

## 1996 No. 1172

### PENSIONS

#### The Occupational Pension Schemes (Contracting-out) Regulations 1996

*Made* - - - - - 25th April 1996

*Laid before Parliament* - - - - 29th April 1996

*Coming into force* - - - - - 6th April 1997

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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(a) 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(b), 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.

▶<sup>1</sup>(1A) For the purposes of these Regulations, two people of the same sex are to be regarded as living together as if they were civil partners if, but only if, they would be regarded as living together as husband and wife were they instead two people of the opposite sex.◀

<sup>1</sup>Reg. (1A) inserted by para. 8 of Sch. 2 to S.I. 2005/2050 as from 5.12.05.

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

“the 1993 Act” means the Pension Schemes Act 1993(c);

“the 1995 Act” means the Pensions Act 1995;

▶<sup>2</sup>“the 2004 Act” means the Pensions Act 2004;◀

▶<sup>3</sup>“the 2009 Regulations” means the Registered Pension Schemes (Authorised Payments) Regulations 2009;◀

<sup>2</sup>Words inserted in reg. 1(2) by para. 1(2)(a) of Sch. 3 to S.I. 2005/3377 as from 30.12.05.

“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(d);

<sup>3</sup>Defn. of “the 2009 Regulations” inserted by reg. 4(2) of S.I. 2009/2930 as from 1.12.09.

“the Administration Act” means the Social Security Administration Act 1992(e);

“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 ▶<sup>4</sup>who is, or the persons who are, appointed in accordance with section 270 of the Finance Act 2004 (meaning of “scheme administrator”)◀

<sup>4</sup>Words substituted in defn. of “administrator” by art. 8(2)(a) of S.I. 2006/744 as from 6.4.06.

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

▶<sup>5</sup>◀

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992(g);

“earnings period” has the same meaning as in the Social Security (Contributions) Regulations ▶<sup>6</sup>2001◀;

<sup>5</sup>Defn of “the Board of Actuarial Standards” omitted by Sch. 1, para. 2(a) of S.I. 1817/2012 as from 9.8.12.

<sup>6</sup>Words substituted in defn. of “earnings period” by reg. 3(2)(a) of S.I. 2007/1154 as from 6.4.07.

(a) 1995 c. 26.

(b) 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.

(c) 1993 c. 48.

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

(e) 1992 c. 5.

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

(g) 1992 c. 4.

## Reg. 1

<sup>1</sup>Words substituted in defn. of “emoluments” & defn. of “retrospective contributions regulations” inserted by reg. 3(2)(b) & (c) of S.I. 2007/1154 as from 6.4.07.

<sup>2</sup>Defn. of “minimum funding requirement” omitted by reg. 1(2)(b) of Sch. 3 to S.I. 2005/3377 as from 30.12.05.

<sup>3</sup>Defn. of “overseas scheme” substituted by reg. 5(2) of S.I. 2007/814 as from 6.4.07.

<sup>4</sup>Words in defn. of “overseas scheme” substituted by Sch. to S.I. 2007/3014 as from 26.11.07.

<sup>5</sup>Words in defn. of “overseas scheme” omitted by reg. 4(2) of S.I. 2011/1245 as from 6.4.12.

<sup>6</sup>Defns. of “pension debit” & “relevant transferee” added by reg. 2(2) of S.I. 2000/2975 as from 1.12.00.

<sup>7</sup>Defn. of “relevant statutory scheme” inserted by art. 8(2)(c) of S.I. 2006/744 as from 6.4.06.

<sup>8</sup>Defn. of “safeguarded rights” omitted by reg. 3(2) of S.I. 2009/598 as from 6.4.09.

<sup>9</sup>Defn. of “section 9(2B) rights” substituted by para. 4(2) of Sch. 1 to S.I. 1997/786 as from 6.4.97.

“emoluments” means so much of a person’s remuneration or profit derived from employed earner’s employment as constitutes earnings for the purposes of <sup>1</sup>Parts 1 to 5 of the Contributions and Benefits Act, including any amount retrospectively treated as earnings (“retrospective earnings”) by retrospective contributions regulations;<sup>◀</sup>

“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;

<sup>2</sup>◀

“the Occupational Pensions Board” means the Occupational Pension Board established under section 66 of the Social Security Act 1973(a) and dissolved under section 150 of the 1995 Act;

<sup>3</sup>“overseas scheme” means an occupational pension scheme which has its main administration outside the <sup>4</sup>EEA states<sup>◀</sup> but does not include a scheme which is contracted-out in the Isle of Man by virtue of satisfying section 9(2) <sup>5</sup>◀ of the 1993 Act as it has effect in the Isle of Man(b);<sup>◀</sup>

<sup>6</sup>“pension debit” means a debit under section 29(1)(a) of the Welfare Reform and Pensions Act 1999;<sup>◀</sup>

“principal appointed day” has the same meaning as in section 7(2B) of the 1993 Act(c);

<sup>7</sup>“relevant statutory scheme” has the same meaning as in paragraph 1(1)(c) of schedule 36 to the Finance Act 2004 (deemed registration of existing schemes);<sup>◀</sup>

<sup>6</sup>“relevant transferee” means any person for whose benefit an order or provision is made by virtue of which section 29 of the Welfare Reform and Pensions Act 1999 (creation of pension debits and credits) applies, where the order or provision relates to the rights of another person who is a member of the scheme;

<sup>1</sup>“retrospective contributions regulations” means regulations made by virtue of section 4B(2) of the Contributions and Benefits Act and, in relation to an amount of retrospective earnings, “the relevant retrospective contributions regulations” means the regulations which treated that amount as earnings;<sup>◀◀</sup>

<sup>8</sup>◀

“scheme” means an occupational pension scheme;

<sup>9</sup>“section 9(2B) rights” are—

- (a) rights to the payment of pensions and accrued rights to pensions (other than rights attributable to voluntary contributions) under a scheme contracted-out by virtue of section 9(2B) of the 1993 Act, so far as attributable to an earner’s service in contracted-out employment on or after the principal appointed day; and
- (b) where a transfer payment has been made to such a scheme, any rights arising under the scheme as a consequence of that payment which are derived directly or indirectly from—
  - (i) such rights as are referred to in sub-paragraph (a) under another scheme contracted-out by virtue of section 9(2B) of that Act; or

(a) 1973 c. 38.

(b) See Article 3 of, and the Schedule to, the Pension Schemes Act 1993 (Application) Order 1995, Statutory Document No. 531/95, which applies (with modifications) section 9 of the Pension Schemes Act 1993 to the Isle of Man; and see Article 3(1)(b) of, and Schedule 1 to, the Pensions Act 1995 (Application) Order 1997, Statutory Document No. 501/97, which applies to the Isle of Man the amendments to that in section 136 of the Pensions Act 1995.

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

- (ii) protected rights under another occupational pension scheme or under a personal pension scheme attributable to payments or contributions in respect of <sup>1</sup> employment on or after the principal appointed day<sup>2</sup>, where that transfer payment was made before the abolition date<sup>3</sup>;

<sup>3</sup>

“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 in 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.

<sup>1</sup>Words deleted in defn. of “section 9(2B) rights” by reg. 3(2)(b) of S.I. 1999/3198 as from 30.12.99.

<sup>2</sup>Words added in para. (b)(ii) to the defn. of “section 9(2B) rights” by art. 8(2) of S.I. 2011/1246 as from 6.4.12.

<sup>3</sup>Defn. of “the taxes act” omitted by art. 8(2)(b) of S.I. 2006/744 as from 6.4.06.





(7) Any document required or authorised under the provisions of these Regulation 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 persons'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.

▶<sup>1</sup>(2) In making or abstaining from making an election as to the inclusion of an employment in a contracting-out certificate, an employer may discriminate between different earners (otherwise than on the ground of the nature of their employment) in any case where such discrimination would be lawful apart from section 11(3) of the 1993 Act.◀

<sup>1</sup>Para. (2) substituted in reg. (2) by reg. 2(2) of S.I. 2002/681 as from 6.4.02.

**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 ▶<sup>2</sup>◀ guaranteed minimum pensions or any benefits arising in respect of section 9(2B) rights to be payable under the scheme, the insurance company of Friendly Society concerned; and
- (d) all independent trade unions recognised in relation to the earners concerned.

<sup>2</sup>Words in reg. 3(1)(c) omitted by art. 8(3) of S.I. 2011/1246 as from 6.4.12.

(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 certificates shall have effect;
- (c) ▶<sup>3</sup>◀
- (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

<sup>3</sup>Reg. 3(c) omitted by reg. 2(a) of S.I. 2002/681 as from 6.4.02.

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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) ►<sup>1</sup>◀ how benefits would accrue to a member under the scheme if the employment were contracted-out, ►<sup>2</sup>and◀
  - (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) ►<sup>2</sup>◀

<sup>1</sup>Words in reg. 3(2)(g)(i) omitted by reg. 4(3) of S.I. 2011/1245 as from 6.4.12.

<sup>2</sup>Word "and" inserted and head (iii) omitted in reg. 2(2) by reg. 2(2) of S.I. 2002/681 as from 6.4.02.

(3) A notice under this regulation shall be given–

- (a) to any earner concerned by–
  - <sup>3</sup>(i) sending it to the earner in accordance with regulations 26 to 28 of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (giving information and documents),
    - (ia) delivering it to the earner, 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;
  - <sup>3</sup>(b) to any other person, by–
    - (i) sending it to that person in accordance with regulations 26 to 28 (giving information and documents) of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013, or
    - (ii) delivering it to that person.◀

<sup>3</sup>Reg. 3(3)(a)((i) & (b) substituted with (a)(i), (a)(ai) & (b) by para. 2 of Sch. 9 to S.I. 2013/2734 as from 6.4.14.

►<sup>4</sup>(4) Unless paragraph (5) applies, a notice under this regulation must specify a date of expiry which is not earlier than the date three months after the date on which the notice is given.

<sup>4</sup>Wording in sub-paras (4) & (5) substituted by reg. 4(4) of S.I. 1997/786 as from 6.4.97.

(5) Where–

- (a) there is no independent trade union recognised in relation to the earners concerned, or
- (b) before the notice has been given every such trade union has consented in writing to the notice specifying an earlier date than that which is required under paragraph (4),

the notice may specify an earlier date (but not earlier than the date one month 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)-(f) ▶<sup>1</sup>◀

- ▶<sup>2</sup>(g) in the case of a scheme to which Part 3 of the 2004 Act (scheme funding) applies, that the requirements of sections 224, 225, 226 (if applicable) and 227 of that Act and any regulations under those provisions are complied with.◀

<sup>1</sup>Reg. 6(2)(e) & (f) omitted by reg. 2(3) of S.I. 2002/681 as from 6.4.02.

<sup>2</sup>Words substituted in reg. 6(2)(g) by para. 1(3) of Sch. 3 to S.I. 2005/3377 as from 30.12.05.

