

# Pensions Schemes Act 1993

## CHAPTER 48

*Note: The material reproduced or annotated below is limited to what is relevant to this volume, comprising ss. 7, 8, 11, 13-18, 39-42A, 45B-49, 67, 68, 109, 128, 155, 156, 168, 169-171; schs. 2,4.*

*The other provisions of this Act are covered in volume 5.*

*The abridged Arrangement of Sections below lists the sections and Schedules relevant to this volume.*

*The full Arrangement of Sections is reproduced in volume 5.*

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[5th November 1993]

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## PART III

## CERTIFICATION OF PENSION SCHEMES AND EFFECTS ON MEMBERS' STATE SCHEME RIGHTS AND DUTIES

## CHAPTER I

## CERTIFICATION

*Preliminary*

**7.**—<sup>[2]</sup>(1) Regulations shall provide for the [<sup>1</sup>Inland Revenue] to issue certificates stating—

- (a) that the employment of an earner in employed earner's employment is contracted-out employment by reference to an occupational pension scheme;  
 or  
 (b) that a personal pension scheme is an appropriate scheme;

Issue of contracting-out [<sup>2</sup>and appropriate scheme] certificates.

and in this Act a certificate under paragraph (a) is referred to as “a contracting-out certificate” and a certificate under paragraph (b) as “an appropriate scheme certificate”.

**7.**—<sup>[2]</sup>(1) *Regulations shall provide for HMRC to issue certificates stating that the employment of an earner in employed earner's employment is*

<sup>1</sup> Words in s. 7(1) substituted (1.4.99) by the Transfer of Functions Act 1999 (c. 11), Sch. 1, para. 33.

<sup>2</sup> S. 7(1) & (1A) to be substituted for 7(1) & words in sidenote to be omitted (prosp.) by the Pensions Act 2007 (c. 22), Sch. 4, para. 2.

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*contracted-out employment by reference to an occupational pension scheme.*

*(1A) In this Act such a certificate is referred to as “a contracting-out certificate”]*

(2) The regulations shall provide for contracting-out certificates to be issued to employers and to specify—

- (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.

[<sup>1</sup>(2A) The regulations may provide, in the case of contracting-out certificates issued before the principal appointed day, for their cancellation by virtue of the regulations—

- (a) at the end of a prescribed period beginning with that day, or
- (b) if prescribed conditions are not satisfied at any time in that period, but for them to continue to have effect until so cancelled; and the regulations may provide that a certificate having effect on and after that day by virtue of this subsection is to have effect, in relation to any earner’s service on or after that day, as if issued on or after that day.

(2B) In this Part, “the principal appointed day” means the day designated\* by an order under section 180 of the Pensions Act 1995 as the principal appointed day for the purposes of Part III of that Act.]

\*6.4.97 (see art. 2(7) of S.I. 1996/778 (c. 13))

(3) 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 in relation to that employment; and references in this Act to the contracting-out of a scheme are references to its inclusion in such a certificate.

[<sup>2</sup>(4) A personal pension scheme is an appropriate scheme if there is in force an appropriate scheme certificate issued [<sup>3</sup>...] in accordance with this Chapter that it is such a scheme.

(5) An appropriate scheme certificate for the time being in force in relation to a scheme shall be conclusive that the scheme is an appropriate scheme.

(6) Regulations shall provide that any question whether a personal pension scheme is or at any time was an appropriate scheme shall be determined by the [<sup>4</sup>Inland Revenue].]

(7) Except in prescribed circumstances, no contracting-out certificate [<sup>2</sup>or appropriate scheme certificate] shall have effect from a date earlier than that on which the certificate is issued.

[<sup>2</sup>(8) References in this Act to a contracting-out certificate, a contracted-out scheme and to contracting-out in a context relating to a money purchase contracted-out scheme are to be construed in accordance with section 181A.]

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<sup>1</sup> S. 7(2A) and (2B) inserted (6.4.96 for reg. making purposes, 6.4.97 for all other purposes) by s. 136(1) of Pensions Act 1995 (c. 26).

<sup>2</sup> S. 7(4)-(6) & words in (7) to be omitted and (8) to be inserted (prosp.) by the Pensions Act 2007 (c. 22), Sch. 4, para. 2.

