



Social Security Pensions Act 1975

1975 CHAPTER 60

PART III

CONTRACTING-OUT

Modifications etc. (not altering text)

- C1** Parts of Pt. III are modified, on transfers from contracted-out schemes, by reg. 3 of, and Sch. 3 to [S.I. 1985/1323](#).

Preliminary

26 Contracting-out of full contributions and benefits.

- (1) This Part of this Act shall have effect for the purpose of reducing—
- (a) the rates at which contributions are payable under Part I of [^{F1}the Contributions and Benefits Act] by or in respect of an earner in employed earner's employment; and
 - (b) the rate of any Category A or Category B retirement pension, widowed mother's allowance or widow's pension payable by virtue of contributions at such reduced rates,

where an occupational pension scheme provides [^{F2}or falls to be treated as providing] for the earner and his widow to be entitled to [^{F3}a guaranteed minimum pension] and the earner's employment is contracted-out by reference to the scheme.

- [^{F4}(1A) This Part of this Act shall also have effect, where an occupational pension scheme so provides or falls to be treated as so providing, for the purpose of making provision in relation—

- (a) to invalidity allowance under section 34 of the Contributions and Benefits Act;
- (b) to increases of Category A retirement pensions for invalidity under section 47 of that Act; and

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

- (c) to increases of unemployability supplement under paragraph 3 of Schedule 7 to that Act.]
- (2) [^{F5} “guaranteed minimum pension” means any such pension which is provided by an occupational pension scheme in accordance with the requirements of sections 33 and 36 below] to the extent to which its weekly rate is equal to the earner’s or widow’s guaranteed minimum as determined for the purposes of those sections respectively.

Textual Amendments

- F1** Words substituted (with effect from 1.7.1992) by Social Security (Consequential Provisions) Act 1992 (c. 6), **Sch. 2**, para. 20(1)
- F2** Words inserted by Social Security Act 1986 (c. 50), **Sch. 2**, para. 2
- F3** Words substituted by Social Security Act 1986 (c. 50), **Sch. 10**, para. 12(a)
- F4** S. 26(1A) inserted (with effect from 1.7.1992) by Social Security (Consequential Provisions) Act 1992 (c. 6), **Sch. 2**, para. 20(2).
- F5** Words substituted by Social Security Act 1986 (c. 50), **Sch. 10**, para. 12(b)

Modifications etc. (not altering text)

- C2** S. 26(2) to be construed (with effect from 6.4.1988) as if reference to “widow” included reference to widower by virtue of Social Security Act 1968 (c. 50), **s. 9(4)(a)**.
- C3** S. 26(2) modified (with effect from 27.7.1987), where certain transfers of guaranteed minimum pension rights have taken place, by S.I. 1987/1099, **Sch. 3A para. 1**. Also modified, for transfer payments to present-and some past-salary related contracted-out schemes, by reg. 4(2) of S.I. 1987/1118 with effect from 27.7.1987 for personal pension schemes and 6.4.1988 otherwise

Contracted-out rates of contributions and benefits

27 Contracted-out rates of Class 1 contributions.

- (1) Where the earnings paid to or for the benefit of an earner in any tax week are in respect of an employment which is contracted-out employment at the time of the payment, the amount of a Class 1 contribution shall be the aggregate of—
- the normal percentage of so much of the earnings paid in that week in respect of the employment as does not exceed the current lower earnings limit; and
 - the contracted-out percentage of so much of those earnings as exceeds that limit but does not exceed the current upper earnings limit [^{F6}and
 - in the case of a secondary Class 1 contribution, the normal percentage of so much of those earnings as exceeds the current upper earnings limit.]
- (2) In subsection (1) above—
- “the normal percentage” means the percentage that would apply for the calculation of the amount of the contribution if the employment were not contracted-out employment;
- “the contracted-out percentage” means—
- in the case of a primary Class 1 contribution, a percentage less by [^{F7}1.8] than the normal percentage;
 - in the case of a secondary Class 1 contribution, a percentage less by [^{F7}3.0] than the normal percentage.

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

- (3) In the case of earners paid otherwise than weekly the references in subsection (1) above to the current lower or upper earnings limit shall be construed as references to the prescribed equivalents.
- (4) [^{F8}Where—
- (a) an earner has ceased to be employed in an employment; and
 - (b) earnings are paid to him or for his benefit within the period of 6 weeks, or such other period as may be prescribed, from the day on which he so ceased, that employment] shall be treated for the purpose of subsection (1) above as contracted-out employment at the time when the earnings are paid if it was contracted-out employment in relation to the earner when he was last employed in it.

(5) This section shall not affect the amount of any primary Class 1 contribution which is payable at a reduced rate by virtue of regulations under [^{F9}section 19(4) of the Contributions and Benefits Act].

(6) ^{F10}

Textual Amendments

- F6** Words added by [Social Security Act 1985 \(c. 53\)](#) Sch. 5, para. 17.
- F7** Figures in s. 27(2)(a)(b) substituted (6.4.1993), for figures of 2.0 and 3.8, by virtue of [S.I. 1992/795, art. 2\(a\)\(b\)](#).
- F8** Words substituted (with effect from 6.4.1987) by [Social Security Act 1986 \(c. 50\)](#), [Sch. 10](#), para. 13
- F9** Words substituted (with effect from 1.7.1992) by [Social Security \(Consequential Provisions\) Act 1992 \(c. 6\)](#), [Sch. 2](#), para. 21
- F10** [S. 27\(6\)](#) repealed by [Social Security Act 1989 \(c. 24\)](#), [Sch. 9](#). Repeal takes effect on 21.7.1989 by virtue of ss. 3 and 33(3)(a) and (g) [Social Security Act 1989](#).

28 Review and alteration of contracted-out rates of Class 1 contributions.

- (1) The Secretary of State may from time to time, and shall when required by subsection (3) below, lay before each House of Parliament—
- (a) a report by the Government Actuary [^{F11}or the deputy Government Actuary] on the contracted-out percentages for the time being applying under section 27 above and any changes in the factors affecting the cost to occupational pension schemes of providing guaranteed minimum pensions; and
 - (b) a report by the Secretary of State stating whether he considers that, in view of the [^{F12}report of the Government Actuary or Deputy Government Actuary,] there should be an alteration in either or both of those percentages and, if so, what alteration is in his opinion required.
- (2) The changes referred to in paragraph (a) of subsection (1) above are, in the case of the first report under that paragraph, changes since the passing of this Act and, in the case of a subsequent report, changes since the preparation of the last report.
- (3) The Secretary of State shall lay such reports as aforesaid as soon as may be after the third anniversary of the coming into force of this section and thereafter at intervals of not more than five years.
- (4) If in a report under subsection (1)(b) above the Secretary of State states that he considers that there should be an alteration in either or both of the contracted-out

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

percentages, he shall prepare and lay before each House of Parliament with the report the draft of an order making that alteration; and if the draft is approved by resolution of each House the Secretary of State shall make the order in the form of the draft.

- (5) An order under subsection (4) above shall have effect from the beginning of such tax year as may be specified in the order, but not a tax year earlier than the second after that in which the order is made.
- (6) No alteration of the contracted-out percentages shall introduce any distinction on grounds of age or sex.
- [^{F13}(7) A draft of an order making alterations in either or both of the contracted-out percentages may contain consequential provisions altering any percentage for the time being specified in paragraph 2(2) of Schedule 3 to this Act as that percentage applies in relation to earnings paid or payable on or after the day as from which the order is to have effect.]

Textual Amendments

- F11** Words inserted by [Social Security \(Consequential Provisions\) Act 1992 \(c. 6\), Sch. 2, para. 22\(a\)](#)
- F12** Words substituted (with effect from 1.7.1992) by [Social Security \(Consequential Provisions\) Act 1992 \(c. 6\), Sch. 2, para. 22\(b\)](#)
- F13** S. 28(7) inserted by [Social Security Act 1985 \(c. 53\), Sch. 5, para. 18](#)

29 Contracted-out rates of benefit.

- (1) Where for any period a person is entitled both—
- to a Category A or Category B retirement pension, a widowed mother's allowance [^{F14}, a widow's pension or a widower's invalidity pension under [^{F15}section 41 of the Contributions and Benefits Act]]; and
 - to one or more guaranteed minimum pensions,
- the weekly rate of the benefit mentioned in paragraph (a) above shall for that period be reduced by an amount equal to its [^{F16}additional pension] or, if less, an amount equal to the weekly rate or aggregate weekly rates of the pension or pensions mentioned in paragraph (b) above.
- (2) For the purposes of this section [^{F17}and sections [^{F18}29A, 29B and 29C below]] a person shall be treated as entitled to any guaranteed minimum pension to which he would have been entitled—
- [^{F19}(a)] if a lump sum had not been paid instead of that pension under provisions included in a scheme by virtue of section 39 below or
 - [^{F19}(b)] if that pension had not been forfeited under any such provisions [^{F20}or
 - [^{F19}(c)] if as a result of a transfer payment or transfer under regulations made by virtue of section 38 below he is no longer entitled to guaranteed minimum pensions under the scheme by which the transfer payment or transfer is made and has not as a result of the transfer payment or transfer become entitled to guaranteed minimum pensions under the scheme to which the transfer payment or transfer is made][^{F19}or
 - (d) if its commencement had not been postponed, as mentioned in section 33(3) below.]

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

- [^{F21}(2A) Subject to subsection (2B) below, where for any period minimum payments have been made in respect of an earner to an occupational pension scheme which, in relation to the earner's employment is a money purchase contracted-out scheme, then, for the purposes of this section and sections [^{F22}29A, 29B and 29C below]—
- (a) the earner shall be treated, as from the date on which he reaches pensionable age, as if he were entitled to a guaranteed minimum pension at a prescribed weekly rate arising from that period in that employment; and
 - (b) in prescribed circumstances, in relation to any widow or widower of the earner—
 - (i) if the earner died after reaching pensionable age, any widow or widower of the earner shall be treated as entitled to a guaranteed minimum pension at a rate equal to one-half of the rate prescribed under paragraph (a) above; and
 - (ii) if the earner died before reaching pensionable age, any widow or widower of the earner shall be treated as entitled to a guaranteed minimum pension at a prescribed weekly rate arising from that period.
- (2B) Where the earner is a married woman or widow, subsection (2A) above shall not have effect in relation to any period during which an election that her liability in respect of primary Class 1 contributions shall be a liability to contribute at a reduced rate is operative.
- (2C) The power to prescribe a rate conferred by subsection (2A)(a) above includes power to prescribe a nil rate.]
- (3) References in this section [^{F23}and in sections 29A, 29B and 29C below] to the weekly rate of a guaranteed minimum pension are references to that rate without any increase under section 35(6) below.

Textual Amendments

- F14** Words substituted (with effect from 6.4.1988) by [Social Security Act 1986 \(c. 50\)](#), **Sch. 10**, para. 14(a)
- F15** Words substituted (with effect from 1.7.1992) by [Social Security \(Consequential Provisions\) Act 1992 \(c. 6\)](#), **Sch. 2**, para. 23(1)
- F16** Words substituted (with effect from 6.4.1987) by [Social Security Act 1986 \(c. 50\)](#), **s. 18(1)**.
- F17** Words inserted (with effect from 1.5.1987) by [Social Security Act 1986 \(c. 50\)](#), **Sch. 10**, para. 14(b)(i).
- F18** Words substituted (with effect from 1.7.1992) by [Social Security \(Consequential Provisions\) Act 1992 \(c. 6\)](#), **Sch. 2 para. 23(2)**
- F19** Reference letters (a), (b) and (c), word “or” and paragraph (d) inserted (1.10.1989) by [Social Security Act 1989 \(c. 24\)](#), **Sch. 1**, para. 11.
- F20** Words added (with effect from 6.4.1988) by [Social Security Act 1986 \(c. 50\)](#), **Sch. 10**, para. 14(b)(ii).
- F21** [S. 29\(2A\)–\(2C\)](#) inserted (with effect from 6.4.1988) by [Social Security Act 1986 \(c. 50\)](#), **Sch. 2**, para. 3.
- F22** Words substituted (with effect from 1.7.1992) by [Social Security \(Consequential Provisions\) Act 1992 \(c. 6\)](#), **Sch. 2 para. 23(2)**
- F23** Words inserted (with effect from 1.7.1992) by [Social Security \(Consequential Provisions\) Act 1992 \(c. 6\)](#), **Sch. 2 para. 23(3)**.

Modifications etc. (not altering text)

- C4** Where minimum contributions have been paid to a personal pension scheme, subsections (1) and (2) above are modified (4.1.1988) by the [Social Security Act 1986 \(c. 50\)](#), **s. 4** and by [S.I. 1987/1113](#),

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

- regs. 2** and 3. Where minimum payments have been made to a money purchase contracted-out scheme, s. 29 is modified (6.4.1988) by S.I. 1987/1113, **regs. 4** and 5, under the powers in s. 29(2A) above.
- C5** S. 29(1) modified, in relation to certain persons entitled to widower's invalidity pension, by **Social Security Act 1986 (c. 50), s. 9(5)**.
- C6** S. 29(2) modified, for transfer payments to present-and some past-salary related contracted-out schemes, by reg. 4(3) of S.I. 1987/1118 with effect from 27.7.1987.for personal pension schemes and 6.4.1988 otherwise
- C7** S. 29(2) modified, where a personal pension protected rights premium is paid, by **Social Security Act 1986 (c. 50), S. 5(9)(b)**.
- C8** S. 29(2A) is modified, where a personal pension protected rights scheme is paid, by **Social Security Act 1986 (c. 50), s. 5(9)(b)**.

[^{F24}29A

- (1) Where for any period—
- (a) a person is entitled to one or more guaranteed minimum pensions; and
 - (b) he is also entitled to an invalidity pension under section 33 of the Contributions and Benefits Act; and
 - (c) the weekly rate of his invalidity pension includes an additional pension such as is mentioned in section 44(3)(b) of that Act,

for that period section 34 of that Act shall have effect as if the following subsection were substituted for subsection (5)—

“(5) In this section “the relevant amount” means an amount equal to the aggregate of—

- (a) an amount equal to the additional pension; and
- (b) an amount equal to the weekly rate or aggregate weekly rates of the guaranteed minimum pension or pensions,

reduced by the amount of any reduction in the weekly rate of the invalidity pension made by virtue of section 29 of the Pensions Act.”

- (2) Where for any period—
- (a) a person is entitled to one or more guaranteed minimum pensions; and
 - (b) he is also entitled to an invalidity pension under section 33 of the Contributions and Benefits Act; and
 - (c) the weekly rate of his invalidity pension does not include an additional pension such as is mentioned in section 44(3)(b) of that Act,
- for that period the relevant amount shall be deducted from the appropriate weekly rate of invalidity allowance and he shall be entitled to invalidity allowance only if there is a balance after the deduction and, if there is such a balance, at a weekly rate equal to it.
- (3) In subsection (2) above “the relevant amount” means an amount equal to the weekly rate or aggregate weekly rates of the guaranteed minimum pension or pensions reduced by the amount of any reduction in the weekly rate of the invalidity pension made by virtue of section 29 above.
- (4) Where subsection (2) above applies, section 34(7) of the Contributions and Benefits Act shall have effect as if for the words “subsection (4) above” there were substituted the words “section 29A(2) of the Pensions Act”.]

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

Textual Amendments

F24 Ss. 29A, 29B and 29C inserted (with effect from 1.7.1992) by [Social Security \(Consequential Provisions\) Act 1992 \(c. 6\)](#), [Sch. 2 para. 24](#).

^{F25}**29B Contracting-out and increases of Category A retirement pension for invalidity.**

- (1) Where for any period—
- a person is entitled to one or more guaranteed minimum pensions; and
 - he is also entitled to a Category A retirement pension under section 44 of the Contributions and Benefits Act; and
 - the weekly rate of his pension includes an additional pension such as is mentioned in section 44(3)(b) of that Act.

for that period section 47 of that Act shall have effect as if the following subsection were substituted for subsection (3)—

“(3) In subsection (2) above “the relevant amount” means an amount equal to the aggregate of—

- an amount equal to the additional pension; and
- an amount equal to the weekly rate or aggregate weekly rates of the guaranteed minimum pension or pensions,

reduced by the amount of any reduction in the weekly rate of the Category A retirement pension made by virtue of section 29 of the Pensions Act.”

- (2) Where for any period—
- a person is entitled to one or more guaranteed minimum pensions; and
 - he is also entitled to a Category A retirement pension under section 44 of the Contributions and Benefits Act; and
 - the weekly rate of his Category A retirement pension does not include an additional pension such as is mentioned in section 44(3)(b) of that Act,

for that period the relevant amount shall be deducted from the amount that would otherwise be the increase under section 47(1) of that Act and the pensioner shall be entitled to an increase under that subsection only if there is a balance remaining after that deduction and, if there is such a balance, of an amount equal to it.

- (3) In subsection (2) above “the relevant amount” means an amount equal to the weekly rate or aggregate weekly rates of the guaranteed minimum pension or pensions reduced by the amount of any reduction in the weekly rate of the Category A retirement pension made by virtue of section 29 above.

Textual Amendments

F25 Ss. 29A, 29B and 29C inserted (with effect from 1.7.1992) by [Social Security \(Consequential Provisions\) Act 1992 \(c. 6\)](#), [Sch. 2 para. 24](#).

