

# PENSIONS ACT 2007

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Schedule 4: Abolition of contracting-out for defined contribution pension schemes*

##### **Part 1**

278. The amendments in this part of the Schedule will take effect from the date on which COMP and APP contracting-out certificates are cancelled by virtue of *section 15(1)* of the Act (“the abolition date”).

##### **Amendments to Pension Schemes Act 1993**

279. *Paragraph 2* amends section 7 (issue of contracting-out and appropriate scheme certificates). As a result of the amendment of subsection (1), HMRC can no longer issue certificates stating that personal pension schemes are appropriate schemes. In addition, when read with the amendments to section 9, the effect is that HMRC can no longer issue a contracting-out certificate in respect of a money purchase occupational pension scheme. Subsections (4) to (6) are omitted to reflect the fact that appropriate scheme certificates can no longer be issued.
280. *Paragraph 3* amends the definition of “contracted-out employment” in section 8(1) to reflect the fact that from the abolition date a money purchase occupational pension scheme can no longer be contracted-out in relation to an earner’s employment. *Paragraph 3(3)* inserts a new subsection (1A) into section 8. New subsection (1A) includes an amended definition of contracted-out employment by reference to a money purchase scheme. This definition now only relates to periods of “contracted-out employment” before the abolition date. This historical definition is required because, although after the abolition date it will no longer be possible for an earner to be in contracted-out employment by reference to a COMP, such periods will continue to be relevant for the calculation of a person’s additional pension. The definition will also be needed during the period immediately after the abolition date for dealing with matters relating to periods before that date which are still outstanding at the date of abolition e.g. contracted-out rebates.
281. *Paragraph 3(4)* amends section 8(2) to reflect the fact that section 42A is being repealed.
282. *Paragraph 4* contains amendments to section 9 (requirements for certification of schemes). Section 9(3), which deals with requirements for a money purchase scheme to be contracted-out, is omitted. Section 9(5), which deals with the requirements for a personal pension scheme to be contracted out, is also omitted. Consequential amendments are made to section 9(6) (which deals with relevant requirements for contracted-out and appropriate schemes).
283. *Paragraph 5* amends section 10 (protected rights). Section 10(3)(a) is amended to reflect the fact that the definition of “minimum contributions” is to be repealed.

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284. *Paragraph 6* omits section 12 (determination of basis on which scheme is contracted-out) to reflect the fact that it will no longer be necessary for certificates to state whether a scheme is contracted-out by virtue of subsection (2) or (3) of section 9, since it will only be possible for schemes to contract out by virtue of section 9(2) (contracting-out requirements for salary related occupational schemes).
285. *Paragraph 7* amends section 20 (transfer of accrued rights). Section 20(3) has been amended to include a reference to the new section 25A inserted by paragraph 9.
286. *Paragraph 8* replaces the cross-heading before section 26 with “Requirements for schemes with members with protected rights”.
287. *Paragraph 9* inserts a new section 25A into the PSA1993. New section 25A applies to money purchase occupational pension schemes which ceased to be contracted-out as a result of section 15(1) of the Act, as well as to personal pension schemes which cease to be appropriate schemes as a result of the same provision. For as long as people have protected rights under such schemes, or are entitled to any benefit giving effect to such rights, new section 25A(3) requires such schemes to continue to comply with sections 26 to 32 (which such schemes would currently be required to comply with in order to be contracted-out) and prescribed requirements (i.e. the requirements which are currently imposed in relation to COMPs and APPs under section 9(3)). It also ensures that the new limited requirements relating to giving effect to protected rights apply to any pension scheme to which protected rights have been transferred.
288. *Paragraph 10* inserts a new section 27A into the 1993 Act. The new section 27A has the effect of retaining the rule that requires provision to be made from protected rights for a surviving spouse or civil partner. It also re-enacts (with some modifications) regulation-making powers under section 28 of the 1993 Act to make provision in relation to survivors’ benefits.
289. *Paragraph 11* omits sections 28 to 29 to remove the existing rules applying to protected rights which will be replaced by the provisions of the new section 27A.
290. *Paragraph 12* inserts a new section 32A into the 1993 Act to ensure that where the protected rights are being given effect to by an insurance policy, the policy must make the same provision as would a scheme to which sections 25A and 27A apply.
291. *Paragraph 13* amends section 33 (tax requirements to prevail over certification requirements), and its sidenote, to include references to new section 25A.
292. *Paragraph 14* amends section 33A (appropriate schemes: blowing the whistle) so that it applies to personal pension schemes which cease to be contracted-out as a result of section 15(1) of the Act.
293. *Paragraph 15* amends section 34 (cancellation, variation, surrender and refusal of certificates) so that after the abolition date this section will only apply to schemes contracted-out by virtue of satisfying section 9(2).
294. *Paragraph 16* amends section 38 (alteration of the rules of appropriate schemes) so that, rather than applying to appropriate schemes, it applies to personal pension schemes that were appropriate schemes. The prohibition on rule changes continues to apply for as long as there are people who have protected rights under the personal pension scheme or who are entitled to any benefit giving effect to such rights under the scheme.
295. *Paragraph 17* amends section 42A by providing a new subsection (8) setting out a definition of “appropriate flat-rate percentage” and “appropriate age-related percentage” in view of the fact that the sections including definitions of these terms (sections 42B and 45A) are to be repealed. Section 42A provides for the calculation of reduced rates of national insurance contributions, and rebates, for earners in COMPs. The section is retained during the period immediately after the abolition date so that HMRC can continue to deal with any matters in connection with reduced rates of