<sup>3</sup> Words in s. 7(4) deleted (6.4.97) by para. 22(b) of Sch. 5 and by Sch. 7 Part III, to Pensions Act 1995 (c. 26).

<sup>4</sup> Words in s. 7(6) substituted (1.4.99) by the Transfer of Functions Act 1999 (c. 11), Sch. 1, para. 33.

<sup>1</sup>8.—(1) 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—

Meaning of "contracted-out employment", "guaranteed minimum pension" and "minimum payment".

(a) either—

[<sup>2</sup>(i) his service in the employment is for the time being service which qualifies him for a pension provided by an occupational pension scheme contracted out by virtue of satisfying section 9(2) (in this Act referred to as "a salary related contracted-out scheme")], or

(ii) his employer makes minimum payments in respect of his employment to an occupational pension scheme which is contracted-out by virtue of satisfying section 9(3) (in this Act referred to as "a money purchase contracted-out scheme"); and [<sup>3</sup>—

(a) *he is under pensionable age;*

(aa) *his service in the employment is for the time being service which qualifies him for a pension provided by an occupational pension scheme contracted-out by virtue of satisfying section 9(2) (in this Act referred to as "a salary related contracted-out scheme");]*

(b) there is in force a contracting-out certificate issued by the [<sup>4</sup>Inland Revenue] in accordance with this Chapter stating that the employment is contracted-out employment by reference to the scheme.

[<sup>3</sup>(1A) *In addition, in relation to any period before the abolition date, the employment of an earner in employed earner's employment was "contracted-out employment" in relation to him during that period if—*

(a) *he was under pensionable age;*

(b) *his employer made minimum payments in respect of his employment to a money purchase contracted-out scheme, and*

(c) *there was in force a contracting-out certificate issued in accordance with this Chapter (as it then had effect) stating that the employment was contracted-out employment by reference to the scheme.]*

(2) In this Act—

"guaranteed minimum pension" means any pension which is provided by an occupational pension scheme in accordance with the requirements of sections 13 and 17 to the extent to which its weekly rate is equal to the earner's or, as the case may be, the earner's widow's or widower's guaranteed minimum as determined for the purposes of those sections respectively; and

"minimum payment", in relation to an earner's employment in any tax week, means the rebate percentage of so much of the earnings paid to or for the benefit of the earner in that week as exceeds the current lower earnings limit but not the current upper earnings limit (or the prescribed equivalents if he is paid otherwise than weekly);

[<sup>5</sup>and for the purposes of this subsection "rebate percentage" means the appropriate flat rate percentage [for the purposes of [<sup>6</sup>section 42A]]].

<sup>1</sup> References to the Board in this section are to be replaced (prosp.) with references to the Secretary of State by para. 21 of Sch. 5 to the Pensions Act 1995 (c. 26).

<sup>2</sup> S. 8(1)(a)(i) substituted (6.4.96 for reg. making purposes, 6.4.97 for all other purposes) by s. 136(2) of Pensions Act 1995 (c. 26).

<sup>3</sup> In s. 8 words to be substituted in (1) & (2) for words in brackets and (1A) to be inserted (prosp.) by the Pensions Act 2007 (c. 22), Sch. 4, para. 3.

<sup>4</sup> Words in s. 8(1)(b) substituted (1.4.99) by the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), Sch. 1, para. 33.

<sup>5</sup> Words in s. 8(2) substituted (6.4.97) by the Pensions Act 1995 (c. 26), Sch. 5, para. 23(a).

<sup>6</sup> Words substituted in s. 8(2) (6.4.99) by Sch. 7, para. 126 of S.S. Act 1998 (c. 8).

*[<sup>1</sup>for the tax year in which the week falls as specified in an order made under section 42B (as it had effect before the abolition date)]*

*The defn. of “guaranteed minimum pension” in s. 8(2) is 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. 1, w.e.f. 23.9.85, and, where such rights have been transferred from appropriate policies, by S.I. 1985/1323, Sch. 3A, para. 1, w.e.f. 27.7.87.*

*The defn. of “guaranteed minimum pension” in s. 8(2) is also modified, for payments transferring protected rights to schemes which are or were salary related contracted-out schemes, by reg. 4(2) of S.I. 1987/1118 w.e.f. 27.7.87 for personal pension schemes and 6.4.88 otherwise.*

(3) 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 deduction from 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 the payment of earnings being made in accordance with any practice which is abnormal for the employment in respect of which the earnings are paid;
- (f) without prejudice to paragraph (e), for enabling the [<sup>2</sup>Inland Revenue], where [<sup>2</sup>they are] 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.