^{F26}**29C Contracting-out and increases of unemployability supplement.**

- (1) Where for any period—
- a person is entitled to one or more guaranteed minimum pensions; and

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

- (b) he is also entitled—
 - (i) to an invalidity pension under section 33 of the Contributions and Benefits Act;
 - (ii) to a Category A retirement pension under section 44; or
 - (iii) to a Category B retirement pension under section 49; and
- (c) the weekly rate of the pension includes an additional pension such as is mentioned in section 44(3)(b) of that Act,

for that period paragraph 3 of Schedule 7 to that Act shall have effect as if the following sub-paragraph were inserted for sub-paragraph (3)—

- “(3) In subsection (2) above “the relevant amount” means an amount equal to the aggregate of—
- (a) an amount equal to the additional pension; and
 - (b) an amount equal to the weekly rate or aggregate weekly rates of the guaranteed minimum pension or pensions,
- reduced by the amount of any reduction in the weekly rate of the pension made by virtue of section 29 of the Pensions Act.”

- (2) Where for any period—
- (a) a person is entitled to one or more guaranteed minimum pensions; and
 - (b) he is also entitled to any of the pensions under the Contributions and Benefits Act mentioned in subsection (1)(b) above; and
 - (c) the weekly rate of the pension does not include an additional pension such as is mentioned in section 44(3)(b) of that Act,
- for that period the relevant amount shall be deducted from the amount that would otherwise be the increase under that paragraph and the beneficiary shall be entitled to an increase only if there is a balance and, if there is such a balance, only to an amount equal to it.
- (3) In subsection (2) above “the relevant amount” means an amount equal to the weekly rate or aggregate weekly rates of the guaranteed minimum pension or pensions.

Textual Amendments

F26 Ss. 29A, 29B and 29C inserted (with effect from 1.7.1992) by [Social Security \(Consequential Provisions\) Act 1992 \(c. 6\)](#), [Sch. 2 para. 24](#).

Arrangements for contracting-out

30 Contracted-out employment.

- (1) Subject to the provisions of this Act, the employment of an earner in employed earner’s employment is contracted-out employment in relation to him during any period in which he is under pensionable age and—
- (a) his service in the employment is for the time being service which qualifies him for [^{F27}a guaranteed minimum pension provided by] an occupational pension scheme [^{F28}or his employer makes minimum payments in respect of the earner’s employment to a money purchase contracted-out scheme]; and
 - (b) the scheme is a contracted-out scheme in relation to that employment; and

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

- (c) there is in force a certificate, issued by the Occupational Pensions Board and known as a “contracting-out certificate”, that the employment is contracted-out employment by reference to the scheme.

[^{F29}(1A) The minimum payment in respect of an earner for any tax week shall be the rebate percentage of so much of the earnings paid to or for the benefit of the earner as exceeds the lower earnings limit for the tax week but does not exceed the upper earnings limit for it; and in this subsection “rebate percentage” means the percentage arrived at by adding—

- (a) the percentage by which for the time being under section 27(2) above the contracted-out percentage of primary Class 1 contributions is less than the normal percentage; and
- (b) the percentage by which for the time being under that subsection the contracted-out percentage of secondary Class 1 contributions is less than the normal percentage.

(1B) The references to the upper and lower earnings limits in subsection (1A) above are references, in the case of an earner who is paid otherwise than weekly, to their prescribed equivalents under [^{F30}sections 6(1) and 8(3) of the Contributions and Benefits Act].

(1C) Regulations may make provision—

- (a) for the manner in which, and time at which or period within which, minimum payments are to be made;
- (b) for the recovery by employers of amounts in respect of the whole or part of minimum payments by deductions for earnings;
- (c) for calculating the amounts payable according to a scale prepared from time to time by the Secretary of State or otherwise adjusting them so as to avoid fractional amounts or otherwise facilitate computation;
- (d) for requiring that the liability in respect of a payment made in a tax week, in so far as the liability depends on any conditions as to a person’s age on retirement, shall be determined as at the beginning of the week or as at the end of it;
- (e) for securing that liability is not avoided or reduced by a person following in the payment of earnings any practice which is abnormal for the employment in respect of which the earnings are paid;
- (f) without prejudice to sub-paragraph (e) above, for enabling the Secretary of State, where he is satisfied as to the existence of any practice in respect of the payment of earnings whereby the incidence of minimum payments is avoided or reduced by means of irregular or unequal payments of earnings, to give directions for securing that minimum payments are payable as if that practice were not followed;
- (g) for the intervals at which, for the purposes of minimum payments, payments of earnings are to be treated as made; and
- (h) for this section to have effect, in prescribed cases, as if for any reference to a tax week there were substituted a reference to a prescribed period.]

(2) ^{F31}

(3) Any contracting-out certificate for the time being in force in respect of an employed earner’s employment shall be conclusive that the employment is contracted-out employment.

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

- (4) Regulations shall provide for the determination by the Board of any question whether an employment is to be treated as contracted-out employment or as to the persons in relation to whom, or the period for which, an employment is to be so treated.
- (5) F32

Textual Amendments

- F27** Words substituted (with effect from 1.11.1986) by [Social Security Act 1986 \(c. 50\)](#), [Sch. 10](#), para. 15
- F28** Words inserted (with effect from 6.4.1988) by [Social Security Act 1986 \(c. 50\)](#), [Sch. 2 para. 4\(a\)](#)
- F29** [S. 30\(1A\)–\(1C\)](#) inserted (with effect from 6.4.1988) by [Social Security Act 1986 \(c. 50\)](#), [Sch. 2](#), para. 4(b)
- F30** Words substituted by [Social Security \(Consequential Provisions\) Act 1992 \(c. 6\)](#), [Sch. 2](#), para. 25
- F31** [S. 30\(2\)](#) repealed by [Social Security Act 1986 \(c. 50\)](#), [Sch. 11](#)
- F32** [S. 30\(5\)](#) repealed by [Employment Protection \(Consolidation\) Act 1978 \(c. 44\)](#), [Sch. 17](#)

31 Contracting-out certificates.

- (1) Regulations shall provide for the issue by the Occupational Pensions Board to employers of contracting-out certificates specifying—
- (a) the employments which are to be treated, either generally or in relation to any specified description of earners, as contracted-out employments; and
 - (b) the occupational pension schemes by reference to which those employments are to be so treated.
- (2) Regulations shall also provide for the cancellation, variation or surrender of any contracting-out certificate, or the issue of an amended certificate, on any change of circumstances affecting the treatment of an employment as contracted-out employment.
- (3) Subject to the provisions of this Part of this Act, an employment otherwise satisfying the conditions for inclusion in a contracting-out certificate shall be so included if and so long as the employer so elects and not otherwise; and subject to subsection (4) below an election may be so made, and an employment so included, either generally or in relation only to a particular description of earners.
- (4) Except in such cases as may be prescribed, an employer shall not, in making or abstaining from making any election under this section, discriminate between different earners on any grounds other than the nature of their employment; and if the Occupational Pensions Board consider that an employer is contravening this subsection in relation to any scheme they may refuse to give effect to any election made by him in relation to that scheme or cancel any contracting-out certificate held by him in respect of that scheme.
- (5) Regulations may make provision—
- (a) for regulating the manner in which an employer is to make an election with a view to the issue, variation or surrender of a contracting-out certificate;
 - (b) for requiring an employer to give a notice of his intentions in respect of making or abstaining from making any such election in relation to any existing or proposed scheme—
 - (i) to employees in any employment to which the scheme applies or to which it is proposed that it should apply;

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

- (ii) to any independent trade union recognised to any extent for the purpose of collective bargaining in relation to those employees;
 - (iii) to the trustees and managers of the scheme and such other persons as may be prescribed;
 - (c) for requiring an employer, in connection with any such notice, to furnish such information as may be prescribed and to undertake such consultations as may be prescribed with any such trade union as is mentioned in paragraph (b)(ii) above;
 - (d) for empowering the Occupational Pensions Board to refuse to give effect to an election made by an employer unless they are satisfied that he has complied with the requirements of the regulations;
 - (e) for referring to an industrial tribunal any question whether an organisation is such a trade union as is mentioned in paragraph (b)(ii) above or whether the requirements of the regulations as to consultation have been complied with.
- (6) Regulations may enable the Occupational Pensions Board to cancel or vary a contracting-out certificate where they have reason to suppose that any employment to which it relates ought not to be treated as contracted-out employment in accordance with the certificate and the employer does not show that it ought to be so treated.
- (7) Except in prescribed circumstances, no contracting-out certificate and no cancellation, variation or surrender of such a certificate shall have effect from a date earlier than that on which the certificate is issued or the cancellation, variation or surrender is made.
- (8) In this section “independent trade union” has the same meaning as in [^{F33}the Trade Union and Labour Relations (Consolidation) Act 1992] and “industrial tribunal” means a tribunal established under section 12 of the ^{M1}Industrial Training Act 1964.
- (9) ^{F34}

Textual Amendments

- F33** Words in s. 31(8) substituted (16.10.1992) by [Trade Union and Labour Relations \(Consolidation\) Act 1992 \(c. 52\), ss. 300\(2\), 302, Sch. 2 para.5.](#)
- F34** S. 31(9) repealed by [Employment Act 1980 \(c. 42\), Sch. 2](#)

Marginal Citations

- M1** 1964 c. 16.

32 Contracted-out schemes.

- (1) An occupational pension scheme is a contracted-out scheme in relation to an earner’s employment if it is for the time being specified in a contracting-out certificate as a scheme by reference to which that employment is contracted-out employment; and references to the contracting-out of a scheme are references to its inclusion in a certificate as aforesaid.
- (2) Subject to the provisions of this section, an occupational pension scheme can be contracted-out in relation to an earner’s employment only if—
- (a) it complies in all respects with sections 33 to 41 below in respect of [^{F35}guaranteed minimum pensions] for the earner and his widow and of the

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

other matters there mentioned or, in such cases or classes of case as may be prescribed, with those sections as modified by regulations; and

- (b) the rules of the scheme applying to the ^{F35}guaranteed minimum pensions] are framed so as to comply with the requirements of any regulations prescribing the form and content of rules of contracted-out schemes and with such other requirements as to form and content (not inconsistent with regulations) as may be imposed by the Occupational Pensions Board as a condition of contracting-out, either generally or in relation to a particular scheme.

^{F36}or it satisfies subsection (2A) below.]

^{F37}(2A) An occupational pension scheme satisfies this subsection only if—

- (a) the requirements imposed by or by virtue of Schedule 1 to the Social Security Act 1986, modified under sub-section (2B) below, are satisfied in its case;
- (b) it complies with section 40(1) below; and
- (c) the rules of the scheme applying to protected rights are framed so as to comply with the requirements of any regulations prescribing the form and content of rules of contracted-out schemes and with such other requirements as to form and content (not inconsistent with regulations) as may be imposed by the Occupational Pensions Board as a condition of contracting-out, either generally or in relation to a particular scheme.

(2B) The modifications of Schedule 1 are—

- (a) that for the references to a personal pension scheme there shall be substituted references to an occupational pension scheme;
- (b) that for the references in paragraph 5 to minimum contributions there shall be substituted references to minimum payments and any payments by the Secretary of State under section 7 of the Social Security Act 1986;
- (c) that for paragraph 7(2) there shall be substituted—

“(2) The rules of the scheme may provide that a member’s protected rights are his rights under the scheme which derive from the payment of minimum payments (within the meaning of the Social Security Pensions Act 1975) together with any payments by the Secretary of State to the scheme under section 7 of this Act in respect of the member and any rights of the member to money purchase benefits which derive from protected rights (within the meaning of the Social Security Pensions Act 1975) under another occupational pension scheme or protected rights under a personal pension scheme which have been the subject of a transfer payment and such other rights as may be prescribed.”

- (d) that in paragraph 9—
- (i) for the reference to an occupational pension scheme there shall be substituted a reference to a personal pension scheme; . . . ^{F38}
- (ii) for the reference to a personal pension protected rights premium there shall be substituted a reference to a contracted-out protected rights premium; and
- ^{F39}(iii) [for the references in sub-paragraphs (3)(a) and 7(a)(i) to the date on which the member attains pensionable age there shall be substituted a reference to a date not earlier than that on which he attains the age of 60 nor later than that on which he attains the age of 65; and]
- (e) that paragraph 10 shall not apply to public service pension schemes.

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

- (2C) A contracting-out certificate shall state whether the scheme is contracted-out by virtue of subsection (2) or subsection (2A) above; and where a scheme satisfies both of those subsections the employers, in their application for a certificate, shall specify one of the subsections as the subsection by virtue of which they desire the scheme to be contracted-out.
- (2D) A scheme which has been contracted-out by virtue of one of those subsections may not become contracted-out by reason of the other, except in prescribed circumstances.]
- (3) Where by any provision of this Part of this Act the contracting-out of a scheme in relation to an employment depends on the satisfaction of a particular condition, continued contracting-out of the scheme shall be dependent on continued satisfaction of the condition; and if the condition ceases to be satisfied, that shall be a ground (without prejudice to any other) for the cancellation or variation of the contracting-out certificate.
- (4) A contracting-out certificate in respect of any employment may be withheld or cancelled by the Occupational Pensions Board notwithstanding that the relevant scheme is one that they would otherwise treat as proper to be contracted-out in relation to all earners in that employment if the Board consider that there are circumstances . . .^{F40} which make it inexpedient that the employment should be or, as the case may be, continue to be, contracted-out employment by reference to the scheme.
- (5) Where in relation to an earner's employment there are in force two or more occupational pension schemes none of which can by itself be a contracted-out scheme, the Board may if they think fit treat them for contracting-out purposes as a single scheme.
- (6) It is hereby declared that nothing in this Part of this Act precludes an occupational pension scheme from providing benefits that are more favourable than those required for contracting-out purposes.
- [^{F41}(7) An occupational pension scheme which—
- (a) at any time before the coming into operation of the first regulations made under paragraph (a) of subsection (2) above did not satisfy that paragraph; but
 - (b) would have satisfied it if those regulations had then been in operation;
- shall, for the purpose of determining whether the scheme satisfied that paragraph, be treated as if those regulations had been in operation at that time.]

Textual Amendments

- F35** Words substituted (with effect from 1.11.1986) by [Social Security Act 1986 \(c. 50\)](#), [Sch. 10](#), para. 16(a).
- F36** Words inserted (with effect from 6.4.1988) by [Social Security Act 1986 \(c. 50\)](#), [Sch. 2](#), para. 5(a)
- F37** [S. 32\(2A\)–\(2D\)](#) inserted (with effect from 6.4.1988) by [Social Security Act 1986 \(c. 50\)](#), [Sch. 2](#), para. 5(b)
- F38** Word repealed (with effect from 13.7.1990) by [Social Security Act 1990 \(c. 27\)](#), [Sch. 7](#)
- F39** [S. 32\(2B\)\(d\)\(iii\)](#) inserted by [Social Security Act 1990 \(c. 27\)](#), [Sch. 4](#), para. 6(1), with effect from 17.5.1990 by virtue of para. 6(2) [Social Security Act 1990](#).
- F40** Words repealed by [Social Security Act 1986 \(c. 50\)](#), [Sch. 10](#), para. 16(b)
- F41** [S. 32\(7\)](#) added by [Social Security and Housing Benefits Act 1982 \(c. 24\)](#), [Sch. 4](#), para. 20

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

Modifications etc. (not altering text)

- C9** S. 32(2) has effect (with effect from 27.7.1987) in relation to personal pension schemes as modified by S.I. 1987/1116, **reg. 3(1)**
- C10** S. 32(2)(a) to be construed (with effect from 6.4.1988) as if reference to “widow” included reference to widower (and with consequential modification) by virtue of **Social Security Act 1986 (c. 50), s. 9(4)(b)**.

Requirements for contracting-out

33 Requisite benefit for earner.

- (1) Subject to the provisions of this Part of this Act, for an occupational pension scheme [^{F42}which is not a money purchase contracted-out scheme] to be contracted-out in relation to an earner’s employment it must provide for him to be entitled to a pension under the scheme if he attains pensionable age and contain—

- (a)^{F43}
- (b) a rule to the effect that if the earner has a guaranteed minimum under section 35 below the weekly rate of the pension will be not less than his guaranteed minimum under that section.

- [^{F44}(1A) In the case of an earner who is a married woman or widow who is liable to pay primary Class 1 contributions at a reduced rate by virtue of [^{F45}section 19(4) of the Contributions and Benefits Act], subject to the provisions of this Part of the Act, for a scheme to be contracted-out in relation to her employment it must—

- (a) provide for her to be entitled to a pension under the scheme if she attains pensionable age [^{F46}and does not have a guaranteed minimum under section 35 below]; and
- (b) satisfy such other conditions as may be prescribed.]

- (2) Subject to subsections (3) . . .^{F47} below, the scheme must provide for the pension to commence on the date on which the earner attains pensionable age and to continue for his life.

- (3) The scheme may provide for the commencement of the earner’s guaranteed minimum pension to be postponed for any period for which he continues in employment after attaining pensionable age but so that his consent is required—

- (a) for any postponement by virtue of employment to which the scheme does not relate; and
- (b) for any postponement after the expiration of five years from the date on which he attains pensionable age.

- (4)^{F48}

- (5) Equivalent pension benefits for the purposes of the former legislation are not to be regarded as constituting any part of the earner’s guaranteed minimum pension.

- (6) The benefits referred to in subsection (5) above are any to which the earner may be immediately or prospectively entitled in respect of a period of employment which—

- (a) was for him non-participating employment under that legislation; and
- (b) was not on its termination the subject of any payment in lieu of contributions;

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

but subsection (5) excludes so much only of those benefits as (and no more than) had to be provided in order that the employment should for that period be treated as non-participating.