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national insurance contributions, and rebates, which are outstanding at the date of abolition.

296. *Paragraph 18* omits section 42B. Section 42B provides for the Secretary of State to make a report and then an order specifying the “appropriate flat-rate percentage” and the “appropriate age-related percentage”. These percentages are used to determine national insurance rebates for COMPs, and there will therefore be no need for the Secretary of State to make further orders after the abolition date.
297. *Paragraph 19* amends section 43 by providing a new subsection (7) defining “the earner’s chosen scheme”. This is necessary because the current definition is contained in section 44, which is to be repealed. Section 43 deals with the payment of contracted-out rebates (minimum contributions) to appropriate personal pension schemes. The section is retained for the period immediately after the abolition date so that HMRC can continue to deal with any minimum contributions relating to the period before the abolition date which are outstanding as at the date of abolition.
298. *Paragraph 20* omits section 44. Section 44 provides a mechanism for an earner to choose that contracted-out rebates (minimum contributions) must be made by HMRC to the earner’s chosen APP. After abolition of APPs this section will no longer be required.
299. *Paragraph 21* amends section 45 by inserting a new subsection (4), defining “appropriate age-related percentage” for the purpose of the section. The new subsection is required in view of the fact that the definition is currently included in section 45A, which is to be repealed. Section 45 sets out how contracted-out rebates to APPs (minimum contributions) are to be calculated. Section 45 is retained for the period immediately after abolition so that HMRC can continue to deal with any minimum contributions relating to the period before the abolition date which are outstanding as at the date of abolition.
300. *Paragraph 22* omits section 45A. Section 45A provides for the Secretary of State to make a report and then an order specifying the “appropriate age-related percentage” for the purposes of calculating minimum contributions under section 45. After the abolition of APPs there will be no need for the Secretary of State to make further orders.
301. *Paragraph 23* amends section 48A. That section deals with the reduction of an earner’s additional pension in respect of any tax week in which a contracted-out rebate was paid as a result of the earner’s membership of a contracted-out occupational pension scheme or an APP. In section 48A(1)(a), the reference to section 42A is amended to reflect the fact that from the abolition date no further contracted-out rebates in respect of COMPs will be made (although rebates resulting from pre-abolition periods of membership of a COMP will continue to affect a person’s entitlement to additional pension). Similarly, in section 48A(1)(b), the reference to section 45(1) is amended, to reflect the fact that from the abolition date no further national insurance rebates in respect of APPs will be made (although rebates resulting from pre-abolition periods of membership of an APP will continue to affect a person’s entitlement to additional pension).
302. *Paragraph 24* amends section 50. That section gives power to HMRC to approve arrangements for schemes which cease to be certified as contracted-out or APPs or to issue a certificate of non-approval. The effect of the amendments is that HMRC’s powers under section 50 extend to schemes which cease to be COMPs or APPs as a result of *section 15(1)* of the Act. *Paragraph 20* also makes various consequential amendments to section 50 to reflect the fact that there will be no money purchase contracted-out schemes after the abolition date.
303. *Paragraph 25* amends section 52. Section 52 provides for the continued supervision by HMRC of occupational pension schemes which used to be contracted-out and personal pension schemes which used to be APPs. The effect of the amendments is that the supervision requirements also apply to schemes which cease to be COMPs and APPs as a result of *section 15(1)* of the Act.