(4) 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.

(5) [...<sup>3</sup>]

<sup>1</sup> In s. 8 words to be substituted in (1) & (2) for words in brackets (prosp.) by the Pensions Act 2007 (c. 22), Sch. 4, para. 3.

<sup>2</sup> Words in s. 8(3)(f) substituted (1.4.99) by the Social Security Contributions (Transfer of Functions, etc.) Act (c. 2), Sch. 1, para. 34(b).

<sup>3</sup> Words in s. 8(2) substituted (6.4.97) by para. 23(a) of Sch. 5 to Pensions Act 1995 (c. 26).

*General requirements for certification*

Ss. 9-10—see volume 5.

[<sup>1</sup>11.—(1) Subject to the provisions of this Part, 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.

Elections as to employments covered by contracting-out certificates.

(2) Subject to subsections (3) and (4), an election may be so made, and an employment so included, either generally or in relation only to a particular description of earners.

(3) 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.

(4) If the [<sup>2</sup>Inland Revenue] consider that an employer is contravening subsection (3) in relation to any scheme, [<sup>2</sup>they] may—

- (a) refuse to give effect to any election made by him in relation to that scheme; or
- (b) cancel any contracting-out certificate held by him in respect of it.

(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;
  - (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
  - (iv) to such other persons as may be prescribed;

<sup>1</sup> Refs. to the Board in this section are to be replaced (prosp.) with refs. to the Secretary of State, together with grammatical consequentials, by para. 21 of Sch. 5 to the Pensions Act 1995 (c. 26). (For reg. making purposes only, however, the relevant substitutions in s. 11(5)(d) came into force on 6.4.96.)

<sup>2</sup> Words in s. 11(4) substituted (1.4.99) by the Social Security Contributions (Transfer of Functions, etc.) Act (c. 2), Sch. 1, para. 37(2).

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- (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);
- (d) for empowering the [<sup>1</sup>Inland Revenue] to refuse to give effect to an election made by an employer unless [<sup>1</sup>they are] satisfied that he has complied with the requirements of the regulations.
- (e) for referring to an industrial tribunal any question—
  - (i) whether an organisation is such a trade union as is mentioned in paragraph (b)(ii), or
  - (ii) whether the requirements of the regulations as to consultation have been complied with.

S. 12—see volume 5.

*Requirements for certification of occupational pension schemes providing guaranteed minimum pensions*

**13.—(1)** Subject to the provisions of this Part, the scheme must—

Minimum pensions for earners

- (a) provide for the earner to be entitled to a pension under the scheme if he attains pensionable age; and
- (b) contain a rule to the effect that the weekly rate of the pension will be not less than his guaranteed minimum (if any) under sections 14 to 16.

(2) 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 section 19(4) of the Social Security Contributions and Benefits Act 1992, subject to the provisions of this Part, the scheme must

1992 c. 4.

- (a) provide for her to be entitled to a pension under the scheme if she attains pensionable age [...<sup>2</sup>]; and
- (b) satisfy such other conditions as may be prescribed.

(3) Subject to subsection (4), 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.

(4) Subject to subsection (5), 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.

<sup>1</sup> Words in s. 11(5)(d) substituted (1.4.99) by the Transfer of Functions Act 1999 (c. 11), Sch. 1, para. 37(3).

<sup>2</sup> Words in s. 13(2)(a) deleted (6.4.97) by Pensions Act 1995 (c. 26), Sch. 5, para. 26, and Sch. 7, Part III.

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**Ss. 13-14**

- (5) The Scheme must provide for the earner's consent to be required—
- (a) for any such postponement by virtue of employment to which the scheme does not relate; and
  - (b) for any such postponement after the expiration of five years from the date on which he attains pensionable age.

(6) 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.

(7) The benefits referred to in subsection (6) 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;

but subsection (6) excludes only so much of those benefits as had to be provided in order that the employment should for that period be treated as non participating.