(3) In the case of a scheme which is electing to contract out under section 9(2) of the 1993 Act(a) (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 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 requirement 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(b).

(4) ▶<sup>3</sup>◀

<sup>3</sup>Reg. 6(4) omitted by reg. 4(4) of S.I. 2011/1245 as from 6.4.12.

**Amendments of an election**

7. An employer may amend his election at any time before the issue of a contracting-out certificate if the amendments does not alter the categories or descriptions of the earners to which the election relates ▶<sup>4</sup>or the date from which it intended that the certificate is to have effect.◀

<sup>4</sup>Words added to reg. 7 by reg. 4(b) of S.I. 1997/786 as from 6.4.97.

(a) Section 9(2) was substituted by section 136(3) of the Pensions Act 1995.

(b) Sections 12A to 12D were inserted by section 136(5) of the Pensions Act 1995.

**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**

<sup>1</sup>Reg. 9(1) substituted by reg. 2(4) of S.I. 2002/681 as from 6.4.02.

9.—<sup>1</sup>(1) Subject to the provisions of paragraphs (2), (3) and (7) and regulation 10, an election with a view to the variation or surrender of a contracting-out certificate—

- (a) may be made only after notices of intention have been given in accordance with paragraphs (4) and (5); and
- (b) shall be made in writing to the Inland Revenue. ◀

(2) Where a proposed variation is a change—

- (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) <sup>2</sup>▶◀ the benefits provided by the scheme; or
- (c) the contributions (if any) payable by those earners to the scheme,

<sup>2</sup>Words in reg. 9(3)(b) omitted by reg. 4(5) of S.I. 2011/1245 as from 6.4.12.

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, <sup>1</sup>and<sup>1</sup>
    - (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, <sup>1</sup>

<sup>1</sup>Words in regs. 9(5)(e) (i)-(ii) inserted and omitted & para. (iii) becomes (5)(ea) words inserted & words substituted in para. (6) by regs. 4(2)(a)-(e) of S.I. 2009/615 as from 6.4.09.

- <sup>1</sup>(ea) <sup>1</sup>where the notice is not about surrendering a contracting-out certificate due to the scheme winding up, contain a statement that<sup>1</sup> 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 <sup>1</sup>a notice under this regulation which is not about surrendering a contacting-out certificate due to the scheme winding up<sup>1</sup> 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 <sup>2</sup>or the date from which it is intended that the variation or surrender is to have effect.<sup>2</sup>

<sup>2</sup>Words added to reg. 9(8) by reg. 4(7) of S.I. 1997/786 as from 6.4.97.

**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, <sup>3</sup>under the scheme when the election takes effect;
- (b) the accrued rights to pensions which satisfy section 9(2) of the 1993 Act <sup>4</sup>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,

<sup>3</sup>Words in reg. 10(1)(a) omitted by reg. 4(6) of S.I. 2011/1245 as from 6.4.12.

<sup>4</sup>Words omitted in reg. 10(1)(b) by art. 8(4) of S.I. 2011/1246 as from 6.4.12.

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) ►<sup>1</sup>◄
  - (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(a), or
  - (ii) ►<sup>1</sup>◄
  - (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 ►<sup>2</sup>a body corporate which is an employer in the scheme and is◄ either—
  - (i) a subsidiary within the meaning of section 736 of the Companies Act 1985, or
  - (ii) ►<sup>1</sup>◄
  - (iii) an employer subject to the rules of the scheme.

<sup>1</sup>Paras. (1)(b)(ii), (2)(b)(ii) & (c)(ii) omitted from reg. 12 by art. 8(3) of S.I. 2006/744 as from 6.4.06.

<sup>2</sup>Words inserted in reg. 12(2)(c) by reg. 3(3) of S.I. 1999/3198 as from 30.12.99.

(a) 1985 c. 6.

(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 purposes of sections 7(1)(a), (2) and (7), 11 and 34(1)(a)(a), (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 <sup>1</sup>9(5)(ea) 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.

<sup>1</sup>Words substituted in reg. 12(4) by reg. 4(3) of S.I. 2009/615 as from 6.4.09.

(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 <sup>2</sup>such written confirmation and any 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)—
  - (i) that the scheme is not one which is excluded from contracting-out under these Regulations, and

<sup>2</sup>Words substituted in reg. 16(1) by reg. 2(5) of S.I. 2002/681 as from 6.4.02.

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

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(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;

<sup>1</sup>Reg. 16(1)(b) omitted by reg. 4(7) of S.I. 2011/1245 as from 6.4.12

(b) ►<sup>1</sup>◄

(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 scheme ceasing to be contracted-out) are satisfied;

<sup>2</sup>Reg. 16(1)(d) omitted by art. 8(5) of S.I. 2011/1246 as from 6.4.12.

(d) ►<sup>2</sup>◄

(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

Regs. 17-20

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(a), 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), ►<sup>1</sup>either the resources of the scheme must be sufficient to enable the scheme to meet the statutory funding objective provided for a section 222(1) of the 2004 Act, or the actuary to the scheme must have certified under section 227(6)(b)(i) of that Act that in his opinion the rates shown in the schedule of contributions are such that the statutory funding objective can be expected to be met by the end of the period specified in the recovery plan.◀

<sup>1</sup>Words substituted and inserted in reg. 18(1) and (2) & para. 3 inserted by para. 1(4)(a)-(c) of Sch. 3 to S.I. 2005/3377 as from 30.12.05.

(2) Paragraph (1) does not apply to a public service pension scheme to which ►<sup>1</sup>Part 3 of the 2004 Act◀ does not apply ►<sup>2</sup>or to any scheme in respect of which any Minister of the Crown has given a guarantee, or made any other arrangements, for the purpose of securing that the assets of the scheme are sufficient to meet its liabilities.◀

<sup>2</sup>Words inserted in reg. 18(2) by reg. 2(6) of S.I. 2002/681 as from 6.4.02.

►<sup>1</sup>(3) In a case where the trustees of a scheme are authorised under section 288 of the 2004 Act to accept contributions from European employers or approved under section 289 of that Act to accept contributions from a particular European employer, paragraph (1) has effect with the substitution for the words "by the end of the period specified in the recovery plan" of "within two years after the date of the last actuarial valuation under section 224 of the 2004 Act".◀

**►<sup>3</sup>Lump sum benefits and salary-related contracted-out schemes**

<sup>3</sup>Reg. 19 substituted by reg. 2(7) of S.I. 2002/681 as from 6.4.02.

19. A salary-related contracted-out scheme may not provide for the payment of a lump sum instead of a ►<sup>4</sup>pension except in accordance with—

- (a) regulation 20 (payment of lump sum instead of a pension payable under a relevant scheme); or
- (b) regulation 60 (payment of a guaranteed pension as a lump sum).◀◀

<sup>4</sup>Words in reg. 19 and reg. 20 substituted by art. 8(4) & (5) of S.I. 2006/744 as from 6.4.06.

**Payment of a lump sum instead of a pension payable under a relevant scheme**

20.—(1) 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), a relevant scheme may not provide for the payment of a lump sum instead of a pension unless the payment to be made is authorised under section 164 of the Finance Act 2004 (authorised member payments) and the payment ►<sup>5</sup>◀—

<sup>5</sup>Words omitted & inserted in reg. 20(1), (1)(a) & (1)(b) by reg. 4(3)(a)-(c) of S.I. 2009/2930 as from 1.12.09.

- (a) ►<sup>5</sup>is permitted◀ by the lump sum rule in section 166 of that Act (lump sum rule) and qualifies as—
  - (i) a pension commencement lump sum for the purposes of paragraph 1 of Part 1 of Schedule 29 to that Act;
  - (ii) a serious ill-health lump sum for the purposes of paragraph 4 of that Part;
  - (iii) a trivial commutation lump sum for the purposes of paragraph 7 of that Part;
  - (iv) a winding-up lump sum for the purposes of paragraph 10 of that Part; or
- (b) ►<sup>5</sup>is permitted◀ by the lump sum death benefit rule in section 168 of that Act (lump sum death benefit rule) and qualifies as—

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

<sup>1</sup>Reg. 20(1)(c) inserted by reg. 4(3)(c) of S.I. 2009/2930 as from 1.12.09.

- (i) a trivial commutation lump sum death benefit for the purposes of paragraph 20 of Part 2 of Schedule 29 to that Act; or
- (ii) a winding-up lump sum death benefit for the purposes of paragraph 21 of that Part <sup>1</sup>; or
- (c) is—
  - (i) made by a registered pension scheme (within the meaning given in section 150(2) of the Finance Act 2004 (meaning of “pension scheme”));
  - (ii) a payment that is described in Part 2 of the 2009 Regulations; and
  - (iii) made to or in respect of a member. ◀
- (2) Where under the scheme—
  - (a) an earner qualifies for a lump sum payment on the ground of serious ill-health; and
  - (b) the earner’s widow, widower or surviving civil partner qualifies for a pension (“a survivor’s pension”),

the scheme must continue to include provision for a survivor’s pension notwithstanding the payment of a lump sum to the earner. ◀

<sup>2</sup>Reg. 20A inserted by reg. 2(a) of S.I. 2002/681 as from 6.4.02.

#### ▶<sup>2</sup>Suspension of section 9(2B) rights

**20A.**—(1) In so far as a person’s accrued rights under an occupational pension scheme are section 9(2B) rights, the circumstances specified in paragraph (2) are prescribed for the purposes of subsection (6) of section 92 of the 1995 Act (circumstances in which subsection (1) of that section does not prevent forfeiture of rights under an occupational pension scheme).

- (2) The circumstances referred to in paragraph (1) are that—
  - (a) the person entitled to payments giving effect to those rights is, in the opinion of the trustees of the scheme, unable to act by reason of mental disorder; and
  - (b) there is provision in the scheme which requires that, while the person is so unable to act, sums equivalent to those payments—
    - (i) must, except in so far as such sums are not, in the opinion of the trustees, required for the maintenance of the pensioner, be paid or applied for his maintenance,
    - (ii) must, in so far as such sums are not, in the opinion of the trustees, required for the maintenance of the pensioner, be paid or applied for the maintenance of any dependants of the pensioner.
    - (iii) must, in so far as such sums are not, in the opinion of the trustees, required for the maintenance of the pensioner, or any dependant of his, be held by the trustees for the pensioner until he is again able to act, if he should die before that happens, for his estate. ◀

#### 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 ▶<sup>3</sup>which is permitted under section 164 of the Finance Act 2004 (authorised member payments). ◀

<sup>3</sup>Words substituted in reg. 21 by art. 8(6) of S.I. 2006/744 as from 6.4.06.