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304. *Paragraph 26* amends section 55, which deals with contributions equivalent premiums. The amendment reflects the fact that after the abolition date COMPs will cease to exist, and therefore the existing provision that the section applies to contracted-out occupational pension schemes *other than COMPs* becomes superfluous.
305. *Paragraph 27* amends section 68A (safeguarded rights). The reference to section 9(3) in section 68A(5) is replaced by a reference to a “money purchase contracted-out scheme” in view of the fact that section 9(3) is to be omitted. The references in this subsection to rights under, or derived from, a COMP or APP are retained because safeguarded rights which arose pre-abolition date and which are attributable to COMP or APP service will continue to include COMP or APP rights.
306. *Paragraph 28* amends section 87 (the general protection principle). The amendment restates the present position that the section only applies to occupational pension schemes contracted-out by virtue of satisfying section 9(2), but without doing so by referring to COMPs, which will not exist after the abolition date.
307. *Paragraph 29* amends section 96, which deals with cash equivalents. The amendment reflects the fact that appropriate schemes will cease to exist from the abolition date. The effect of the amendment is that, where a transfer is made to a personal pension scheme which is unable or unwilling to accept a transfer payment for guaranteed minimum pensions or protected rights, the member will have a right to the balance of the cash equivalent after deduction of liabilities for guaranteed minimum pensions and/or protected rights.
308. *Paragraph 30* amends section 156 so as to allow HMRC to give information to a former APP for the purposes of Part III.
309. *Paragraph 31* amends section 163 (exemption of certain schemes from rule against perpetuities) so as to remove a reference to APPs that becomes redundant after the abolition date.
310. *Paragraph 32* amends section 164 (Crown employment) by removing references to provisions of the 1993 Act which are to be repealed.
311. *Paragraph 33* amends section 177 (general financial arrangements) by removing references to provisions of the 1993 Act which are to be repealed.
312. *Paragraph 34* amends section 181(1) (general interpretation) by providing various new and amended definitions. Section 181(4) (regulations) is amended to reflect the fact that section 44 is to be repealed.
313. *Paragraph 35* inserts a new section 181A which deals with the interpretation of references to money purchase contracted-out schemes or appropriate schemes after the abolition date. The definitions apply in respect of periods before the abolition date, and mirror the existing definitions of the same expressions in the Act. These historical definitions are required because, although COMPs and APPS will cease to exist from the abolition date, the definitions used in this section will continue to be relevant for the calculation of a person’s additional pension, and, during the period immediately after the abolition date, for dealing with matters relating to periods before that date which are still outstanding at that date (for example contracted-out rebates).

### **Amendments to Pensions Act 1995**

314. *Paragraph 36* amends section 149 of the PA1995. Section 149 gives a power to the Secretary of State to make regulations providing for schemes which provide both pensions capable of being contracted out by virtue of section 9(2) and pensions capable of being contracted out by virtue of section 9(3) to be treated as two separate schemes. The effect of the amendment is that schemes which provide both pensions capable of being contracted out by virtue of section 9(2), and pensions satisfying the requirements

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mentioned in new section 25A(3) are to be treated as two separate schemes for the purposes of Part 3 of the PSA1993.

### **Amendments to Welfare Reform and Pensions Act 1999**

315. *Paragraph 37* omits section 1(10). The amendment removes the current condition that a stakeholder pension scheme which is a personal pension scheme must be an appropriate scheme. A consequential amendment is made to section 1(1).
316. *Paragraph 38* amends a cross-reference to section 1(10) to reflect the fact that it has been omitted.
317. *Paragraph 39* omits section 7, which allows orders under section 42B and 45A of the PSA1993 to specify different percentages in orders made under those sections for the purposes of for stakeholder schemes. Those sections are to be repealed and so section 7 is no longer needed.
318. *Paragraph 40* amends Schedule 5 paragraph 7(6) to remove a cross reference to a provision that is repealed by the Act and to insert a new paragraph (ab).

### **Amendment to Pensions Act 2004**

319. *Paragraph 41* omits section 257(7) of the PA2004. This subsection means that the pensions protection provided by virtue of transfer of undertakings protection of employment is not provided to employees in a contracted-out money purchase occupational pension schemes where the scheme only makes contributions based on the contracted-out rebate (minimum payments). The need for such an exemption will cease to exist after the abolition date.

### **Part 2**

320. The amendments in *Part 2* are intended to be brought into force at a date later than the abolition date. The purpose of bringing the amendments in *Part 2* of the Schedule into force at a later date is to ensure that the existing statutory mechanisms for HMRC to deal with administrative matters concerning the contracted-out rebate and certification of schemes etc. remain in place until any matters outstanding at the date of abolition of COMPs and APPs have been dealt with before the amendments are brought into force.

