(6) was inserted by section 136(5) of the Pensions Act 1995.

(5) 1992 c. 5.

(6) Section 42A was inserted by section 137(5) of the Pensions Act 1995.

(7) 1992 c. 4.

(8) S.I. 1979/591; relevant amending instruments are S.I. 1983/10 and 1987/413.

(9) 1973 c. 38.

(10) Section 7(2B) was inserted by section 136(1) of the Pensions Act 1995.

(11) Section 9(2B) was inserted by section 136(3) of the Pensions Act 1995.

“the Taxes Act” means the Income and Corporation Taxes Act 1988(12);

“trustees”, in relation to a scheme which is not set up or established under a trust, means the managers or administrators of the scheme.

- (3) In these Regulations, unless the context otherwise requires, a reference—
- (a) to a numbered Part is to the Part of these Regulations bearing that number;
  - (b) to a numbered regulation or Schedule is to the regulation in, or Schedule to, these Regulations bearing that number;
  - (c) in a regulation or Schedule to a numbered paragraph is to the paragraph in that regulation or Schedule bearing that number;
  - (d) in a paragraph to a lettered or numbered sub-paragraph is to the sub-paragraph in that paragraph bearing that letter or number.

(4) For the purposes of these Regulations, any person, government department or public authority who, under Part I of the Contributions and Benefits Act or regulations made thereunder, 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 or public authority who makes or is liable 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, a 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 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 Secretary of State 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 shall be deemed to have been sent if it was sent by registered post or by recorded delivery service to that person’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 10, an election with a view to the issue of a contracting-out certificate—

- (a) may only be made—

- (i) after notices to make such an election have been given by the employer in accordance with regulation 3; and
  - (ii) within the period after the expiry of those notices which is specified in regulation 5; and
  - (b) shall be made in writing to the Secretary of State and shall include the particulars specified in regulation 6.
- (2) An employer may elect that the employment of earners in an employment shall be contracted-out by reference to a scheme in relation to all earners in that employment with the exception of those mentioned in either or both of sub-paragraphs (a) and (b), namely—
- (a) where an earner in an employment to which the scheme relates opts in writing not to join or, as the case may be, not to remain as a member of any contracted-out employment to which the scheme relates, any earner who so opts; and
  - (b) in a case where it is possible for one or more earners 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 earner or 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) falls short of a minimum length of service (not exceeding 5 years) specified in the rules of the scheme and who cannot (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) A notice of intention to make an election with a view to the issue of a contracting-out certificate 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, and those (if any) in that employment in relation to whom the employer is not electing that the employment shall be treated as contracted-out;
  - (b) the trustees 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 protected rights, guaranteed minimum pensions or any benefits arising in respect of section 9(2B) rights to be payable under the scheme, the insurance company or Friendly Society concerned; and
  - (d) all independent trade unions recognised in relation to the earners concerned.
- (2) Notices given under this regulation shall be in writing and 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) describe (whether or not by reference to another document) 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 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 in accordance with paragraphs (4) and (5);
  - (e) specify the name and business address of the person to whom representations may be made with respect to the matters included in the notice;

- (f) contain a statement that—
    - (i) such representations may also be made to the Secretary of State,
    - (ii) the Secretary of State may defer his determination 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,
    - (iii) the Secretary of State has power to refuse to give effect to the election if he is not satisfied that the employer has undertaken consultations about the matters covered by the notice with all independent trade unions recognised in relation to the earners concerned; and
  - (g) explain (whether or not by reference to another document)—
    - (i) whether the employment would be contracted-out by reference to a salary-related or money purchase contracted-out scheme and how benefits would accrue to a member under the scheme if the employment were contracted-out,
    - (ii) how, if the employment were contracted-out, the additional pensions of State retirement pensions and widows' and widowers' benefits payable to or in respect of the earners in that employment under the Contributions and Benefits Act, and the rates at which contributions payable by those earners under Part I of that Act, would be affected,
    - (iii) where further information about the scheme, State retirement pensions and the benefits mentioned in sub-paragraph (ii) can be obtained.
- (3) A notice under this regulation shall be given—
- (a) to any earner concerned by—
    - (i) sending or delivering it 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;
  - (b) to any other person, by sending or delivering it to that person.
- (4) Subject to paragraph (5), a notice may specify a date of expiry which is not earlier than the date one month after that on which the notice is given.
- (5) If any independent trade union recognised in relation to the earners concerned does not assent to the period of notice specified in accordance with paragraph (4), a notice must specify a date of expiry which is not earlier than the date 3 months after that on which the notice is given.

#### **Consultation with trade unions.**

4.—(1) An employer who has given a notice under 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 in relation to the earners concerned.

(2) Any question whether an organisation is an independent trade union recognised 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 as to consultations specified in paragraph (1) may be referred by the employer, or by an independent trade union recognised 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 expiry of the notice given under regulation 3 and within 3 months of that date (or such longer period as the Secretary of State may in his discretion

allow), but 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) An 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 and administrator of the scheme to which the election relates; and
  - (f) the persons to whom notices were given under regulation 3(1) (b), (c) and (d).
- (2) The employer shall also confirm in writing—
- (a) that he has, in accordance with regulation 3(1), given the earners mentioned in regulation 3(1)(a) notice of the intention to make the election; and
  - (b) how that notice was given and its date of expiry;
  - (c) that the scheme is not one which is excluded from contracting-out under these Regulations;
  - (d) unless the scheme is one to which regulation 27 applies (modification applying to public service pension schemes), that the restrictions imposed under section 40 of the 1995 Act (restrictions on employer-related investments) apply to the scheme and the scheme complies with those restrictions;
  - (e) in the case of a scheme to which section 47 of the 1995 Act (professional advisers) applies, that the scheme complies with the requirement, under subsection (1)(b) of that section, to have an actuary;
  - (f) in the case of a trust scheme—
    - (i) that any fund manager to whom any discretion to make any decisions about investments has been delegated in accordance with section 34 of the 1995 Act (power of investment and delegation) is capable of giving proper advice within the meaning of section 36(6) of that Act;
    - (ii) that the requirements of section 49 of the 1995 Act (other responsibilities of trustees, employers, etc.) and any regulations made under that provision to keep any money received by the trustees in a separate account and to keep proper books and records are complied with;
  - (g) in the case of a scheme to which section 56 of the 1995 Act (minimum funding requirement) applies, that the requirements of sections 57(1) and (2) and 58 of that Act and any regulations made under those provisions to obtain actuarial valuations and certificates are complied with.
- (3) In the case of a scheme which is electing to contract out under section 9(2) of the 1993 Act<sup>(13)</sup> (salary-related contracted-out scheme) the employer shall also provide—
- (a) unless the scheme is one to which regulation 18(2) applies (public service pension scheme), written confirmation or evidence that the actuary is satisfied that the resources of

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<sup>(13)</sup> Section 9(2) was substituted by section 136(3) of the Pensions Act 1995.

the scheme are sufficient to meet the requirement prescribed in regulation 18 (requirement as to resources of the scheme) or, as the case may be, the transitional requirements as to resources prescribed in regulations 72 and 73; and

- (b) a certificate signed by the actuary that the scheme satisfies the statutory standard in relation to any earner's service after the principal appointed day in accordance with section 12A of the 1993 Act<sup>(14)</sup>.

(4) In the case of a scheme which is electing to contract out under section 9(3) of the 1993 Act<sup>(15)</sup> (money purchase contracted-out scheme) the employer shall also provide confirmation in writing—

- (a) that he will comply with obligations concerning minimum payments in accordance with section 8(1)(a)(ii) of the 1993 Act and regulations made under sections 8(3) and 9(3) of that Act, and
- (b) that the requirements of regulation 30(1) (b) and (c) are satisfied.

#### **Amendment of an election.**

7. An employer may amend his election at any time before the issue of a contracting-out certificate 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 Secretary of State has 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, he 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 Secretary of State considers it appropriate, be earlier than the date on which the certificate is issued provided that the scheme satisfied any contracting-out conditions or requirements which apply to the scheme from the date from which the certificate is to have effect.

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

9.—(1) Subject to the provisions of paragraphs (2) and (3) and regulation 10, an election with a view to the variation or surrender of a contracting-out certificate may only be made—

- (a) after notices of intention to make such an election have been given by the employer in accordance with paragraphs (4) and (5), and
- (b) within the period after the expiry of those notices which is specified in paragraph (7),

and shall be made in writing to the Secretary of State.

- (2) Where a proposed variation is a change—

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<sup>(14)</sup> Sections 12A to 12D were inserted by section 136(5) of the Pensions Act 1995.

<sup>(15)</sup> Section 9(3) was amended by section 136(4) of the Pensions Act 1995.

- (a) in the name of the employer;
- (b) in the address of the employer; or
- (c) in the name of the scheme,

an election with a view to the variation of a certificate shall be made in writing to the Secretary of State within 3 months of the event to which the election relates or such longer period as the Secretary of State may in his discretion allow and may be made without compliance with paragraphs (1) and (4) to (7).

(3) In addition to the cases described in paragraph (2), in such cases as the Secretary of State may approve, where a proposed variation would not alter—

- (a) the categories or descriptions of the earners affected by the certificate; or
- (b) in the case of a money purchase contracted-out scheme, the protected rights under, or in the case of any other scheme, the benefits provided by the scheme; or
- (c) the contributions (if any) payable by those earners to the scheme,

an election with a view to the variation of a certificate shall be made in writing to the Secretary of State within 3 months of the event to which the election relates or such longer period as the Secretary of State may in his discretion allow and may be made without compliance with paragraphs (1) and (4) to (7).

(4) Notices of intention to make an election with a view to the variation or surrender of a contracting-out certificate shall be given within 3 months of the event to which the election relates, or such longer period as the Secretary of State may in his discretion allow, to the persons referred to in regulation 3(1)(a) to (d) in the manner mentioned in regulation 3(3).

(5) Notices given under this regulation shall be given in writing and 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 variation or surrender is to have effect;
- (c) specify the date of expiry of the notice in accordance with paragraphs (4) and (5) of regulation 3;
- (d) specify the name and business address of the person to whom representations may be made with respect to the matters included in the notice;
- (e) contain a statement that—
  - (i) such representations may also be made to the Secretary of State,
  - (ii) the Secretary of State may defer his determination 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
  - (iii) the Secretary of State has power to refuse to give effect to the election if he is not satisfied that the employer has undertaken consultations about the matters covered by the notice with all independent trade unions recognised 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 pensions of State retirement pensions and widows' benefits payable to or in respect of the earners concerned under the Contributions and Benefits Act, 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 the earners concerned to, the scheme if the proposed variation or surrender took place.

(6) 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 in relation to the earners concerned and any question whether an employer has complied with this requirement may be referred to an industrial tribunal.

(7) An election under this regulation may only be made after the date of the expiry of the notice given in accordance with paragraphs (4) and (5) and within 3 months of that date (or such longer period as the Secretary of State may in his 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.

(8) An employer may amend his election under this regulation at any time before the variation or surrender of the certificate 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.**

**10.**—(1) Subject to regulation 71 (elections for replacement certificates by salary-related schemes during transitional period) and 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 Secretary of State is satisfied, that—

- (a) any earner in respect of whose employment the election relates will continue to qualify for pensions which satisfy section 9(2) of the 1993 Act, or for protected rights, as the case may be, under the scheme when the election takes effect;
- (b) the accrued rights to pensions which satisfy section 9(2) of the 1993 Act or to protected rights, as the case may be, of that earner under that scheme, will be unaffected; and
- (c) the employment of the earner will continue to be contracted-out employment by reference to that same scheme,

then that election shall be made in writing to the Secretary of State and may be made without compliance with regulations 2(1), 4 and 5 and paragraphs (1) and (4) to (7) of regulation 9.

(2) Where, in accordance with paragraph (1), an election is made without compliance with the said provisions, the employer must give a notice in the manner mentioned in regulation 3(3) to—

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

(3) Notices given under paragraph (2) shall specify—

- (a) the name of the scheme;
- (b) the reason for the election;
- (c) the date from when the change is to have effect; and
- (d) the reasons why the election is being made without compliance with regulations 2(1), 4 and 5 and paragraphs (1) and (4) to (7) of regulation 9.