(7) In this section “the former legislation” means Part III of the ^{M2}National Insurance Act 1965 and the previous corresponding enactments.

Textual Amendments

- F42** Words inserted (with effect from 6.4.1988) by Social Security Act 1986 (c. 50), **Sch. 2**, para. 6(1)(a)
- F43** S. 33(1)(a) repealed by Social Security Act 1986 (c. 50), **Sch. 11**
- F44** S. 33(1A) inserted by Social Security Act 1986 (c. 50), **Sch. 10 para. 17**
- F45** Words substituted (with effect from 1.7.1992) by Social Security (Consequential Provisions) Act 1992 (c. 6) Sch. 2, para. 26
- F46** Words inserted (*prosp.*) by Social Security Act 1990 (c. 27), **Sch. 4**, para. 7(1)
- F47** Words repealed (with effect from 1.10.1990) by Social Security Act 1990 (c. 27), **Sch. 7**
- F48** S. 33(4) repealed by Social Security Act 1986 (c. 50), **Sch. 11**

Marginal Citations

- M2** 1965 c. 51.

34 ^{F49}

Textual Amendments

- F49** S. 34 repealed by Social Security Act 1986 (c. 50), **Sch. 11**(and expressed to be repealed (7.2.1994) by 1993 c. 48, s. 188, **Sch. 5 Pt. I**; S.I. 1994/86, **art. 2**)

35 Earner’s guaranteed minimum.

- (1) An earner has a guaranteed minimum in relation to the pension provided by a scheme in accordance with section 33 above if, in any tax week in a relevant year, earnings have been paid to or for the benefit of the earner in respect of contracted-out employment by reference to the scheme, being earnings in excess of the current lower earnings limit or the prescribed equivalent if he is paid otherwise than weekly.
- (2) Where an earner has a guaranteed minimum as aforesaid, that minimum shall, subject to subsection (6) below, be the weekly equivalent of an amount equal to the appropriate percentage of the total of his earnings factors for the relevant years so far as derived from [^{F50}earnings such as are mentioned in subsection (1) above upon which primary Class 1 contributions have been paid or treated as paid].

[^{F51}(2ZA) In determining the guaranteed minimum in a case where—

- (a) earnings such as are mentioned in subsection (1) above have been paid to a married woman or widow who is liable to pay primary Class 1 contributions at a reduced rate by virtue of [^{F52}section 19(4) of the Contributions and Benefits Act], and
- (b) the tax week in which those earnings are paid falls in the tax year 1991-92 or any subsequent tax year,

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

the married woman or widow shall be treated for the purposes of this section as having such earnings factors derived from those earnings as she would have had if primary Class 1 contributions had been payable, and paid, upon them otherwise than at a reduced rate.]

[^{F53}(2A) Where the amount of a person’s earnings for any period is relevant for any purpose of subsection (1) or (2) above and the Secretary of State is satisfied that records of those earnings have not been maintained or retained or are otherwise unobtainable, he may for that purpose—

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

[^{F54}(3) In subsection (2) above— “the appropriate percentage” means—

- (a) in respect of the earner’s earnings factors for any tax year not later than the tax year 1987-1988—
 - (i) if the earner was not more than 20 years under pensionable age on 6th April 1978, $1\frac{1}{4}$ per cent.;
 - (ii) in any other case

$$\frac{25}{N}$$

per cent.;

- (b) in respect of the earner’s earnings for the tax year 1988-89 and for subsequent tax years—
 - (i) if the earner was not more than 20 years under pensionable age on 6th April 1978, 1 per cent.;
 - (ii) in any other case

$$\frac{20}{N}$$

per cent.;

where N is the number of years in the earner’s working life (assuming that he will attain pensionable age) which fall after 5th April 1978; and—

“derived” means derived in accordance with the rules to be embodied in regulations.]

(4) For the purposes of subsection (2) above the weekly equivalent of the amount there mentioned shall be calculated by dividing that amount by 52 . . . ^{F55}.

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

- (5) For the purposes of subsection (2) above the earner's earnings factor for any relevant year (so far as derived as mentioned in that subsection) shall, subject to subsection (7) below, be taken to be that factor as increased by [^{F56}the same percentage as that described for the increase of earnings factors by][^{F57}the last order under [^{F58}section 148 of the Administration Act] to come into force] before the end of the final relevant year.
- (6) Where in accordance with section 33(3) above the commencement of an earner's guaranteed minimum pension is postponed for any period and there are at least [^{F59}seven] complete weeks in that period, his guaranteed minimum in relation to the scheme shall, for each complete week in that period, be increased by [^{F59}1/7th] per cent.—
- (a) of the amount of that minimum apart from this subsection; or
 - (b) if for that week (or a period which includes that week) a pension is paid to him under the scheme at a weekly rate less than that minimum, of the difference between that pension and that minimum.

In this subsection “week” means any period of seven consecutive days.

- [^{F60}(6A) Where an earner's guaranteed minimum pension is increased under subsection (6) above, the increase of that part of it which is attributable to earnings factors for the tax year 1987-88 and earlier tax years shall be calculated separately from the increase of the rest.
- (6B) Where one or more orders have come into force under section 37A below during the period for which the commencement of a guaranteed minimum pension is postponed, the amount of the pension for any week in that period shall be determined as if the order or orders had come into force before the beginning of the period.]
- (7) The scheme may provide that the earnings factors of an earner whose service in contracted-out employment by reference to the scheme is terminated before [^{F61}the final relevant year shall be determined for the purposes of subsection (2) above by reference to the last order under [^{F62}section 148 of the Administration Act] to come into force before the end of the tax year in which the service in question is terminated and without reference to the last such order to come into force before the end of the final relevant year]; but in that event the scheme shall provide for the weekly equivalent mentioned in that subsection to be increased by at least—
- (a) 5 per cent. compound for each relevant year after that year; or
 - (b) the amount by which an earnings factor for that year equal to that weekly equivalent would be increased by [^{F63}the last order under the said section 21 to come into force] before the end of the final relevant year,
- whichever makes the lesser increase (so however that this subsection is not to be taken as preventing the scheme from providing increases above those alternative minima).
- (8) Subsection (7) above applies [^{F64}, except in such cases or classes of case as may be prescribed,] only so as to permit the same such provision to be made for all members of the scheme.

- [^{F65}(8A) An occupational pension scheme which—
- (a) at any time before the coming into operation of the first regulations made under subsection (8) above did not satisfy that subsection; but
 - (b) would have satisfied it if those regulations had been in operation at that time.]
- (9) In this section “relevant year” means any tax year in the earner's working life (not being earlier than the first tax year for which lower and upper earnings limits are

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

specified under section 1 above) and “final relevant year” means the last tax year which is a relevant year in relation to the earner.

Textual Amendments

- F50** Words substituted (with effect from 6.4.1987) by [Social Security Act 1986 \(c. 50\)](#), **Sch. 8**, para. 8
- F51** [S. 35\(2ZA\)](#) inserted (*prosp.*) by [Social Security Act 1990 \(c. 27\)](#), **Sch. 4**, para. 7(2)
- F52** Words substituted (with effect from 1.7.1992) by [Social Security \(Consequential Provisions\) Act 1992 \(c. 6\)](#), **Sch. 2 para. 27(1)**
- F53** [S. 35\(2A\)](#) inserted (with effect from 1.10.1989) by [Social Security Act 1989 \(c. 24\)](#), **Sch. 6**, para. 5
- F54** [S. 35\(3\)](#) substituted (with effect from 6.4.1988) by [Social Security Act 1986 \(c. 50\)](#), **s. 9(1)**
- F55** Words repealed by [Social Security Act 1979 \(c. 18\)](#), **Sch. 3 para. 13**
- F56** Words inserted (with effect from 6.4.1979) by [Social Security Act 1988 \(c. 7\)](#), **Sch. 2**, para. 1(2) and (3)
- F57** Words substituted by [Social Security Act 1979 \(c. 18\)](#), **Sch. 3 para. 18(a)**
- F58** Words substituted (with effect from 1.7.1992) by [Social Security \(Consequential Provisions\) Act 1992 \(c. 6\)](#), **Sch. 2**, para. 27(2)
- F59** Figure substituted by [Social Security \(Miscellaneous Provisions\) Act 1977 \(c. 5\)](#), **s. 3(2)**
- F60** [S. 35\(6A\)\(6B\)](#) inserted (with effect from 6.4.1988) by [Social Security Act 1986 \(c. 50\)](#), **s. 9(2)**
- F61** Words substituted by [Social Security Act 1985 \(c. 53\)](#), **Sch. 3**, paras. 2 and 7 with effect from 6.4.1979, subject to para 2(2) [Social Security Act 1985](#).
- F62** Words substituted (with effect from 1.7.1992) by [Social Security \(Consequential Provisions\) Act 1992 \(c. 60\)](#), **Sch. 2**, para. 27(2)
- F63** Words substituted by [Social Security Act 1979 \(c. 18\)](#), **Sch. 3 para. 18(b)**
- F64** Words inserted by [Social Security Act 1985 \(c. 53\)](#), **Sch. 3**, Pt. II, para 8
- F65** [S. 35\(8A\)](#) inserted by [Social Security Act 1985 \(c. 53\)](#), **Sch. 3**, Pt. II, para 8

Modifications etc. (not altering text)

- C11** [S. 35\(1\)](#) modified, where guaranteed minimum pension rights have been transferred from schemes which are or were contracted-out salary schemes, by [S.I. 1985/1323](#), **Sch. 3**, para. 3, with effect from 23.9.1985, and where such rights have been transferred from appropriate policies, by [S.I. 1985/1323](#), **Sch. 3A**, para. 2. with effect from 27.7.1987
- C12** [S. 35\(1\)](#) modified, for payments transferring protected rights to schemes which are or were salary related contracted-out schemes, by reg. 4(4) of [S.I. 1987/1118](#) with effect from 27.7.1987 for personal pension schemes and 6.4.1988 otherwise
- C13** [S. 35\(5\)](#) modified, for certain schemes ceasing to be contracted-out, by [Social Security \(Miscellaneous Provisions\) Act 1977 \(c. 5\)](#), **s. 21**
- C14** [S. 35\(5\)](#) modified, for certain transfers of guaranteed minimum pension rights, by [S.I. 1984/380](#), **reg. 44(a)**
- C15** [S. 35\(5\)](#) modified, for payments transferring protected rights to schemes which are or were salary related contracted-out schemes where minimum contributions have been paid, by reg. 4(5) of [S.I. 1987/1118](#) with effect from 27.7.1987 for personal pension schemes and 6.4.1988 otherwise
- C16** [S. 35\(6\)](#) amended (8.4.1991) by [S.I. 1991/503](#), **arts. 4(4), 5**
- C17** [S. 35\(6\)](#): power to amend conferred (1.7.1992) by [Social Security Administration Act 1992 \(c. 5\)](#), **ss. 150(1)(e)(i), 192(4)**.
- C18** [S. 35\(6\)](#) amended (12.4.1993) by [S.I. 1993/349](#) art. 5(2)
- C19** [S. 35\(7\)](#) modified, for certain transfers of guaranteed minimum pension rights, by [S.I. 1984/380](#), **reg. 44(b)**
- C20** [S. 35\(7\)](#) modified, for payments transferring protected pension rights to schemes which are or were salary related contracted-out schemes, by reg. 4(6) of [S.I. 1987/1118](#) with effect from 27.7.1987 for personal pension schemes and 6.4.1988 otherwise

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

- C21** On 1.7.1992, the said s. 21 was repealed and re-enacted in s. 148 of the [Social Security Administration Act 1992 \(c. 5\)](#)
- C22** [S. 35\(8\)](#) modified, where guaranteed minimum pension rights have been transferred from schemes which are or were contracted-out salary related schemes, by [S.I. 1985/1323, Sch. 3, para. 4](#), with effect from 23.9.1985, and, where such rights have been transferred from appropriate policies, by [S.I. 1985/1323, Sch. 3A, para. 3](#), with effect from 27.7.1987
- C23** [S. 35\(8\)](#) modified, for payments transferring protected rights to schemes which are or were salary related contracted-out schemes, by reg. 4(7) of [S.I. 1987/1118](#) with effect from 27.7.1987 for personal pension schemes and 6.4.1988 otherwise

36 Requisite benefit for widow.

[^{F66}(1) Subject to the provisions of this Part of this Act, for an occupational pension scheme [^{F67}which is not a money purchase contracted-out scheme] to be contracted-out in relation to an earner's employment it must provide, in the event of the earner dying (whether before or after attaining pensionable age) and leaving a widow or widower, for the widow or widower to be entitled to a guaranteed minimum pension under the scheme.

(1A) A scheme need not provide for widowers of earners who die before 6th April 1989 to be entitled to guaranteed minimum pensions.]

(2) ^{F68}

[^{F69}(3) To comply with this section the scheme must also contain a rule to the effect that—
(a) if the earner is a man who had a guaranteed minimum under section 35 above, the weekly rate of the widow's pension will be not less than her guaranteed minimum, which shall be half that of the earner.
(b) if the earner is a woman who had such a guaranteed minimum, the weekly rate of the widower's pension will be not less than his guaranteed minimum, which shall be one-half of that part of the earner's guaranteed minimum which is attributable to earnings factors for the tax year 1988-89 and subsequent tax years.]

(4) ^{F68}

(6) ^{F70}the scheme must provide for the widow's pension to be payable for any period for which a Category B retirement pension, widowed mother's allowance or widow's pension is payable to her by virtue of the earner's contributions or for which a Category B retirement pension would be so payable but for [^{F71}section 43(1) of the Contributions and Benefits Act].

(7) ^{F68}

[^{F72}(7A) The scheme must provide for the widower's pension to be payable in prescribed circumstances and for the prescribed period.

(7B) The trustees or managers of the scheme shall supply to the Secretary of State such information as he may require relating to the payment of pensions under the scheme to widowers.]

(8) The widow's guaranteed minimum pension must be payable to her; . . . ^{F73}

(9) ^{F68}

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

Textual Amendments

- F66** S. 36(1) and (1A) substituted for s. 36(1) (6.4.1988) by Social Security Act 1986 (c. 50), s. 9(3)(a)
- F67** Words inserted (with effect from 6.4.1988) by Social Security Act 1986 (c. 50), Sch. 2 para. 6(1)(b)
- F68** S. 36(2),(4),(5),(7),(9) repealed by Social Security Act 1986 (c. 50), Sch. 11
- F69** S. 36(3) substituted (6.4.1988) by Social Security Act 1986 (c. 50), s. 9(3)(b)
- F70** Words repealed (1.11.1986) by Social Security Act 1986 (c. 50), Sch. 11
- F71** Words substituted (with effect from 1.7.1992) by Social Security (Consequential Provisions) Act 1992, (c. 6), Sch. 2, para. 28
- F72** S. 36(7A) and (7B) inserted by Social Security Act 1986 (c. 50), s. 9(3)(c)
- F73** Words repealed (with effect from 1.11.1986) by Social Security Act 1986 (c. 50), Sch. 11

Modifications etc. (not altering text)

- C24** S. 36(3): power to amend conferred (1.7.1992) by Social Security Administration Act 1992 (c. 5), ss. 150(1)(e)(i), 192(4).
- C25** S. 36(3) amended (12.4.1993) by S.I. 1993/349, arts. 1(2)(d), 5(2)
- C26** S. 36(8) to be construed (with effect from 6.4.1988) as if reference to “widow” included reference to widower (and with consequent modification) by virtue of Social Security Act 1986 (c. 50), s. 9(4)

37 F74

Textual Amendments

- F74** S. 37 repealed by Social Security Act 1986 (c. 50), Sch. 11 (and expressed to be repealed (7.2.1994) by 1993 c. 48, s. 188, Sch. 5 Pt. I; S.I. 1994/86, art. 2)

[^{F75}F76] 37 Annual increases of guaranteed minimum pensions.

- (1) The Secretary of State shall in the tax year 1989-90 review the general level of prices obtaining in Great Britain for a period of twelve months commencing in the previous tax year.
- (2) The Secretary of State shall in each subsequent tax year review the general level of prices obtaining in Great Britain for the period of twelve months commencing at the end of the period last reviewed under this section.
- (3) Where it appears to the Secretary of State that the general level of prices is greater at the end of that period, he shall lay before Parliament the draft of an order specifying a percentage by which there is to be an increase of the rate of that part of guaranteed minimum pensions which is attributable to earnings factors for the tax year 1988-89 and subsequent tax years for—
 - (a) earners who have attained pensionable age; and
 - (b) widows and widowers.
- (4) The percentage shall be—
 - (a) the percentage by which the general level of prices is greater at the end of the period under review than it was at the beginning of that period; or
 - (b) 3 per cent.,
 whichever is less.