(8) In this section "the former legislation" means Part III of the National Insurance Act 1965 and the previous corresponding enactments.

1965 c. 51.

Earner's guaranteed minimum.

**14.—(1)** An earner has a guaranteed minimum in relation to the pension provided by a scheme if in any tax week in a relevant year, earnings in excess of the current lower earnings limit (or the prescribed equivalent if he is paid otherwise than weekly) have been paid to or for his benefit in respect of employment which is contracted-out by reference to the scheme.

*S. 14(1) is 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. 3, w.e.f. 23.9.85, and, where such rights have been transferred from appropriate policies, by S.I. 1985/1323, Sch. 3A, para. 2, w.e.f. 27.7.87.*

*S. 14(1) is also 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, w.e.f. 27.7.87 for personal pension schemes and 6.4.88 otherwise.*

(2) Subject to section 15(1), the guaranteed minimum shall be the weekly equivalent of an amount equal to the appropriate percentage of the total of the earner's earnings factors for the relevant years, so far as derived from earnings such as are mentioned in subsection (1) upon which primary Class 1 contributions have been paid or treated as paid.

(3) [...<sup>1</sup>]

(4) Where the amount of a person's earnings for any period is relevant for any purpose of subsection (1) or (2) and the [<sup>2</sup>Inland Revenue are] 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 [<sup>2</sup>they think] fit, an amount which shall be regarded as the amount of those earnings; or
- (b) take their amount to be such sum as [<sup>2</sup>they] may specify in the particular case.

(5) In subsection (2) the "appropriate percentage" means—

- (a) in respect of the earner's earnings factors for any tax year not later than the tax year 1987-88—

<sup>1</sup> S. 14(3) deleted (6.4.97) by Pensions Act 1995 (c. 26), Sch. 5, para. 27(a), and Sch. 7, Part III.

<sup>2</sup> Words in s. 14(4) substituted (1.4.99) by the Transfer of Functions Act 1999 (c. 11), Sch. 1, para. 38(a) to (c).

- (i) if the earner was not more than 20 years under pensionable age on 6th April 1978, 1.25 per cent.;
- (ii) in any other case  $25/N$  per cent.;
- (b) in respect of the earner's earnings factors 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  $20/N$  per cent.;

where  $N$  is the number of years in the earner's working life (assuming he will attain pensionable age) which fall after 5th April 1978.

(6) Regulations may prescribe rules as to the circumstances in which earnings factors are derived from earnings for the purposes of subsection (2).

(7) For the purposes of subsection (2) the weekly equivalent of the amount there mentioned shall be calculated by dividing that amount by 52.

(8) In this section "relevant year" means any tax year in the earner's working life (not being earlier than the tax year 1978-79 [<sup>1</sup>or later than the tax year ending immediately before the principal appointed day\*]).

\*6.4.97 (See art. 2(7) of S.I. 1996/778 (c. 13).)

**15.—(1)** Where in accordance with section 13(4) the commencement of an earner's guaranteed minimum pension is postponed for any period and there are at least 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 one-seventh per cent—

Increase of guaranteed minimum where commencement of guaranteed minimum pension postponed.

- (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.

(2) In subsection (1) "week" means any period of seven consecutive days.

(3) Where an earner's guaranteed minimum is increased under subsection (1), 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.

(4) Where one or more orders have come into force under section 109 during the period for which the commencement of a guaranteed minimum pension is postponed, the amount of the guaranteed minimum 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.

[<sup>2</sup>**15A.—(1)** Where—

Reduction of guaranteed minimum in consequence of pension debit.

- (a) an earner has a guaranteed minimum in relation to the pension provided by a scheme, and
- (b) his right to the pension becomes subject to a pension debit, his guaranteed minimum in relation to the scheme is, subject to subsection (2), reduced by the appropriate percentage.

(2) Where the earner is in pensionable service under the scheme on the day on which the order or provision on which the pension debit depends takes effect, his guaranteed minimum in relation to the scheme is reduced by an amount equal to the appropriate percentage of the corresponding qualifying benefit.

(3) For the purposes of subsection (2), the corresponding qualifying benefit is the guaranteed minimum taken for the purpose of calculating the cash equivalent by reference to which the amount of the pension debit is determined.