#### 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 such description of earners which is to be contracted-out.

(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 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—

- ▶<sup>1</sup>(a) must comply with any standards adopted or prepared, an from time to time revised, by ▶<sup>2</sup>the Financial Reporting Council Limited(a)◀ which are relevant to the matters specified in section 12A(4) of the 1993 Act;◀
- (b) may not certify that the pensions to be provided by the scheme for earners in employed earner's employment and their ▶<sup>3</sup>widows, widowers or surviving civil partners◀ 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 ▶<sup>3</sup>widows, widowers or surviving civil partners◀ 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 ▶<sup>4</sup>in respect of—
  - (i) earners who are not in contracted-out employment, ▶<sup>5</sup>◀◀
- (e) must not have regard to any money purchase benefits; ▶<sup>6</sup>◀
- (f) may have regard to the payment of a lump sum ▶<sup>1</sup>but may not have regard to any payment of a lump sum made as a result of the death of an earner◀▶<sup>6</sup>and
- (g) must take no account of any provision made by the scheme for the suspension, in the circumstances specified in regulation 20A(2), of benefits derived from section 9(2B) rights.◀
- ▶<sup>1</sup>(h) must not have regard to any discretionary benefits; and
  - (i) must comply with the further requirement set out in Schedule 3.◀

<sup>1</sup>Words in reg. 23(a) & (f) substituted & paras. (h)-(i) added by reg. 2(2)(a)-(c) of S.I. 2011/1294 as from 1.10.11.

<sup>2</sup>Words in reg. 23(a) substituted by Sch. para. 2(b) of S.I. 2012/1817 as from 9.8.12.

<sup>3</sup>Words substituted in reg. 23(b) by para. 10 of Sch. 2 to S.I. 2005/2050 as from 5.12.05.

<sup>4</sup>Words substituted in reg. 23(d) by reg. 2(4) of S.I. 2000/2975 as from 1.12.00.

<sup>5</sup>Reg. 23(d)(ii) omitted by reg. 3(3) of S.I. 2009/598 as from 6.4.09.

<sup>6</sup>Word deleted in reg. 23(e) & 23(g) inserted by reg. 2(10) of S.I. 2002/681 as from 6.4.02.

### 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 comply 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).

### ▶<sup>7</sup>Reference scheme: circumstances in which widows', widowers' or surviving civil partners' pensions need not be payable

26. For the purposes of section 12B(4)(a) of the 1993 Act (reference scheme to provide widows', widowers' and surviving civil partners' pensions except in prescribed circumstances), and subject to paragraph (2), the prescribed circumstances are where—

<sup>7</sup>Reg. 26 substituted by para. 11 of Sch. 2 to S.I. 2005/2050 as from 5.12.05.

(a) A company registered in England and Wales with number 02486368.

- (a) the scheme member marries or forms a civil partnership after having received benefits under the scheme;
- (b) the widow, widower or surviving civil partner of the scheme member—
  - (i) remarries or, as the case may be, marries;
  - (ii) forms a civil partnership or, as the case may be, forms a subsequent civil partnership;
  - (iii) lives together as husband and wife with another person to whom he or she is not married; or
  - (iv) lives together with a person of the same sex as if they were civil partners, after having received benefits under the scheme; or
- (c) the widow, widower or surviving civil partner of the scheme member is at the time of the member's death—
  - (i) living together as husband and wife with another person to whom he or she is not married; or
  - (ii) living together with a person of the same sex as if they were civil partners.

(2) Sub-paragraphs (b)(ii) and (iv) and (c)(ii) of paragraph (1) do not apply where the scheme member dies before 5th December 2005. ◀

#### **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 scheme 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 in 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(a).

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

**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—

- ▶<sup>1</sup>(a) a scheme which is not registered under section 153 of the Finance Act 2004, unless it is, or was formerly, a relevant statutory scheme.◀
- (b) a money purchase scheme.

<sup>1</sup>Reg. 29(a) substituted by art. 8(7) of S.I. 2006/744 as from 6.4.06.

PART IV

MONEY PURCHASE CONTRACTED-OUT SCHEMES

**30.** ▶<sup>2</sup>◀

**Deduction of minimum payments from earnings**

**31.—(1)** ▶<sup>3</sup>Subject to paragraph (3A), 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.

<sup>2</sup>Reg. 30 omitted & words added to reg. 31(3)(a) by reg. 4(8)-(9) of S.I. 2011/1245 as from 6.4.12.

<sup>3</sup>Words substituted in reg. 31(1) & (3) and para. 3(3A) inserted by reg. 2(11) of S.I. 2002/681 as from 6.4.02.

(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 ▶<sup>3</sup>paragraphs (3A) and (4)◀, on making any payment of emoluments to the earner the employer may deduct from those emoluments an amount which bears the same ratio 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>2</sup>as it had effect immediately prior to the abolition date◀(a); and
- (b) B is the appropriate flat-rate percentage for secondary Class 1 contributions specified in that order.

▶<sup>3</sup>(3A) Where the payment of emoluments in respect of which minimum payments are payable does not exceed the amount which is for the time being specified in regulations under section 5 of the Contributions and Benefits Act (earnings limits and thresholds for Class 1 contributions)(b) as the primary threshold for the purposes of that Act (or the amount which is, in relation to that payment of emoluments, the amount prescribed under that section as the equivalent of that threshold) no amount shall be deducted from those emoluments under this regulation.◀

(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.

(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).

▶<sup>4</sup>(5A) In the case of retrospective earnings (see the definition of “emoluments”) the employer may recover the minimum payments relating to those earnings from any payment of emoluments to that earner made after the relevant retrospective contributions regulations come into force and during the same tax year.

<sup>4</sup>Reg. 31(5A) & (5B) inserted by reg. 3(3) of S.I. 2007/1154 as from 6.4.07.

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

(b) 1992 c. 4 section 5 was substituted by paragraph 1 of Schedule 9 to the Welfare Reform and Pensions Act 1999 (c. 2) (“the 1999 Act”).

(5B) Any amount deducted under paragraphs (5) and (5A) 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(a), not paid through the secondary contributor in relation to the employment.

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

<sup>1</sup>Words substituted in reg. 32(1) by reg. 4(10)(a) & (b) of S.I. 2011/1245 as from 6.4.12.

**32.**—(1) For the purposes of ▶<sup>1</sup>section 8(1A)◀ of the 1993 Act(b), the employer of an earner whose ▶<sup>1</sup>employment was 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.

<sup>2</sup>Reg. 32(1A) inserted by reg. 3(4) of S.I. 2007/1154 as from 6.4.07.

▶<sup>2</sup>(1A) In the case of retrospective earnings, the employer shall make to the trustees of the scheme any additional minimum payments which fall to be made by him, within 14 days of the end of the income tax month in which the relevant retrospective contributions regulations come into force.◀

(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 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 therefore.

(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.

(a) S.I. 1979/591; the relevant amending instrument is 1983/395.

(b) 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>(a)</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>(b)</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.

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

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

**Regs. 37-40**

<sup>1</sup>Reg. 37(1A) & words in paras. (2) & (7) inserted by art. 8(6)(a)-(c) of S.I. 2011/1246 as from 6.4.12.

►<sup>1</sup>(1A) Subject to paragraph (2), where the earner is no longer a member of the scheme which before the abolition date was a money purchase contracted-out scheme, an age-related payment shall be paid—

- (a) to the trustees or managers of the scheme, if the earner has become a member of another scheme, and the scheme is able to transfer the payment to that other scheme,
- (b) to the trustees or managers of another scheme of which the earner is a member, if known to HMRC, or
- (c) in all other circumstances, to the earner.◄

(2) Where effect has been given to protected rights under section 28 of the 1993 Act(a) (ways of giving effect to protected rights) ►<sup>1</sup>as it had effect prior to the abolition date,◄ 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 ►<sup>2</sup>widow, widower or surviving civil partner◄, or if the earner ►<sup>2</sup>was not married or a civil partner at the time of his or her death◄, 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 payments shall be payable to the earner or the earner's ►<sup>2</sup>widow, widower or surviving civil partner◄, or if the earner ►<sup>2</sup>was not married or a civil partner at the time of his or her death◄, 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(b) (discharge of protected rights on winding up: insurance policies) ►<sup>1</sup>as it had effect prior to the abolition date◄, 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.

**39.-40.** ►<sup>3</sup>◄

<sup>3</sup>Regs. 39 & 40 omitted by reg. 4(11) of S.I. 2011/1245 as from 6.4.12.

(a) Section 28 was amended by sections 142 and 146(2) of the Pensions Act 1995.  
(b) Section 32A was inserted by section 146(1) of the Pensions Act 1995.



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.—**<sup>1</sup>(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 alterations which are prescribed are any alterations which are not prohibited by paragraph (2) <sup>2</sup>, (2ZA) <sup>3</sup> or (2B).

<sup>1</sup>Words in paras 42(1) & (2) substituted by reg. 4(8) of S.I. 1997/786 as from 6.4.97.

<sup>2</sup>Words inserted in reg. 42(1) substituted in para (2) & paras. (2ZA) & (2ZB) added by reg 3(a)-(c) of S.I. 2013/459 as from 6.4.13.

<sup>3</sup>Words in reg. 42(1) & para. (2A) omitted and para. (2B)(c) substituted by reg. 4(12)(a)-(c) of S.I. 2011/1245 as from 6.4.12.

(2) The rules of a salary-related contracted-out scheme cannot be altered in relation to any <sup>2</sup>rights which are to accrue under the scheme in so far as such rights are attributable to an earner's service in contracted-out employment on or after the date on which the alteration to the rules takes effect (other than rights attributable to the payment of voluntary contributions) <sup>3</sup> unless—

- (a) the trustees of the scheme have informed the actuary in writing of the proposed alteration,
- (b) the actuary has considered the proposed alteration and has confirmed to the trustees in writing that he is satisfied that the scheme would continue to satisfy the statutory standard in accordance with section 12A of the 1993 Act if the alteration were made, and
- (c) the alteration does not otherwise prevent the scheme from satisfying the conditions of section 9(2B) of that Act.

(2A) <sup>3</sup>

(2B) The rules of a contracted-out scheme cannot be altered in relation to any guaranteed minimum pensions under the scheme if the alteration would—

- (a) affect any of the matters dealt with in Part III of that Act or any regulations made under that Part which relate to guaranteed minimum pensions in a manner which would or might adversely affect any entitlement or accrued rights of any member of the scheme acquired before the alteration takes effect,
- (b) affect any of the matter dealt with in section 87 to 92 (protection of increases in guaranteed minimum pensions) and 109 and 110 of that Act (annual increases of guaranteed minimum pensions) or in any regulations made under those provisions which relate to guaranteed minimum pensions, or

<sup>3</sup>(c) otherwise prevent the scheme from satisfying section 9(2) of that Act. <sup>3</sup>

<sup>3</sup>(2ZA) The rules of a contracted-out salary-related scheme cannot be altered in relation to any section 9(2B) rights under the scheme unless—

- (a) following the alteration, the scheme provides benefits for the member and for that member's widow, widower or surviving civil partner, in respect of the period of pensionable service to which the alteration relates and in which the member's employment was contracted-out under section 9(2B) of the 1993 Act (requirements for certification of schemes: general) which are at least equal to the benefits that would be provided by a reference scheme (within the meaning of section 12B(2) of the 1993 Act (reference scheme)),
- (b) the alteration is one to which section 67 of the 1995 Act (the subsisting rights provisions) does not apply,

- (c) the alteration is one which is not a protected modification or a detrimental modification within the meaning given in section 67A of the 1995 Act (the subsisting rights provisions: interpretation), or
- (d) if the alteration is a detrimental modification within the meaning of section 67A of the 1995 Act, the actuarial equivalence requirements provided for in sections 67C and 67D of that Act (the actuarial equivalence requirements and further provisions) are met in relation to the proposed modification of those rights.