**Special circumstances in which the Secretary of State may determine earners to have been in contracted-out employment**

**11.** Where an earner has been employed in an employment during a period in which employment of that description was contracted-out but such employment was not (apart from this regulation) contracted-out in relation to him, and the Secretary of State is 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,

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

**Special provision for holding companies and subsidiaries**

**12.—**(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 the employers in the scheme is either—
  - (i) one of a group of companies consisting of a holding company and one or more subsidiaries, or
  - (ii) one of a group of employers who are associated employers within the meaning of section 590A(3) and (4) of the Taxes Act<sup>(16)</sup>, or
  - (iii) one of a group of employers who are associated by a common interest.

(2) In this regulation the expression—

- (a) “associated by a common interest” means employers who share either management, shareholders, employees or business operations in common;
- (b) “holding company” means a body corporate which is either—
  - (i) a holding company within the meaning of section 736 of the Companies Act 1985<sup>(17)</sup>, or
  - (ii) an employer who controls an associated employer within the meaning of section 590A(3) and (4) of the Taxes Act, or
  - (iii) an employer who is the principal employer for the purposes of the scheme in accordance with the scheme rules or the employer who has power to act on behalf of all employers in the scheme in relation to the scheme rules;
- (c) “subsidiary” means an employer in the scheme which is either—
  - (i) a subsidiary within the meaning of section 736 of the Companies Act 1985, or
  - (ii) an employer controlled by an associated employer within the meaning of section 590A(3) and (4) of the Taxes Act, or
  - (iii) an employer subject to the rules of the scheme.

(3) In a case to which this regulation applies, any notice which is required or authorised to be given under these Regulations shall, subject to paragraph (4), 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 (4) and (5), be treated as the employer of the earners for the

<sup>(16)</sup> Section 590A was inserted by section 75 of the Finance Act 1989 and paragraphs 1, 4 and 18(2) of Part I of Schedule 6 to that Act.

<sup>(17)</sup> 1985 c. 6.

purposes of sections 7(1)(a), (2) and (7), 11 and 34(1)(a)(18), (2) and (8) of the 1993 Act and of any regulations made thereunder.

(4) The duty of an employer to undertake the consultations mentioned in regulations 3(2)(f)(iii), 4 and 9(5)(e)(iii) and (6) shall be carried out by each subsidiary in respect of the earners employed by it, unless all the independent trade unions recognised 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.

(5) The Secretary of State may refuse to give effect to an election made by a holding company if he is 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.**

13.—(1) This regulation applies to cases where earners 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 sections 7(1)(a), (2) and (7), 11 and 34(1)(a), (2) and (8) of the 1993 Act and of any regulations made thereunder.

#### **Special provision for holders of pensionable judicial office.**

14. In respect of earners who are holders of pensionable 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 sections 7(1)(a), (2) and (7), 11 and 34(1)(a), (2) and (8) of the 1993 Act and of any regulations made thereunder.

#### **Further information and change of circumstances.**

15. An employer who makes an election with a view to the issue of a contracting-out certificate or an employer to whom such a certificate has been issued, shall furnish to the Secretary of State such reports, accounts and other documents and information relating to the scheme as the Secretary of State requires, and, in particular, shall notify the Secretary of State of any such change of circumstances affecting the scheme as he may have required the employer to notify as soon as practicable after its occurrence.

#### **Requirement to confirm relevant requirements are satisfied.**

16.—(1) An employer to whom a contracting-out certificate has been issued (including any certificate which has been surrendered or cancelled) shall, on such occasions and at such times as the Secretary of State may require, provide written confirmation and such other evidence as the Secretary of State may require—

- (a) in the case of a scheme contracted-out under section 9(2) of the 1993 Act (salary-related contracted-out scheme)—

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(18) Section 34(1)(a) was substituted by paragraph 37 of Schedule 5 to the Pensions Act 1995.

- (i) that the scheme is not one which is excluded from contracting-out under these Regulations, and
  - (ii) that section 9(2) of the 1993 Act and any regulations which apply to the scheme by reason of it being a scheme to which that provision relates are satisfied;
- (b) in the case of a scheme contracted-out under section 9(3) of the 1993 Act (money purchase contracted-out scheme)—
- (i) that the scheme is not one which is excluded from contracting-out under these Regulations, and
  - (ii) that sections 8(1)(a)(ii) and 9(3) of the 1993 Act, and any regulations which apply to the scheme by reason of it being a scheme to which those provisions relate, are satisfied;
- (c) in the case of a scheme which has ceased to be contracted-out under section 9(2) of the 1993 Act (salary-related contracted-out scheme) and which preserves any of the rights specified in section 50(1)(a) of the 1993 Act within the scheme, that the requirements specified in regulation 45(3)(a) (approval of arrangements for salary-related schemes ceasing to be contracted-out) are satisfied;
- (d) in the case of a scheme which has ceased to be contracted-out under section 9(3) of the 1993 Act (money purchase contracted-out scheme) and which preserves any protected rights within the scheme, that the requirements specified in regulation 45(3)(b) (approval of arrangements for money purchase schemes ceasing to be contracted-out) are satisfied.
- (2) In the case of a scheme which is contracted-out under section 9(2) of the 1993 Act (salary-related contracted-out scheme) the evidence to be provided to the Secretary of State referred to in paragraph (1) shall include a certificate signed by the actuary that the scheme continues to satisfy the statutory standard in accordance with section 12A of the 1993 Act.

## PART III

### SALARY-RELATED CONTRACTED-OUT SCHEMES

#### **Further contracting-out conditions for salary-related contracted-out schemes**

**17.** A scheme may be contracted-out in relation to the employment of an earner under section 9(2) of the 1993 Act (requirements for certification of a salary-related contracted-out scheme) only if, in relation to an earner's service on or after the principal appointed day, in addition to satisfying the conditions required by section 9(2B)(a) and (b) of that Act<sup>(19)</sup>, it also satisfies the requirements of regulations 18 to 22.

#### **Requirement as to resources of the scheme.**

**18.—**(1) Subject to paragraph (2) and regulations 72 and 73 (transitional arrangements concerning requirements as to resources), for the purposes of section 9(2B)(c)(i) of the 1993 Act (requirements as to amount of the resources of the scheme), the amount of the resources of the scheme must be sufficient either to enable the scheme to meet the minimum funding requirement provided for in section 56(1) of the 1995 Act, or the actuary to the scheme must have certified under section 58(6)(b) of that Act that in his opinion the rates of contributions are adequate for the purpose of securing that the minimum funding requirement will be met by the end of the period prescribed in relation to that section.

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<sup>(19)</sup> Section 9(2B) was inserted by section 136(3) of the Pensions Act 1995.

(2) Paragraph (1) does not apply to a public service pension scheme to which section 56 of the 1995 Act does not apply.

**Lump sum benefits and salary-related contracted-out schemes.**

**19.** A salary-related contracted-out scheme may not provide for the payment of a lump sum instead of a pension except in accordance with regulation 20 (trivial commutation of section 9(2B) rights) and, as the case may be, regulation 60 (trivial commutation of guaranteed minimum pensions) or—

- (a) in the case of a scheme which is exempt approved within the meaning of section 592(1) of the Taxes Act or a scheme which has applied for such approval which has not yet been determined, to the extent permitted under the rules of that scheme in accordance with that approval, or
- (b) in the case of a relevant statutory scheme within the meaning of section 611A of the Taxes Act(20), to the extent permitted under the regulations or rules governing the scheme as a relevant statutory scheme.

**Trivial commutation of benefits derived from section 9(2B) rights.**

**20.** For the purposes of section 12C(1)(c) of the 1993 Act (regulations may prohibit or restrict the payment of a lump sum instead of a pension under a relevant scheme except in prescribed circumstances or on prescribed conditions), any benefits which have accrued in respect of an earner's section 9(2B) rights under a scheme may not be paid as a lump sum instead of a pension unless—

- (a) such benefits are payable under the rules of the scheme;
- (b) the aggregate of all benefits including benefits in respect of section 9(2B) rights payable to the earner (or his widow or widower) does not exceed £260 per annum; and
- (c) the Secretary of State is satisfied that the scheme provides a reasonable basis for ascertaining the sum to be paid on commutation.

**Payable age in salary-related contracted-out schemes.**

**21.** For the purposes of section 12D of the 1993 Act (regulations may provide for the ages for payment of benefits in salary-related contracted-out schemes) in respect of an earner's service on or after the principal appointed day, schemes must provide for benefits to be paid by reference to an age which is equal for men and women and which—

- (a) in the case of a scheme which is exempt approved within the meaning of section 592(1) of the Taxes Act or a scheme which has applied for such approval which has not yet been determined, is permitted under the rules of that scheme in accordance with that approval, or
- (b) in the case of a relevant statutory scheme within the meaning of section 611A of the Taxes Act, is permitted under the regulations or rules governing the scheme as a relevant statutory scheme.

**Each part of scheme to comply with section 12A of the 1993 Act.**

**22.—(1)** Where a scheme makes provision in relation to earners in one category of employment which differs from provision made in the case of earners in another such category, the Secretary of State must be satisfied that the scheme satisfies section 12A of the 1993 Act in relation to each of the categories of employment which is to be contracted-out.

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(20) Section 611A was inserted by section 75 of the Finance Act 1989 and Part I, paragraphs 1, 15 and 18(1) of Schedule 6 to that Act.

(2) Where a scheme makes provision in relation to one description of earners within a category of employment which differs from provision made in the case of another description of earners within that category, the Secretary of State must be satisfied that the scheme satisfies section 12A of the 1993 Act in relation to each such description of earners which is to be contracted-out.

**Requirements for meeting the statutory standard.**

**23.** For the purposes of section 12A(4) of the 1993 Act (regulations may provide for the manner of, and criteria for, determining whether pensions are broadly equivalent to those under a reference scheme) in determining whether the pensions provided under the scheme are broadly equivalent to or better than those which would be provided under a reference scheme, the actuary—

- (a) must follow guidance note GN 28 prepared from time to time by the Institute of Actuaries and Faculty of Actuaries<sup>(21)</sup> and approved by the Secretary of State;
- (b) may not certify that the pensions to be provided by the scheme for earners in employed earner's employment and their widows or widowers collectively are broadly equivalent to or better than those which would be provided for such persons under a reference scheme if the pensions to be provided for more than 10 per cent. of such earners or their widows or widowers are not broadly equivalent to the pensions which would be provided for them under a reference scheme;
- (c) must have regard to the pensions to be provided under the scheme for the persons specified in section 12A(1) of the 1993 Act who are in the scheme at the date from which the certificate has effect;
- (d) must not have regard to any pensions to be provided under the scheme in respect of earners who are not in contracted-out employment;
- (e) must not have regard to any money purchase benefits; and
- (f) may have regard to the payment of a lump sum.

**Circumstances when actuary other than actuary appointed under section 47 of the 1995 Act may certify broad equivalence.**

**24.** For the purposes of section 12A(6) of the 1993 Act (scheme actuary appointed under section 47 of the 1995 Act to certify whether pensions are broadly equivalent to or better than those in a reference scheme except in prescribed circumstances) the prescribed circumstances are where a scheme is not required to appoint an actuary for the scheme under section 47 of the 1995 Act.

**Requirements for a reference scheme.**

**25.** A reference scheme is a scheme which, in addition to complying with the requirements of section 12B(3) and (4) of the 1993 Act, complies with the requirements of Chapter II of Part IV of the 1993 Act (revaluation of benefits in the case of scheme members who leave pensionable service before attaining normal pension age) and section 51 of the 1995 Act (indexation of pensions).

**Reference scheme: circumstances in which widows' or widowers' pensions need not be payable.**

**26.** For the purposes of section 12B(4)(a) of the 1993 Act (reference scheme to provide widows' and widowers' pensions except in prescribed circumstances) the prescribed circumstances are where—

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(21) The Institute of Actuaries is at Staple Inn Hall, High Holborn, London WC1V 7QJ. The Faculty of Actuaries is at 23 St. Andrew Square, Edinburgh, EH2 1AQ.