<sup>1</sup> Words in s. 14(8) inserted (6.4.97) by para. 27(b) of Sch. 5 to Pensions Act 1995 (c. 26).

<sup>2</sup> S. 15A inserted (1.12.00) by the Welfare Reform and Pensions Act 1999 (c. 30), s. 32(3).

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**Ss. 15A-16**

Revaluation of earnings factors for purposes of s. 14: early leavers etc.

1975 c. 60.  
1992 c. 5.

- (4) For the purposes of this section the appropriate percentage is—
- (a) if the order or provision on which the pension debit depends specifies the percentage value to be transferred, that percentage;
  - (b) if the order or provision on which the pension debit depends specifies an amount to be transferred, the percentage which the appropriate amount for the purposes of subsection (1) of section 29 of the Welfare Reform and Pensions Act 1999 (lesser of specified amount and cash equivalent of transferor's benefits) represents of the amount mentioned in subsection (3)(b) of that section (cash equivalent of transferor's benefits).]

**16.—**(1) Subject to subsection (2), for the purpose of section 14(2) the earner's earnings factor for any relevant year (so far as derived as mentioned in that section) shall be taken to be that factor as increased by the same percentage as that prescribed for the increase of that factor by the last order under section 21 of the Social Security Pensions Act 1975 or section 148 of the Social Security Administration Act 1992 to come into force before the end of the final relevant year.

*S. 16(1) modified, for certain transfers of guaranteed minimum pension rights, by S.I. 1984/380, reg. 44(a).*

*S. 16(1) also 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 w.e.f. 27.7.87 for personal pension schemes and 6.4.88 otherwise.*

(2) 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 the final relevant year shall be determined for the purposes of section 14(2) by reference to the last such order to come into force before the end of the tax year in which that service ends ("the last service tax year").

(3) Where a scheme provides as mentioned in subsection (2) the scheme shall provide for the weekly equivalent mentioned in section 14(2) to be increased by at least [the prescribed percentage for each relevant year after the last service tax year; and the provisions included by virtue of this subsection may also conform with such additional requirements as may be prescribed].

*S. 16(2) and (3) modified, for certain transfers of guaranteed minimum pension rights, by S.I. 1984/380, reg. 44(b).*

*S. 16(2) is also modified, for payments transferring protected rights to schemes which are or were salary related contracted-out schemes, by reg. 4(6) of S.I. 1987/1118 w.e.f. 27.7.87 for personal pension schemes and 6.4.88 otherwise.*

(4) Except in such cases or classes of case as may be prescribed, the provision made by virtue of subsections (2) and (3) must be the same for all members of the scheme.

*S. 16(4) is 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, w.e.f. 23.9.85, and, where such rights have been transferred from appropriate policies, by S.I. 1985/1323, Sch. 3A, para. 3, w.e.f. 27.7.87.*

*S. 16(4) is also 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 w.e.f. 27.7.87 for personal pension schemes and 6.4.88 otherwise.*

(5) In this section—

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<sup>1</sup> Words in s. 16(3) substituted (6.4.96 for reg. making purposes, 6.4.97 for other purposes) by para. 28(a) of Sch. 5 to Pensions Act 1995 (c. 26).

[<sup>1</sup>“relevant year” means any tax year in the earner’s working life,] and  
 [<sup>2</sup>“final relevant year” means the last tax year in the earner’s working life].

17.—(1) Subject to the provisions of this Part, the scheme must provide that if the earner dies leaving a widow or widower (whether before or after attaining pensionable age), the widow or widower will be entitled to a guaranteed minimum pension under the scheme.

Minimum pensions for widows and widowers.

(2) The scheme must contain a rule to the effect that—

- (a) if the earner is a man who has a guaranteed minimum under section 14, the weekly rate of the widow’s pension will be not less than the widow’s guaranteed minimum;
- (b) if the earner is a woman who has a guaranteed minimum under that section, the weekly rate of the widower’s pension will be not less than the widower’s guaranteed minimum.

(3) The widow’s guaranteed minimum shall be half that of the earner.

(4) The widower’s guaranteed minimum 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.