(2ZB)(a) This paragraph applies in the case of alterations falling within paragraph (2ZA)(c) or (d), but not falling within (2ZA)(a) or (b).

- (b) subject to sub-paragraph (c), the altered scheme must provide for a pension to be paid to the member's widow, widower or surviving civil partner in respect of the period in which the member's employment was contracted-out under section 9(2B) of the 1993 Act ("relevant survivor's post-1997 pension") which is at least as generous, either as regards the amount of the pension or as regards the circumstances in which it will be paid, as it would have been before the alteration.
- (c) in relation to a member who is an active member of the scheme immediately before the alteration takes effect, the requirement in sub-paragraph (b) shall be deemed to be satisfied if the relevant survivor's post-1997 pension which the scheme would provide in respect of the member if the member left pensionable service immediately after the alteration is at least as generous as the relevant survivor's post-1997 pension which the scheme would have provided in respect of the member had the member left service immediately before the alteration.
- (d) in sub-paragraph (c), "active member" means a person who is in pensionable service under the scheme. ◀

(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 sections continue to apply.

#### **Termination of periods of contracted-out employments**

**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 ►<sup>1</sup>or section 9(2B)◀ 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, ►<sup>1</sup>or section 9(2B)◀ 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 ►<sup>1</sup>or section 9(2B)◀ 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>(a)</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>(b)</sup> or 20(1) of the 1993 Act or regulations made thereunder ►<sup>2</sup>◀
  - (iv) the scheme is one for which there is a common fund, and any interval between one employment and the next is not 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>(c)</sup> (right to return to work following pregnancy or confinement) and does in fact return to work pursuant to that right.

<sup>1</sup>Words in reg. 43(1)(c), (d) & (e) substituted by art. 8(7) of S.I. 2011/1246 as from 6.4.12.

<sup>2</sup>Words in para. (3)(a)(iii) omitted by reg. 4(13)(a) of S.I. 2011/1245 as from 6.4.12.

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

(b) Section 12C(1) was inserted by section 136(5) of the Pensions Act 1995.

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

(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 guarantee minimum pensions <sup>1</sup>or section 9(2B) 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 reasonable 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 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 continues 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.

<sup>1</sup>Words in reg. 43(5)(a) substituted by reg. 4(13)(b) of S.I. 2011/1245 as from 6.4.12.

(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)-(6) <sup>1</sup>◀

(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) <sup>2</sup>▶ and any entitlement arising in respect of section 9(2B) rights.◀

<sup>1</sup>Reg. 44(5) & (6) omitted by art. 25 of S.I. 2011/1246 as from 6.4.13.

<sup>2</sup>Words in reg. 44(7) & 45(2), (3) substituted and omitted by art. 8(8) & (9) of S.I. 2011/1246 as from 6.4.12.

### 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(a) (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) <sup>3</sup>▶<sup>4</sup>▶ 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.

<sup>3</sup>Words in reg. 45(2) omitted by reg. 4(14) of S.I. 2011/1245 as from 6.4.12.

(3) To the extent that the arrangements concern the preservation of rights within the scheme, the scheme must comply with the requirements of <sup>2</sup>▶ paragraph (a)◀—

(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 <sup>4</sup>▶ a protection rule◀

<sup>4</sup>Words in reg 45(3) substituted and paras (3A) and (3B) added by reg. 3(b) of S.I. 1997/819 with effect from 6.4.97.

(b) <sup>2</sup>▶◀

<sup>4</sup>▶(3A) For the purpose of paragraph (3)(a) a protection rule is a rule which provides that the total amount of the benefits under the scheme for each member at normal pension age and the member's <sup>5</sup>▶ widow, widower or surviving civil partner◀ at the day following the date of death of the member will not be less than the aggregate of—

<sup>5</sup>Words substituted in reg. 45(3A) by para. 13 of Sch. 2 to S.I. 2005/2050 as from 5.12.05.

(a) any such benefits arising in respect of section 9(2B) rights and guaranteed minimum pensions;

(b) any other such benefits due in respect of rights which have accrued to the member in relation to service in employments which was contracted-out before the principal appointed day under section 9(2) of the 1993 Act; and

(c) any such benefits due in respect of rights which have accrued to the member in relation to service in employment which was not contracted-out

(a) Section 50(1B) was inserted by paragraph 45 of Schedule 5 to the Pensions Act 1995.

(3B) The amount of the benefits mentioned in paragraphs (3A)(a) and (b) and, so far as they relate to service on or before the date on which the scheme ceased to be contracted-out, those mentioned in paragraph (3A)(c) shall be calculated on an early leaver basis in accordance with Chapter I of Part IV of the 1993 Act and any regulations made under that Chapter, as if the member had ceased to be in pensionable service under the scheme on that date.◀

<sup>1</sup>Words in reg. 45(4), 46(1) & (4) deleted and substituted by art. 8(9) & (10) of S.I. 2011/1246 as from 6.4.12.

(4) ▶<sup>1</sup>◀

#### 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 ▶<sup>2</sup>liabilities in respect of such entitlement of rights as are referred◀ to in section 52(2A)(a)▶<sup>1</sup>◀ of the 1993 Act(a) must, subject to ▶<sup>1</sup>paragraphs (2) 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 subsection (2) of section 50 is issued, unless the certificate has been cancelled.

<sup>2</sup>Words in reg. 46(1) & (2) substituted by reg. 3(c)(i) & (ii) of S.I. 1997/819 with effect from 6.4.97.

(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 ▶<sup>2</sup>regulation 3 and, in the case of a pension or accrued benefit under a relevant scheme, 11 of the Occupational Pension Schemes (Discharge of Liability) Regulations 1997(b)◀ notwithstanding that a member's pensionable service has not terminated and the scheme is not winding up.

(3) ▶<sup>1</sup>◀

(4) Every active and deferred member with any entitlement to ▶<sup>1</sup>◀ 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.

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(a) Section 52(2A) was inserted by paragraph 47 of Schedule 5 to the Pensions Act 1995.  
(b) 1997/784.

**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 employments should not continue to be treated as contracted-out employment and where he so determined, 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.

(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, the date may be any date not earlier than when, in the Secretary of State's opinion, the scheme ceased to satisfy those requirements.
- (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 <sup>1</sup>who is appointed in accordance with section 270 of the Finance Act 2004 (meaning of "scheme administrator").<sup>◀</sup>

<sup>1</sup>Words substituted in reg. 48(3) by art. 8(9) of S.I. 2006/744 as from 6.4.06.

(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).

## Reg. 48

<sup>1</sup>Words in reg. 48(5)(c) substituted by para. 4(9)(a) to Sch. 1 of S.I. 1997/786 as from 6.4.97.

<sup>2</sup>Words substituted in reg. 48(5)(c) and (ca) and words inserted in reg. 48(5)(ca)(i) by para. 8(2)(a) & (b) to Sch. 1 of S.I. 2005/706 as from 6.4.05.

<sup>3</sup>Reg. 48(5)(d) amended by para. 4(9)(b) to Sch. 1 of S.I. 1997/786 as from 6.4.97.

<sup>4</sup>Para. 5A omitted by para. 8(2)(c) to Sch. 1 of S.I. 2005/706 as from 6.4.05.

<sup>5</sup>Reg. 48(6) omitted by reg. 4(16) of S.I. 2011/1245 as from 6.4.12.

<sup>6</sup>Words substituted in reg. 48(7) by reg. 3(4) of S.I. 1999/3198 as from 30.12.99.

- (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>(a)</sup>;
  - (b) regulation 18 shall not apply;
  - ▶<sup>1</sup>(c) except in cases to which regulation 73 applies, 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, if the scheme were to be wound up at any time, those resources would be sufficient to meet in full the liabilities mentioned in ▶<sup>2</sup>section 73(4)◀ of the 1995 Act, calculating, determining and valuing those liabilities and resources in a manner approved by the Secretary of State;
  - (ca) the scheme must provide that, if it is wound up, the assets of the scheme must be applied first towards satisfying the amounts of liabilities mentioned ▶<sup>2</sup>in section 73(4)◀ and, if they are insufficient to satisfy those amount in full, then—
    - (i) they must be applied first towards satisfying the amounts of the liabilities mentioned in earlier paragraphs ▶<sup>2</sup>of that section◀ before those mentioned in later paragraphs, and
    - (ii) where the amounts of the liabilities mentioned in one of those paragraphs cannot be satisfied in full, those amounts must be satisfied in the same proportions: 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 ▶<sup>3</sup>(c)◀ and the value of such investments shall be calculated and determined in a manner approved by the Secretary of State.
- (5A) ▶<sup>4</sup>◀
- (6) ▶<sup>5</sup>◀
- (7) An overseas scheme must provide, in respect of ▶<sup>6</sup>rights which have accrued as a result of contracted-out employment in the scheme in Great Britain◀, for revaluation of accrued rights in accordance with sections 83 to 86 of the 1993 Act<sup>(b)</sup> and for indexation of pensions in accordance with sections 51 to 54 of the 1995 Act.

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

(b) 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(2B) of Schedule 2 to the 1993 Act(a) applies in relation to a member of a contracted-out scheme which is being wound up and the conditions set out in a 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(b)—

- (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) ►<sup>1</sup>◄

►<sup>2</sup>(aa) except where paragraph (3A) applies, the member is not a qualifying member of a qualifying pension scheme for the purposes of the Financial Assistance Scheme Regulations 2005(c); 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 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.

►<sup>2</sup>(3A) This paragraph applies where—

- (a) the member has been notified in accordance with regulation 50 before the date on which the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2008 came into force; and
- (b) the Commissioners for Her Majesty's Revenue and Customs(d) receive 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—

- <sup>1</sup>(a) in the case of a scheme to which Part 3 of the 2004 Act applies (scheme funding), the cash equivalent of a member's rights under the scheme shall be determined as if the requirements of section 222(1) of that Act were satisfied;◄

<sup>1</sup>Reg. 49(3)(a) omitted and para. (4)(a) substituted by reg. 4(16)(a) & (b) of S.I. 2011/1245 as from 6.4.12.

<sup>2</sup>Reg. 49(3)(aa) & (3A) inserted by reg. 21 of S.I. 2008/1903 as from 17.7.08.

(a) Sub-paragraphs (3A) to (3E) were inserted in paragraph 5 of Schedule 2 by section 141(2) of Pensions Act 1995.