- (a) the scheme member marries after having received benefits under the scheme; or
- (b) the widow or widower of the scheme member remarries or lives together as husband and wife with another person to whom he or she is not married after having received benefits under the scheme; or
- (c) the widow or widower of the scheme member is living together as husband and wife with another person to whom he or she is not married at the time of the member's death.

**Modification applying to public service pension schemes.**

27. In the case of schemes which are public service pension schemes, section 9(2B) of the 1993 Act (requirements for salary-related contracted out schemes in relation to service on or after the principal appointed day) is modified by omitting paragraph (b) (a requirement that the restrictions on employer-related investments apply to the scheme and the scheme complies with those restrictions).

**Service in a salary-related contracted-out scheme that does not qualify for further benefits**

28.—(1) This regulation applies in cases in which any description of benefit under a salary-related contracted-out 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 does 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 pensionable earnings on which it is calculated; and
- (c) the total benefits payable under the scheme (other than benefits attributable to voluntary contributions within the meaning of section 111 of the 1993 Act) are the same as or more favourable than the guaranteed minimum pension and any benefits arising in respect of section 9(2B) rights to which the earner would be entitled in respect of service in that employment and any 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" includes 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(22).

**Schemes which cannot be certified under section 9(2B) of the 1993 Act.**

29. For the purposes of section 9(2B)(d) of the 1993 Act (prescribed class or description of schemes which may not be salary-related contracted-out schemes) the prescribed schemes are—

- (a) a scheme which is not exempt approved within the meaning of section 592(1) of the Taxes Act, unless it either has applied for such approval which has not yet been determined or it is a relevant statutory scheme within the meaning of section 611A of that Act;
- (b) a money purchase scheme.

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(22) 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.

## PART IV

### MONEY PURCHASE CONTRACTED-OUT SCHEMES

#### **Further contracting-out requirements for money purchase contracted-out schemes**

**30.**—(1) For the purpose of section 9(3) of the 1993 Act (occupational pension schemes may be contracted-out if the requirements imposed by virtue of sections 26 to 32 of the 1993 Act and other prescribed requirements are satisfied) the prescribed requirements are—

- (a) restrictions imposed under section 40 of the 1995 Act (restriction on employer-related investments) apply to the scheme and the scheme complies with those restrictions;
- (b) in a case where the rules of the scheme provide for a member to make payments in addition (“additional payments”) to the minimum payments that are made to that scheme, the rules also provide that those payments shall, subject to paragraph (2), be invested so as to provide money purchase benefits;
- (c) the rules of the scheme require—
  - (i) in the case of an insured scheme, the insurance company to be notified of any alteration in the membership of the scheme and the amount of earnings of any member,
  - (ii) minimum payments to be invested on behalf of the member within one month of the end of the income tax month to which they relate and age-related payments to be invested on behalf of the member within one month of the date of payment by the Secretary of State.

(2) The requirement referred to in paragraph (1)(b) shall not apply in a case where the rules of the scheme provide that the additional payments made shall entitle the member to benefits which are not money purchase benefits and such benefits are paid in addition to the benefits derived from minimum payments.

#### **Deduction of minimum payments from earnings.**

**31.**—(1) Every employer, on making during any tax year to any earner any payment of emoluments in respect of which minimum payments are payable, may deduct minimum payments in accordance with this regulation.

(2) An employer shall not be entitled to recover any minimum payments paid or to be paid by him on behalf of any earner otherwise than by deduction in accordance with this regulation.

(3) Subject to the provisions of paragraph (4), on making any payment of emoluments to the earner the employer may deduct from those emoluments an amount which bears the same ratio to the amount of the minimum payments relating to those emoluments as A does to A plus B, where—

- (a) A is the appropriate flat-rate percentage for primary Class 1 contributions specified in an order made under section 42B of the 1993 Act<sup>(23)</sup>; and
- (b) B is the appropriate flat-rate percentage for secondary Class 1 contributions specified in that order.

(4) Where two or more payments of emoluments fall to be aggregated under or by virtue of paragraph 1(1) of Schedule 1 to the Contributions and Benefits Act, the employer may deduct the amount of the minimum payments based thereon which are payable by the earner either wholly from one such payment or partly from one and partly from the other or any one or more of the others.

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(23) Section 42B was inserted by section 137(5) of the Pensions Act 1995.



(5) In the circumstances specified in paragraph (6), if the employer on making any payment of emoluments to an earner does not deduct therefrom the full amount of minimum payments which by virtue of these Regulations he is entitled to deduct, he may recover the amount so underdeducted by deduction from any subsequent payment of emoluments to that earner during the same tax year, so however that any amount deducted under this paragraph may be in addition to, but shall not exceed, any amount deducted from the same payment of emoluments under paragraphs (3) or (4).

(6) Paragraph (5) applies only where—

- (a) the underdeduction occurred by reason of an error made by the employer in good faith; or
- (b) the emoluments in respect of which the underdeduction occurred are deemed to be earnings by virtue of regulations made under section 112 of the Contributions and Benefits Act; or
- (c) the underdeduction occurred as a result of the variation of the contracting-out certificate issued in respect of the employment in respect of which the payment of emoluments is made; or
- (d) the emoluments in respect of which the underdeduction occurred are, by virtue of regulation 17B of the Social Security (Contributions) Regulations 1979<sup>(24)</sup>, not paid through the secondary contributor in relation to the employment.

#### **Minimum payments to be made by employers to trustees.**

**32.**—(1) For the purposes of section 8(1) of the 1993 Act<sup>(25)</sup>, the employer of an earner whose employment is contracted-out by reference to a money purchase contracted-out scheme shall, subject to paragraph (2), make to the trustees of that scheme any minimum payments which fall to be made by him, other than amounts deductible by virtue of regulation 31(4) which he did not deduct, within 14 days of the end of the income tax month in which there arose the liability for Class 1 contributions in respect of the earnings to which those minimum payments relate.

(2) An employer shall for the purposes of paragraph (1) be deemed to have deducted from the last of any number of payments of emoluments which fall to be aggregated under or by virtue of paragraph 1(1) of Schedule 1 to the Contributions and Benefits Act the amount of minimum payments deductible from those payments which he did not deduct from the earlier payments.

(3) Subject to paragraph (4), if the employer has paid to the trustees on account of minimum payments an amount which he was not liable so to pay, the amounts which he is liable so to pay subsequently, in respect of other payments of emoluments made by him during the same tax year, shall be reduced by the amount so overpaid, so however that if there was a corresponding overdeduction from any payment of emoluments to an earner the provisions of this paragraph shall only apply insofar as the employer has reimbursed the earner therefor.

(4) Paragraph (3) applies only where the overdeduction occurred by reason of an error made by the employer in good faith.

#### **Calculation of minimum payments.**

**33.**—(1) Subject to the provisions of paragraphs (3) and (4), minimum payments shall be calculated in accordance with section 8(2) of the 1993 Act, so however that each such calculation shall be to the nearest penny and any amount of half a penny or less shall be disregarded.

(2) In the alternative, but subject to the provisions of paragraphs (3) to (5), minimum payments may be calculated in accordance with a scale prepared for that purpose by the Secretary of State.

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<sup>(24)</sup> S.I. 1979/591; the relevant amending instrument is 1983/395.

<sup>(25)</sup> Section 8 was amended by section 136(2) of the Pensions Act 1995.

(3) Where the amount of the earnings to which the scale is to be applied does not appear in the scale, the amount of the minimum payments shall be calculated by reference to the next smaller amount of earnings in the appropriate column in the scale.

(4) Where the scale would, but for the period to which it relates, be appropriate and the earnings period in question is a multiple of the period in the scale, the scale shall be applied by dividing the earnings in question so as to obtain the equivalent earnings for the period to which the scale relates and by multiplying the amount of minimum payments shown in the scale as appropriate to those equivalent earnings by the same factor as the earnings were divided.

(5) Unless the Secretary of State agrees to the contrary, all the minimum payments to be made in a tax year in respect of the earnings paid to or for the benefit of an earner in respect of his employed earner's employment or, where he has more than one such employment and the earnings therefrom are aggregated under paragraph 1(1) of Schedule 1 to the Contributions and Benefits Act, in respect of those employments, shall be calculated either in accordance with paragraph (1) or in accordance with paragraph (2) but not partly in accordance with one and partly in accordance with the other of those paragraphs.

#### **Manner of calculation or estimation of earnings.**

**34.** Where the Secretary of State cannot readily ascertain the amount of earnings in any tax week or is satisfied that records of earnings in any tax week have not been maintained or retained or are otherwise unobtainable, he may—

- (a) compute, in such manner as he thinks fit, an amount which shall be regarded as the amount of earnings; or
- (b) take their amount to be such as he may specify in the particular case.

#### **Manner of payment of the age-related payment.**

**35.** The Secretary of State shall make the age-related payment—

- (a) by automated credit transfer into a bank or building society account relating to the relevant scheme and which accepts payments made by automated credit transfer; or
- (b) in such other manner as the Secretary of State may in his discretion approve.

#### **Verification of age.**

**36.**—(1) For the purposes of determining the appropriate age-related percentage in respect of an earner for the purposes of section 42A of the 1993 Act<sup>(26)</sup>, the Secretary of State may require that earner to send documentary evidence of his date of birth.

(2) For the purposes of section 45B of the 1993 Act<sup>(27)</sup> (information held as to the age to be disclosed by the Secretary of State to trustees or managers of a money purchase scheme and such other persons as may be prescribed) the prescribed person shall be the person who is responsible for administering the scheme.

#### **Circumstances in which the age-related payments are not to be paid.**

**37.**—(1) An age-related payment shall not be paid in respect of an earner for the tax year or part of the tax year in which that earner—

- (a) reaches pensionable age; or
- (b) dies and in which he would have reached pensionable age.

<sup>(26)</sup> Section 42A was inserted by section 137(5) of the Pensions Act 1995.

<sup>(27)</sup> Section 45B was inserted by section 139 of the Pensions Act 1995.

(2) Where effect has been given to protected rights under section 28 of the 1993 Act<sup>(28)</sup> (ways of giving effect to protected rights) age-related payments shall not, except as provided for by paragraphs (3) to (6), be paid in respect of an earner for any tax year or part of a tax year before effect had been given to that earner's protected rights.

(3) Where effect has been given to the earner's protected rights by the purchase of an annuity or by the provision by the scheme of a pension and the amount of the age-related payment in question is at least 10 times as great as the weekly lower earnings limit for the tax year in which the Secretary of State first becomes aware that the age-related payment is payable or would have been payable but for paragraph (2), the age-related payments shall be paid (in the case of an annuity) to the insurance company from which the annuity had been purchased, or (in the case of a pension) to the trustees or managers of the scheme.

(4) Where effect has been given to the earner's protected rights but the circumstances described in paragraph (3) do not exist the age-related payments shall be payable to the earner or the earner's widow or widower, or if the earner died unmarried, they may at the Secretary of State's discretion be paid to any person.

(5) Where effect has been given to the earner's protected rights by the provision of a lump sum, the age-related payment shall be payable to the earner or the earner's widow or widower or, if the earner died unmarried, they may at the Secretary of State's discretion be paid to any person.

(6) Where effect has been given to the earner's protected rights by virtue of a transfer payment to another money purchase contracted-out scheme or a salary-related scheme and either the whole or part of a contributions equivalent premium has not been paid or no election to pay the whole or part of the contributions equivalent premium has been received by the Secretary of State, or to an appropriate personal pension scheme or an overseas scheme, the age-related payments shall be payable up to the date on which the transfer payment was made to the trustees or managers of that other scheme.

(7) Where effect has been given to the earner's protected rights by means of an appropriate policy of insurance by virtue of section 32A of the 1993 Act<sup>(29)</sup> (discharge of protected rights on winding up: insurance policies), the age-related payments in respect of the tax year or part of the tax year before the tax year in which either the earner reaches pensionable age, or dies and in which he would have reached pensionable age, shall be payable to the insurance company with which that policy of insurance is or was taken out or entered into.