[<sup>3</sup>(4A) The scheme must provide for the widow or widower’s pension to be payable to the widow or widower—

- (a) for any period for which a Category B retirement pension is payable to the widow or widower by virtue of the earner’s contributions or would be so payable but for section 43(1) of the Social Security Contributions and Benefits Act 1992 (persons entitled to more than one retirement pension);
- (b) for any period for which widowed parent’s allowance or bereavement allowance is payable to the widow or widower by virtue of the earner’s contributions; and
- (c) in the case of a widow or widower whose entitlement by virtue of the earner’s contributions to a widowed parent’s allowance or bereavement allowance has come to an end at a time after the widow or widower attained the age of 45, for so much of the period beginning with the time when the entitlement came to an end as neither—
  - (i) comprises a period during which the widow or widower and a person of the opposite sex are living together as husband and wife; nor
  - (ii) falls after the time of any remarriage by the widow or widower.]

(5) The scheme [<sup>3</sup>must also make provision] for the widow’s pension to be payable to her for any period for which a [...<sup>3</sup>] widowed mother’s allowance or widow’s pension is payable to her by virtue of the earner’s contributions [...<sup>3</sup>].

(6) The scheme [<sup>3</sup>must also make provision] for the widower’s pension to be payable to him in the prescribed circumstances and for the prescribed period.

(7) The trustees or managers of the scheme shall supply to the [<sup>4</sup>Inland Revenue] such information as [<sup>4</sup>the Inland Revenue] may require relating to the payment of pensions under the scheme to widowers [<sup>5</sup>or widows].

<sup>1</sup> Defn. of “relevant year” substituted (25.4.00) by s. 18 of the Welfare Reform & Pensions Act 1999 (c. 30).

<sup>2</sup> Defn. of “final relevant year” in s. 16(5) substituted (6.4.97) by para. 28(b) of Sch. 5 to Pensions Act 1995 (c. 26).

<sup>3</sup> In s. 17, subsection (4A) inserted & words in subsection (5) & (6) substituted & omitted (1.1.01) by the Child Support, Pensions & Social Security Act 2000 (c. 19), Sch. 5, para. 1.

<sup>4</sup> Words in s. 17(7) substituted (1.4.99) by the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), Sch. 1, para. 39.

<sup>5</sup> Words in s. 17(7) inserted (6.4.97) by para. 29 of Sch. 5 to Pensions Act 1995 (c. 26).

**PENSION SCHEMES ACT 1993 (c. 48)**

**Ss. 18-41**

Treatment of insignificant amounts

**18.**—(1) Where an amount is required to be calculated in accordance with the provisions of sections 14(7), 15(1) or 17(2), (3) or (4) and, apart from this subsection, the amount so calculated is less than 0.5p, then, notwithstanding any other provision of this Act, that amount shall be taken to be zero, and other amounts so calculated shall be rounded to the nearest whole penny, taking 0.5p as nearest to the next whole penny above.

(2) Where a guaranteed minimum pension is attributable in part to earnings factors for the period before the tax year 1988-89 and in part to earnings factors for that tax year or for that tax year and subsequent tax years, the pension shall be calculated by—

- (a) applying subsection (1) separately to the amount attributable to the period before the tax year 1988-89 and to the amount attributable to that and subsequent tax years, and
- (b) aggregating the two amounts so calculated.

*Ss. 19-38—see volume 5.*

*General regulations as to administration of Part III*

General power to make regulations.

**39.** Schedule 2 shall have effect for enabling regulations to be made in relation to the operation and administration of this Part, and Part I of that Schedule has effect as respects occupational pension schemes [...<sup>1</sup>]

**CHAPTER II**

**REDUCTION IN STATE SCHEME CONTRIBUTIONS AND SOCIAL SECURITY BENEFITS FOR MEMBERS OF CERTIFIED SCHEMES**

*Preliminary*

Scope of Chapter II.

**40.** This Chapter has effect for the purpose—

- (a) of reducing the rates at which certain national insurance contributions are payable by or in respect of earners whose employment is contracted-out by reference to contracted-out occupational pension schemes;
- (b) of providing for contributions to be paid by the [<sup>2</sup>Inland Revenue] in respect of earners who are members of [<sup>3</sup>money purchase contracted-out schemes and members of] appropriate personal pension schemes; and
- (c) of making provision concerning the payment of certain social security benefits payable in respect of members and former members of such schemes.