(b) Section 48A was inserted by section 140 of the Pensions Act 1995.

(c) S.I. 2005/1986 as amended by S.I. 2005/3256, 2006/3370, 2007/3581 and 2008/1432.

(d) The functions of the Commissioners of Inland Revenue ("the former Commissioners") were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5 of the Commissioners for Revenue and Customs Act 2005 (c. 11). *See also* section 50(1) of that Act in relation to the construction of references to the former Commissioners in other enactments.

- (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
  - (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 **▶<sup>1</sup>◀**;
- (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.

<sup>1</sup>Words in reg. 50(a) omitted by art. 8(11) of S.I. 2011/1246 as from 6.4.12.

<sup>2</sup>Reg. 50A inserted by reg. 5 of S.I. 1998/1397 as from 6.7.98.

<sup>3</sup>Words substituted in reg. 50A by para. 14 of Sch. 2 to S.I. 2005/2050 as from 5.12.05.

<sup>4</sup>Reg 51(1)-(1C) substituted for 51(1); words deleted in 51(2)(a); 51(2)(b) substituted by reg. 2(12) of S.I. 2002/681 as from 6.4.02.

<sup>5</sup>Words substituted in reg. 51(1A) by reg. 3(2)(a) & (b) of S.I. 2006/778 as from 6.4.06.

#### **▶<sup>2</sup>Persons to be regarded as members**

**50A.**— For the purposes of paragraph 5(3A) to (3E) of Schedule 2 to the 1993 Act and regulations 49 and 50 the persons to be regarded as members of an occupational pension scheme shall include a person who has the right to payment of a **▶<sup>3</sup>widow's, widower's or surviving civil partner's◀** pension under the scheme.◀

#### **▶<sup>4</sup>Contributions equivalent premium**

**51.**—(1) For the purposes of section 55(2) of the 1993 Act (which requires the prescribed person to pay a contributions equivalent premium in the case mentioned in section 55(2B) of that Act and otherwise enables him to elect to pay such a premium on termination of contracted-out employment) **(a)** the prescribed person is the trustees of the scheme.

(1A) Section 55(2B) of the 1993 Act (by virtue of which a contributions equivalent premium must be paid in any case where the earner has no accrued right to benefit under the scheme)**(b)** does not apply if **▶<sup>5</sup>paragraph (1B), (1C) or (1D)◀** applies.

(1B) This paragraph applies where—

- (a) the earner's service in the employment ceases on the earner's death; and

**(a)** Subsection (2) was substituted by section 141 of the 1995 Act and amended by section 18 of, and paragraph 7(1)(a) of Schedule 2 to, the 1999 Act.

**(b)** Subsection (2B) was inserted by paragraph 7(1)(c) of Schedule 2 to the 1999 Act.

- (b) the earner leaves a surviving spouse <sup>1</sup>or civil partner<sup>◀</sup> who is not entitled to any of the following benefits—
- (i) a widowed mother's allowance under section 37 of the Contributions and Benefits Act,
  - (ii) a widow's pension under section 38 of that Act,
  - (iii) a widowed parent's allowance under section 39A(a) of that Act, or
  - (iv) a bereavement allowance under section 39B(b) of that Act.

<sup>1</sup>Words substituted in reg. 51(1B)(b) & (2)(c) by para. 15 of Sch. 2 to S.I. 2005/2050 as from 5.12.05.

(1C) This paragraph applies where the earner is a woman who has made, or is treated as having made, an election under regulations made under section 19(4) of the Contributions and Benefits Act, which has not been revoked, that her liability in respect of primary Class 1 contributions shall be at a reduced rate.◀

<sup>2</sup>(1D) This paragraph applies where, on the termination of his pensionable service, the earner elects to acquire a right to a cash transfer sum in accordance with section 101AB(1)(a) of the 1993 Act(e) (right to cash transfer sum and contribution refund).◀

<sup>2</sup>Para. (1D) added by reg. 3(2)(a) & (b) of S.I. 2006/778 as from 6.4.06.

(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 <sup>3</sup>◀ under section 12C (transfer, commutation etc.) of the 1993 Act(d);
- <sup>3</sup>(b) cases where paragraph (1C) applies;◀
- (c) cases where, on the death of an earner, there arises an entitlement to a <sup>1</sup>widow's, widower's or surviving civil partner'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
- <sup>4</sup>(e) cases where any liability to provide pensions to an earner has been discharged in accordance with regulations under section 12C of the 1993 Act(e)◀, 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.

<sup>3</sup>Words deleted in sub-para (a) and sub-para (b) substituted by reg. 2(12)(b) of S.I. 2002/681 as from 6.4.02.

<sup>4</sup>Wording in reg. 51(2)(e) substituted by reg. 2(12) of S.I. 2002/681 as from 6.4.02.

<sup>5</sup>(2A) Where a contributions equivalent premium is required to be paid in respect of an earner by virtue of section 55(2) of the 1993 Act, the trustees of the scheme must notify the Inland Revenue of that fact in such form as the Inland Revenue may reasonably require for the purpose of identifying the earner.

<sup>5</sup>Regs. 51(2A)-(2C) inserted by reg. 2(12) of S.I. 2002/681 as from 6.4.02.

(2B) Such a notification must be given—

- (a) where the earner has ceased to serve in employment which is contracted-out employment by reference to the scheme because it is wound up, within two years of the cessation of the scheme; and
- (b) where the earner has so ceased for any other reason mentioned in section 55(2A) of the 1993 Act(f) within the period beginning one month before and ending six months after the date on which the person so ceases.

(2C) The Inland Revenue may in any particular case or class of cases extend the period applicable under paragraph (2B) if it appears to them that the notification could not reasonably have been given within that period.◀

(a) Section 39A was inserted by section 55 of the 1999 Act.

(b) Section 39B was inserted by section 55 of the 1999 Act

(c) Section 101AB was inserted by section 264 of the Pensions Act 2004 (c. 35).

(d) Section 12C was inserted by section 136(5) of the Pensions Act 1995.

(e) Section 12C was inserted by section 136(5) of the 1995 Act.

(f) Section 55(2A) was inserted by section 141(1) of the 1995 Act.

(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(c) 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.

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(a) Section 55(2A) was inserted by section 141(1) of the Pension Act 1995.

(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 ▶are required or ◀ have elected to pay shall be paid on or before whichever is the later of the following days—

Words inserted in reg. 52(1) by reg. 2(13) of S.I. 2002/681 as from 6.4.05.

- (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.

▶(1A) On an application made to him for that purpose, the Secretary of State may, in any particular case or class of case, extend the period within which a premium must be paid under paragraph (1)—

Sub-para (1A) inserted into reg. 52 by reg 4(10) of S.I. 1997/786 as from 6.4.97.

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

(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 rights 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 (a) 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 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).

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(a) Section 61 was amended by paragraph 55 of Schedule 5 to the Pensions Act 1995.

(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, amount 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>(a)</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, widower or surviving civil partner◄ on or before the later of the days first mentioned in sub-paragraphs (a) and (b) respectively of regulation 52(1); or

Words substituted in reg. 54(5)(a) by para. 16 of Sch. 2 to S.I. 2005/2050 as from 5.12.05.

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

- (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 <sup>1</sup>widow, widower or surviving civil partner<sup>1</sup> in question.

<sup>1</sup>Words substituted in reg. 54(5)(b) by para. 16 of Sch. 2 to S.I. 2005/2050 as from 5.12.05.

PART VII  
GUARANTEED MINIMUM PENSIONS

**Scheme rules about guaranteed minimum pensions**

**55.—(1)** For a scheme to be contracted-out in relation to <sup>2</sup>the employment of any earner who has a guaranteed minimum under section 14 of the 1993 Act in relation to a pension provided by the scheme it must include a rule to the effect that <sup>(a)</sup>—

<sup>2</sup>Words substituted in reg. 55(1) by reg. 4(11) of S.I. 1997/786 as from 6.4.97.

- (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 <sup>3</sup>or surviving civil partner<sup>3</sup> of the earner under the scheme in respect of the earner's service before the principal appointed day shall not be less than half of that part of the earner's guaranteed minimum which is attributable to earnings factors for the tax year 1988-1989 and subsequent tax years up to and including the tax year 1996-97,

<sup>3</sup>Words inserted & substituted in regs. 55(1)(c) & 57 by paras. 17 & 18 of Sch. 2 to S.I. 2005/2050 as from 5.12.05.

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.

**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 <sup>3</sup>or surviving civil partner's<sup>3</sup> 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 <sup>3</sup>or surviving civil partner's<sup>3</sup> guaranteed minimum pension to be payable in prescribed circumstances and for a prescribed period) the prescribed circumstances are that—

- (a) the widower <sup>3</sup>or surviving civil partner<sup>3</sup> 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 <sup>3</sup>the earner's<sup>3</sup> 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 <sup>3</sup>the widower, or surviving civil partner<sup>3</sup> then was, or would have been if the child had not been absent from Great Britain, entitled to child benefit; or

(a) Section 14 was amended by paragraph 27 of Schedule 5 to the Pensions Act 1995.

- (c) the widower had attained the age of 45 either—
  - (i) when the earner died, or
  - (ii) during a period when the circumstances described in paragraph (b) existed;

<sup>1</sup>Words inserted in heading to reg. 58 & para. (1); para. (2) substituted & para. (3) inserted by para. 19 of Sch. 2 to S.I. 2005/2050 as from 5.12.05.

**Period for which widower's <sup>▶</sup>1 or surviving civil partner's <sup>◀</sup> 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 <sup>▶</sup>1 or surviving civil partner's <sup>◀</sup> 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 <sup>▶</sup>1 or surviving civil partner's <sup>◀</sup> life (subject to paragraph (2)).

<sup>▶</sup>1(2) There is excluded from the periods prescribed under paragraph (1)(b) and (c) any period—

- (a) after the widower's remarriage or surviving civil partner's marriage under pensionable age,
- (b) after the formation of a civil partnership by the widower or the formation of a subsequent civil partnership by the surviving civil partner under pensionable age;
- (c) during which the widower or surviving civil partner is under pensionable age and
  - (i) he or, as the case may be, she and a person of the opposite sex are living together as husband and wife, or
  - (ii) he or, as the case may be, she and a person of the same sex are living together as if they were civil partners;
- (d) after the widower has attained pensionable age if immediately before he attained that age—
  - (i) he and a woman to whom he was not married were living together as husband and wife; or
  - (ii) he and a man were living together as if they were civil partners; or
- (e) after the surviving civil partner has attained pensionable age if immediately before he or she attained that age—
  - (i) he or she and a person of the opposite sex to whom he or she was not married were living together as husband and wife; or
  - (ii) he or she and a person of the same sex were living together as if they were civil partners.