#### **Adjustment of the amount of the age-related payment.**

**38.** Where the amount of the age-related payment payable in respect of an earner would otherwise not be a whole number of pence, it shall be adjusted to the nearest whole number of pence, and any amount of half a penny or less shall be disregarded.

#### **Circumstances in which schemes may change mode of contracting-out.**

**39.** Subject to the provisions of any regulations made under section 149 of the 1995 Act, a scheme which has been contracted-out by virtue of section 9(3) of the 1993 Act may become contracted-out by virtue of section 9(2) of that Act only if its trustees have been discharged of all liability to give effect to protected rights.

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<sup>(28)</sup> Section 28 was amended by sections 142 and 146(2) of the Pensions Act 1995.

<sup>(29)</sup> Section 32A was inserted by section 146(1) of the Pensions Act 1995.

**Schemes which may not be contracted-out under section 9(3) of the 1993 Act.**

**40.** For the purposes of section 9(3)(aa) of the 1993 Act<sup>(30)</sup> (prescribed class or description of scheme which may not be a money purchase contracted-out scheme) the prescribed class or description is a scheme which is not exempt approved within the meaning of section 592(1) of the Taxes Act, unless it either—

- (a) has applied for such approval which has not yet been determined, or
- (b) it is a relevant statutory scheme within the meaning of section 611A of that Act.

**PART V****FURTHER REQUIREMENTS (ALL SCHEMES) AND OVERSEAS SCHEMES****Provision of information as to resources.**

**41.** The employer in relation to a scheme and the trustees of a scheme must provide the Secretary of State, in such manner and at such times as the Secretary of State may reasonably require, with such reports, accounts, and with such other documents and information relating to the resources of the scheme as the Secretary of State may reasonably require for the purposes of Part III of the 1993 Act and these Regulations.

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

**42.—(1)** For the purposes of section 37(1) of the 1993 Act (prohibition on alteration of rules of contracted-out scheme unless the alteration is of a prescribed description) the rules of a salary-related contracted-out scheme cannot be altered—

- (a) in relation to any section 9(2B) rights under the scheme unless—
  - (i) the trustees of the scheme have informed the actuary in writing of the proposed alteration to the scheme rules, and
  - (ii) the actuary has considered the proposed alteration and has confirmed to the trustees of the scheme in writing that he is satisfied that the scheme will continue to satisfy the statutory standard in accordance with section 12A of the 1993 Act after the alteration is made, and
  - (iii) the alteration is not one which would otherwise prevent the scheme from satisfying the conditions of section 9(2B) of that Act; and
- (b) in relation to any guaranteed minimum pensions under the scheme unless the alteration will not affect any of the matters dealt with in Part III of the 1993 Act and sections 87 to 92 (protection of increases in guaranteed minimum pensions) and 109 and 110 of that Act (annual increases of guaranteed minimum pensions) and any regulations made under those provisions which relate to guaranteed minimum pensions and that the alteration will not otherwise prevent the scheme from satisfying the conditions of section 9(2A) of that Act.

(2) For the purposes of section 37(1) of the 1993 Act the rules of a scheme contracted-out under section 9(3) of that Act (a money purchase contracted-out scheme) cannot be altered in relation to any protected rights, unless the alteration will not affect any of the matters dealt with in Part III of the 1993 Act or any regulations made under those provisions which relate to protected rights and the alteration will not otherwise prevent the scheme from satisfying the conditions of section 9(3) of that Act.

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<sup>(30)</sup> Section 9(3)(aa) was inserted by section 136(4) of the Pensions Act 1995.

(3) Where the provisions of section 37 of the 1993 Act continue to apply after a scheme has ceased to be contracted-out, this regulation shall continue to apply so long as the circumstances provided for in subsections (3) or (4) of that section continue to apply.

**Termination of periods of contracted-out employment.**

**43.**—(1) Subject to paragraphs (2) and (7), 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) the 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 guaranteed minimum pensions, section 9(2B) rights or his protected rights, as the case may be, 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 guaranteed minimum pensions, section 9(2B) rights or his protected rights, as the case may be, 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 guaranteed minimum pensions, section 9(2B) rights or his protected rights, as the case may be, are transferred; and
- (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 or where the earner is employed by another employer in employment which is contracted-out by reference to the same scheme as the first employment and, in respect of the employment first mentioned in paragraph (2)
  - (i) no state scheme premium or contributions equivalent 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 16(3) of the 1993 Act<sup>(31)</sup>;
  - (iii) the earner's accrued rights to guaranteed minimum pensions or to section 9(2B) rights under the scheme arising out of his service in that employment have not been transferred in accordance with the provisions of the scheme under sections 12C(1)<sup>(32)</sup> or 20(1) of the 1993 Act or regulations made thereunder or, as the case may be, effect has not been given to protected rights under the scheme arising out of his service in that employment by the making of a transfer payment in accordance with the provisions of the scheme under section 28(2)(b)(i) of the 1993 Act;
  - (iv) the scheme is one for which there is a common fund,
    - and any interval between one employment 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 39 of the Employment Protection (Consolidation) Act 1978<sup>(33)</sup> (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.
- (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 guaranteed minimum pensions, section 9(2B) rights or protected rights, as the case may be, under the contracted-out scheme by virtue of which he qualified for such benefits or such rights 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 28;
  - (b) the new employer accepts all the responsibilities of the former employer for any contributions to the scheme and any state scheme premiums or contributions equivalent premiums which are outstanding in respect of the scheme at the time of the change; and
  - (c) the new employer notifies the Secretary of State of the change within one month of its taking place or such longer period as the Secretary of State may consider reasonable in the particular case and provides the Secretary of State with such documents and information as he may reasonably require.
- (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 former employer shall be treated as issued to the new employer and the Secretary of State may vary that certificate in such respects as may be necessary in the circumstances.
- (7) In cases where an earner is employed concurrently in two 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 all such employments are treated as having so terminated.
- (8) Where an earner ceases to be liable for Class 1 contributions under the Contributions and Benefits Act in respect of any contracted-out employment because he is employed outside Great

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<sup>(31)</sup> Section 16(3) is amended by paragraph 28 of Schedule 5 to the Pensions Act 1995.

<sup>(32)</sup> Section 12C(1) was inserted by section 136(5) of the Pensions Act 1995.

<sup>(33)</sup> 1978 c. 44. Section 39 was substituted by section 23 of the Trade Union Reform and Employment Rights Act 1993 (c. 19).

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 be treated as not having terminated.

(9) 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;

“holding company” has the same meaning as in regulation 12(2);

“state scheme premium” means a premium paid or payable under Chapter III of Part III of the 1993 Act before the principal appointed day or under those provisions as continued in force by an order made under section 180 of the 1995 Act.

#### **Notifications to the Secretary of State.**

**44.**—(1) Whenever an earner's service in contracted-out employment is treated as terminated under the provisions of regulation 43, 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 £17, 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 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 (including those to which persons are treated as entitled under section 48(2) of the 1993 Act), any entitlements arising in respect of section 9(2B) rights and contributions equivalent premiums and for related purposes.

(4) In any case where a person transfers his responsibility for, or makes a transfer payment in respect of, a guaranteed minimum pension or any section 9(2B) rights to another person, the first person shall, within 5 weeks from the date of the transfer or transfer payment, notify the Secretary of State of its occurrence, giving such particulars as the Secretary of State may reasonably require to enable him to identify the second person.

(5) Except in a case to which paragraph (6) applies, within 5 weeks after effect has been given to the protected rights of a member of the scheme, the trustees of that scheme shall notify the Secretary of State in writing that effect has been given to those rights, giving such particulars as the Secretary of State may reasonably require to enable him—

- (a) to identify the means by which effect has been given to them;
- (b) where effect has been given to them by means of a pension, annuity or lump sum, to identify the recipient of it;
- (c) where effect has been given to them by means of an annuity, to identify the insurance company responsible for paying the annuity;
- (d) where effect has been given to them by means of a transfer payment, to identify the personal or occupational pension scheme to which the transfer payment was made; and

- (e) where effect has been given to them by means of an appropriate policy of insurance under section 32A(1)(a) or (b) of the 1993 Act<sup>(34)</sup> (discharge of protected rights on winding up: insurance policies), to identify the member in respect of whom, and the insurance company with which, that policy was taken out or entered into.
- (6) Where the member is a married woman or widow, and effect has been given to her protected rights at a time when an election is operative that her liability in respect of primary Class 1 contributions shall be a liability to contribute at a reduced rate, paragraph (5) shall not apply.
- (7) 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 that scheme to which the contracting-out certificate relates as he may reasonably require for the purpose of calculating guaranteed minimum pensions (including those to which persons are treated as entitled under section 48(2) of the 1993 Act), any entitlement arising in respect of section 9(2B) rights and in order to know for what, if any, protected rights the scheme is responsible, and from what minimum contributions, minimum payments or transfer payments they derive, and for related purposes.

#### **Approval of arrangements for schemes ceasing to be contracted-out.**

45.—(1) Subject to regulation 74 (transitional arrangements relating to schemes ceasing to contract out before the principal appointed day), for the purposes of section 50(1B) of the 1993 Act<sup>(35)</sup> (prescribed conditions to be met in order for arrangements to be approved on the cessation of contracting-out) arrangements shall not be approved by the Secretary of State unless the conditions specified in paragraphs (2) or (3) are satisfied.

(2) To the extent that the arrangements concern the transfer of rights or the discharge of liabilities they must meet the requirements of (as the case may be) sections 12C of the 1993 Act (transfer or discharge of section 9(2B) rights), section 19 of that Act (discharge of liability for guaranteed minimum pensions secured by insurance policies or annuity contracts), section 20 of that Act (transfer of guaranteed minimum pensions), section 28(2)(b) and (3)<sup>(36)</sup> of that Act (transfer of protected rights) or section 32A of that Act (discharge of protected rights on winding up) and any regulations made under those provisions and the Secretary of State must be satisfied that such arrangements will be completed within two years of the date of cessation or such later date as the Secretary of State may specify in relation to a particular case or class of case.

(3) To the extent that the arrangements concern the preservation of rights within the scheme, the scheme must comply with the requirements of paragraphs (a) or (b), as the case may be—

- (a) in the case of a scheme where employment was contracted-out under section 9(2) of the 1993 Act (salary-related contracted-out scheme) the scheme must continue to satisfy the requirements of that section and any regulations which would apply to the scheme by reason of it being a scheme to which section 9(2) of that Act relates, other than section 9(2B)(a) of that Act (requirement to comply with section 12A of that Act) and any regulations which relate to compliance with that section, and the scheme must contain a rule which provides that the amount of any benefits under the scheme arising in respect of section 9(2B) rights and guaranteed minimum pensions for each member and their widow or widower shall, at normal pension age, be the higher of A and B where—

(A) is the aggregate of—

- (i) the amount of such benefits calculated on an early leaver basis in accordance with Chapter I of Part IV of the 1993 Act and any regulations made under those

<sup>(34)</sup> Section 32A was inserted by section 146 of the Pensions Act 1995.

<sup>(35)</sup> Section 50(1B) was inserted by paragraph 45 of Schedule 5 to the Pensions Act 1995.

<sup>(36)</sup> Section 28(3) was amended by section 142(4) of the Pensions Act 1995.



provisions as if the member had ceased to be in pensionable service at the date on which the scheme ceased to be contracted-out, and

(ii) the amount of any benefits due in respect of rights which have accrued to the member in relation to service which was not contracted-out; and

(B) is the amount of benefits otherwise payable under the scheme;

(b) in the case of a scheme where employment was contracted-out under section 9(3) of the 1993 Act (money purchase contracted-out scheme) the scheme must, subject to paragraph (4), continue to satisfy the requirements of section 9(3) of that Act and any regulations which apply to the scheme by reason of it being a scheme to which section 9(3) of that Act relates.