Reduced rates of Class 1 contributions.

**41.** [<sup>4</sup>(1) Subsections (1A) to [<sup>5</sup>(1E)] apply where—

- (a) 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, and
- (b) the earner's service in the employment is service which qualifies him for a pension provided by a salary related contracted-out scheme;

<sup>1</sup> Words omitted in s. 39 (6.4.12) by art. 5(7) of S.I. 2011/1730.

<sup>2</sup> Words substituted (11.11.99) by the Welfare Reform & Pensions Act 1999 (c. 30), Sch. 11, para. 21.

<sup>3</sup> Words in s. 40(b) inserted (6.4.97) by s. 137(1) of Pensions Act 1995 (c. 26).

<sup>4</sup> S. 41(1) substituted (6.4.99) by Sch. 9, para 127 of S.S. Act 1998 (c. 8).

<sup>5</sup> Words in s. 41(1) substituted & subsections (1A) to (1E) substituted for (1A) to (1C) (22.12.99 for reg. making purposes, 6.4.00 for all other purposes) by the Welfare Reform & Pensions Act 1999 (c. 30), Sch. 9, para. 6(2) & (3).

and in subsections (1A) and (1B) “the relevant part”, in relation to those earnings, means so much of those earnings as exceeds the current lower earnings limit but not [<sup>1</sup>the applicable limit] for that week (or the prescribed equivalents if the earner is paid otherwise than weekly).

[<sup>1</sup>(1ZA) In subsection (1)–

(a) “the applicable limit”–

- (i) in relation to a tax week falling in a tax year before the flat rate introduction year, means the upper earnings limit for the week in question;
- (ii) in relation to a tax week falling in the flat rate introduction year or any subsequent tax year, means the upper accrual point divided by 52; and

(b) “prescribed”–

- (i) in relation to the lower or upper earnings limit, means (in accordance with section 5(4) of the Social Security Contributions and Benefits Act 1992) prescribed under that provision;
- (ii) in relation to the amount mentioned in paragraph (a)(ii) above, means (in accordance with section 181) prescribed by regulations under this Act.]

[<sup>2</sup>(1A) The amount of any primary Class 1 contribution [<sup>3</sup>attributable to section 8(1)(a) of the Social Security Contributions and Benefits Act 1992 (c. 4)] in respect of the earnings shall be reduced by an amount equal to 1.6 per cent. of the relevant part of the earnings (“Amount R1”).

(1B) The amount of any secondary Class 1 contribution in respect of the earnings shall be reduced by an amount equal to [<sup>4</sup>3.7 per cent] of the relevant part of the earnings (“Amount R2”).

(1C) The aggregate of Amounts R1 and R2 shall be set off–

- (a) first against the aggregate amount which the secondary contributor is liable to pay in respect of the contributions mentioned in subsections (1A) and (1B); and
- (b) then (as to any balance) against any amount which the secondary contributor is liable to pay in respect of any primary or secondary Class 1 contribution in respect of earnings–
  - (i) paid to or for the benefit of any other employed earner (whether in contracted-out employment or not), and
  - (ii) in relation to which the secondary contributor is such a contributor;

and in this subsection any reference to a liability to pay an amount in respect of a primary Class 1 contribution is a reference to such a liability under paragraph 3 of Schedule 1 to the Social Security Contributions and Benefits Act 1992.

(1D) If–

- (a) any balance remains, and
- (b) the secondary contributor makes an application for the purpose to the Inland Revenue,

the Inland Revenue shall, in such manner and at such time (or within such period) as may be prescribed, pay to the secondary contributor an amount equal to the remaining balance.

<sup>1</sup> Words inserted in s. 41(1) & s. 41(1ZA) inserted (27.9.07) by the Pensions Act 2007 (c. 22), Sch. 1, para. 37.

<sup>2</sup> S. 41(1A) substituted (6.4.99) by Sch. 9, para 127 of S.S. Act 1998 (c. 8).

<sup>3</sup> Words inserted in s. 41(1A) (6.4.03) by the National Insurance Contributions Act 2002 (c. 19), Sch. 1, para. 36.