(3) Sub-paragraphs (b), (c)(ii), and (d)(ii) of paragraph (2) do not apply where a man became a widower before 5th December 2005.◀

**Statutory references to persons entitled to guaranteed minimum pensions — application to widowers <sup>▶</sup>2 and surviving civil partners◀**

**59.** The provisions of sections 50(1)(a)(ii) and 52(2A)(a)(i) of the 1993 Act (a) 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 <sup>▶</sup>2 or by virtue of being the surviving civil partner of an earner only in the case where the earner and the surviving civil partner were both over pensionable age when the earner died.◀

<sup>2</sup>Words inserted in reg. 59 by para. 20 of Sch. 2 to S.I. 2005/2050 as from 5.12.05.

**<sup>▶</sup>3Payment of a guaranteed minimum pension as a lump sum**

**60.**—(1) For the purposes of section 21(1) of the 1993 Act (payment of a lump sum instead of a pension in prescribed circumstances and subject to prescribed restrictions

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

<sup>3</sup>Reg. 60 substituted by art. 8(10) of S.I. 2006/744 as from 6.4.06.



and conditions) the circumstances are where—

- (a) a guaranteed minimum pension has become payable; and
- (b) the payment of a lump sum is authorised under section 164 of the Finance Act 2004 and the payment is <sup>1</sup>—
  - (i) <sup>1</sup>permitted by the lump sum rule in section 166 of that Act and <sup>2</sup>—
    - (aa) <sup>2</sup>qualifies as a trivial commutation lump sum for the purposes of paragraph 7 <sup>3</sup>of Part 1 of Schedule 29 to that Act; or
    - (bb) <sup>2</sup>qualifies as a winding-up lump sum for the purposes of paragraph 10 of that Part; <sup>1</sup>
  - (ii) <sup>1</sup>permitted by the lump sum death benefit rule in section 168 of that Act and qualifies as—
    - (aa) a trivial commutation lump sum death benefit for the purposes of paragraph 20 of Part 2 of Schedule 29 to that Act; or
    - (bb) a winding-up lump sum death benefit for the purposes of paragraph 21 of that Part <sup>1</sup>; or
  - (iii) made by a registered pension scheme (within the meaning given in section 150(2) of the Finance Act 2004 (meaning of “pension scheme”)), is a payment that is described in Part 2 of the 2009 Regulations and is made to or in respect of a member.

<sup>1</sup>Words omitted & inserted in reg. 60(1)(b) & (i)-(ii) and sub-para. (i)(cc) deleted and sub-para. (iii) added by reg. 2(2)(a)-(d) of S.I. 2010/499 as from 6.4.10.

<sup>2</sup>Words omitted & inserted in reg. 60(1)(b)(i) by reg. 4(4)(a)-(c) of S.I. 2009/2930 as from 1.12.09.

<sup>3</sup>Words substituted in reg. 60(1)(b)(i)(aa) & paras. (3) & (4) added by reg. 2(2)(a) & (b) of S.I. 2006/1337 as from 14.6.06.

(2) The condition in paragraph (1)(a) 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 or the scheme has made the provisions mentioned in section 16(2) and (3) of the 1993 Act, provided that—

- (a) for the purposes of paragraph (1)(b), where the aggregate amount of the benefits which has accrued to the earner at the date of winding-up or, as the case may be, of his retirement, increased—
  - (i) in accordance with section 16(2) and (3) of the 1993 Act, or
  - (ii) in a case where that section 16(2) and (3) applies, to the amount that would have been payable at pensionable age,

that aggregate amount shall be treated as the amount of benefits 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 or have made the provisions mentioned in section 16(2) and (3) of the 1993 Act.

<sup>3</sup>(3) Subject to paragraph (4), for the purposes of section 21(1) of the 1993 Act further circumstances are where the payment of a lump sum—

- (a) is authorised under section 164 of the Finance Act 2004;
- (b) is permitted by the lump sum rule in section 166 of that Act; and
- (c) qualifies as a serious ill-health lump sum for the purposes of paragraph 4 of Part 1 of Schedule 29 to that Act.

(4) Where—

- (a) under the scheme, an earner qualifies for a lump sum payment on the ground of serious ill-health; and
- (b) the scheme also provides for the payment of a guaranteed minimum pension to the widow, widower or surviving civil partner of the earner (“a survivor’s pension”),

### 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

## Regs. 61-62

<sup>1</sup>Words substituted in reg. 61(1) & (2) by para. 22 of Sch. 2 to S.I. 2005/2050 as from 5.12.05.

<sup>2</sup>Words deleted & substituted in reg. 61(1)(a) by reg. 2(15) of S.I. 2002/681 as from 6.4.05.

for an earner's or an earner's ►<sup>1</sup>widow's, widower's or surviving civil partner'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 or mental disorder ►<sup>2</sup>◄ and there is provision in the scheme ►<sup>2</sup>which requires that, in those circumstances, sums equivalent to the guaranteed minimum pension—
  - (i) must, except in so far as such sums are not, in the opinion of the trustees, required for the maintenance of the pensioner, be paid or applied for his maintenance,
  - (ii) may, in so far as such sums are not, in the opinion of the trustees, required for the maintenance of the pensioner, be paid or applied for the maintenance of any dependants of the pensioner,
  - (iii) must, in so far as such sums are not, in the opinion of the trustees, required for the maintenance for the pensioner or of any dependant of his, be held by the trustees for the pensioner until he is again able to act or, if he should die before that happens, 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 the scheme may provide for an earner's or an earner's ►<sup>1</sup>widow's, widower's or surviving civil partner'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(a) 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 ►<sup>1</sup>widow's, widower's or surviving civil partner'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 ►<sup>1</sup>widow, widower or surviving civil partner◄ 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 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.

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

(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, <sup>1</sup>but before 6th April 2002, 6.25 per cent. compound; ◀
- <sup>1</sup>(e) where that period of service terminates on or after <sup>2</sup>6th April 2002 but before 6th April 2007, 4.5 per cent. ◀ compound. ◀
- <sup>2</sup>(f) where that period of service terminates on or after <sup>3</sup>6th April 2007 but before 6th April 2012, 4 per cent. ◀, compound. ◀
- <sup>3</sup>(g) where that period of service terminates on or after 6th April 2012, 4.75 per cent. compound. ◀

<sup>1</sup>Words substituted in reg. 62(2)(d) & 62(2)(e) inserted by reg. 2(16) of S.I. 2002/681 as from 6.4.05.

<sup>2</sup>Words substituted in reg. 62(2)(e) and sub-para. (f) added by reg. 4(3)(a) & (b) of S.I. 2007/814 as from 6.4.07.

<sup>3</sup>Words substituted in reg. 62(2)(f) & sub-para. (g) inserted by reg. 2(2)(a) & (b) of S.I. 2012/542 as from 6.4.12.

<sup>4</sup>Words omitted & substituted in reg. 62(3) by reg. 4(17)(a) & (b) of S.I. 2011/1245 as from 6.4.12.

<sup>5</sup>Words substituted in reg. 63(1) & 63(2)(aa) inserted by reg. 2(17) of S.I. 2002/681 as from 6.4.02.

<sup>6</sup>Words substituted in reg. 63(1)(a) & 2(b) by para. 23 of Sch. 2 to S.I. 2005/2050 as from 5.12.05.

(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) <sup>4</sup>◀ the 1993 Act or regulations made under <sup>4</sup>that provision◀ 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) <sup>5</sup>As respects any occupational pension scheme, the persons prescribed for the purposes of section 156(2) of the 1993 Act (additional persons to whom information may be provided for the purpose of enabling them to comply with obligations under Part III of that Act (a) are◀

- (a) the earner or <sup>6</sup>widow, widower or surviving civil partner◀ 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;
- <sup>5</sup>(aa) whether the scheme is liable in respect of section 9(2B) rights, <sup>7</sup>◀◀ or
- (b) to be furnished with the written consent of the earner or <sup>6</sup>widow, widower or surviving civil partner◀ to whom the information relates.

<sup>7</sup>Words in reg. 63(2)(aa) omitted by art. 8(12) of S.I. 2011/1246 as from 6.4.12.

#### 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 subsidiary within the meaning of regulation 12(2);
- (b) subsidiaries of the same holding company within the meaning of that regulation; or
- (c) partnership each having the same persons as at least half of its partners.

(a) 1993 c. 48; section 156 was substituted by paragraph 9 of Schedule 5 to the Child Support, Pensions and Social Security Act 2000 (c. 19).

(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 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 (a) 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.

**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 <sup>1</sup>as they had effect prior to the abolition date<sup>1</sup>, 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.

<sup>1</sup>Words inserted in reg. 68(1) & (3) by art. 8(13)(a) & (b) of S.I. 2011/1246 as from 6.4.12.

(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 <sup>1</sup>as they had effect prior to the abolition date<sup>1</sup>—

- (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

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

- (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 employer" 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.

#### **►<sup>1</sup>Conversion of guaranteed minimum pensions into other benefits: actuarial equivalence**

<sup>1</sup>Regs. 69A & 69B inserted by reg. 2(2) of S.I. 2009/846 as from 6.4.09.

**69A.**—(1) For the purposes of Condition 1 of section 24B of the 1993 Act (the conversion conditions), actuarial equivalence is to be determined in accordance with this regulation.

- (2) The trustees are responsible for determining actuarial equivalence.
- (3) In determining actuarial equivalence, the trustees must—
  - (a) obtain advice from the actuary about what assumptions are appropriate at the conversion date,
  - (b) consider that advice,
  - (c) decide what assumptions are appropriate at the conversion date and, if the trustees later think it is necessary, change that decision, and
  - (d) arrange for the actuary to calculate the actuarial values of the post-conversion benefits and the pre-conversion benefits in accordance with paragraph (4).
- (4) In calculating the actuarial values mentioned in paragraph (3)(d), the actuary must—
  - (a) use the assumptions chosen by the trustees under paragraph (3)(c), and
  - (b) ignore the value of any—
    - (i) benefits that have been commuted,
    - (ii) amounts that have been paid in respect of any benefits,
    - (iii) amounts in respect of any benefits that, before the conversion date, became due to be paid, and
    - (iv) discretionary benefits that might be awarded in the future.
- (5) When the actuarial values mentioned in paragraph (3)(d) have been calculated, the actuary must send the trustees a certificate if the post-conversion benefits are actuarially at least equivalent to the pre-conversion benefits.
- (6) The certificate must—
  - (a) state that—
    - (i) the calculations have been completed, and
    - (ii) the post-conversion benefits are actuarially at least equivalent to the pre-conversion benefits, and
  - (b) be sent to the trustees no later than three months after the calculations have been completed.

#### **Conversion of guaranteed minimum pensions into other benefits: survivors' benefits**

**69B.**—(1) For the purposes of Condition 4 of section 24B of the 1993 Act, the circumstances in which, and periods during which, the converted scheme must provide survivors' benefits are prescribed in this regulation.