(4) For the purposes of paragraph (3)(b), in determining whether a scheme complies with the requirements concerning the calculation of protected rights in accordance with section 27(2) of the 1993 Act, regard shall be had only to any rights of the member to money purchase benefits which have accrued under the scheme up to the date it ceased to be contracted-out.

#### **Supervision of schemes that have ceased to contract out.**

**46.**—(1) Subject to such directions as the Secretary of State may give under section 53(1) of the 1993 Act (supervision of formerly contracted-out schemes) for the purposes of section 53(3) of the 1993 Act (requirement to discharge liabilities following issue of certificate of non-approval), the liabilities referred to in section 52(2A)(a) or (b) of the 1993 Act<sup>(37)</sup> must, subject to paragraphs (2), (3) and (4), be transferred or discharged in the manner permitted by paragraph (2) of regulation 45 within 6 months of the date a certificate of non-approval under sub-section (2) of section 50 is issued, unless the certificate has been cancelled.

(2) In the case of a scheme where employment was contracted-out under section 9(2) of the 1993 Act (salary-related contracted-out scheme), the discharge may be arranged in accordance with the requirements of regulation 5(4) of the Occupational Pension Schemes (Discharge of Liability) Regulations 1985<sup>(38)</sup>, notwithstanding that a member's pensionable service has not terminated and the scheme is not winding up.

(3) In the case of a scheme where employment was contracted-out under section 9(3) of the 1993 Act (money purchase contracted-out scheme), the discharge may be arranged in the manner specified by regulations made under section 32A of the 1993 Act, notwithstanding that the scheme is not winding up.

(4) Every active and deferred member with any entitlement to protected rights, guaranteed minimum pensions or section 9(2B) rights under the scheme must be notified of the issue of the certificate of non-approval and the reasons for it and allowed a period of 3 months from the date of such notification in which he may elect to transfer any such rights before they are discharged.

#### **Circumstances in which the Secretary of State may vary or cancel a contracting-out certificate.**

**47.**—(1) Where the Secretary of State has reason to suppose that any employment to which a contracting-out certificate applies should not continue to be contracted-out employment and the employer has not shown to the satisfaction of the Secretary of State that it should so continue, the Secretary of State may determine that the employment should not continue to be treated as contracted-out employment and where he so determines, he shall cancel or vary the certificate with effect, subject to paragraph (2), from such date as he may specify and he shall notify the employer in writing of his determination, the reasons for it and of his powers to review that determination.

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<sup>(37)</sup> Section 52(2A) was inserted by paragraph 47 of Schedule 5 to the Pensions Act 1995.

<sup>(38)</sup> S.I. 1985/1929: the relevant amending instruments are S.I. 1991/167 and S.I. 1994/1062.

(2) The date from which the cancellation or variation is to have effect may not be earlier than the date of the cancellation or variation, as the case may be, except—

- (a) in a case of a salary-related contracted-out scheme where the Secretary of State considers that the resources of the scheme have not been maintained at a sufficient level for maintaining all claims in respect of guaranteed minimum pensions and section 9(2B) rights so far as falling to be met out of those resources, the date may be the latest date on which in the opinion of the Secretary of State those resources were maintained at such a sufficient level; or
- (b) in a case of a salary-related contracted-out scheme where the earners in employments to which the contracting-out certificate applies have ceased to qualify for guaranteed minimum pensions or benefits arising from section 9(2B) rights under the scheme, the date may be a date not earlier than the date on which, in the opinion of the Secretary of State, the said cessation occurred; or
- (c) in a case where the Secretary of State discovers that the scheme did not satisfy the requirements for being a contracted-out scheme at the date the contracting-out certificate was issued, the date may be the date from which the certificate had effect or any later date; or
- (d) in a case where the Secretary of State considers that the scheme has ceased to satisfy the requirements for being a contracted-out scheme, the date may be any date not earlier than when, in the Secretary of State's opinion, the scheme ceased to satisfy those requirements.

(3) In any case where the Secretary of State has cancelled or varied a certificate under the provisions of paragraph (1) above he may require the employer to give notice of the cancellation or variation, in the manner specified in regulation 3(3), to—

- (a) the earners in relation to whom the employment was contracted-out by virtue of the certificate immediately before its cancellation or variation;
- (b) the trustees (if any) and administrator of the scheme by reference to which the employment was contracted-out immediately before the cancellation or variation of the certificate; and
- (c) the persons specified in regulation 3(1)(c) and (d),

and he may require any such notice to include such particulars (including particulars of the consequences of the cancellation or variation) as he considers appropriate.

#### **Special provision for overseas schemes.**

**48.**—(1) In the case of an overseas scheme the modifications and, as the case may be, the additional requirements specified in this regulation apply.

(2) A notice of intention to make an election which relates to an overseas scheme shall, in addition to the requirements of paragraph (2) of regulation 3, specify that the scheme is an overseas scheme.

(3) An overseas scheme shall have an administrator for the scheme who is resident in the United Kingdom and appointed in accordance with section 590(2)(c) of the Taxes Act.

(4) Any obligation placed on an employer in Part II (Certification of Employments) may be discharged by an administrator for the scheme appointed in accordance with paragraph (3).

(5) In the case of an overseas scheme which is a salary-related scheme—

- (a) the trustees or managers must appoint an actuary to the scheme who satisfies the requirements of regulations made under section 47(5) of the 1995 Act and such an actuary may provide certification to the Secretary of State in accordance with section 12A(6) of the 1993 Act<sup>(39)</sup>;

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<sup>(39)</sup> Section 12A(6) was inserted by section 136(5) of the Pensions Act 1995.

- (b) regulation 18 shall not apply;
- (c) subject to regulation 73, for the purposes of section 9(2B)(c)(i) of the 1993 Act, the requirement as to the amount of the resources of the scheme is that such resources, were the scheme to wind-up at any time, are sufficient to meet any liability for the following—
  - (i) pensions or other benefits which, in the opinion of the trustees, are derived from the payment by any member of the scheme of voluntary contributions;
  - (ii) where a person's entitlement to payment of a pension or other benefit has arisen, liability for that pension or benefit and for any pension or other benefit which will be payable to dependants of that person on his death and any increases to such pensions;
  - (iii) equivalent pension benefits, guaranteed minimum pensions and protected rights which have accrued to or in respect of any members of the scheme and any increases to such pensions;
  - (iv) pensions or other benefits which have accrued after the principal appointed day to or in respect of members whose employment is contracted-out by reference to the scheme and any increases to such pensions;
  - (v) in respect of members with less than two years pensionable service who are not entitled to accrued rights under the scheme, the return of contributions,and such liabilities and resources shall be calculated, determined and valued in a manner approved by the Secretary of State, and
- (d) section 9(2B)(b) of the 1993 Act is modified with effect that the Secretary of State must be satisfied that not more than 5 per cent. of the current market value of the scheme's resources are invested in a person who is an employer, or connected with an employer, in relation to the scheme if such investments are required to meet the liabilities specified in paragraph (b) and the value of such investments shall be calculated and determined in a manner approved by the Secretary of State.
- (6) In the case of an overseas scheme which is a money purchase scheme—
  - (a) the trustees or managers of the scheme must appoint an auditor who satisfies the requirements of regulations made under section 47(5) of the 1995 Act;
  - (b) regulation 30(1)(a) shall not apply; and
  - (c) the Secretary of State must be satisfied that not more than 5 per cent. of the current market value of the scheme's resources are invested in a person who is an employer, or connected with an employer, in relation to the scheme if such investments are required to meet the scheme's liabilities for protected rights and the value of such investments shall be calculated and determined in a manner approved by the Secretary of State.
- (7) An overseas scheme must provide, in respect of any members who are resident in Great Britain, for revaluation of accrued rights in accordance with sections 83 to 86 of the 1993 Act<sup>(40)</sup> and for indexation of pensions in accordance with sections 51 to 54 of the 1995 Act.

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<sup>(40)</sup> Section 84(5) was amended by paragraph 62 of Schedule 5 to the Pensions Act 1995.

## PART VI

### RESTORATION OF STATE SCHEME RIGHTS

#### Insolvent schemes.

**49.**—(1) Where paragraph 5(3B) of Schedule 2 to the 1993 Act<sup>(41)</sup> applies in relation to a member of a contracted-out scheme which is being wound up and the conditions set out in paragraph (3) are satisfied, the member shall be treated as if sections 46 to 48 or, as the case may be, 48A(1) of the 1993 Act<sup>(42)</sup>—

- (a) except as provided in sub-paragraph (b), did not apply; or
- (b) in a case where the cash equivalent of the member's rights is less than the amount required for restoring his state scheme rights, applied only in so far as they extinguish such part of the member's state scheme rights as, in the opinion of the Secretary of State, corresponds to that shortfall.

(2) For the purposes of paragraph 5(3B)(b) of Schedule 2 to the 1993 Act, the debt due from the trustees of the scheme to the Secretary of State shall be only such part of the amount required for restoring the member's state scheme rights as does not exceed the amount which, in the opinion of the Secretary of State, is the amount available from the resources of the scheme to meet the liability for the cash equivalent of the member's rights.

(3) The conditions referred to in paragraph (1) are that—

- (a) in the case of a money purchase contracted-out scheme, there has been a determination by the Compensation Board that the conditions set out in section 81(1) of the 1995 Act (cases where compensation provisions apply) are satisfied; and
- (b) no later than 3 months after the date on which the trustees notify the member in accordance with regulation 50, or such further period as the Secretary of State may allow in a particular case, the Secretary of State has received from—
  - (i) the member; or
  - (ii) where the Secretary of State is satisfied that the member cannot be traced, the trustees,

a written application for the member's state scheme rights to be restored in accordance with this regulation.

(4) For the purposes of this regulation and paragraph 5(3A) to (3D) of Schedule 2 to the 1993 Act—

- (a) the cash equivalent of a member's rights under a scheme shall be determined—
  - (i) in the case of a scheme to which section 56 of the 1995 Act applies (minimum funding requirement) as if the requirements of subsection (1) of that section were satisfied; or
  - (ii) in the case of a money purchase scheme, as if there had been no reduction in the value of its assets attributable to an act or omission constituting a prescribed offence for the purposes of section 81(1)(c) of that Act;
- (b) the extent (if any) to which the resources of the scheme are insufficient to meet that cash equivalent shall be determined—
  - (i) on the assumption that those resources include any payment to the trustees under the compensation provisions; and

<sup>(41)</sup> Sub-paragraphs (3A) to (3E) were inserted in paragraph 5 of Schedule 2 by section 141(2) of the Pensions Act 1995.

<sup>(42)</sup> Section 48A was inserted by section 140 of the Pensions Act 1995.

- (ii) where section 73 of the 1995 Act (preferential liabilities on winding up) applies, in accordance with the requirements of that section;
  - (c) the amount required for restoring the member's state scheme rights shall be an amount determined in accordance with regulations made under paragraph 5(3C)(c) of Schedule 2 to the 1993 Act.
- (5) In this regulation "Compensation Board" and "compensation provisions" have the same meaning as in section 124 of the 1995 Act.

**Member to be informed of the option to restore state scheme rights.**

**50.** Where the Secretary of State has advised the trustees of a scheme that he is of the opinion that the conditions referred to in paragraph 5(3A) of Schedule 2 to the 1993 Act are satisfied in respect of any member, the trustees must inform the member in writing of that fact—

- (a) when they give notice of any proposal to discharge a liability of the scheme in respect of the member in accordance with regulations under section 74 of the 1995 Act (discharge of liabilities by insurance etc.) or under sections 32A of the 1993 Act<sup>(43)</sup> (discharge of protected rights on winding up: insurance policies);
- (b) if no notice is given by the trustees in accordance with sub-paragraph (a), when the member is advised of any other option available to discharge a liability of the scheme in respect of him.

**Election to pay a contributions equivalent premium**

**51.—**(2) For the purposes of section 55(2) of the 1993 Act<sup>(44)</sup> (which provides for the prescribed person to elect to pay a contributions equivalent premium on termination of certified status) the prescribed person is the trustees of the scheme.