### **Social Security Contributions and Benefits Act 1992**

321. *Paragraph 42* makes amendments to section 4C (regulation-making power in respect of retrospective tax legislation) to reflect the abolition of COMPs and APPs.
322. *Paragraphs 43 and 44* make amendments to sections 8 and 9 respectively (calculation of primary and secondary Class 1 contributions) to remove references to section 42A of the PSA1993, which is to be repealed.
323. *Paragraph 45* makes amendments to Schedule 1, which deals with the calculation of national insurance contributions in cases where an earner is employed in more than one employment, to reflect the fact that COMPs and APPs are being abolished.

### **Pension Schemes Act 1993**

324. *Paragraph 47* omits section 8(3), which allows for regulations to be made in relation to the manner in which minimum payments are to be made etc. Minimum payments derive from the contracted-out rebate and are paid to a COMP in respect of earners in contracted out employment.
325. *Paragraph 48* amends section 20(3) to omit a reference to sections that are being repealed by the Act

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- 326. *Paragraph 49* omits section 31 which currently provides for the investment and resources of schemes.
- 327. *Paragraph 50* omits section 40(b), which currently provides for contributions to be paid by HMRC in respect of earners who are members of COMPs and APPs.
- 328. *Paragraph 51* omits section 42A, which provides for the calculation of national insurance rebates in respect of contracted-out employment in a COMP.
- 329. *Paragraph 52* omits section 43, which provides for HMRC to make minimum contributions to an APP which is an earner's chosen scheme.
- 330. *Paragraph 53* omits section 45, which provides for the calculation of minimum contributions.
- 331. *Paragraph 54* omits section 45B, which provides a power to make regulations dealing with the verification of ages for the purpose of determining "appropriate age-related percentages", and provides a power to disclose information in connection with contracted-out rebates.
- 332. *Paragraphs 55, 56, and 57* amend sections 50, 164 and 177 respectively to reflect the repeal of sections 42A, 43 and 45.
- 333. *Paragraph 58* omits the definition of "minimum contributions" in section 181(1) and omits a reference to section 43 in section 181(4). Minimum contributions are made to APPs, and will therefore no longer be required.
- 334. *Paragraph 59* amends Schedule 2 (certification regulations) by making a correction to paragraphs 4 and 6 to reflect the fact that section 66 has been repealed, and by amending the list of provisions in paragraph 5 to reflect repeals in this Schedule.
- 335. *Paragraph 60* amends Schedule 4 (priority in bankruptcy) to reflect the fact that COMPs will no longer exist.

### **Part 3 – Savings**

- 336. *Paragraph 61* allows HMRC to continue to deal with COMP and APP certificates which are still outstanding at the abolition date.
- 337. *Paragraph 62* allows HMRC to continue to cancel, vary etc. COMP and APP certificates retrospectively after the abolition date.

### **Section 16: Dispute resolution arrangements**

- 338. *Section 16* amends section 273 of the PA2004. That section of that Act (pensions disputes) substitutes a new section 50 into the PA1995 and adds new sections 50A and 50B. Section 273 has not yet been brought into force.
- 339. *Subsections (2), (3) and (9)* make minor textual amendments.
- 340. *Subsection (4)* inserts subsection (4A) into the new section 50. Subsection (4A) provides trustees or managers of an occupational pension scheme with the option of adopting two-stage dispute resolution arrangements. Schemes must provide for disputes to be considered by the trustees or managers, but the trustees or managers can choose for disputes to be considered by another person first. Any decision by the trustees or managers will confirm or replace any first-stage decision.
- 341. *Subsection (5)* inserts subsection (5A) into the new section 50. The effect is that the requirements of new section 50(5) apply equally to any first-stage arrangements. This means any decision on an application made under a discretionary first stage must be made and notified to the applicant within a reasonable period.

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342. *Subsections (6) and (7)* make minor amendments to make it clear that the requirements of section 50B relating to the dispute resolution procedure apply only to applications to the trustees or managers, and not any discretionary first stage process.
343. *Subsection (8)* substitutes a new version of section 50B(3). The amendment means that certain applications will simply have to be made within a reasonable period rather than in accordance with a fixed six-month time limit. This will give the trustees or managers the flexibility to adopt time limits to suit either one or two stage arrangements.
344. *Subsection (10)* inserts a new subsection (4A) into new section 50B. This amendment makes it clear that a decision by the trustees or managers can be made by one or more of the trustees on behalf of the whole board.

***Section 17: Removal of Secretary of State's role in approving actuarial guidance***

345. The section introduces *Schedule 5* which amends pensions legislation and other legislation to remove the requirement for the Secretary of State to approve certain actuarial guidance.