- (2) The circumstances are that—
- (a) an earner's pre-conversion benefits include a guaranteed minimum pension, and
  - (b) the scheme before conversion provided that—
    - (i) if such an earner dies leaving a widow, widower or surviving civil partner (whether before or after attaining pensionable age), the widow, widower or surviving civil partner will be entitled to a guaranteed minimum pension, and
    - (ii) such a widower or surviving civil partner's guaranteed minimum pension will be payable in the circumstances set out in regulation 57(a) to (c)(a).
- (3) The periods are—
- (a) for widows, widowers and surviving civil partners, any period mentioned in section 17 (4A)(a) and (b) of the 1993 Act (minimum pensions for widows and widowers)(b),
  - (b) for widows, widowers and surviving civil partners whose entitlement by virtue of the earner's contributions to a widowed partner's allowance or bereavement allowance has come to an end at a time after the widow, widower or surviving civil partner attained the age of 45, so much of the period beginning with the time when that entitlement came to an end as neither—
    - (i) comprises a period during which the widow, widower or surviving civil partner and—
      - (aa) a person of the opposite sex are living together as husband and wife, or
      - (bb) a person of the same sex are living together as if they were civil partners, nor
    - (ii) falls after the time of any—
      - (aa) marriage, or
      - (bb) formation of a civil partnership,by the widow, widower or surviving civil partner which takes place after the earner's death,
  - (c) for widows, any period for which a widowed mother's allowance or widow's pension is payable to the widow by virtue of the earner's contributions, and
  - (b) for widowers and surviving civil partners, any period which is, by virtue of regulation 58(c), a prescribed period for the purposes of section 17(6) of the 1993 Act(d).
- (4) Paragraph (3)(b)(i)(bb) and (ii)(bb) does not apply where the earner died before 5th December 2005◀.

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(a) Regulation 57 was amended by S.I. 2005/2050.

(b) Section 17(4A) was inserted by paragraph 1(1) of Schedule 5 to the Child Support, Pensions and Social Security Act 2000 (c. 19) and amended by S.I. 2005/2050.

(c) Regulation 58 was amended by S.I. 2005/2050.

(d) Section 17(6) was amended by paragraph 1(3) of Schedule 5 to the Child Support, Pensions and Social Security Act 2000 and S.I. 2005/2050.

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 contracting-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 19 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 <sup>1</sup>beginning with the principal appointed day <sup>2</sup>and ending with the date of first certification<sup>3</sup>, the amount of resources of the scheme must be sufficient to meet the liabilities specified in paragraph (2).

<sup>1</sup>(1A) In paragraph (1) above, the date of first certification means the first occasion on which the actuary to the scheme certifies the rates of contributions shown in a schedule of contributions for the scheme for the purposes of <sup>2</sup>section 227 of the 2004 Act<sup>3</sup> (schedules of contributions).

<sup>1</sup>Words deleted and substituted in reg. 72(1) & 72(1A) inserted by reg. 2(18) of S.I. 2002/681 as from 6.4.02.

<sup>2</sup>Words substituted in reg. 72(1A) by reg. 1(6)(a) of Sch. 3 to S.I. 2005/3377 as from 30.12.05.



▶<sup>1</sup>(2) The liabilities referred to in paragraph (1) are the liabilities mentioned in ▶<sup>2</sup>section 73(4) of the 1995 Act (liabilities towards which scheme assets must be applied first on winding up).◀◀

(3)▶<sup>3</sup>◀ 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 ▶<sup>4</sup>section 222(3) of the 2004 Act (statutory funding objective)◀.

(4)—(5)▶<sup>5</sup>◀

(6) This regulation does not apply to a public service pension scheme to which ▶<sup>4</sup>Part 3 of the 2004 Act◀ does not apply ▶<sup>6</sup>, or to any scheme in respect of which any Minister of the Crown has given a guarantee, or made any other arrangements, for the purposes of securing that the assets of the scheme are sufficient to meet its liabilities.◀

### **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(a) 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(b) 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▶<sup>7</sup>◀, 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(c), 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”;
- (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 substituted “he would have been prevented”; and
- (e) in subsection (6) of section 36, for “have cancelled” there is substituted “has cancelled”.

<sup>1</sup>Words in reg 72(2) substituted by reg. 4(13)(a) of S.I. 1997/786 as from 6.4.97.

<sup>2</sup>Words in reg. 72(2) substituted by reg. 8(3) of S.I. 2005/706 as from 6.4.05.

<sup>3</sup>Words deleted from reg. 72(3) by reg. 4(13)(b) by S.I. 1997/786 as from 6.4.97.

<sup>4</sup>Words in regs. 72(3) & (6) substituted by reg. 1(6)(b) and (c) of Sch. 3 to S.I. 2005/3377 as from 30.12.05.

<sup>5</sup>Regs. 72(4) & (5) deleted by reg. 4(13)(c) by S.I. 1997/786 as from 6.4.97.

<sup>6</sup>Words inserted in reg. 72(6) by reg. 2(18) of S.I. 2002/681 as from 6.4.02.

<sup>7</sup>Words omitted in reg. 73(b) by reg. 3(6) of S.I. 2009/598 as from 6.4.09.

(a) Section 23 was amended by paragraph 31 of Schedule 5 to the Pensions Act 1995.

(b) S.I. 1984/380; the relevant amending instrument is S.I. 1994/1062.

(c) Section 50(1A) was inserted by paragraph 45 of Schedule 5 to the Pensions Act 1995.

**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 liabilities 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.

<sup>1</sup>Para. 76A added by reg. 2 of S.I. 1996/1577 as from 12.7.96.

**►<sup>1</sup>Transitional arrangements for schemes contracted-out under section 9(2) of the 1993 Act to become contracted-out under section 9(3) of that Act**

**76A.—(1)** This regulation applies where a scheme, which is a salary-related contracted-out scheme immediately before the principal appointed day, satisfies the requirements of section 9(3) of the 1993 Act in respect of all earners' service on or immediately after that day.

(2) The circumstances referred to in paragraph (1) shall, for the purposes of section 12(3) of that Act (determination of basis on which a scheme is contracted-out) be circumstances in which a scheme which has been contracted-out by virtue of section 9(2) of that Act may become contracted-out by virtue of section 9(3) of that Act.

<sup>2</sup>Reg. 76A(3) substituted by reg. 3(7) of S.I. 2009/598 as from 6.4.09.

►<sup>2</sup>(3) Where this regulation applies, sections 50, 52 and 53 of that Act (approval of arrangements for, and supervision of, schemes which cease to be contracted-out) as they apply in relation to the guaranteed minimum pensions provided under the scheme shall be modified so as to have effect as if those pensions were provided under a separate scheme which had ceased to be certified as a contracted-out scheme immediately before the principal appointed day◄.

<sup>3</sup>Reg. 76A(4) substituted & paras (5) & (6) added by reg. 4(14) of S.I. 1997/786

►<sup>3</sup>(4) Where a contracting-out certificate for a scheme to which this regulation applies ("the second certificate") is issued after the principal appointed day but not later than 31st January 1998 (or such later date as the Secretary of State may in his discretion permit in any particular case), then the contracting-out certificate in force immediately before the principal appointed day ("the first certificate") shall be deemed to continue in effect during the period beginning with the principal appointed day and ending with the time when the second certificate is issued ►<sup>4</sup>◄.

<sup>4</sup>Words deleted from reg. 76A(4) by reg. 2 of S.I. 1997/3038 as from 12.1.98.

(5) Paragraph (4) does not apply if the first certificate was cancelled or surrendered before the end of that period.

(6) Paragraph (4) is without prejudice to the powers in regulations 8(2)(d) and 47(2) (retrospective effect of issue and cancellation of certificates).◄◄

<sup>5</sup>Para (7) added by reg. 3(d) of S.I. 1997/819 with effect from 6.4.97.

►<sup>5</sup>(7) Section 55(2) of the 1993 Act(a) shall be modified so as to have effect in relation to a scheme to which this regulation applies as though it were a salary related scheme, save that an election to pay a contributions equivalent premium shall apply only in respect of the earner's service before the principal appointed day.◄

<sup>6</sup>Reg. 76B added by S.I. 1997/786 as from 6.4.97

**►<sup>6</sup>Former requirements for consent for alterations of rules**

**76B.** Where any provision of a scheme provides that any alteration of the rules of the scheme, to which section 37(1) of the 1993 Act applied immediately before the principal appointed day, requires, or is void if made without, the consent of the Occupational Pensions Board, to the extent that it so provides it shall cease to have effect.◄

(a) Section 55(2) is substituted by section 141(1) of the Pensions Act 1995.

**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(**a**);
- (b) the Occupational Pension Schemes (Contracted-out Protected Rights Premiums) Regulations 1987(**b**).

PART IX  
REVOCATIONS

**Revocations**

**78.** Subject to the savings provided for in regulations 73 and 77, the regulation 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.

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

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(a) 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. 1987/114, S.I. 1988/475, S.I. 1989/500, S.I. 1990/1142, S.I. 1992/1531, S.I. 1993/519, S.I. 1994/1062.  
(b) S.I. 1987/1103: the amending instrument is S.I. 1994/1062.

SCHEDULE 1  
PROVISIONS CONFERRING POWERS EXERCISED IN MAKING  
THESE REGULATIONS

Column (1)	Column (2)
Pension Schemes Act 1993 <b>(a)</b>	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 section 179 section 181(1) section 182(2) and (3) section 183(1) Schedule 2, Part I
Pensions Act 1995 <b>(b)</b>	section 174(3) and (4) section 180(4)

**(a)** 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”.

**(b)** 1995 c. 26.

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 Regulation
S.I. 1987/1101	The Money Purchase Contracted-out Schemes Regulations 1987	The whole of the Regulations
S.I. 1987/1103	The Occupational Pension Schemes (Contracted-out Protected Rights Premiums) Regulations 1987	Regulations 3, 4, 5, 6 and 7
S.I. 1987/1104	The Occupational Pension Schemes (Contracting-out) Amendment Regulations 1987	The whole of the Regulations
S.I. 1987/1106	The Occupational Pension Schemes (Qualifying Service-Consequential and Other Provisions) Regulations 1987	Regulation 2
S.I. 1987/1114	The Personal and Occupational Pension Schemes (Consequential Provisions) Regulations 1987	Regulation 4

Column 1 Statutory Instrument Number	Column 2 Statutory Instrument	Column 3 Provision Revoked
S.I. 1987/1117	The Personal and Occupational Pension Schemes (Protected Rights) Regulations 1987	Regulation 14
S.I. 1988/474	The Personal and Occupational Pension Schemes (Tax Approval and Miscellaneous Provisions) Regulations 1988	Regulation 4
S.I. 1988/475	The Contracting-out (Miscellaneous Amendments) Regulations 1988	Regulation 2
S.I. 1989/500	The Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulation 1989	Regulation 2
S.I. 1990/1141	The Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1990	Regulation 6
S.I. 1990/1142	The Personal and Occupational Pension Schemes (Miscellaneous Amendments) (No. 2) Regulation 1990	Regulation 2
S.I. 1991/2273	The Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1991	Regulation 2
S.I. 1993/1531	The Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 1992	Regulation 2
S.I. 1993/519	The Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 1993	Regulation 2,
S.I. 1994/1062	The Occupational and Personal Pensions Schemes (Consequential Amendments) Regulations 1994	Schedule 2, paragraphs 4 and 10 and regulation 2 as far as it relates to those paragraphs
S.I. 1995/35	The Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 1995	Regulations 2 and 4
S.I. 1996/776	The Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1996	Regulation 2