(2) The obligation under section 57(2) of the 1993 Act (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 rights are transferred in accordance with regulations under section 20 (transfer of accrued rights) or under section 12C (transfer, commutation etc.) of the 1993 Act<sup>(45)</sup>;
- (b) married women and widows who, by virtue of regulations under section 19(4) and (5) of the Contributions and Benefits Act, have elected to pay contributions under that Act at a reduced rate;
- (c) cases where, on the death of an earner, there arises an entitlement to a widow's or widower's pension which comprises amounts of pension which have accrued by reference to the earner's service in employment which was not contracted-out and to his service in employment which was contracted-out;
- (d) cases where the earner has completed less than two years qualifying service for the purposes of Chapter I of Part IV of the 1993 Act (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 appropriately secured within the meaning of section 19 of the 1993 Act (discharge of liability for

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<sup>(43)</sup> Section 32A was inserted by section 146 of the Pensions Act 1995.

<sup>(44)</sup> Section 55(2) was substituted by section 141(1) of the Pensions Act 1995.

<sup>(45)</sup> Section 12C was inserted by section 136(5) of the Pensions Act 1995.

guaranteed minimum pensions) or where any liability to provide pensions to that earner has been discharged in accordance with regulations under section 12C of that Act,

but 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.

(3) An election under section 55(2) of the 1993 Act shall be notified to the Secretary of State in writing in such form as he may reasonably require for the purpose of identifying the earner to whom the election relates. Such notification shall be given—

- (a) where the circumstances specified in section 55(2A)(d) of the 1993 Act<sup>(46)</sup> apply (the scheme is wound up), within two years of the cessation of the scheme; or
- (b) where the circumstances specified in section 55(2A)(a) to (c) or (e) apply, within the period beginning one month before, and ending 6 months after, the date on which the person ceases to serve in employment which is contracted-out employment by reference to the scheme.

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

#### **Payment of a contributions equivalent premium.**

52.—(1) A contributions equivalent premium which the trustees have elected to pay 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; or
- (b) the day one month after the day on which the Secretary of State sends to the trustees a notice certifying the amount of the premium payable.

(2) Where the amount of any contributions equivalent premium which is payable does not exceed £17, the trustees shall not be liable to pay it and, accordingly, if it is not paid, it shall be treated as paid for the purposes of section 60 (effect of payment of premium on rights) and section 48A(2) (additional pension and other benefits) of the 1993 Act.

(3) Any liability for a contributions equivalent premium shall be a liability to make payment out of the resources of the scheme.

#### **Payment in lieu of benefit and delay in refund for the purposes of employer's right of recovery.**

53.—(1) For the purposes of section 61(10) of the 1993 Act (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 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 61 of the 1993 Act<sup>(47)</sup> to be exercised.

(3) Where in such a case a contributions equivalent premium falls to be paid in respect of the earner under the 1993 Act, the person liable for the refund shall not, after he has been given notice in accordance with paragraph (5) ("notice of delay"), make the refund in whole or in part until

<sup>(46)</sup> Section 55(2A) was inserted by section 141(1) of the Pensions Act 1995.

<sup>(47)</sup> Section 61 was amended by paragraph 55 of Schedule 5 to the Pensions Act 1995.

the expiration of the period of delay specified in paragraph (4), but 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 63(1)(d) of the 1993 Act.

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

(5) A notice of delay shall be a notice in writing given by the trustees of the scheme concerned relating either to a particular case or class of case and containing the following particulars—

- (a) the name of the earner or such particulars as will sufficiently identify the class of case 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) Where the trustees of a scheme have given notice of delay they shall from time to time inform any person to whom they have given notice of the ending of the period of delay in relation to any refund affected by the notice.

#### **Refund of a contributions equivalent premium.**

**54.—**(1) The Secretary of State shall refund a contributions equivalent premium if—

- (a) it was paid in error; or
- (b) he is satisfied that the employment to which it relates will be linked with another employment in the circumstances set out in regulation 43(2) and (3); or
- (c) he is satisfied that the earner in respect of whom it was paid has entered into employment which is contracted-out employment by reference to the same contracted-out scheme as that by which the employment to which it relates was contracted-out employment, and that for the purpose of calculating the earner's accrued rights under the scheme the two employments will be linked; or
- (d) he is satisfied that a transfer of the earner's accrued rights will be made in accordance with regulations under section 20 (transfer of accrued rights) or under section 12C (transfer, commutation etc.) of the 1993 Act; or
- (e) 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 (within the meaning of section 2 of the Contributions and Benefits Act) or both and he is satisfied that the earner in respect of whom that 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 two years,

and, where a contributions equivalent 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.

(2) A refund under paragraph (1) shall only be made if application is made in writing, in such form as the Secretary of State may reasonably require for the purpose.

(3) In paragraph (1)(a) "error" means an error which—

- (a) is made at the time of payment; and
- (b) relates to some present or past matter.

(4) Where—

- (a) an earner has been employed concurrently in two or more contracted-out employments, on the termination of one or more of which, a contributions equivalent premium has been paid; and
- (b) the aggregate amount of any such payments has the effect that the National Insurance Fund has gained, by reference to any employment in respect of which such a payment has been made, a greater amount than it would have gained from Class 1 contributions under the Contributions and Benefits Act if those employments had not been contracted out,

there shall be paid out of the National Insurance Fund to the earner (or his estate) an amount which bears the same proportion to the amount of the excess as the reduction under paragraph (a) of subsection (1A) of section 41 of the 1993 Act<sup>(48)</sup>, 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.

- (5) The Secretary of State shall refund a contributions equivalent premium if he is satisfied that—
  - (a) where it was paid in the circumstances mentioned in section 55(2A)(a), (b), (d) or (e) of the 1993 Act, the person in respect of whom it was paid has died, without leaving a widow or widower, on or before the later of the days first mentioned in sub-paragraphs (a) and (b) respectively of regulation 52(1); or
  - (b) where it was paid in the circumstances mentioned in paragraph (2A)(c) of that section, there are no accrued rights to guaranteed minimum pensions or section 9(2B) rights under the scheme in question in respect of the widow or widower in question.

## PART VII

### GUARANTEED MINIMUM PENSIONS

#### **Scheme rules about guaranteed minimum pensions**

**55.**—(1) For a scheme to be contracted-out in relation to an earner’s employment it must include a rule to the effect that if the earner has a guaranteed minimum under section 14 of the 1993 Act<sup>(49)</sup>—

- (a) the weekly rate of his pension under the scheme at pensionable age in respect of his service before the principal appointed day shall not be less than that guaranteed minimum;
- (b) the weekly rate of pension payable to any widow of the earner under the scheme in respect of the earner’s service before the principal appointed day shall be not less than half that guaranteed minimum; and
- (c) the weekly rate of pension payable to any widower of the earner under the scheme in respect of the earner’s service before the principal appointed day shall be not less than half of that part of the earner’s guaranteed minimum which is attributable to earnings factors for the tax year 1988-89 and subsequent tax years up to and including the tax year 1996-97,

that rule to be expressed to override all other provisions of the scheme, except any that are in accordance with the provisions of the 1993 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.

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<sup>(48)</sup> Section 41(1A) was inserted by section 137(2) of the Pensions Act 1995.

<sup>(49)</sup> Section 14 was amended by paragraph 27 of Schedule 5 to the Pensions Act 1995.



**Special provision for revaluation of guaranteed minimum pensions secured by insurance policies or annuity contracts.**

56. A scheme may make provision under section 16(2) of the 1993 Act (alternative to revaluation of guaranteed minimum pensions under section 148 of the Administration Act) for the case of those of its members whose guaranteed minimum pensions are, or are to be, appropriately secured within the meaning of section 19(3) of the 1993 Act, notwithstanding that it makes no such provision for any other case.

**Circumstances in which widower's guaranteed minimum pension is to be payable.**

57. For the purposes of section 17(6) of the 1993 Act (for a scheme to be contracted-out it must provide for a widower's guaranteed minimum pension to be payable in prescribed circumstances and for a prescribed period) the prescribed circumstances are that—

- (a) the widower and the earner were both over pensionable age when the earner died; or
- (b) the widower is entitled to child benefit (which expression has in this regulation the same meaning as in the Contributions and Benefits Act) in respect of a child who is, or residing with a child under 16 who is—
  - (i) a son or daughter of the widower and the earner, or
  - (ii) a child in respect of whom the earner, immediately before her death, was, or would have been if the child had not been absent from Great Britain, entitled to child benefit, or
  - (iii) if the widower and the earner were residing together immediately before the earner's death, a child in respect of whom he then was, or would have been if the child had not been absent from Great Britain, entitled to child benefit; or
- (c) the widower had attained the age of 45 either—
  - (i) when the earner died, or
  - (ii) during a period when the circumstances mentioned in paragraph (b) existed.

**Period for which widower's guaranteed minimum pension is to be payable.**

58.—(1) For the purposes of section 17(6) of the 1993 Act the prescribed period is—

- (a) in a case where the circumstances described in paragraph (a) of regulation 57 exist, the remainder of the widower's life;
  - (b) in a case where the circumstances described in paragraph (b), but not either paragraph (a) or paragraph (c), of regulation 57 exist, the period (subject to paragraph (2)) during which the circumstances described in paragraph (b) of regulation 57 continue to exist; and
  - (c) in a case where the circumstances described in paragraph (c), but not paragraph (a), of regulation 57 exist, the remainder of the widower's life (subject to paragraph (2)).
- (2) There is excluded from the periods prescribed under paragraph (1)(b) and (c) any period—
- (a) after the widower's remarriage under pensionable age, or during which the widower is under pensionable age and he and a woman to whom he is not married are living together as husband and wife, or
  - (c) after the widower has attained pensionable age if immediately before he attained that age he and a woman to whom he was not married were living together as husband and wife.

**Statutory references to persons entitled to guaranteed minimum pensions application to widowers.**

**59.** The provisions of sections 50(1)(a)(ii) and 52(2A)(a)(i) of the 1993 Act(**50**) shall be construed as if the reference to a person entitled to receive a guaranteed minimum pension included a reference to a person so entitled by virtue of being the widower of an earner only in the case where the earner and the widower were both over pensionable age when the earner died.

**Trivial commutation of guaranteed minimum pensions.**

**60.**—(1) For the purposes of section 21(1) of the 1993 Act (provisions of a scheme relating to commutation), the prescribed circumstances are—

- (a) that a guaranteed minimum pension has become payable,
- (b) 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 or her widower 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 £260 per annum, and
- (c) that the Secretary of State is satisfied that the scheme provides a reasonable basis for ascertaining the sum to be paid on commutation.

(2) Where, under paragraph (1), a scheme permits an earner to commute benefit in accordance with this regulation it may also permit him or her to commute any prospective widow's or widower'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 £260 per annum) and the value of any such widow's or widower's benefit shall not be taken into account for the purpose of the limit of £260 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 55(2) of the 1993 Act (contributions equivalent premium) has been paid or treated as paid under Part VI, provided that—

- (a) for the purposes 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 16(2) and (3) of the 1993 Act(**51**) or in either case to the amount that would have been payable at pensionable age, shall be treated as the amount of benefit currently payable to him under the scheme;
- (b) in the case of an earner who retires before normal pension age, commutation is not permitted before the date on which benefits become payable to the earner under the scheme's early retirement provisions;
- (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.

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(50) Section 52(2A)(a)(i) was inserted by paragraph 47 of Schedule 5 to the Pensions Act 1995.

(51) Section 16(3) was amended by paragraph 28 of Schedule 5 to the Pensions Act 1995.

### **Suspension and forfeiture of guaranteed minimum pensions.**

**61.**—(1) For the purposes of section 21(2) of the 1993 Act (suspension and forfeiture of guaranteed minimum pension) the circumstances in which a scheme may provide for an earner's or an earner's widow's or widower'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 and 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, and 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 in prison or detained in legal custody, and there is provision in the scheme for sums equivalent to the guaranteed minimum pension to be paid or applied during such circumstances 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 and 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 15(1) of the 1993 Act.