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

- (5) If a draft order laid before Parliament in pursuance of this section is approved by a resolution of each House, the Secretary of State shall make the order in the form of the draft.
- (6) An order under this section shall be so framed as to bring the alterations to which it relates into force on the first day of the tax year next following the making of the order.
- (7) Where the benefits mentioned in [^{F77}sections 29(1), 29A(1) and (2), 29B(1) and (2) and 29C(1) and (2) above] are not increased on the day on which an order under this section takes effect, the order shall be treated for the purposes of those subsections as not taking effect until the day on which the benefits mentioned in them are next increased.
- (8) Except as permitted by subsection (13), (14) or (15) below, the trustees or managers of a scheme may not make an increase in a person's pension which is required by virtue of this section out of money which would otherwise fall to be used for the payment of benefits under the scheme to or in respect of that person unless—
 - (a) the payment is to an earner in respect of the tax year in which he attains pensionable age and the increase is the one required to be made in the following year; or
 - (b) the payment is to a person as the widow or widower of an earner who died before attaining pensionable age in respect of the tax year in which the person became a widow or widower and the increase is the one required to be made in the next following tax year.
- (9) Subsection (8) above overrides any provision of a scheme to the extent that it conflicts with it.
- (10) The Occupational Pensions Board may at any time, and shall if requested by the trustees and managers of a scheme, advise on any question whether or not subsection (8) above overrides any provision of the scheme.
- (11) On an application made to them in respect of a scheme (other than a public service pension scheme) by persons competent to make such an application in respect of it, the Board shall issue a determination on any such question as is mentioned in subsection (10) above.
- (12) The persons competent to make an application under subsection (11) above in respect of a scheme are—
 - (a) the trustees or managers of the scheme;
 - (b) any person other than the trustees or managers who has power to alter any of the rules of the scheme;
 - (c) any person who was an employer of persons in service in an employment to which the scheme applies;
 - (d) any member or prospective member of the scheme; and
 - (e) such other persons as may be prescribed, in relation to any category of schemes into which the scheme falls, as being proper persons to make an application for the purposes of this section in respect of that category.
- (13) Where in the tax year 1989-90 the trustees or managers of an occupational pension scheme make an increase in the rate of pensions currently payable to the members of the scheme who have attained pensionable age or to the widows or widowers of members, they may deduct the amount of the increase from any increase which, but

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

for this subsection, they would be required to make under this section in the tax year 1990-1991.

- (14) Where the trustees or managers of such a scheme make an increase otherwise than in pursuance of this section in a tax year subsequent to 1989-90, they may deduct the amount of the increase from any increase which, but for this subsection, they would be required to make under this section in the next following tax year.
- (15) Where in any tax year subsequent to 1989-90 the trustees or managers of a scheme make an increase which is partly made otherwise than in pursuance of this section, they may deduct the part of the increase made otherwise than in pursuance of this section from any increase which, but for this subsection, they would be required to make under this section in the next following year.
- (16) Where by virtue of subsection (13), (14) or (15) above guaranteed minimum pensions are not required to be increased in pursuance of this section, their amount shall be calculated for any purpose as if they had been so increased.
- (17) Where by virtue of any of those subsections guaranteed minimum pensions are required to be increased in pursuance of this section by an amount less than they otherwise would be, their amount shall be calculated for any purpose as if they had been increased by that full amount.]

Textual Amendments

- F75** S. 37A inserted (with effect from 6.4.1988) by [Social Security Act 1986 \(c. 50\), s. 9\(7\)](#)
- F76** S. 37A modified (with effect from 1.7.1992) by [Social Security Administration Act 1992 \(c. 5\), ss. 151\(4\)\(a\), 192\(4\)](#).
- F77** Words substituted (with effect from 1.7.1992) by [Social Security \(Consequential Provisions\) Act 1992 \(c. 6\), Sch. 2, para. 29](#)

38 Transfer of accrued rights.

^{F78} Regulations may prescribe circumstances in which and conditions subject to which—

- ^{F79}(1) (a) there may be made by one occupational pension scheme to another or by an occupational pension scheme to a personal pension scheme a transfer of or a transfer payment in respect of—
- (i) an earner's accrued rights to guaranteed minimum pensions under a contracted-out scheme;
 - (ii) an earner's accrued rights to pensions under an occupational pension scheme which is not contracted-out, to the extent that those rights derive from his accrued rights to guaranteed minimum pensions under a contracted-out scheme; or
 - (iii) the liability for the payment of guaranteed minimum pensions to or in respect of any person who has become entitled to them;
- (b) there may be made to an occupational pension scheme or a personal pension scheme a transfer of or a transfer payment in respect of an earner's accrued rights to guaranteed minimum pensions which are appropriately secured for the purposes of section 52C below.]

- (1A) Any such regulations may be made so as to apply to earners who are not in employment at the time of the transfer.

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

- (1B) Regulations under subsection (1) above may provide that any provision of this Part of this Act shall have effect, where there has been a transfer to which they apply, subject to such modifications as may be specified in the regulations.
- (1C) Regulations under subsection (1) above shall have effect in relation to transfers whenever made unless they provide that they are only to have effect in relation to transfers which take place after they come into force.
- (1D) The power conferred by subsection (1) above is without prejudice to the generality of section 166(2) of the principal Act.]
- (3) In this Part of this Act—
“accrued rights”, in relation to an earner, means the rights conferring prospective entitlement under the scheme in question to the pensions to be provided for him and his widow in accordance with sections 33 and 36 above, and references to an earner’s accrued rights to guaranteed minimum pensions shall be construed accordingly;
- F80
- (4) F81

Textual Amendments

- F78** S. 38(1)–(1D) substituted for subsections (1) and (2) by [Health and Social Security Act 1984 \(c. 48\)](#), [s. 19\(1\)](#)
- F79** S. 38(1) substituted by [Social Security Act 1986 \(c. 50\)](#), [Sch. 10](#), para. 18
- F80** Definition repealed by [Health and Social Security Act 1984 \(c. 48\)](#), [Sch. 8](#), Pt. II
- F81** S. 38(4) repealed by [Health and Social Security Act 1984 \(c. 48\)](#), [Sch. 8 Pt. II](#)

Modifications etc. (not altering text)

- C27** S. 38(3) modified, where guaranteed minimum pension rights have been transferred from schemes which are or were contracted-out salary schemes, by [S.I. 1985/1323](#), [Sch. 3](#), para. 5, with effect from 23.9.1985, and, where such rights have been transferred from appropriate policies, by [S.I. 1985/1323](#), [Sch. 3A](#), para. 4, with effect from 27.7.1987
- C28** Definition to be construed (with effect from 6.4.1988) as if references to “widow” included references to widower (and with consequential modifications) by virtue of [Social Security Act 1986 \(c. 50\)](#), [s. 9\(4\)](#)

39 Commutation, surrender and forfeiture.

- (1) Where the annual rate of a pension required to be provided by a scheme in accordance with section 33 or 36 above would not exceed the prescribed amount and the circumstances are such as may be prescribed, the scheme may provide for the payment of a lump sum instead of that pension.
- (2) F82
- (4) Neither section 33 nor section 36 above shall preclude a scheme from providing—
- (a) F83
- (b) for the earner’s or widow’s guaranteed minimum pension to be suspended or forfeited in such circumstances as may be prescribed.

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

Textual Amendments

F82 S. 39(2)(3) repealed (with effect from 1.11.1986) by [Social Security Act 1986 \(c. 50\)](#), [Sch. 11](#)

F83 S. 39(4)(a) repealed by [Social Security Act 1986 \(c. 50\)](#), [Sch. 11](#)

Modifications etc. (not altering text)

C29 S. 39(4)(b) to be construed (with effect from 6.4.1988) as if references to “widow” included references to widower (and with consequential modifications) by virtue of [Social Security Act 1986 \(c. 50\)](#), [s. 9\(4\)](#)

40 Financing and assurance of benefits.

- (1) For an occupational pension scheme to be contracted out the resources of the scheme must be derived in whole or in part from—
 - (a) payments made or to be made by one or more employers of earners to whom the scheme applies, being payments either—
 - (i) under an actual or contingent legal obligation; or
 - (ii) in the exercise of a power conferred, or the discharge of a 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; or
 - (b) such other payments by the earner or his employer, or both, as may be prescribed for different categories of scheme.
- (2) For an occupational pension scheme, other than a public service pension scheme [^{F84}or a money purchase contracted-out scheme], to be contracted-out the Occupational Pensions Board must be satisfied [^{F85}, except in the case mentioned in section 52D below,] that the scheme complies with—
 - (a) regulations prescribing the means by which guaranteed minimum pensions under contracted-out schemes are to be secured (whether irrevocable trust, policy of insurance, annuity contract or other means); and
 - (b) the conditions which are required by the regulations to be satisfied in relation to any means adopted;
- (3) For an occupational pension scheme [^{F86}which is not a money purchase contracted-out scheme] to be contracted-out it must contain a rule whereby any liabilities of the scheme in respect of—
 - (a) guaranteed minimum pensions and accrued rights to guaranteed minimum pensions;
 - (b) any such benefits as are excluded by section 33(5) above from earners’ guaranteed minimum pensions;
 - (c) pensions and other benefits (whether or not within paragraph (a) or (b) above) in respect of which entitlement to payment has already arisen; and
 - (d) state scheme premiums,

and generally as to the arrangements in force or to be in force from time to time for securing those pensions.

are accorded priority on a winding up over other liabilities under the scheme in respect of benefits attributable to any period of service after the rule has taken effect [^{F87}except that the rule may also accord priority, on a winding up occurring after an earner has attained normal pension age, to liabilities of the scheme in respect of pensions and

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

other benefits to which he will be entitled on ceasing to be in employment or to which the earner's widow or widower or any dependant of the earner's will be entitled on the earner's death].

This does not apply to public service pension schemes, nor to schemes falling within any category or description prescribed as being exempt from the requirements of this subsection.

- (4) For an occupational pension scheme [^{F86}which is not a money purchase contracted-out scheme] to be contracted-out it must, if it provides for the payment out of any sum representing the surrender value of a policy of insurance taken out for the purposes of the scheme, so provide that there shall be no payment out in relation to guaranteed minimum pensions except in such circumstances as may be prescribed.

Textual Amendments

- F84** Words inserted (with effect from 6.4.1988) by [Social Security Act 1986 \(c. 50\)](#), [Sch. 2](#), para. 6(3)(a)
F85 Words inserted by [Social Security Act 1985 \(c. 53\)](#), [Sch. 5](#), para. 20(a)
F86 Words inserted (with effect from 6.4.1988) by [Social Security Act 1986 \(c. 50\)](#), [Sch. 2](#), para. 6(1)(c)
F87 Words inserted by [Social Security \(Miscellaneous Provisions\) Act 1977 \(c. 5\)](#), [s. 22\(8\)](#)

41 Sufficiency of resources.

- (1) For an occupational pension scheme, other than a public service scheme [^{F88}or a money purchase contracted-out scheme], to be contracted-out the Occupational Pensions Board must be satisfied [^{F89}, except in the case mentioned in section 52D(4) below,] that the resources of the scheme are sufficient—
- for meeting from time to time all claims in respect of guaranteed minimum pensions so far as falling to be met out of those resources, having regard to the expected extent of the scheme's resources and its other liabilities at any time when claims may be expected to arise; and
 - for paying state scheme premiums in respect of all persons at any time entitled to, or having accrued rights to, guaranteed minimum pensions under the scheme; and
 - for meeting in full, in the event of an immediate winding up, the liabilities accorded priority in accordance with section 40(3) above and the expenses of administration so far as those expenses are payable out of the resources of the scheme.

[^{F90}(1A) Regulations may provide for subsection (1) above to have effect, in prescribed cases, with the omission of paragraphs (b) and (c) or either of them or with the substitution for both or either of them of provisions specified in the regulations.]

- (2) Where contracting-out or continued contracting-out depends on the Board being satisfied as mentioned in subsection (1) above, the scheme may be contracted-out or continue to be contracted-out, as the case may be, in relation to any employment subject to such conditions as the Board think fit to impose for securing—
- that the board are kept informed as to any matters affecting the security of the minimum pensions guaranteed under the scheme;
 - that the resources of the scheme are brought to and maintained at a level satisfactory to the Board;

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

and non-compliance with any condition imposed by the Board under this subsection shall be grounds on which the Board may cancel a contracting-out certificate issued in respect of any employment within the application of the scheme.

- (3) Conditions imposed by the Board for the purpose mentioned in subsection (2)(b) above may require steps to be taken, at the instance of the Board, to increase the scheme's resources at any time after contracting-out, including a time when the scheme has ceased to be contracted-out.

(4) ^{F91}

- (5) In considering a scheme by reference to the considerations of subsection (1) above, the Board shall have regard to any investments held for the purposes of the scheme; and the Board may by reference to those considerations make it a condition of contracting-out or continued contracting-out that—

- (a) no part, or no more than a specified proportion, of the scheme's resources shall be invested in investments of a specified class or description;
- (b) there shall be realised, before the expiration of a specified period, the whole or a specified proportion of investments of a specified class or description forming part of the scheme's resources when the condition is imposed;

and non-compliance with any such condition shall be a ground on which the Board may withhold or cancel a contracting-out certificate in respect of any employment within the application of the scheme.

Textual Amendments

F88 Words inserted (with effect from 6.4.1988) by [Social Security Act 1986 \(c. 50\)](#), [Sch. 2](#), para. 6(3)(b)

F89 Words inserted by [Social Security Act 1985 \(c. 53\)](#), [Sch. 5](#), para. 20(b)

F90 [S. 41\(1A\)](#) substituted by [Social Security Act 1985 \(c. 53\)](#), [Sch. 5](#), para. 21

F91 [S. 41\(4\)](#) repealed by [Social Security Act 1986 \(c. 50\)](#), [Sch. 10](#), para. 19

[^{F92} Protection of pensions]

Textual Amendments

F92 [Ss. 41A–41E](#) inserted by [Health and Social Security Act 1984 \(c. 48\)](#), [Sch. 6](#)

41A Earners' pensions.

(1) If—

- (a) there is an interval between—
- (i) the date on which an earner ceases to be in employment which is contracted-out by reference to an occupational pension scheme [^{F93}which is not a money purchase contracted-out scheme] (“the termination of employment date”); and
- (ii) the date on which his guaranteed minimum pension under that scheme commences (“the commencement of payment date”);
- (b) the relevant sum exceeds his guaranteed minimum on the day after the termination of employment date; and

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

(c) on the commencement of payment date or at any time thereafter his guaranteed minimum pension under the scheme exceeds the amount of his guaranteed minimum under it on the day after the termination of employment date, the weekly rate on the [^{F94}commencement of payment date] and at any time thereafter of the pension payable to him under the scheme shall be an amount not less

[^{F95}(i) in a case where by virtue of paragraph 9(2)(b) of Schedule 16 to the Social Security Act 1973 a pension is provided by way of complete substitute for short service benefit, than the weekly rate of that pension; and

(ii) in any other case, than the relevant aggregate.]

(1A) ^{F96}

[^{F97}(1C) In subsection (1) above “the relevant aggregate” means the aggregate of the following—

- (a) the relevant sum;
- (b) the excess mentioned in subsection (1)(c) above; . . . ^{F98}
- (c) any amount which is an appropriate addition at the time in question][^{F99}and
- (d) where the scheme provides that part of the earner’s pension shall accrue after the termination of employment date by reason of employment after that date, the later earnings addition.]

(2) In subsection [^{F100}(1C)] above “appropriate addition” means—

- (a) where a scheme provides that part of an earner’s pension shall accrue after the termination of employment date by reason of employment after that date, an amount equal to the part which has so accrued; and
- (b) where a scheme provides that an earner’s pension which has accrued before that date shall be enhanced after it if payment of the pension is postponed, the amount by which the excess of the pension on the day after the termination of employment date over the earner’s guaranteed minimum on the day after the termination of employment date has been enhanced by reason of the postponement.

[^{F101}(2A) In this section “the later earnings addition” means the amount (if any) by which (R2—G2) exceeds (R1—G1), where—

- R1 is the relevant sum;
- G1 is the earner’s guaranteed minimum on the day after his termination of employment date;
- R2 is the amount that would have been the relevant sum, had the weekly rate of the benefit which determines that sum been calculated by reference to the earner’s later earnings level; and
- G2 is that amount which bears to R2 the proportion which G1 bears to R1.

(2B) For the purposes of subsection (2A) above, the earner’s “later earnings level” is the level of earnings by reference to which the weekly rate of the benefit which determines the relevant sum would have been calculated, had the termination of employment date fallen on the earlier of—

- (a) the commencement of payment date, or
 - (b) the date on which the earner ceased to be in pensionable service under the scheme.]
- (3) Subject to subsections (6) to (8) below, in this section “the relevant sum” means—

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

- (a) if the earner reaches normal pensionable age on or before the termination of employment date, an amount equal to the weekly rate of his pension on the day after the termination of employment date; and
- (b) if he reaches normal pension age after the termination of employment date, an amount equal to the weekly rate of—
 - (i) any short service benefit which has accrued to him on the termination of employment date; or
 - (ii) where no short service benefit has then accrued to him, any other benefit to which this paragraph applies and which has then accrued to him.
- (4) The benefit other than short service benefit to which subsection (3)(b) above applies is benefit—
 - (a) which would have been provided, as either the whole or part of the earner’s short service benefit; or
 - (b) of which the earner’s short service benefit would have formed part, if paragraph 6(1) of Schedule 16 to the Social Security Act 1973 had effect with the substitution—
 - (i) ^{F102}
 - (ii) in paragraph (b), of a reference to the service which the earner had on that date for the reference to [^{F103}2] years’ qualifying service.
- (5) Any such benefit is only to be included in the relevant sum to the extent that it does not exceed the amount which the scheme would have had to provide as short service benefit if paragraph 6(1) of Schedule 16 to the Social Security Act 1973 had effect as mentioned in subsection (4) above.
- (6) To the extent that amounts attributable to transfer credits have accrued by reason of any transfer before the commencement of this section they are to be disregarded for the purposes of [^{F104}subsections (1)(c) and (1C)(b)] above.
- (7) If any part of the earner’s pension is postponed beyond the termination of employment date, the relevant sum is an amount equal to what would have been the weekly rate of his pension on the day after the termination of employment date if there had been no such postponement.
- (8) If—
 - (a) an earner’s employment ceases to be contracted-out by reference to an occupational pension scheme but the scheme continues to apply to it; or
 - (b) an earner transfers from employment which is contracted-out by reference to an occupational pension scheme to employment to which the scheme applies but which is not contracted-out by reference to it,
 the amount of any short service or other benefit which has accrued to the earner shall be computed for the purposes of subsection (3)(b) above as it would be computed if he had ceased on the termination of employment date to be in employment to which the scheme applies.
- (9) An earner shall be treated for the purpose of this section as if benefit under a scheme had accrued to him—
 - (a) if—
 - (i) one of the events mentioned in subsection (8) above occurs before he has attained the age at which, if he had attained it, that benefit would have accrued to him; and

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

- (ii) he continues to be in employment to which the scheme applies until he attains that age; or
- (b) if—
 - (i) one of those events occurs before he has a particular period of service; and
 - (ii) that benefit would have accrued to him if he had that period; and
 - (iii) he continues to be in employment to which the scheme applies until he has it.
- (10) Nothing in this section shall be construed as entitling an earner who has not reached normal pension age to any portion of a pension under a scheme to which he would not otherwise be entitled.
- (11) In this section, [^{F105}“pensionable service” and “short service benefit” are] to be construed in accordance with Schedule 16 to the Social Security Act 1973.