►<sup>1</sup>SCHEDULE 3

Regulation 23(i)

Further requirements for meeting the statutory standard

1. The actuary must complete a reference scheme test certificate.
2. The reference scheme test certificate must—
  - (a) certify whether in the actuary’s opinion, the scheme satisfies the statutory standard in relation to the provision of pensions for—
    - (i) earners, and
    - (ii) the widows, widowers or surviving civil partners of earners, and
  - (b) specify the date of the information used by the actuary for the purposes of completing the certificate (referred to in this Schedule as the “effective date”).
3. The actuary must—
  - (a) send the completed reference scheme test certificate to Her Majesty’s Revenue and Customs and send a signed copy of that certificate to the employer, or
  - (b) send the completed reference scheme test certificate to the employer and inform the employer that that certificate should be sent to Her Majesty’s Revenue and Customs.
4. Where the actuary is sending the first reference scheme test certificate for a scheme, the actuary must also inform—
  - (a) the ►<sup>1</sup>trustees or managers of the scheme◄ and the employer that Her Majesty’s Revenue and Customs provide guidance on contracting-out, including guidance on what changes need to be notified to Her Majesty’s Revenue and Customs,
  - (b) the employer that it should provide a copy of the completed certificate to the ►<sup>1</sup>trustees or managers of the scheme◄, and
  - (c) the employer that it should keep a record of any subsidiary or associated employers.
- 5.—(1) Where the employer asks the actuary to advise whether the statutory standard is satisfied, the actuary must inform the trustees or managers of the scheme that the employer has asked for that advice.  
  
(2) Sub-paragraph (1) does not apply if the actuary has previously informed the trustees or managers of the scheme that the actuary provides advice to the employer.
6. Where the scheme calculates pensions by different methods for different members, the actuary—
  - (a) must decide whether the pensions provided under each method are broadly equivalent to, or better than, the pensions which would be provided under a reference scheme, and
  - (b) must not complete a reference scheme test certificate for any members whose pensions are calculated by a method which does not provide pensions that are broadly equivalent to, or better than, the pensions which would be provided under a reference scheme.
7. The actuary must not complete a reference scheme test certificate if the average value of pension provided under the scheme is less than the average value of pension which would be provided under a reference scheme.
8. Where an employer asks for a separate reference scheme test certificate which only includes its employees, the actuary must—
  - (a) provide that employer with a separate reference scheme test certificate, and
  - (b) consider only the employees of that employer for that certificate.
9. Where—
  - (a) an employer has two or more schemes, and

<sup>1</sup>Words in para. 4(a) & (b) of Sch. 3 substituted by reg. 2(3) of S.I. 2012/542 as from 6.4.12.

- (b) none of those schemes can be contracted-out by itself under section 9(1) of the 1993 Act (requirements for certification of schemes: general),

the actuary may take into account the pensions provided under all those schemes.

**10.** The actuary must use any information about the earner's remuneration which—

- (a) the actuary considers is relevant for the reference scheme test certificate,
- (b) is the latest available information, and
- (c) subject to paragraph 11, refers to the period of one year.

**11.** Where—

- (a) the actuary is satisfied that the information about the earner's remuneration which refers to a period of one year is significantly abnormal, and
- (b) the employer writes to the actuary stating that it is also so satisfied,

the actuary may use such information for the purposes of paragraph 10(c) which refers to the period of three years ending on the effective date.

**12.—(1)** This paragraph applies where, on the effective date, the scheme has not been established but is in the process of being established.

(2) For the purposes of carrying out the comparison under regulation 23, the actuary must use estimated membership information.

(3) In this paragraph, “estimated membership information” means any information about the earners who the actuary expects to join the scheme when it is established which—

- (a) the actuary considers is necessary for the purposes of the comparison under regulation 23, and
- (b) may include information on the age, gender and earnings of those earners.

**13.—(1)** The pensions provided under the scheme for the purposes of carrying out the comparison under regulation 23 are the pensions referred to in sub-paragraph (2).

(2) The pensions are those which the actuary expects will accrue in the three years after the effective date.

(3) For the purposes of sub-paragraph (2), the actuary must—

- (a) assume that the earner leaves pensionable service—
  - (i) at the end of the three-year period mentioned in sub-paragraph (2), or
  - (ii) if the earner attains normal pension age before the end of that three-year period, on the date on which the earner attains normal pension age,
- (b) assume that pensions are payable from the date on which the earner attains normal pension age,
- (c) where the earner has accrued their maximum pension under the scheme during any part of the three-year period mentioned in sub-paragraph (2), assume that that maximum pension accrues at the same rate for each year of the pensionable service which the earner is likely to complete up to a maximum of 40 years, and
- (d) take into account the person whom the actuary expects will be entitled to receive the pensions referred to in sub-paragraph (2).

**14.—(1)** For the purposes of carrying out the comparison under regulation 23, the actuary must use—

- (a) where a statement of funding principles has been prepared or revised for the scheme under section 223 of the 2004 Act (statement of funding principles), the actuarial assumptions in the most recent such statement, and
- (b) any other actuarial assumptions which the actuary considers necessary.

(2) The actuarial assumptions referred to in sub-paragraph (1) must be used for valuing—



- (a) the pensions provided under the scheme, and
- (b) the pensions which would be provided under a reference scheme.

**15.—(1)** For the purposes of carrying out the comparison under regulation 23, the pensions provided under the scheme for widows, widowers and surviving civil partners are subject to the following requirements of this paragraph.

(2) The actuary must carry out a separate comparison for pensions the actuary expects to accrue during the three-year period referred to in paragraph 13(2) in respect of—

- (a) death in service (see sub-paragraphs (3), (9) and (10) of this paragraph),
- (b) death in deferment (see sub-paragraph (4)), and
- (c) death in retirement (see sub-paragraphs (5) and (11)).

(3) A death in service pension must be valued as if the earner died—

- (a) three years after the effective date, or
- (b) if the earner attains normal pension age before that date, on the day before the date on which the earner attains normal pension age.

(4) A death in deferment pension must be valued as if the earner died more than three years after the effective date.

(5) A death in retirement pension must be valued as if the earner died after the date on which the earner attains normal pension age.

(6) The actuary may not complete the reference scheme test certificate unless each of the pensions referred to in sub-paragraph (2) are broadly equivalent to, or better than, those which would be provided under a reference scheme.

(7) Sub-paragraph (8) applies where—

- (a) a pension which is in payment for a widow, widower or surviving civil partner has been reduced under the scheme because they were at least 10 years younger than the earner, or
- (b) a pension which may become payable in the future for a widow, widower or surviving civil partner would be reduced under the scheme if they were at least 10 years younger than the earner.

(8) Where this sub-paragraph applies, the actuary—

- (a) must estimate, where sub-paragraph (7)(b) applies, the number and amount of future pension reductions which the actuary thinks are likely to occur, and
- (b) may ignore any part of the reductions referred to in sub-paragraph (7) which are or are likely to be—
  - (i) made in respect of each complete year during which the age difference referred to in sub-paragraph (7) was at least 10, and
  - (ii) 2.5% or less for each such year.

(9) Sub-paragraph (10) applies where any death in service pensions—

- (a) have an accrual rate of less than 1/160ths of any qualifying earnings within the meaning of section 12B(5) of the 1993 Act (reference scheme)(a) and are calculated by reference to—
  - (i) the number of years of pensionable service which the earner has completed in the scheme, and
  - (ii) any amount which is additional to the number of years of pensionable service referred to in sub-paragraph (i), or
- (b) are not calculated by reference to the number of years of pensionable service.

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(a) Section 12B was inserted by section 136(5) of the Pensions Act 1995 and section 12B(5) was amended by paragraph 36(a) of Schedule 1 to the Pensions Act 2007.

(10) Where this sub-paragraph applies, the actuary must compare under sub-paragraph (2)(a) the death in service pension with a reference scheme—

- (a) based on the earner's pensionable service up to the date which applies under sub-paragraph (3), and
- (b) excluding any of the earner's pensionable service which took place before—
  - (i) the date on which a contracting-out certificate was first issued to the scheme, or
  - (ii) in the case of female earners or surviving civil partners, 6th April 1988 where that date is later than the date referred to in sub-paragraph (i).

(11) Where a death in retirement pension can be reduced under the scheme if the earner takes part of their pension as a lump sum on retirement, the actuary must reduce the death in retirement pension by an amount broadly consistent with the average such reductions made by the scheme in relation to other earners.

**16.—**(1) Subject to sub-paragraph (2), this paragraph applies in each of the following circumstances—

- (a) where the actuary has been informed of any changes to—
  - (i) the scheme rules, or
  - (ii) the membership of the scheme (including changes to the remuneration of scheme members),

which the actuary thinks might affect the scheme's ability to satisfy the statutory standard;

- (b) where, after estimated membership information has been used in accordance with paragraph 12, actual information becomes available about the members who have joined the scheme;
- (c) unless paragraph (a) or (b) applies, three years after the effective date;
- (d) three years after the date on which this paragraph (that is, paragraph 16 of this Schedule) last applied.

(2) This paragraph does not apply where the scheme is no longer required to satisfy the statutory standard.

(3) The actuary must consider whether there have been any changes which would prevent a reference scheme test certificate from being issued.

(4) If—

- (a) there have been any changes referred to in sub-paragraph (3), and
- (b) no further changes have been made which the actuary considers would enable a reference scheme test certificate to be issued,

the actuary must inform in writing the trustees or managers of the scheme, Her Majesty's Revenue and Customs and the employer.

**17.** In this Schedule—

“accrual rate” means the rate at which, under the scheme rules, rights to the pension accrue over time by reference to periods of service in any description of employment to which the scheme applies;

“death in deferment pension” means a pension payable in respect of an earner who dies—

- (a) otherwise than in pensionable service under the scheme, and
- (b) before their own entitlements to pensions under the scheme have commenced;

“death in retirement pension” means a pension payable in respect of an earner who dies after their own entitlements to pensions under the scheme have commenced;

“death in service pension” means a pension payable in respect of an earner who dies in pensionable service under the scheme;

“earner” means an earner in employed earner’s employment;

“effective date” has the meaning given in paragraph 2(b);

“normal pension age” means the earliest age at which an earner may be entitled to payment of an unreduced pension;

“unreduced pension” means a pension which—

- (a) has not been actuarially reduced as a result of early payment of the pension,  
and
- (b) does not include any discretionary benefits. ◀.

**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).

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.