(2) For the purposes of section 21(2) of the 1993 Act the circumstances in which a scheme may provide for an earner's or an earner's widow's or widower'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 to 1989<sup>(52)</sup> for which he has been sentenced on the same occasion to a term of imprisonment of, or to two or more consecutive terms amounting in the aggregate to, at least 10 years;
- (b) in the case of a widow's or widower'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 or widower 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.

### **Fixed rate revaluation of guaranteed minimum pensions for early leavers.**

**62.**—(1) This regulation applies to a case where a scheme provides, under section 16(2) of the 1993 Act, for the earnings factors of an earner whose service in contracted-out employment by

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(52) 1911 c. 28; 1920 c. 75; 1939 c. 121; 1989 c. 6.

reference to the scheme is terminated before he attains pensionable age to be determined by reference to the last order that comes into force under section 148 of the Administration Act before the end of the tax year in which his service is terminated.

(2) Subject to paragraph (3), in a case to which this regulation applies, the prescribed percentage for the purpose of section 16(3) of the 1993 Act (revaluation of earnings factors) is, in relation to each period of service in respect of which accrued rights to guaranteed minimum pension have been acquired under, or transferred to, the scheme—

- (a) where the period of service terminated before 6th April 1988, 8.5 per cent. compound;
- (b) where that period of service terminated on or after 6th April 1988 but before 6th April 1993, 7.5 per cent. compound;
- (c) where that period of service terminated on or after 6th April 1993 but before 6th April 1997, 7 per cent. compound;
- (d) where that period of service terminates on or after 6th April 1997, 6.25 per cent. compound.

(3) Paragraph (2) only applies 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 rights to guaranteed minimum pensions under the scheme arising in respect of a transfer or transfer payment made in accordance with section 20(1) (transfer of accrued rights) or section 28 (ways of giving effect to protected rights) of the 1993 Act or regulations made under those provisions or for members whose guaranteed minimum pensions are, or are to be, appropriately secured within the meaning of section 19(3) of the 1993 Act.

#### **Provision of information about guaranteed minimum pensions.**

**63.**—(1) The prescribed persons to whom, under section 156 of the 1993 Act, the Secretary of State may furnish information as to the amount of any 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 or widower to whom the information relates;
- (b) the employer in relation to the contracted-out employment of an earner to whom the information relates;
- (c) any independent trade union recognised in relation to those earners who are members of a contracted-out scheme; and
- (d) any person who is, or who in the opinion of the Secretary of State is likely to become, 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 or widower to whom the information relates.

#### **Meaning of expression “connected employer”.**

**64.**—(1) The cases in which employers are to be treated as connected for the purposes of section 35 of the 1993 Act (surrender and cancellation: issue of further certificates) are those specified in paragraph (2).

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

- (a) a holding company and a subsidiary within the meaning of regulation 12(2);
- (b) subsidiaries of the same holding company within the meaning of that regulation; or
- (c) 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.

#### **Modification of section 16 of the 1993 Act.**

**65.** In such a case as is specified in regulation 66—

- (a) section 16(1) of the 1993 Act 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 section 14(2) for any relevant year in a period of linked qualifying service, 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 16(3)”, and
- (b) where earnings factors of an earner whose accrued rights to guaranteed minimum pensions, including such rights derived from linked qualifying service, have been transferred under section 20(1) of the 1993 Act or regulations made thereunder to another contracted-out scheme, section 16(2) and (3) of that Act 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 14(2) of that Act without reference to any order coming into force under section 148 of the Administration Act—
  - (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 148 of the Administration Act, or
  - (ii) in and after the relevant year in which that service was terminated in any other case, and as if section 16(3) of the 1993 Act 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 16(3) as a reference to the amount by which the earnings factors relevant to the weekly equivalent would be increased.

#### **Circumstances in which the modifications to the 1993 Act set out in regulation 65 apply.**

**66.** The case referred to in regulation 65 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 20(1) of the 1993 Act, or regulations made thereunder, of the earner’s accrued rights to guaranteed minimum pensions 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;
- (c) by virtue of section 14(1) of that Act as modified by regulations made under section 20 of the 1993 Act, the calculation, under the provisions of the receiving scheme, of the

earner's guaranteed minimum pension for the purposes of section 14(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 148 of the Administration Act, the receiving scheme provides for those earnings factors or the weekly equivalent derived therefrom to be increased in accordance with the provisions of section 16(2) and (3) of the 1993 Act, or regulations made under section 16(3) of that Act, 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 16(2) and (3) of the 1993 Act or of regulations made under section 16(3) of that Act, the receiving scheme includes provision for those earnings factors to be increased by reference to orders under section 148 of the Administration Act 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 148 of the Administration Act, 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 148 of the Administration Act.

**Modification of section 51(1) of the 1993 Act in relation to revaluation and schemes which have ceased to be contracted-out.**

67. Subject to the provisions of regulation 68, in relation to a scheme which has ceased to be contracted-out and, immediately before it so ceased, contained provision authorised by section 16(2) and (3) of the 1993 Act, section 51(1) to (3) of that Act<sup>(53)</sup> shall be modified so 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 the period of 5 years, 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, but his weekly equivalent shall not be increased pursuant to any provision required by section 16(2) and (3) of the 1993 Act for the years for which that factor is taken to be that factor as increased by 12 per cent.

(53) Section 51 was amended by paragraph 46 of Schedule 5 to the Pensions Act 1995.

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

**68.**—(1) Subject to the provisions of paragraphs (2) and (3), in any case where an earner’s accrued rights to guaranteed minimum pensions are or have been transferred under section 20 of the 1993 Act or regulations made under that section to another contracted-out scheme, or have arisen in such a scheme by reason of a transfer payment giving effect to his protected rights in accordance with regulations made under section 28(2)(b) of the 1993 Act, references in regulation 67(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 employment by reference to which the scheme ceasing to contract-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 148 of the Administration Act.

(3) For the purposes of paragraph (1), where an earner has a guaranteed minimum pension in consequence of a transfer payment made in accordance with regulations made under section 28(2) of the 1993 Act—

- (a) that pension shall be treated as if it had arisen as a result of his service in the employment by reference to which the scheme ceasing to be contracted-out was contracted-out; and
- (b) the reference to earnings factors, to the extent that they relate to that pension, shall be construed so as to include only those which do not fall to be revalued in accordance with section 16(2) and (3) of the 1993 Act as modified by those regulations.

**Miscellaneous provisions affecting section 51 of the 1993 Act.**

**69.**—(1) Section 51(1) to (3) of the 1993 Act shall not apply where an earner’s accrued rights to guaranteed minimum pensions under the scheme which is ceasing to be contracted-out are transferred to another contracted-out scheme in accordance with arrangements approved by the Secretary of State, 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.

(2) In paragraph (1), “connected employers” means employers who would fall within any of the cases referred to in regulation 64(2), if the words “at the relevant time” and regulation 64(3) were disregarded.

## PART VIII

### TRANSITIONAL ARRANGEMENTS AND SAVINGS

**Transitional arrangements for certification of schemes.**

**70.**—(1) In the case of a scheme contracted-out under section 9(2) of the 1993 Act, a contracting-out certificate issued before the principal appointed day shall continue to have effect during the period beginning with that day and ending on either—

- (a) whichever is the earlier of—
  - (i) the day before the effective date of a replacement contracting-out certificate issued by the Secretary of State, or
  - (ii) 31st January 1998, or
- (b) such later date as the Secretary of State may in his discretion permit in any particular case,

provided that it is not otherwise cancelled or surrendered and the scheme satisfies all contracting-out conditions or requirements which apply to the scheme from the principal appointed day by virtue of it being a scheme to which section 9(2) of that Act applies.

(2) In the case of a scheme contracted-out under section 9(3) of the 1993 Act, a contracting-out certificate issued before the principal appointed day shall continue to have effect on and after that date provided that it is not cancelled or surrendered and the scheme satisfies all contracting-out conditions or requirements which apply to the scheme from the principal appointed day by virtue of it being a scheme to which section 9(3) of that Act applies.

(3) A contracting-out certificate having effect on or after the principal appointed day by virtue of this regulation, shall have effect in relation to any earner's service on and after that day as if the certificate was issued by the Secretary of State on or after that day.

#### **Elections for replacement certificates by salary-related schemes during transitional period.**

71. During the period beginning with the principal appointed day and ending on 31st January 1998 or such later date as the Secretary of State may allow in relation to a particular case or class of case, an election made with a view to the issue of a contracting-out certificate in relation to an employment which is to remain contracted-out under section 9(2) of the 1993 Act on or after the principal appointed day must be made in compliance with regulation 2 and regulation 10 shall not apply.

#### **Transitional requirements as to sufficiency of resources of salary-related schemes.**

72.—(1) Except in cases to which regulation 73 applies (schemes which have begun winding up before the principal appointed day) for the purposes of section 9(2B)(c)(i) of the 1993 Act (requirement as to the amount of the resources of the scheme) and section 25(2) of that Act (scheme to comply with prescribed requirements in relation to securing that the resources of the scheme are brought to and maintained at satisfactory level in respect of any earner's service before the principal appointed day) at any time during the period of ten years beginning with the principal appointed day or such longer period as the Secretary of State may specify in a particular case or class of case, the amount of resources of the scheme must be sufficient to meet the liabilities specified in paragraph (2).

(2) The liabilities referred to in paragraph (1) are any liability for—

- (a) pensions or other benefits which, in the opinion of the trustees, are derived from the payment by any member of the scheme of voluntary contributions;
- (b) where a person's entitlement to payment of a pension or other benefit has arisen, liability for that pension or benefit and for any pension or other benefit which will be payable to dependants of that person on his death and any increases to such pensions;
- (c) equivalent pension benefits, guaranteed minimum pensions and protected rights which have accrued to or in respect of any members of the scheme and any increases to such pensions;
- (d) pensions or other benefits which have accrued after the principal appointed day to or in respect of members whose employment is contracted-out by reference to the scheme and any increases to such pensions; and
- (e) in respect of members with less than two years pensionable service who are not entitled to accrued rights under the scheme, the return of contributions.

(3) Subject to paragraphs (4) and (5), the liabilities specified in paragraph (2) and the resources required to meet such liabilities shall be calculated, determined and verified in accordance with regulations made under section 56(3) of the 1995 Act (minimum funding requirement).

(4) In calculating the amount of resources of a scheme for the purposes of paragraph (1) during the period of five years beginning with the principal appointed day there shall be excluded any



employer-related investments within the meaning of section 40 of the 1995 Act (other than any such investments to which the restrictions imposed by regulations made under that section do not apply) which are—

- (a) prohibited by regulations made under that section, or
- (b) in excess of 5 per cent. of the current market value of the scheme's resources,

and at any later time, there shall be excluded from the amount of resources of a scheme any such employer-related investments which are excluded at that time from the calculation of the assets of a scheme for the purposes of the minimum funding requirement in accordance with regulations made under section 56(3) of the 1995 Act.

(5) During the period beginning with the principal appointed day and ending on the date on which the first actuarial valuation is required to be obtained in relation to a scheme in accordance with regulations made under section 57(1)(a) of the 1995 Act (minimum funding requirement: valuation and certification of assets and liabilities), the resources and liabilities specified in this regulation shall be calculated, determined and verified in a manner approved by the Secretary of State.

(6) This regulation does not apply to a public service pension scheme to which section 56 of the 1995 Act does not apply.

#### **Transitional arrangements and savings for salary-related schemes which have begun winding up before the principal appointed day.**

73. In the case of a scheme to which section 23(2) and (3) of the 1993 Act<sup>(54)</sup> applies (schemes where winding up began before the principal appointed day)—

- (a) regulation 40 (priorities on the winding-up of a scheme) of the Occupational Pension Schemes (Contracting-out) Regulations 1984<sup>(55)</sup> shall continue to have effect, and
- (b) the resources of the scheme must be sufficient to meet the liabilities specified in section 24(1)(c) of the 1993 Act, such resources and liabilities being calculated, determined and verified in a manner approved by the Secretary of State.