Textual Amendments

- F93** Words inserted (with effect from 6.4.1988) by [Social Security Act 1986 \(c. 50\)](#), [Sch. 2](#), para. 6(1)(d)
- F94** Words substituted (with effect from 13.7.1990) by [Social Security Act 1990 \(c. 27\)](#), [Sch. 4](#), para. 8(8)
- F95** Words substituted by [Social Security Act 1985 \(c. 53\)](#), [s. 6\(1\)](#)
- F96** [S. 41A\(1A\)](#) and (1B) repealed (with effect from 13.7.1990) by [Social Security Act 1990 \(c. 27\)](#), [Sch. 4](#), para. 8(8) and Sch. 7
- F97** [S. 41A\(1C\)](#) inserted by [Social Security Act 1985 \(c. 53\)](#), [s. 6\(2\)](#)
- F98** Word repealed (with effect from 21.7.1989) by [Social Security Act 1989 \(c. 24\)](#), [Sch. 9](#)
- F99** Word and s. 41A(1C)(d) added by [Social Security Act 1990 \(c. 27\)](#), [Sch. 4](#), para. 8(2), with effect from 21.7.1989 by virtue of para. 8(1) Social Security Act 1990, and subject to savings in para. 8(10).
- F100** Reference substituted by Social Security Act 1985, Sch. 5, para. 23(a)
- F101** [S. 41A\(2A\)](#) and (2B) added by [Social Security Act 1990 \(c. 27\)](#), [Sch. 4](#), para. 8(3), with effect from 21.7.1989 by virtue of para. 8(1) Social Security Act 1990, and subject to savings in para. 8(10).
- F102** [S. 41A\(4\)\(i\)](#) repealed by [Social Security Act 1985 \(c. 53\)](#), [Sch. 6](#)
- F103** Figure substituted (with effect from 6.4.1988) by [Social Security Act 1986 \(c. 50\)](#), [Sch. 10](#), para. 20
- F104** Words substituted by [Social Security Act 1985 \(c. 53\)](#), [Sch. 5](#), para. 23(b)
- F105** Words substituted by [Social Security Act 1990 \(c. 27\)](#), [Sch. 4](#), para. 8(4), with effect from 21.7.1989 by virtue of para. 8(1) of Social Security Act 1990, and subject to savings in para. 8(10).

Modifications etc. (not altering text)

- C30** [S. 41A\(1\)](#) modified by [S.I. 1991/166](#), [reg. 3\(2\)\(a\)](#)
- C31** [S. 41A\(3\)](#) modified by [S.I. 1991/166](#), [regs. 2\(2\)](#), [3\(2\)\(b\)](#)
- C32** [S. 41A\(6\)](#) modified by [S.I. 1991/166](#), [reg. 7\(2\)](#)

41B

- (1) If—
 - (a) there is an interval between the earner’s termination of employment date and whichever of the following is the earlier—
 - (i) the date of his death;
 - (ii) his commencement of payment date; and
 - (b) the relevant sum exceeds one half of the earner’s guaranteed minimum on the day after the termination of employment date; and
 - (c) at any time when a pension under the occupational pension scheme is required to be paid to his widow her guaranteed minimum pension under the scheme

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

exceeds one half of his guaranteed minimum on the day after the termination of employment date,

the weekly rate of the pension to be paid to her at the time shall be an amount not less [F106(i) in a case where by virtue of paragraph 9(2)(b) of Schedule 16 to the Social Security Act 1973 a pension is provided by way of complete substitute for a widow's pension, than the weekly rate of pension so provided; and

(ii) in any other case, than the relevant aggregate.]

[F107(1A) In subsection (1) above “the relevant aggregate” means the aggregate of the following—

- (a) the relevant sum;
- (b) the excess mentioned in subsection (1)(c) above; . . . F108
- (c) any amount which is an appropriate addition at the time in question][F109]and
- (d) where the scheme provides that part of the widow's pension shall accrue after the termination of employment date by reason of the earner's employment after that date, the later earnings addition.]

(2) In subsection [F110(1A)] above “appropriate addition” means—

- (a) where a scheme provides that a widow's pension shall accrue after the termination of employment date by reason of the earner's employment after that date, an amount equal to the part which has so accrued; and
- (b) where a scheme provides that a widow's pension which has accrued before that date shall be enhanced after it if payment of the earner's pension is postponed, the amount by which the excess of the widow's pension on the day after the termination of employment date over one half of the earner's guaranteed minimum on the day after the termination of employment date has been enhanced by reason of the postponement.

(3) Subject to subsection (5) below, in this section “the relevant sum” means an amount equal to the weekly rate at which, on the [F111]prescribed assumptions], a pension would have commenced to be paid to the widow if she had satisfied the conditions for entitlement to a pension which are specified in the scheme.

[F112(3A) In this section “the later earnings addition” means the amount (if any) by which (R2—G2) exceeds (R1—G1), where—

R1 is the relevant sum;

G1 is one half of the earner's guaranteed minimum on the day after his termination of employment date;

R2 is the amount that would have been the relevant sum, had the weekly rate of the pension which determines that sum been calculated by reference to the earner's later earnings level; and

G2 is that amount which bears to R2 the proportion which G1 bears to R1.

(3B) For the purposes of subsection (3A) above, the earner's “later earnings level” is the level of earnings by reference to which the weekly rate of the pension which determines the relevant sum would have been calculated, had the termination of employment date fallen on the earlier of—

- (a) the earner's commencement of payment date, or
- (b) the date on which the earner ceased to be in pensionable service under the scheme.]

(4) F113

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

(5) To the extent that amounts attributable to transfer credits have accrued by reason of any transfer before the commencement of this section they are to be disregarded for the purposes of [F114subsections (1)(c) and (1A)(b)] above.

[F115(6) In this section “pensionable service” shall be construed in accordance with Schedule 16 of the Social Security Act 1973.]

Textual Amendments

- F106** Words substituted by [Social Security Act 1985 \(c. 53\), s. 6\(3\)](#)
- F107** [S. 41B\(1A\)](#) inserted by [Social Security Act 1985 \(c. 53\), s. 6\(4\)](#)
- F108** Word repealed (with effect from 21.7.1989) by [Social Security Act 1989 \(c. 24\), Sch. 9](#)
- F109** Word and [S. 41B\(1A\)\(d\)](#) added by [Social Security Act 1990 \(c. 27\), Sch. 4, para. 8\(5\)](#), with effect from 21.7.1989 by virtue of para. 8(1) [Social Security Act 1990](#), and subject to savings in para. 8(10).
- F110** Reference substituted by [Social Security Act 1985 \(c. 53\), Sch. 5, para. 24](#)
- F111** Words substituted by [Social Security Act 1985 \(c. 53\), s. 6\(5\)](#) and (6)
- F112** [S.41B\(3A\)](#) and (3B) inserted by [Social Security Act 1990 \(c. 27\), Sch. 4, para. 8\(6\)](#), with effect from 21.7.1989 by virtue of para. 8(1) *ibid.*, and subject to savings in para. 8(10).
- F113** [S. 41B\(4\)](#) repealed by [Social Security Act 1985 \(c. 53\), Sch. 6](#)
- F114** Words substituted by [Social Security Act 1985 \(c. 53\), Sch. 5, para. 24](#)
- F115** [S. 41B\(6\)](#) inserted by [Social Security Act 1990 \(c. 27\), Sch. 4, para. 8\(7\)](#), with effect from 21.7.1989 by virtue of para. 8(1) [Social Security Act 1990](#), and subject to savings in para. 8(10).

Modifications etc. (not altering text)

- C33** [S. 41B](#) modified by [S.I. 1991/166, reg. 4\(2\)](#)
- C34** [S. 41B\(1\)\(c\)](#) (but not [s. 41B\(1\)\(c\)\(i\)](#)), (2) and (3) to be construed (6.4.1988) as if references to “widow” included references to widower (and with consequential modifications) by virtue of [Social Security Act 1986 \(c. 50\), s. 9\(4\)\(f\)](#)
- C35** [S. 41B\(1\)\(c\)\(i\)](#) to be construed (with effect from 21.7.1989) as if references to “widow” included references to widower (and with consequential modifications) by virtue of [Social Security Act 1986 \(c. 50\), s. 9\(4\)\(f\)](#)
- C36** [S. 41B\(3\)](#) modified by [S.I. 1991/166, reg. 2\(2\)](#)
- C37** [S. 41B\(5\)](#) modified by [S.I. 1991/166, reg. 7\(2\)](#)

41C

- (1) Subject to subsection (2) below, sections 41A and 41B above override any provision of a scheme to the extent that it conflicts with them.
- (2) Sections 41A and 41B do not override a protected provision of a scheme.
- (3) In subsection (2) above “protected provision” means—
- any provision contained in a scheme by virtue of—
 - paragraph 9(2), 15(2), (3) or (4), 16(2), (3) or (4), 17(2) or 18 of Schedule 16 to the Social Security Act 1973; [F116and]
 - F117
 - any provision of a scheme to the extent that it deals with priorities on a winding-up; and
 - any provision of a scheme which is included in it for the purpose of effecting a transfer of rights or liabilities authorised by regulations under section 38(1) above [F118and

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

- (d) any provision of a scheme to the extent that it deals with [^{F119}the commutation, suspension or forfeiture] of the whole or part of a pension][^{F120}and
 - (e) any provision of a scheme whereby, as respects so much of a widow's or widower's pension as exceeds the guaranteed minimum pension—
 - (i) no pension, or a pension at a reduced rate, is payable if the earner and the widow or widower married not more than six months before the earner's death;
 - (ii) the whole or any part of the pension is not paid to the widow or widower, but instead comparable benefits are provided for one or more dependants of the deceased earner; or
 - (iii) no pension, or a pension at a reduced rate, is payable to the widow or widower (or, where a provision such as is mentioned in subparagraph (ii) above operates, to another dependant of deceased earner) who was more than ten years younger than the deceased earner.]
- (4) In making any calculation for the purposes of section 41A or 41B above—
- (a) any commutation, forfeiture or surrender of the whole or part of a pension;
 - (b) any charge or lien on the whole or part of a pension; and
 - (c) any set-off against the whole or part of a pension,
- shall be disregarded.
- [^{F121}(4A) In calculating an earner's guaranteed minimum for the purposes of sections 41A and 41B above his earnings factor shall be taken to be that factor as increased, except as provided by subsection (4B) below, by the last order under [^{F122}section 148 of the Administration Act] to come into force before the end of the tax year in which termination of employment date falls.
- (4B) If an earner's termination of employment date falls in the tax year in which he attains pensionable age, subsection (4A) above shall have effect in relation to him as if for the words from "tax year" onwards there were substituted the word "final relevant year".
- (4C) In subsection (4B) above "final relevant year" has the same meaning as in section 35 above.]
- (5) Any reference in section 41A and 41B above to the weekly rate of a pension is to be construed, in relation to a pension payable otherwise than weekly, as a reference to the weekly sum which would be payable in respect of a pension of that amount payable weekly.
- (6) Sections 41A and 41B above do not apply to a pension to which an earner or his widow is entitled in respect of employment if before the commencement of this section—
- (a) he left the employment, or left it for the last time; or
 - (b) the employment ceased, or ceased for the last time, to be contracted-out in relation to him.
- (7) The Secretary of State may by regulations direct that sections 41A and 41B above and this section shall have effect, in such cases as he may there specify.
- (8) In subsection (7) above "modification" includes, without prejudice to the generality of that subsection, addition, omission and amendment.

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

Textual Amendments

- F116** Word substituted by [Social Security Act 1990 \(c. 27\)](#), [Sch. 4, para. 9\(1\)\(a\)](#) and Sch. 7, with effect from 1.11.1986 by virtue of para. 9(4) of Sch. 4 Social Security Act 1990.
- F117** [S. 41C\(3\)\(a\)\(ii\)](#) repealed by [Social Security Act 1990 \(c. 27\)](#), [Sch. 4, para. 9\(1\)\(a\)](#) and Sch. 7, with effect from 1.1.1986 by virtue of para. 9(4) of Sch. 4 Social Security Act 1990.
- F118** Word and s. 41C(3)(d) added by [Social Security Act 1989 \(c. 24\)](#), [Sch. 6, para. 8\(1\)\(b\)](#) as from 1.11.1986 (by paragraph 8(2) Social Security Act 1989.)
- F119** Words substituted by [Social Security Act 1990 \(c. 27\)](#), [Sch. 4, para. 9\(1\)\(b\)](#) with effect from 1.11.1986 by virtue of para. 9(4) Social Security Act 1990.
- F120** Word and s. 41C(3)(e) inserted (with effect from 13.7.1990) by [Social Security Act 1990 \(c. 27\)](#), [Sch. 4, para. 9\(2\)](#)
- F121** [S. 41C\(4A\)–\(4C\)](#) inserted by [Social Security Act 1985 \(c. 53\)](#), [Sch. 3, paras. 3 and 7](#) with effect from 1.1.1985
- F122** Words substituted (with effect from 1.7.1992) by [Social Security \(Consequential Provisions\) Act 1992 \(c. 6\)](#), [Sch. 2, para. 30](#)

Modifications etc. (not altering text)

- C38** [S. 41C](#) modified by [S.I. 1991/166, reg. 6\(2\)](#)

41D

The Occupational Pensions Board may at any time, and shall if requested by the trustees or managers of an occupational pension scheme, advise on any question whether . . . ^{F123} any provision of section 41A or 41B above (including, without prejudice to section 20(2) of the Interpretation Act 1978, any such provision as modified by regulations under section 41C(7) above) does or does not override any provisions of the scheme.

Textual Amendments

- F123** Words repealed by [Social Security Act 1985 \(c. 53\)](#), [Sch. 6](#)

41E

- (1) On an application made to them in respect of an occupational pension scheme (other than a public service pension scheme [^{F124} or a money purchase contracted-out scheme]) by persons competent to make such an application in respect of it, the Occupational Pensions Board shall issue a determination on any such question as is mentioned in section 41D above.
- (2) The persons competent to make an application under this section in respect of a scheme are—
- the trustees or managers of the scheme;
 - any person other than the trustees or managers who has power to alter any of the rules of the scheme;
 - any person who is an employer of persons in service in an employment to which the scheme applies;
 - any member or prospective member of the scheme;
 - such other persons as regulations may specify, in relation to any category of schemes into which the scheme falls, as being proper persons to make an

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

application for the purposes of this section in respect of a scheme of that category.

Textual Amendments

F124 Words inserted (with effect from 6.4.1988) by [Social Security Act 1986 \(c. 50\)](#), [Sch. 2](#), para. 6(3)(c)

State scheme premiums

42 Premium on termination of contracted-out employment.

(1) This section has effect as to the cases in which [^{F125}the prescribed person] may pay a state scheme premium where—

- (a) the earner’s service in contracted-out employment by reference to an occupational pension scheme [^{F126}which is not a money purchase contracted-out scheme] is terminated before he attains the scheme’s normal pension age or (if earlier) the end of the tax year preceding that in which he attains pensionable age; and
- (b) he has served for less than [^{F127}two] years in contracted-out employment by reference to the scheme;

and a premium under this section may be referred to as a “contributions equivalent premium”.

(2) If—

- (a) the earner’s service is terminated in any way except by his death or by the scheme’s ceasing to be contracted-out; and
- (b) his period of service is not one in respect of which the scheme conforms to the appropriate extent with the preservation requirements of Part II of the ^{M3}Social Security Act 1973,

[^{F128}the prescribed person] may elect to pay a contributions equivalent premium with a view to extinguishing the earner’s accrued rights to guaranteed minimum pensions under the scheme.

(3) If the earner’s service is terminated by his death and he dies leaving a widow, [^{F128}the prescribed person] may elect to pay a contributions equivalent premium with a view to extinguishing any such accrued rights in respect of the widow.

Textual Amendments

F125 Words substituted by [Social Security Act 1985 \(c. 53\)](#), [Sch. 5](#), para. 25

F126 Words inserted (with effect from 6.4.1988) by [Social Security Act 1986 \(c. 50\)](#), [Sch. 2](#), para. 6(1)(f)

F127 Word substituted (with effect from 6.4.1988) by [Social Security Act 1986 \(c. 50\)](#) Sch. 10, para. 21

F128 Words substituted by [Social Security Act 1985 \(c. 53\)](#), [Sch. 5](#), para. 25

Marginal Citations

M3 1973 c. 38.

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

43 Premium under section 42: additional provisions.

(1) The amount of a contributions equivalent premium shall be the equivalent, as certified by the Secretary of State, of the amount by which the Class 1 contributions payable in respect of the earner's employment in contracted-out employment by reference to the scheme have fallen short of what would have been payable if the employment had not been contracted-out; and in certifying any amount under this section the Secretary of State may make such adjustments as he thinks necessary for avoiding fractional amounts.

[^{F129}(1A) Where an earner's earnings paid in any period—

- (a) exceeded the lower earnings limit; but
- (b) were not such as that primary Class 1 contributions within Bracket 3 fell to be paid in respect of them,

it shall be assumed for the purposes of subsection (1) above that his earnings paid in that period were such that, taking the rate specified in Bracket 3 as the appropriate rate, the same amount of primary Class 1 contributions fell to be paid in respect of them as in fact fell to be paid in respect of them.]

[^{F130}(1B) Where the amount of a person's earnings for any period (whether before or after the passing of this Act is relevant for any purpose of subsection (1) or (1A) above and the Secretary of State is satisfied that records of those earnings have not been maintained or retained or are otherwise unobtainable, he may for that purpose—

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

(1C) Where—

- (a) the Secretary of State subsequently ascertains the amount of those earnings, and
- (b) it appears to him that the amount of the premium would have been different if he had not made the calculation of the basis described in subsection (1A) above,

he shall refund to the prescribed person the amount by which it would have been less or, as the case may be, the prescribed person shall pay to the Secretary of State the amount by which it would have been more.]

(2) Where under the rules of the scheme transfer credits have been allowed in respect of the earner's accrued rights under another scheme, the references in section 42(1), and in subsection (1) above, to contracted-out employment by reference to the scheme shall include references to employment in any period of linked qualifying service which was contracted-out employment by reference to the other scheme.

[^{F131}(2A) [^{F132}Subject to subsection (2B) below] for the purposes of this Act any period of an earner's service in an employment is linked qualifying service in relation to a later period of service (whether in the same or another employment) if—

- [^{F133}(a) under the rules of a scheme applying to him in the earlier period of service—
 - (i) there was made a transfer of his accrued rights under that scheme to another scheme applying to him in the later period of service; or
 - (ii) those rights were secured by a policy of insurance or an annuity contract and were subsequently transferred to another scheme applying to him in the later period of service;]^{F134} and]

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

- (b) in consequence of [^{F135}[^{F136}the transfer of] his accrued rights to the second scheme], there are (or were) allowed to him transfer credits under the rules of that other scheme.

except that, for any service to be taken into account as linked qualifying service, it must be actual service and no regard shall be had to any scheme rule which provides for service to be treated for any purposes of benefit or otherwise as longer or shorter than it actually was.]

- [^{F137}(2B) Only so much of the earlier period as is a period of service in respect of which there accrued under the first scheme any of the rights transferred to the second scheme shall be linked qualifying service in relation to the later period of service.]

- (3) For the purposes of section 42(2), a scheme conforms to the appropriate extent with the preservation requirements of Part II of the ^{M4}Social Security Act 1973 if—

- (a) it entitles the earner to short service benefit within the meaning of those requirements; or
 (b) it makes any provision which under those requirements is permitted as an alternative to short service benefit (other than provision for return of contributions or for benefit in the form of a lump sum).

- (4) Except in such cases as may be prescribed, [^{F138}the prescribed person] shall not, in making or abstaining from making elections under section 42(2) or (3), discriminate between different earners on any grounds other than their respective lengths of relevant service; and if the Occupational Pensions Board consider that [^{F138}the prescribed person] is contravening this subsection, they may cancel any contracting-out certificate held by [^{F138}the earner's employer] in respect of the scheme in question.

- (5) In subsection (4) above “relevant service” means service in contracted-out employment by reference to the scheme, together with any service in contracted-out employment which in relation to service in that employment is linked qualifying service.

- (6) An election by [^{F138}the prescribed person] under section 42(2) or (3) must be made within the prescribed period in the prescribed manner; and where [^{F138}the prescribed person] elects to pay a premium in respect of an earner, he shall pay it to the Secretary of State within the prescribed period.

- (7) Payment of a premium under section 42(2) shall operate to extinguish the earner's accrued rights to guaranteed minimum pensions under the scheme; and payment of a premium under section 42(3) shall operate to extinguish any right to guaranteed minimum pension in respect of the widow.

- (8) Subject to regulations made under paragraph 1 of Schedule 2 to this Act, an employment which is terminated by the death of the employer shall be treated for the purposes of section 42 as terminated immediately before the death.

Textual Amendments

F129 S. 43(1A) inserted by [Social Security Act 1985 \(c. 53\)](#), [Sch. 5](#), para. 26

F130 S. 43(1B) and (1C) inserted (with effect from 1.10.1989) by [Social Security Act 1989 \(c. 24\)](#), [Sch. 6](#), para. 9(1)

F131 S. 43(2A) inserted by [Health and Social Security Act 1984 \(c. 48\)](#), [Sch. 7](#), para. 4

F132 Words inserted (with effect from 1.10.1989) by [Social Security Act 1989 \(c. 24\)](#), [Sch. 6](#), para. 9(2)

F133 S. 43(2A)(a) substituted by [Social Security Act 1986 \(c. 50\)](#), [Sch. 10](#), para. 22(a)

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

- F134** Word inserted (with effect from 1.10.1989) by [Social Security Act 1989 \(c. 24\)](#), [Sch. 7](#), para. 21
- F135** Words substituted by [Social Security Act 1986 \(c. 50\)](#), [Sch. 10](#), para. 22(b)
- F136** Words substituted (with effect from 1.10.1989) by [Social Security Act 1989 \(c. 24\)](#), [Sch. 7](#), para. 21
- F137** [S. 43\(2B\)](#) inserted (with effect from 1.10.1989) by [Social Security Act 1989 \(c. 24\)](#), [Sch. 6](#), para. 9(2)
- F138** Words substituted by [Social Security Act 1985 \(c. 53\)](#), [Sch. 5](#), para. 25

Modifications etc. (not altering text)

- C39** [S. 43\(1A\)](#) shall not apply to any period after the end of the tax year 1986/87 ([Social Security Act 1986 \(c. 50\)](#), [Sch. 8 para. 9](#).)

Marginal Citations

- M4** [1973 c. 38](#).

44 Premium on termination of contracted-out scheme.

- (1) In the case of an occupational pension scheme [^{F139}which is not a money purchase contracted-out scheme] which is [^{F140}or has been] contracted-out, the Occupational Pensions Board may, for the event of [^{F140}, or in connection with,] its ceasing to be contracted-out, approve any arrangements made or to be made in relation to the scheme, or for its purposes, for the preservation or transfer—
- of earners' accrued rights to guaranteed minimum pensions under the scheme;
 - of the liability for the payment of guaranteed minimum pensions thereunder in respect of persons who have then become entitled to receive them.
- [^{F141}(1A) Regulations may provide that any provision of this Part of this Act shall have effect where the Occupational Pensions Board have approved arrangements under subsection (1) above subject to such modifications as may be specified in the regulations.
- (1B) Any such regulations shall have effect in relation to arrangements whenever approved, unless they provide that they are only to have effect in relation to arrangements approved after they come into force.]
- [^{F142}(1C) If the scheme ceases to be a contracted-out scheme (whether by being wound up or otherwise) and the Occupational Pensions Board either—
- have withdrawn their approval of previously approved arrangements relating to it; or
 - have declined to approve arrangements relating to it,
- the Board may issue a certificate to that effect.
- (1D) A certificate issued under subsection (1C)(a) or (b) above shall be cancelled by the Board if they subsequently approve the arrangements.]
- (2) If the scheme ceases to be a contracted-out scheme (whether by being wound up or otherwise) then—
- in respect of each earner whose accrued rights to guaranteed minimum pensions under the scheme are not subject to approved arrangements [^{F143}and have not been disposed of so as to discharge the trustees or managers of the scheme under [^{F144}section 52C of or] paragraph 16 of Schedule 1A to this Act]; and

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

- (b) in respect of each person who has then become entitled to receive a guaranteed minimum pension under the scheme and whose guaranteed minimum pension rights are not ^{F145}subject to approved arrangements],
a state scheme premium shall be payable by the prescribed person.
- (3) A premium under subsection (2)(a) above may be referred to as an “accrued rights premium”; and a premium under subsection (2)(b) may be referred to as a “pensioner’s rights premium”; and in each case the premium shall be paid within the prescribed period to the Secretary of State.
- (4) For the purposes of subsection (2) above, an earner’s accrued rights or, as the case may be, a person’s guaranteed minimum pension rights are subject to approved arrangements if (either before or after the scheme ceased to be contracted-out) the Occupational Pensions Board have approved arrangements under subsection (1) above which operate as respects him and the rights in question, and have not since withdrawn their approval.
- (5) ^{F146}Subject to subsection (5A) below, the amount]—
- (a) of an accrued rights premium shall be the cost (as certified by the Secretary of State) of providing guaranteed minimum pensions for the earner and his widow in accordance with his accrued rights under the scheme; and
 - (b) of a pensioner’s rights premium shall be the cost (as so certified) of providing or continuing to provide any guaranteed minimum pension thereunder, whether for the earner (or former earner) or for his widow.
- ^{F147}(5A) Where, in calculating the costs referred to in subsection (5) above, the Secretary of State cannot readily ascertain the amount of any earnings in a tax week, he may for the purpose of calculating those costs—
- (a) compute, in such manner as he thinks fit, an amount which shall be regarded as the amount of those earnings, or
 - (b) take their amount to be such sum as he may specify in the particular case, and he may certify the costs accordingly.]
- ^{F148}(5B) Where—
- (a) the Secretary of State subsequently ascertains the amount of those earnings; and
 - (b) it appears to him that the amount of the premium would have been ^{F149}different] if he had not made the calculation on the basis described in subsection (5A) above,
- he shall refund to the prescribed person the amount by which it would have been less ^{F150}or, as the case may be, the prescribed person shall pay to the Secretary of State the amount by which it would have been more.]]
- ^{F151}(6) In determining the amount of any state scheme premium payable under this section where one or more of the five tax years ending with the tax year in which the scheme ceases to be contracted-out is a relevant year in relation to the earner, the costs referred to in subsection (5)(a) and (b) above shall, unless the person liable for the premium elects in the prescribed manner that this subsection shall not apply, be calculated as follows—
- ^{F152}(a) [any relevant earnings factor shall be taken to be that factor as increased by ^{F153}the last order under section 148 of the Administration Act] to come into force before those five tax years; and]

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

- (b) any relevant earnings factor derived from contributions in respect of any year (hereafter in this subsection referred to as “the relevant contributions year”) shall be treated as increased by 12 per cent. compound for each of those five tax years, other than any of those years which—
- (i) constitutes or begins before the relevant contributions year, or
 - (ii) begins after the final relevant year in relation to the earner;
- and in this subsection “relevant year” and “final relevant year” have the same meanings as in section 35 above and references to the earner shall be construed as references to the earner in respect of whom or, as the case may be, in respect of whose widow the premium in question has become payable.]
- (7) In calculating those costs, the Secretary of State shall apply whichever of the prescribed actuarial tables (as in force at the time when the scheme ceases to be contracted-out) is applicable in accordance with the regulations prescribing the tables.
- (8) In certifying any amount under subsection (5) above, the Secretary of State may make such adjustments as he thinks necessary for avoiding fractional amounts.
- (9) Payment of an accrued rights premium shall extinguish the earner’s accrued rights to guaranteed minimum pensions under the scheme; and payment of a pensioner’s rights premium shall extinguish any right to receive guaranteed minimum pensions thereunder, whether for the earner (or former earner) or for his widow.
- [^{F154}(10) Any reference to earners in this section includes, in relation to any particular time, not only a reference to earners who are in employment at that time but also a reference to earners who are not in employment at that time but who have been in employment before it or will be in employment after it.]

Textual Amendments

- F139** Words inserted (with effect from 6.4.1988) by Social Security Act 1986 (c. 50), **Sch. 10**, para. 6(1)(f)
- F140** Words inserted by Social Security Act 1986 (c. 50), **Sch. 10**, para. 23(1)
- F141** S. 44(1A)(1B) inserted by Health and Social Security Act 1984 (c. 48), **s. 19(2)(a)**
- F142** S. 44(1C)(1D) inserted by Social Security Act 1986 (c. 50), **Sch. 10**, para. 23(2)
- F143** Words inserted by Social Security Act 1985 (c. 53), **Sch. 5**, para. 27(a)
- F144** Words inserted by Social Security Act 1986 (c. 50), **Sch. 10**, para. 23(3)
- F145** Words substituted by Social Security Act 1985 (c. 53), **Sch. 5**, para. 27(b)
- F146** Words substituted by Social Security Act 1986 (c. 50), **Sch. 10**, para. 23(4)
- F147** S. 44(5A) substituted (with effect from 1.10.1989) by Social Security Act 1989 (c. 24), **Sch. 6**, para. 10(1)
- F148** S. 44(5B) inserted by Social Security Act 1986 (c. 50), **Sch. 10**, para. 23(5)
- F149** Word substituted (with effect from 1.10.1989) by Social Security Act 1989 (c. 24), **Sch. 6**, para. 10(2)(a)
- F150** Words added (with effect from 1.10.1989) by Social Security Act 1989 (c. 24), **Sch. 6**, para. 10(2)(b).
- F151** S. 44(6) substituted by Social Security Act 1980 (c. 30), **s. 3(8)**
- F152** S. 44(6)(a) substituted by Social Security Act 1985 (c. 53), **Sch. 3**, paras. 4 and 7 with effect from 6.4.1979
- F153** Words substituted (with effect from 1.7.1992) by Social Security (Consequential Provisions) Act 1992 (c. 6), **Sch. 2**, para 31
- F154** S. 44(10) inserted by Health and Social Security Act 1984 (c. 48), **s. 19(2)(b)**

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

Modifications etc. (not altering text)

- C40** S. 44(1)(b) to be construed (with effect from 6.4.1988) as if reference to a person entitled to receive a guaranteed minimum pension includes earner's widower by virtue of, and only in cases prescribed under, [Social Security Act 1986 \(c. 50\), s. 9\(6\)](#); construction amplified in [S.I. 1984/380, reg. 33D](#).
- C41** S. 44(2)(b) to be construed (with effect from 6.4.1988) as if reference to a person entitled to receive a guaranteed minimum pension includes earner's widower by virtue of, and only in cases prescribed under, [Social Security Act 1986 \(c. 50\), s.9\(6\)](#); construction amplified in [S.I. 1984/380, reg. 33D](#)
- C42** References in s. 44(5) to “widow” to be construed (with effect from 6.4.1988) as including references to earner's widower by virtue of, and only cases prescribed under, [Social Security Act 1986 \(c. 50\), s. 9\(6\)](#)
- C43** Power to modify s. 44(6) conferred by [Social Security \(Miscellaneous Provisions\) Act 1977 \(c. 5\), s. 22\(13\)](#)
- C44** S. 44(6) modified, in cases of limited revaluation in respect of certain schemes ceasing to contract out, by [S.I. 1984/380, reg. 47](#)
- C45** S. 44(6)(a) modified, for certain transfers of guaranteed minimum pension rights, by [S.I. 1984/380, reg. 44\(d\)](#)
- C46** S. 44(6)(a) modified, for payments transferring protected rights to schemes which are or were salary related contracted-out schemes where minimum contributions have been paid, by reg. 4(8)(a) of [S.I. 1987/1118](#) with effect from 27.7.1987. for personal pension schemes and 6.4.1988 otherwise
- C47** S. 44(9) to be construed (with effect from 6.4.1988) as if reference to “widow” included reference to widower (and with consequential modifications) by virtue of [Social Security Act 1986 \(c. 50\), s.9\(4\)\(g\)](#).

[^{F155}44ZA] Money purchase schemes; contracted-out protected rights premium.