#### **Transitional arrangements in relation to the powers of the Secretary of State to approve arrangements for schemes ceasing to contract out before the principal appointed day.**

74. In the case of a scheme which ceased to be certified as contracted-out before the principal appointed day, the Secretary of State may approve arrangements under section 50(1) or (1A) of the 1993 Act<sup>(56)</sup>, notwithstanding that the conditions prescribed under section 50(1B) of that Act are not met.

#### **Transitional modifications to sections 35 and 36 of the 1993 Act.**

75. Sections 35 and 36 of the 1993 Act (surrender and cancellation of contracting-out certificates: issue and cancellation of further certificates) shall be modified for transitional purposes until the coming into force of an order under section 180 of the 1995 Act repealing those provisions as follows—

- (a) in paragraph (a) of subsection (1) of section 35 of the 1993 Act “or the Secretary of State” is added after “the Board”;
- (b) in each other place where the word appears, for “Board” there is substituted “Secretary of State”;

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<sup>(54)</sup> Section 23 was amended by paragraph 31 of Schedule 5 to the Pensions Act 1995.

<sup>(55)</sup> S.I. 1984/380: the relevant amending instrument is S.I. 1994/1062.

<sup>(56)</sup> Section 50(1A) was inserted by paragraph 45 of Schedule 5 to the Pensions Act 1995.

- (c) in subsection (3) of section 35 of the 1993 Act, for “they consider” there is substituted “he considers”;
- (d) in paragraph (c) of subsection (1) of section 36 of the 1993 Act, for “have formed” there is substituted “has formed”, for “had they been aware” there is substituted “had he been aware” and for “they would have been prevented” there is substituted “he would have been prevented”; and
- (e) in subsection (6) of section 36, for “have cancelled” there is substituted “has cancelled”.

**Prevention of recovery by employers of Class 1 contributions where certificate cancelled under section 36(3) of the 1993 Act.**

76.—(1) This regulation shall apply in any case where the Occupational Pensions Board or the Secretary of State has cancelled a contracting-out certificate under section 36(3) of the 1993 Act.

(2) An employer shall not be entitled to recover (whether by deduction from emoluments or otherwise) any arrears which he is required to pay to the Secretary of State in respect of an earner’s liability under section 6(3) of the Contributions and Benefits Act in so far as those arrears comprise the difference between the amount of the primary Class 1 contributions payable at the normal rate in respect of the emoluments from the employed earner’s employment and the amount of the primary Class 1 contributions that were paid while the employment was regarded as contracted-out to the cancellation of the further contracting-out certificate.

(3) This regulation shall apply notwithstanding the terms of any contract to the contrary.

**Savings in respect of State Scheme Premiums.**

77. The following regulations shall continue to have effect in relation to any state scheme premium which has been paid before the principal appointed day or is payable immediately before that day—

- (a) regulations 18 to 26, 34, 44, 45, 47, 48 and 49 of the Occupational Pension Schemes (Contracting-out) Regulations 1984(57);
- (b) the Occupational Pension Schemes (Contracted-out Protected Rights Premiums) Regulations 1987(58).

## PART IX REVOCATIONS

**Revocations.**

78. Subject to the savings provided for in regulations 73 and 77, the regulations listed in column 2 of Schedule 2 to these Regulations (some of which are spent) are revoked to the extent specified in column 3 of that Schedule.

(57) S.I. 1984/380: the relevant amending instruments are S.I. 1985/1323, S.I. 1985/1928, S.I. 1986/317, S.I. 1986/1716, S.I. 1987/1103, S.I. 1987/1106, S.I. 1987/1114, S.I. 1988/475, S.I. 1989/500, S.I. 1990/1142, S.I. 1992/1531, S.I. 1993/519, S.I. 1994/1062.

(58) S.I. 1987/1103: the amending instrument is S.I. 1994/1062.

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

25th April 1996

*Oliver Heald*  
Parliamentary Under-Secretary of State,  
Department of Social Security

**Status:** This is the original version (as it was originally made).

## SCHEDULE 1

### PROVISIONS CONFERRING POWERS EXERCISED IN MAKING THESE REGULATIONS

Column (1)	Column (2)
Pension Schemes Act 1993(59)	section 7 section 8(3) section 9 section 11(5) section 12(3) section 12A(4), (5) and (6) section 12B(2) and (4) section 12C(1) and (3) section 12D section 16(3) and (4) section 17(6) section 21(1) and (2) section 25(2) section 34 section 35(6) section 36(6) section 37 section 42A section 45B section 50(1B) and (4) section 51 (2) and (4) section 53(3) section 55(2) section 56(2) section 57(1) and (2) section 61(7) and (11) section 113(1) section 155 section 156 section 178

(59) 1993 c. 48 as amended by Part III and Schedule 5 to the Pensions Act 1995. Section 181(1) is cited for the meaning given to “prescribe” and “regulations”.

Column (1)	Column (2)
	section 179
	section 181(1)
	section 182(2) and (3)
	section 183(1)
	Schedule 2, Part I
Pensions Act 1995(60)	section 174(3) and (4)
	section 180(4)

## SCHEDULE 2

Regulation 78

## REVOCATIONS

Column 1 Statutory Instrument Number	Column 2 Statutory Instrument	Column 3 Provision Revoked
S.I.1982/1033	The Contracting-out (Recovery of Class 1 Contributions) Regulations 1982	Regulation 2
S.I. 1984/380	The Occupational Pension Schemes (Contracting-out) Regulations 1984	The whole of the Regulations
S.I. 1985/1323	The Contracting-out (Transfer) Regulations 1985	Regulation 4(3) and (4)
S.I. 1985/1928	The Contracting-out (Transfer Premiums) Regulations 1985	The whole of the Regulations
S.I. 1985/1930	The Occupational Pension Schemes (Revaluation) Regulations 1985	Regulation 9
S.I. 1986/317	The Occupational Pension Schemes (Contracting-out) Amendment Regulations 1986	Regulation 2
S.I. 1986/1716	The Contracting-out (Requisite Benefits-Consequential Provisions) Regulations 1986	Regulation 3
S.I. 1987/1100	The Contracting-out (Widowers' Guaranteed Minimum Pensions) Regulations 1987	The whole of the Regulations

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(60) 1995 c. 26.

*Status: This is the original version (as it was originally made).*

Column 1 Statutory Instrument Number	Column 2 Statutory Instrument	Column 3 Provision Revoked
S.I. <a href="#">1987/1101</a>	The Money Purchase Contracted-out Schemes Regulations 1987	The whole of the Regulations
S.I. <a href="#">1987/1103</a>	The Occupational Pension Schemes (Contracted-out Protected Rights Premiums) Regulations 1987	Regulations 3, 4, 5, 6 and 7
S.I. <a href="#">1987/1104</a>	The Occupational Pension Schemes (Contracting-out) Amendment Regulations 1987	The whole of the Regulations
S.I. <a href="#">1987/1106</a>	The Occupational Pension Schemes (Qualifying Service Consequential and Other Provisions) Regulations 1987	Regulation 2
S.I. <a href="#">1987/1114</a>	The Personal and Occupational Pension Schemes (Consequential Provisions) Regulations 1987	Regulation 4
S.I. <a href="#">1987/1117</a>	The Personal and Occupational Pension Schemes (Protected Rights) Regulations 1987	Regulation 14
S.I. <a href="#">1988/474</a>	The Personal and Occupational Pension Schemes (Tax Approval and Miscellaneous Provisions) Regulations 1988	Regulation 4
S.I. <a href="#">1988/475</a>	The Contracting-out (Miscellaneous Amendments) Regulations 1988	Regulation 2
S.I. <a href="#">1989/500</a>	The Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1989	Regulation 2
S.I. <a href="#">1990/1141</a>	The Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1990	Regulation 6
S.I. <a href="#">1990/1142</a>	The Personal and Occupational Pension Schemes (Miscellaneous Amendments) (No.2) Regulations 1990	Regulation 2
S.I. <a href="#">1991/2273</a>	The Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1991	Regulation 2

Column 1 Statutory Instrument Number	Column 2 Statutory Instrument	Column 3 Provision Revoked
S.I. <a href="#">1992/1531</a>	The Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 1992	Regulation 2
S.I. <a href="#">1993/519</a>	The Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 1993	Regulation 2
S.I. <a href="#">1994/1062</a>	The Occupational and Personal Pension Schemes (Consequential Amendments) Regulations 1994	Schedule 2, paragraphs 4 and 10 and regulation 2 as far as it relates to those paragraphs
S.I. <a href="#">1995/35</a>	The Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 1995	Regulations 2 and 4
S.I. <a href="#">1996/776</a>	The Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1996	Regulation 2

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations replace the Occupational Pension Schemes (Contracting-out) Regulations 1984 and other related regulations which are now revoked. The Regulations supplement the changes introduced by the Pensions Act 1995 to Part III of the Pension Schemes Act 1993. They also consolidate and amend those provisions of the 1984 Regulations which remain relevant. The regulations made by virtue of Part III of the Pensions Act 1995 are made within six months of those provisions coming into force and as a consequence there is no requirement to consult. As regards other regulations, the Occupational Pensions Board has agreed that proposals to make regulations need not be referred to it.

Part II of these Regulations provides for the procedure for employers to make elections to contract out employments, for notice and consultation requirements and the issue of contracting-out certificates by the Secretary of State.

Part III concerns the new requirements applying to salary-related contracted-out schemes from 6th April 1997. Provision is made as to the level of resources required (regulation 18), payment of lump sums and commutation of benefits (regulations 19 and 20), the age at which benefits can be paid (regulation 21) and meeting the statutory standard in accordance with section 9(2B)(a) of the Pension Schemes Act 1993 (regulations 22 to 27).

*Status: This is the original version (as it was originally made).*

Part IV concerns money purchase contracted-out schemes. Provision is made for further requirements applying to such schemes (regulation 30); the deduction, payment and calculation of minimum payments (regulations 31, 32 and 33); the manner of calculating or estimating earnings (regulation 34); the manner and adjustment of age-related payments and the circumstances in which such payments are not to be made (regulations 35, 37 and 38); verification of age (regulation 36); the circumstances in which a money purchase scheme can change mode of contracting-out (regulation 39) and schemes which may not be contracted-out (regulation 40).

Part V provides for additional requirements applying to all schemes and special requirements applying to overseas schemes. Provision is made for requirements concerning information about resources (regulation 41); alteration of scheme rules (regulation 42); termination of contracted-out employment (regulation 43); notifications to the Secretary of State (regulation 44); approval and supervision of schemes which cease contracting-out (regulations 45 and 46); variation and cancellation of certificates (regulation 47); and overseas schemes (regulation 48).

Part VI concerns the restoration of rights in the State scheme. It provides for cases where a scheme is insolvent (regulations 49 and 50) and carries forward some provisions relating to contributions equivalent premiums (regulations 51 to 54).

Part VII provides for requirements applying to guaranteed minimum pensions which have accrued up until 6th April 1997. It carries forward the requirements applying to guaranteed minimum pensions which were previously contained in the Occupational Pension Schemes (Contracting-out) Regulations 1984.

Part VIII concerns transitional arrangements and savings. Provision is made in relation to the transitional arrangements for certification of schemes (regulation 70); the renewal of certificates by salary-related schemes during a transitional period (regulation 71); transitional requirements as to resources for salary-related schemes (regulation 72); transitional arrangements and savings for salary-related schemes which have commenced winding up before 6th April 1997 (regulation 73); transitional arrangements concerning approval of schemes ceasing to be contracted-out before 6th April 1997 (regulation 74); transitional modifications relating to issue and cancellation of further certificates (regulation 75); the prevention of recovery of Class 1 contributions in certain circumstances (regulation 76). Savings are made in respect of transitional arrangements for state scheme premiums (regulation 77).

Revocations are made in regulation 78 and Schedule 2.

An assessment of the compliance cost for employers of the measures arising from the Pensions Act 1995, including these Regulations, has been placed in the libraries of both Houses of Parliament. Copies can be obtained by post from the Department of Social Security, Private Pensions Directorate, 11th floor, The Adelphi, 1-11 John Adam Street, London WC2N 6HT.