- (1) In the case of a scheme which is or has been a money purchase contracted-out scheme the Occupational Pensions Board may, for the event of, or in connection with, its ceasing to be contracted-out, approve any arrangements made or to be made in relation to the scheme, or for its purposes, for the preservation or transfer of protected rights under the scheme.
- (2) If the scheme ceases to be a contracted-out scheme (whether by being wound up or otherwise) and the Occupational Pensions Board either—
 - (a) have withdrawn their approval of previously approved arrangements relating to it; or
 - (b) have declined to approve arrangements relating to it,
 the Board may issue a certificate to that effect.
- (3) A certificate issued under subsection (2)(a) or (b) above shall be cancelled by the Board if they subsequently approve the arrangements.
- (4) If the scheme ceases to be a contracted-out scheme (whether by being wound up or otherwise), a state scheme premium shall be payable, except in prescribed circumstances—
 - (a) in respect of each earner whose protected rights under the scheme are not subject to approved arrangements and have not been disposed of so as to discharge the trustees or managers of the scheme under section 52C of or paragraph 16 of Schedule 1A to this Act; and
 - (b) in respect of each person who has become entitled to receive a pension under the scheme giving effect to protected rights which are not subject to approved arrangements

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

- (5) A premium under subsection (4) above may be referred to as a “contracted-out protected rights premium”.
- (6) A contracted-out protected rights premium shall be paid by the prescribed person, within the prescribed period, to the Secretary of State.
- (7) The amount of a contracted-out protected rights premium payable in respect of any person shall be the cash equivalent of the protected rights in question, calculated and verified in the prescribed manner.
- (8) Where a contracted-out protected rights premium is paid in respect of a person—
 - (a) the rights whose cash equivalent is included in the premium shall be extinguished; and
 - (b) section 29(2) and (2A) above and section 4 of the Social Security Act 1986 shall have effect in relation to that person and a widow or widower of that person as if any guaranteed minimum pension to which that person or any such widow or widower is treated as entitled under those provisions and which derives from the minimum payments, minimum contributions (within the meaning of the Social Security Act 1986) or transfer payment or payments from which those rights derive were reduced by the appropriate percentage.
- (9) In subsection (8) above “the appropriate percentage” means, subject to the following provisions of this section,

$$\frac{X}{Y} \times 100$$

where—

- (a) X = the amount of the premium together with, if the person in respect of whom it fails to be paid gives notice to the prescribed person within the prescribed period—
 - (i) the cash equivalent, calculated and verified in the prescribed manner, and paid to the Secretary of State within the prescribed period, of any other rights which he has under the scheme and specifies in the notice; and
 - (ii) the amount of any voluntary contribution paid to the Secretary of State within the prescribed period by, or in respect of, the person concerned; and
 - (b) Y = the cost of providing any guaranteed minimum pension such as is mentioned in subsection (8) above.
- (10) If the appropriate percentage, as calculated under subsection (9) above would fall between two whole numbers, it is to be taken to be the lower number.
 - (11) If it would be over 100, it is to be taken to be 100.
 - (12) The remainder after the reduction for which subsection (8) above provides—
 - (a) if it would contain a fraction of 1p, is to be treated as the nearest lower whole number of pence; and

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

- (b) if it would be less than a prescribed amount, is to be treated as nil.
- (13) The power to make regulations conferred by subsections (7) and (9) above includes power to provide that cash equivalents are to be calculated and verified in such manner as may be approved in particular cases—
- (a) by prescribed persons;
 - (b) by persons with prescribed professional qualifications or experience; or
 - (c) by persons approved by the Secretary of State,
- and power to provide that they shall be calculated and verified in accordance with guidance prepared by a prescribed body.
- (14) The cost of providing the appropriate percentage of the guaranteed minimum pension shall be certified by the Secretary of State, and in calculating and certifying it the Secretary of State—
- (a) shall apply whichever of the prescribed actuarial tables (as in force at the time when the scheme ceases to be appropriate) is applicable in accordance with the regulations prescribing the tables; and
 - (b) may make such adjustments as he thinks necessary for avoiding fractional amounts.]

Textual Amendments

F155 S. 44ZA inserted (with effect from 6.4.1988) by [Social Security Act 1986 \(c. 50\)](#), [Sch. 2, para. 7](#)

Modifications etc. (not altering text)

C48 S. 44ZA(4)(a)(b)(7) modified (with effect from 6.4.1988), in certain cases where part of a premium is treated as having been paid, by reg. 23A (10)(b) of [S.I. 1984/380](#)

C49 S. 44ZA(8)(9)(a) modified (with effect from 6.4.1988), where part of a premium is treated as having been paid, by reg. 23A(10)(a) of [S.I. 1984/380](#)

[^{F156} 44A Transfer premiums.

- (1) The Secretary of State may by regulations provide that, in such cases and subject to such conditions as may be prescribed, if—
- (a) an earner in employment to which an occupational pension scheme [^{F157} which is not a money purchase contracted-out scheme] applies has ceased, whether before or after the commencement of this section, to be in that employment before attaining normal pension age; and
 - (b) there has been a transfer from that scheme to another scheme of his accrued rights . . . ^{F158} other than his accrued rights to his and his widow's guaranteed minimum pensions; and
- [^{F159}(c) the scheme to which his accrued rights are transferred is neither a contracted-out scheme nor one which was formerly contracted-out and in respect of which the Occupational Pensions Board have duties under section 49 below at the time of the transfer; and]
- (d) no accrued rights premium is payable in respect of the earner; and
 - (e) the circumstances in which by virtue of section 42(1)(a) and (b) above a contributions equivalent premium is payable do not exist,
- a state scheme premium may be paid to the Secretary of State by the prescribed person within a prescribed time after the prescribed event.

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

- (2) A premium under subsection (1) above may be referred to as a “transfer premium”.
- (3) The amount of a transfer premium shall be determined in the manner in which the amount of an accrued rights premium falls to be determined under section 44 above, except that—
 - (a) subsection (6) shall be disregarded; and
 - (b) the Secretary of State shall apply the actuarial table prescribed for the purpose of calculating the amount of an accrued rights premium in such manner as may be prescribed.
- (4) Payment of a transfer premium shall extinguish the earner’s accrued rights to guaranteed minimum pensions under the scheme from which his other accrued rights . . . ^{F160} have been transferred.]

Textual Amendments

F156 S. 44A inserted by [Social Security Act 1985 \(c. 53\)](#), [Sch. 1](#), para. 1

F157 Words inserted (with effect from 6.4.1988) by [Social Security Act 1986 \(c. 50\)](#), [Sch. 2](#), para. 6(1)(g)

F158 Words repealed by [Social Security Act 1986 \(c. 50\)](#), [Sch. 11](#)

F159 S. 44A(1)(c) substituted (with effect from 1.10.1989) by [Social Security Act 1989 \(c. 24\)](#), [Sch. 6](#), para. 11.

F160 Words repealed by [Social Security Act 1986 \(c. 50\)](#), [Sch. 11](#).

45 Premium where guaranteed minimum pension excluded from full revaluation.

- (1) Where an earner’s service in contracted-out employment by reference to an occupational pension scheme [^{F161}which is not a money purchase contracted-out scheme] is terminated before he attains [^{F162}pensionable age] and the weekly rate of the guaranteed minimum pensions to which he has accrued rights under the scheme will fall to be determined in accordance with provisions included in the scheme by virtue of section 35(7) above, then, unless either—
 - (a) a state scheme premium is payable in respect of him under section 42 or 44 above, or
 - (b) those provisions conform with such additional requirements as may be prescribed,^{F163}the prescribed person] shall in respect of the earner pay a state scheme premium (which may be referred to as a “limited revaluation premium”).
- (2) Such a premium shall be paid to the Secretary of State within the prescribed period; and its amount shall be the difference, as certified by the Secretary of State, between the cost of providing the guaranteed minimum pensions in accordance with the provisions included in the scheme by virtue of the said section 35(7) and what would have been the cost of providing them if no such provision had been included.
- (3) Where a state scheme premium is payable in respect of an earner under this section, and the case is one in which his service in contracted-out employment is terminated in consequence of the relevant scheme ceasing to be contracted-out, the costs referred to in subsection (2) above shall, [^{F164} . . . ^{F165}be calculated as follows—
 - ^{F166}(a) [^{F167}any earnings factor shall be taken to be that factor as increased by the last order under ^{F167}section 148 of the Administration Act]to come into force before

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

- the five tax years ending with the tax year in which the scheme ceases to be contracted-out; and]
- (b) any relevant earnings factor derived from [^{F168}earnings upon which primary Class 1 contributions have been paid or treated as paid] in respect of any year (hereafter in this subsection referred to as “the relevant contributions year”) shall be treated as increased by 12 per cent. compound for each of those five tax years, other than any of those years which constitutes or begins before the relevant contributions year][^{F169}but this subsection shall not apply in any case where its application would result in the amount of the premium being greater than it would have been apart from this subsection.]
- (4) In calculating the costs referred to in subsection (2) above the Secretary of State shall apply whichever of the prescribed actuarial tables (as in force at the time when the earner’s service in contracted-out employment is terminated) is applicable in accordance with the regulations prescribing the tables; and—
- (a) the tables shall be so framed as to embody the assumption that the increase of weekly equivalent required by section 35(7) is 5 per cent. compound for each relevant year after that in which the earner’s service is terminated; and
- (b) that assumption shall prevail over any different provision made by the scheme.
- (5) In certifying any amount under subsection (2) above the Secretary of State may make such adjustments as he thinks necessary for avoiding fractional amounts.
- (6) References in this section to the termination of an earner’s employment do not include references to its termination by his death; and, subject to regulations made under paragraph 1 of Schedule 2 to this Act, an employment which is terminated by the death of the employer shall be treated for the purposes of this section as terminated immediately before the death.

Textual Amendments

- F161** Words inserted (with effect from 6.4.1988) by [Social Security Act 1986 \(c. 50\)](#), **Sch. 2**, para. 6(1)(h)
- F162** Words substituted by [Social Security Act 1985 \(c. 53\)](#), **Sch. 5**, para. 25
- F163** Words substituted by [Social Security Act 1985 \(c. 53\)](#), **Sch. 5**, para. 25
- F164** Words substituted by [Social Security Act 1980 \(c. 30\)](#), **s. 3(9)**
- F165** Words repealed (with effect from 1.10.1989) by [Social Security Act 1989 \(c. 24\)](#), **Sch. 6**, para. 12(a) and Sch. 9
- F166** [S. 45\(3\)\(a\)](#) substituted by [Social Security Act 1985 \(c. 53\)](#), **Sch. 3**, paras. 5 and 7 with effect from 6.4.1979
- F167** Words substituted (with effect from 1.7.1992) by [Social Security \(Consequential Provisions\) Act 1992 \(c. 6\)](#), **Sch. 2**, para. 30
- F168** Words substituted (with effect from 6.4.1987) by [Social Security Act 1986 \(c. 50\)](#), **Sch. 8**, para. 10
- F169** Words added (with effect from 1.10.1989) by [Social Security Act 1989 \(c. 24\)](#), **Sch. 6**, para. 12(b)

Modifications etc. (not altering text)

- C50** [S. 45\(1\)](#) extended to certain transfers of guaranteed minimum pension rights by [S.I. 1984/380](#), **reg. 44(e)**
- C51** [S. 45\(1\)](#) modified, where guaranteed minimum pension rights have been transferred from schemes which are or were contracted-out salary related schemes, by [S.I. 1985/1323](#), **Sch. 3**, para. 6(a)–(d), with effect from 23.9.1985
- C52** [S. 45\(1\)](#) modified, for payments transferring protected rights to schemes which are or were salary related contracted-out schemes, by [reg. 4\(9\) of S.I. 1987/1118](#) with effect from 27.7.1987 for personal pension schemes and 6.4.1988 otherwise

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

- C53** S. 45(3) modified, for certain transfers of guaranteed minimum pension rights by S.I. 1984/380, **reg. 44(e)**
- C54** S. 45(3) modified, where guaranteed minimum pension rights have been transferred from schemes which are or were contracted-out salary related schemes, by S.I. 1985/1323, **Sch. 3, para. 6(a)** and (e), with effect from 23.8.1985
- C55** S. 45(3)(a) modified, for payments transferring protected rights to schemes which are or were salary related contracted-out schemes where minimum contributions have been paid, by reg. 4(8)(b) of S.I. 1987/1118 with effect from 27.7.1987 for personal pension schemes and 6.4.88 otherwise

46 ^{F170}

Textual Amendments

- F170** S. 46 repealed by Social Security Act 1986 (c. 50), **Sch. 11** (and expressed to be repealed (7.2.1994) by 1993 c. 48, s. 188, **Sch. 5 Pt. I**; S.I. 1994/86, **art. 2**)

47 Deduction of premium from refund of contributions.

- (1) Where an earner's service in contracted-out employment is terminated and—
 - (a) he (or by virtue of a connection with him, any other person) is entitled to a refund of any payments made by or in respect of him for the purposes of the relevant scheme towards the provision of benefits under the scheme; and
 - (b) a [^{F171}contributions equivalent premium] falls to be paid by any person in respect of him under this Part of this Act,

then, subject to the provisions of this section, the person by whom the premium falls to be paid shall be entitled on paying it to recover the certified amount (and on paying any part of it to recover a proportionate part of the certified amount) from the person liable for the refund.

- (2) For the purposes of this section the certified amount in relation to a premium paid in respect of any person who is or was an earner or whose husband was an earner shall be such amount as may be certified by the Secretary of State as the amount by which the primary Class 1 contributions payable in respect of the earner's employment in—
 - (a) contracted-out employment by reference to the relevant scheme; and
 - (b) employment in any period of linked qualifying service which was contracted-out employment by reference to another scheme,

have fallen short of what would have been payable if the employment or employments had not been contracted-out; and in certifying any amount under this subsection the Secretary of State may make such adjustments as he thinks necessary for avoiding fractional amounts.

[^{F172}(2A) Where an earner's earnings paid in any period—

- (a) exceeded the lower earnings limit; but
- (b) were not such that primary Class 1 contributions within Bracket 3 fell to be paid in respect of them,

it shall be assumed for the purposes of subsection (2) above that his earnings paid in that period were such that, taking the rate specified in Bracket 3 as the appropriate rate, the same amount of primary Class 1 contributions fell to be paid in respect of them as in fact fell to be paid in respect of them.]

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

- (3) The amount recoverable under this section shall not exceed the amount of the refund or so much of it as has not been made.
- (4) Where the period taken into account in arriving at the certified amount does not coincide with that in respect of which the refund is to be made, the sum recoverable under this section shall be determined by reference to so much of that amount and of the refund as are referable to the same period.
- (5) The amount which may be recovered under this section in respect of any premium shall be increased by such amount as may be prescribed where the refund—
- (a) is made in respect of more than one period of service, and one or more of those periods are periods of previous linked qualifying service; and
 - (b) includes any amount paid under a contracted-out scheme in relation to that service on or in connection with a transfer of accrued rights to another scheme.
- (6) Where the person liable for the premium is himself liable for the refund, he shall be entitled to retain out of the refund the amount which he could recover under this section from another person liable for the refund.
- (7) The amount of the refund shall be reduced by any amount recovered or retained under this section; and provision shall be made by regulations for requiring the making of refunds to be delayed for the purpose of enabling any right of recovery or retainer conferred by this section to be exercised, and any provision so made shall have effect notwithstanding anything in any enactment relating to the making of the refund.
- (8) Where an earner's service in contracted-out employment is terminated and—
- (a) he (or by virtue of a connection with him any other person) is entitled to a refund of any payments made by or in respect of him under the relevant scheme in relation to any previous contracted-out employment of his, being payments towards the provision of benefits under that scheme; and
 - (b) a [^{F171}contributions equivalent premium] falls to be paid in respect of him and the period taken into account in arriving at the certified amount includes the period of the previous contracted-out employment,
- then in respect of that premium the person liable for it shall have the like right of recovery from that refund (so far as the premium is not recoverable or retainable out of a refund in respect of a later employment) as a person has under the foregoing provisions of this section where a state scheme premium and a refund fall to be made on the termination of service in the employment in respect of which the refund is made; and subsection (7) above shall apply accordingly.
- (9) Notwithstanding any contract to the contrary, a person shall not be entitled to recover any part of a state scheme premium from any earner in respect of whom it is payable or, except in accordance with this section, to recover or retain any part of such a premium out of any money payable to or for the benefit of the earner or any other person.
- ^{F173}(9A) Nothing in subsection (9) above affects—
- (a) the right of the trustees or managers of a scheme, in a case where an accrued rights premium or a pensioner's rights premium has been paid, to reduce the pension of the person in respect of whom the premium has been paid by the amount of his guaranteed minimum pension;
 - (b) the right of trustees or managers, in a case where a limited revaluation premium has been paid, to recoup it—

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

- (i) out of the resources of the scheme, in so far as they derive from contributions; or
 - (ii) in prescribed cases, out of payments made to them in respect of an earner's transfer to their scheme from some other scheme;
 - (c) the right of trustees or managers, in a case where a state scheme premium has been paid, to make the deduction for which paragraph 13(6) of Schedule 1A to this Act provides when they calculate the cash equivalent to which the earner in respect of whom the premium has been paid has a right under Part II of that Schedule.]
- (10) The foregoing provisions of this section shall apply in relation to such a refund as is referred to in subsection (1)(a) above which becomes payable after the termination of an earner's service in contracted-out employment as they apply to such a refund becoming payable on the termination of an earner's service in such employment; and where he (or, by virtue of a connection with him, any other person) becomes entitled to any payment in lieu of benefit, those provisions shall apply in relation to the payment as if it were such a refund as is referred to in subsection (1)(a) above.
- (11) For the purposes of subsection (10) above, a payment in lieu of benefit is any payment falling to be made to or for the benefit of, or in respect of, a person by virtue of his being or having been a member of an occupational pension scheme, being a payment which either—
- (a) is made or to be made otherwise than out of the resources of the scheme; or
 - (b) is made or to be made out of those resources but by way of distribution on a winding-up; or
 - (c) falls within such other description of payments as may be prescribed for the purposes of subsection (10) above.
- (12) In this section, "the relevant scheme" in relation to any employment means the contracted-out scheme by reference to which that employment is or was contracted-out employment in relation to the earner concerned.

Textual Amendments

F171 Words substituted by [Social Security \(Miscellaneous Provisions\) Act 1977 \(c. 5\), s. 22\(14\)](#)

F172 [S. 47\(2A\)](#) inserted by [Social Security Act 1985 \(c. 53\), Sch. 5, para. 29](#)

F173 [S. 47\(9A\)](#) inserted by [Social Security Act 1985 \(c. 53\), Sch. 5, para. 30](#)

Modifications etc. (not altering text)

C56 [S. 47\(2A\)](#) shall not apply to any period after the end of the tax year 1986-87 ([Social Security Act 1986 \(c. 50\), Sch. 8, para. 9](#))

Supplementary

48 Guaranteed minimum pensions to be inalienable.

- (1) Where a person is entitled or prospectively entitled to a guaranteed minimum pension under an occupational pension scheme [^{F174}or to payments giving effect to protected rights under such a scheme] and the person's entitlement is in respect of his or another person's service in employment which was contracted-out by reference to that scheme—

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

- (a) every assignment of or charge on that pension [^{F174}or those payments]; and
 - (b) every agreement to assign or charge that pension [^{F174}or those payments],
- shall be void.

[^{F175}(1A) In subsection (1) above, the references to assignments of and agreements to assign a guaranteed minimum pension do not include references to any assignment of or agreement to assign a policy of insurance or annuity contract in accordance with conditions prescribed by regulations under section 52C(4)(b) below.]

(2) Subsection (1) above has effect whether or not the assignment, charge or agreement was made at a time when the employment was contracted-out employment or the scheme was a contracted-out scheme in relation to the employment.

(3) On the bankruptcy of a person who is entitled or prospectively entitled as mentioned in subsection (1) above, [^{F176}nothing whose assignment is or would be made void by that subsection shall] pass to any trustee or other person acting on behalf of his creditors.

(4) In the application of this section to Scotland—

- (a) references to assignment shall be construed as references to assignation and “assign” shall be construed accordingly; and
- (b) the reference to a person’s bankruptcy shall be construed as a reference to the sequestration of his estate or the appointment on his estate of a judicial factor under section 14 of the ^{M5}Bankruptcy (Scotland) Act 1913 or section 15 of the ^{M6}Solicitors (Scotland) Act 1958.

Textual Amendments

F174 Words inserted (with effect from 6.4.1988) by [Social Security Act 1986 \(c. 50\)](#), [Sch. 2](#), para. 8(a)

F175 [S. 48\(1A\)](#) inserted by [Social Security Act 1985 \(c. 53\)](#), [Sch. 5](#), para. 31

F176 Words substituted (with effect from 6.4.1988) by [Social Security Act 1986 \(c. 50\)](#), [Sch. 2](#), para. 8(b)

Modifications etc. (not altering text)

C57 [S. 48](#) modified, where guaranteed minimum pension rights have been transferred from schemes which are or were contracted-out salary related schemes, by [S.I. 1985/1323](#), [Sch. 3](#), para. 8, with effect from 23.9.1985, and where such rights have been transferred from appropriate policies, by [S.I. 1985/1323](#), [Sch. 3A](#), para. 5, with effect from 27.7.1987

C58 [Bankruptcy \(Scotland\) Act 1913 \(c. 20\)](#) was repealed (with effect from 29.12.1986) by [Bankruptcy \(Scotland\) Act 1985 \(c. 66\)](#)

C59 The reference to s. 15 of [Solicitors \(Scotland\) Act 1958](#) is to be construed, by virtue of [Solicitors \(Scotland\) Act 1980 \(c. 46\)](#), [Sch. 6](#), para. 2, as a reference to s. 41 of the latter Act

Marginal Citations

M5 1913 c. 20.

M6 1958 c. 28.

49 Supervision of schemes which have ceased to be contracted-out.

(1) The provisions of this section shall apply in respect of any occupational pension scheme, other than a public service scheme, where—

- (a) the scheme has ceased to be a contracted-out scheme otherwise than by being wound up; and

[^{F177}(b) there has not been a payment—

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

- (i) under section 44 above in respect of each person entitled to receive, or having accrued rights to, guaranteed minimum pensions under the scheme; or
- (ii) of a premium under section 44ZA above in respect of each person (not being a person in respect of whom a premium is not payable by virtue of regulation 18(2A) of the Occupational Pension Schemes (Contracting-out) Regulations 1984) who has protected rights under it or is entitled to any benefit giving effect to protected rights under it or is entitled to any benefit giving effect to protected rights under it;]

and those provisions shall continue to apply so long as there is any such person [F178(not being a person in respect of whom a premium is not payable by virtue of regulation 18(2A) of the Occupational Pension Schemes (Contracting-out) Regulations 1984)].

Textual Amendments

F177 S. 49(1)(b) substituted (with effect from 6.4.1988) by [Social Security Act 1986 \(c. 50\)](#), [Sch. 2](#), para. 9(a)

F178 Words inserted (with effect from 6.4.1988) by [The Personal and Occupational Pensions Schemes \(Modification of Enactments\) Regulations 1987 \(S.I. 1987/1116\)](#), [reg. 5\(2\)](#)

Modifications etc. (not altering text)

C60 S. 49(1) to be construed (with effect from 6.4.1988) as if reference to a person entitled to receive a guaranteed minimum pension includes earner's widower by virtue of, and only in cases prescribed under, [Social Security Act 1986 \(c. 50\)](#), [s. 9\(6\)](#); construction amplified in [S.I. 1984/380](#), [reg. 33D](#)

C61 S. 49(1) has effect (with effect from 27.7.1987) in relation to personal pension schemes subject to the modifications in para. 1 of Sch. 2 of [S.I. 1987/1116](#); as so modified, s. 49(1) is set out below

C62 The reference to s. 15 of Solicitors (Scotland) Act 1958 is to be construed, by virtue of [Solicitors \(Scotland\) Act 1980 \(c. 46\)](#), [Sch. 6](#), para. 2, as a reference to s. 41 of the latter Act

[F179] **49** (1) The provisions of this section shall apply in respect of any personal pension scheme, where—

- (a) the scheme has ceased to be an appropriate scheme otherwise than by being wound up; and
- (b) there has not been a payment of a premium under section 5 of the Social Security Act 1986 in respect of each person (not being a person in respect of whom a premium is not payable by virtue of regulation 3 of the Personal Pension Schemes (Personal Pension Protected Rights Premiums) Regulations 1987) who has protected rights under it or is entitled to any benefit giving effect to protected rights under it;

and those provisions shall continue to apply so long as there is any such person (not being a person in respect of whom a premium is not payable by virtue of regulation 3 of the Personal Pension Schemes (Personal Pension Protected Rights Premiums) Regulations 1987).]

(2) The Occupational Pensions Board shall be under a duty to satisfy themselves from time to time as to—

- (a) the matters in respect of which they are required to be satisfied for contracting-out purposes under sections 40(2) and 41(1) above [F180] or, by virtue of

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

subsections (2A) and (2B) of section 32 above, paragraph 10(1) of Schedule 1 to the Social Security Act 1986]; and

- (b) the soundness and adequacy of any investments held for the purposes of the scheme (so far as relevant to the considerations of the said section 41(1));

and where the scheme was contracted-out subject to such conditions as are referred to in section 41(2) and (5) above those conditions shall continue to be binding notwithstanding that there is no contracting-out certificate in force.

[^{F181}(2A) Where in the case of any scheme the Board have issued a certificate under subsection (1C) of section 44 above which has not been cancelled under subsection (1D) of that section, or a certificate under subsection (2) of section 44ZA above which has not been cancelled under subsection (3) of that section, the Board shall not be under the duty which would otherwise be imposed on them by subsection (2) above in relation to that scheme.]

(3) ^{F182}

(4) In so far as the Board are not satisfied as mentioned in subsection (2)(b) above, they may by order modify the scheme's rules or by order direct the scheme's trustees or managers to take such steps as the order may specify, in either case with a view to ensuring that the guaranteed minimum pensions under the scheme are adequately secured to its beneficiaries, both present and future.

(5) If it appears to the Board that there has been, or is likely to be, a breach of any rule of the scheme relating to the matters dealt with in sections [^{F183}32] to 41 above, the Board may take such steps as they think expedient with a view to remedying or preventing the breach; and for this purpose they may themselves take any proceedings for enforcement of the rules which would be open to a person as an actual or prospective beneficiary under the scheme, or as one of its trustees or managers, or as being otherwise concerned with the scheme or its benefits, and may assume the conduct of proceedings for enforcement brought by any such person.

(6) Where the Board are satisfied that the guaranteed minimum pensions under the scheme are not, and cannot be, adequately secured to its beneficiaries, they may by order—

- (a) require the scheme to be wound up in accordance with such directions in that behalf as may be contained in the order; or
- (b) direct the trustees or managers to take such steps for the winding-up of the scheme as the order may specify;

and, on a winding-up in pursuance of an order of theirs under this subsection, the same powers shall be exercisable by the Board in relation to the scheme's winding-up rules as are exercisable by them under subsection (5) above in relation to other rules.

(7) ^{F182}

Textual Amendments

F179 S. 49(1) has effect (with effect from 27.7.1987) in relation to personal pension schemes subject to the modifications in para. 1 of Sch. 2 of S.I. 1987/1116; as so modified, s. 49(1) is set out above

F180 Words inserted (with effect from 6.4.1988) by [Social Security Act 1986 \(c. 50\)](#), [Sch. 2](#), para. 9(b)

F181 S. 49(2A) inserted (with effect from 1.11.1986) by [Social Security Act 1986 \(c. 50\)](#), [Sch. 10](#), para. 24

F182 S. 49(3)(7) repealed by [Social Security Act 1986 \(c. 50\)](#), [Sch. 10](#), para. 19

F183 “32” substituted (with effect from 6.4.1988) by [Social Security Act 1986 \(c. 50\)](#), [Sch. 2](#), para. 9(b)

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

Modifications etc. (not altering text)

- C63** S. 49(2)(2A) has effect (with effect from 27.7.1987) in relation to personal pension schemes subject to the modifications in paras. 2 and 3 of Sch. 2 to S.I. 1987/1116
- C64** S. 49(5) has effect (with effect from 27.7.1987) in relation to personal pension schemes subject to the substitution of “Schedule 1 to the Social Security Act 1986” for the words from “sections” to “above”; S.I. 1987/1116, reg. 3(2), Sch. 2 para. 4
- C65** Reference to guaranteed minimum pensions to be construed (with effect from 6.4.88) as including reference to guaranteed minimum pension of earner's widower by virtue of, and only in cases prescribed under, Social Security Act 1986 (c. 50), s. 9(6)

50 Alteration of rules of contracted-out schemes.

- (1) Where in respect of any employment a contracting out certificate has been issued, no alteration of the rules of the relevant contracted-out scheme shall be made so as to affect any of the matters dealt with in this Part of this Act without the consent of the Occupational Pensions Board [^{F184}unless it is an alteration to which this subsection does not apply]; and subject to subsection (2) below any [^{F185}alteration to which this subsection applies] made without that consent shall be void.

[^{F186}(1A) Subsection (1) above does not apply—

- (a) to an alteration consequential on a provision of the Health and Social Security Act 1984, the Social Security Act 1985 or the Social Security Act 1986; or
- (b) to an alteration of a prescribed description.]
- (2) A consent given by the Board for the purposes of this section shall, if and to the extent that the Board so direct, operate so as to validate with retrospective effect any alteration of the rules which would otherwise be void under this section.
- (3) This section shall continue in force in relation to a scheme after it has ceased to be contracted-out so long as any person is entitled to receive, or has accrued rights to, a guaranteed minimum pension under the scheme [^{F187}or any person has protected rights under it or is entitled to any benefit giving protected rights under it].

Textual Amendments

- F184** Words inserted by Social Security Act 1986 (c. 50), Sch. 10, para. 25(a)
- F185** Words substituted by Social Security Act 1986 (c. 50), Sch. 10, para. 25(a)
- F186** S. 50(1A) inserted by Social Security Act 1986 (c. 50), Sch. 10, para. 25(b)
- F187** Words added (with effect from 6.4.1988) by Social Security Act 1986 (c. 50), Sch. 2, para. 10

Modifications etc. (not altering text)

- C66** S. 50 has effect (with effect from 27.7.1987) in relation to personal pension schemes subject to the modifications in reg. 3(4)-(7) of S.I. 1987/1116
- C67** S. 50(1)(2) applied by Social Security Act 1980 (c. 30), s. 3(10)
- C68** S. 50(3) to be construed (with effect from 6.4.1988) as if reference to a person entitled to receive a guaranteed minimum pension includes earner's widower by virtue of, and only in cases prescribed under, Social Security Act 1986 (c. 50), s. 9(6); construction amplified in S.I. 1984/380, reg. 33D

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

51 Information as to guaranteed minimum pensions.

The Secretary of State may from time to time furnish the trustees or managers of an occupational pension scheme [^{F188}which is not a money purchase contracted-out scheme] and such other persons as may be prescribed with information as to the amount of the guaranteed minimum pension to which it appears to him that any person is immediately or prospectively entitled under the scheme or as to any other matter required for calculating that amount.

Textual Amendments

F188 Words inserted (with effect from 6.4.1988) by [Social Security Act 1986 \(c. 50\)](#), [Sch. 2](#), para. 6(1)(j)

[^{F189}51A Refusal and cancellation of contracting-out certificates.

- (1) This subsection applies in any case where—
 - (a) a contracting-out certificate (the “first certificate”) has been surrendered by an employer or cancelled by the Occupational Pensions Board; and
 - (b) at any time before the expiry of the period of twelve months beginning with the date of the surrender or cancellation, that or any connected employer, with a view to the issue of a further contracting-out certificate, makes an election in respect of any employment which was specified by virtue of section 31(1)(a) of this Act in the first certificate.
- (2) This subsection applies in any case where—
 - (a) a contracting-out certificate (the “first certificate”) has been surrendered by an employer or cancelled by the Board;
 - (b) a further contracting-out certificate has been issued, after the surrender or cancellation of the first certificate but before the expiry of the period of twelve months beginning with the date of the surrender or cancellation, in respect of any employment which was specified by virtue of section 31(1)(a) of this Act in the first certificate; and
 - (c) the Board have formed the opinion that had they been aware of all the circumstances of the case at the time when the further contracting-out certificate was issued they would have been prevented by subsection (4) below from issuing it.
- (3) Subsections (1) and (2) above apply whether or not the occupational pension scheme by reference to which the employment concerned with contracted-out employment by virtue of the first certificate is the same as the scheme by reference to which the employment—
 - (a) would be contracted-out employment if the further contracting-out certificate were issued; or
 - (b) is contracted-out employment by virtue of the further contracting-out certificate.
- (4) In a case to which subsection (1) above applies, the Board shall not give effect to the election referred to in that subsection by issuing a further contracting-out certificate unless they consider that, in all the circumstances of the case, it would be reasonable to do so.

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

- (5) In a case to which subsection (2) above applies, the Board may, before the expiry of the period of twelve months beginning with the date on which the further contracting-out certificate was issued, cancel the further contracting-out certificate.
- (6) Where a contracting-out certificate is cancelled under subsection (5) above the provisions of this Act and of any regulations and orders made under it shall have effect as if the certificate had never been issued.
- (7) This section does not apply in any case where the surrender or cancellation of the first certificate occurred before 22nd July 1981.
- (8) Where the further contracting-out certificate referred to in paragraph (b) of subsection (2) above was issued before the commencement of this section, then—
 - (a) paragraph (c) of that subsection shall have effect as if this section had been in force at the time when the further contracting-out certificate was issued; and
 - (b) subsection (5) above shall have effect as if the reference to the date of issue of that certificate were a reference to the commencement of this section.
- (9) Regulations may make such supplemental provision in relation to cases falling within subsection (1) or (2) above as the Secretary of State considers necessary or expedient.
- (10) Without prejudice to subsection (9) above, regulations may make provision, in relation to any case in which the Board have cancelled a contracting-out certificate under subsection (5) above, preventing the recovery by the employer concerned (whether by deduction from emoluments or otherwise) of such arrears which he is required to pay to the Secretary of State in respect of an earner's liability under ^{F190}section 6(3) of the Contributions and Benefits Act] as may be prescribed.
- (11) For the purposes of subsections (1) and (2) above an employment (the "second employment") in respect of which—
 - (a) an election of the kind referred to in subsection (1)(b) above has been made; or
 - (b) a further contracting-out certificate of the kind referred to in subsection (2) (b) above has been issued;and an employment (the "first employment") which was specified by virtue of section 31(1)(a) of this Act in the first certificate shall be treated as one employment if, in the opinion of the Board,—
 - (i) they are substantially the same, however, described; or
 - (ii) the first employment fall wholly or partly within the description of the second employment or the second employment falls wholly or partly within the description of the first employment.
- (12) Regulations shall prescribe the cases in which employers are to be treated as connected for the purposes of this section.]
- (13) ^{F191}

Textual Amendments

F189 S. 51A inserted by [Social Security and Housing Benefits Act 1982 \(c. 24\), s. 40](#)

F190 Words substituted (with effect from 1.7.1992) by [Social Security \(Consequential Provisions\) Act 1992 \(c. 6\), Sch. 2, para. 32](#)

Status: Point in time view as at 06/04/1993.

Changes to legislation: There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III. (See end of Document for details)

F191 Ss. 1–10, 12–16A, 18–21, 23–25, 51A(13), 60(1)(a), words in s. 60A, s. 62(1) and (3), words in s. 64(2), s. 65(4), words in s. 66(2)(a) and (b); Sch. 1; Sch. 4, paras. 35–46, 49, 50, 53–64, 66, 67 repealed (1.7.1992) on consolidation by Social Security (Consequential Provisions) Act 1992 (c. 6)

52 Contracting-out regulations.

Schedule 2 to this Act shall have effect for enabling regulations to be made in relation to the operation and administration of this Part of this Act.

Status:

Point in time view as at 06/04/1993.

Changes to legislation:

There are currently no known outstanding effects for the Social Security Pensions Act 1975, Part III.