<sup>4</sup> Words substituted in s. 41(1B) (6.4.07) by art. 2 of S.I. 2006/1009.

**PENSION SCHEMES ACT 1993 (c. 48)**

**Ss. 41-42**

1992 c. 4.

But regulations may make provision for the adjustment of an amount that would otherwise be payable under this subsection so as to avoid the payment of trivial or fractional amounts.

(1E) If the Inland Revenue pay any amount under subsection (1D) which they are not required to pay, they may recover that amount from the secondary contributor in such manner and at such time (or within such period) as may be prescribed.]]

(2) 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 purposes of subsection (1) 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.

(3) 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 section 19(4) of the Social Security Contributions and Benefits Act 1992 (reduced rates for married women and widows).

Review and alteration of rates of contributions applicable under s. 41.

**42.—**(1) The Secretary of State may from time to time, and shall when required by subsection (2), lay before each House of Parliament—

[<sup>1</sup>(a) a report by the Government Actuary or the Deputy Government Actuary on—

- (i) the percentages for the time being applying under section 41(1A)(a) and (b), and
- (ii) any changes since the preparation of the last report under this paragraph in the factors in his opinion affecting the cost of providing benefits [<sup>2</sup>(or parts of benefits) which, in accordance with section 48A below and [<sup>3</sup>Schedules 4A and 4B] Schedule 4A to the Social Security Contributions and Benefits Act 1992,] are foregone by or in respect of members of salary related contracted-out schemes]; and

(b) a report by the Secretary of State stating whether he considers that, in view of the report of the Government Actuary or the 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 Secretary of State shall lay such reports at intervals of not more than five years.

(3) If in a report under subsection (1)(b) the Secretary of State states that he considers that there should be an alteration in either or both of the percentages mentioned in section [<sup>4</sup>41(1A)(a)] and (b), 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.

(4) An order under subsection (3) 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.

<sup>1</sup> S. 42(1)(a) substituted (13.3.96) by s. 137(3) of Pensions Act 1995 (c. 26), subj. to s. 137(4) *ibid.* (first report-see small-print version of s. 42 below).

<sup>2</sup> Words in s. 42(1)(a)(ii) substituted (8.1.01 for reg. & order making purposes, 25.1.01 for certain purposes in art. 2(a)(i) of S.I. 2001/153 page 1.5907 6.4.02 for all remaining purposes) by the Child Support, Pensions & Social Security Act 2000 (c. 19), s. 34.

<sup>3</sup> Words substituted in s. 42(1)(a)(ii) (27.9.07) by the Pensions Act 2007 (c. 22), Sch. 2, para. 12.

<sup>4</sup> Ref. in s. 42(3) substituted (6.4.97) by para. 41 of Sch. 5 to Pensions Act 1995 (c. 26).

(5) No alteration of those percentages shall introduce any distinction on grounds of age or sex.

(6) A draft of an order making alterations in either or both of those percentages may contain consequential provisions altering any percentage for the time being specified in [1the definition of “the percentage for contributing earners” or “the percentage for non-contributing earners” in paragraph 2(5)] of Schedule 4 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.

[1(7) Until paragraph 60(4) of Schedule 4 to the Pensions Act 2007 comes into force, subsection (6) has effect as if the reference to the definition of “the percentage for contributing earners” or “the percentage for non-contributing earners” were a reference to paragraph (a) of either of those definitions.]

*For the first report under s 42(1)(a) laid after 19.7.95, s. 42 applies subject to the amendments in s. 137(4) of the Pensions Act 1995 (c. 26). S. 42 as so amended is reproduced below:-*

**42.**—(1)The Secretary of State may from time to time, and shall when required by subsection (2), lay before each House of Parliament—

Review and alteration of rates of contributions applicable under s. 41.

(a) a report by the Government Actuary or the Deputy Government Actuary on [...2] the factors in his opinion affecting the cost of providing benefits of an actuarial value equivalent to that of the benefits which, under section 48A, are foregone by or in respect of members of salary related contracted-out schemes; and

[3(b) a report by the Secretary of State stating what, in view of the report under paragraph (a), he considers the percentages under section 41(1A)(a) should be].

(2) The Secretary of State shall lay such reports at intervals of not more than five years.

[4(3) The Secretary of State shall prepare and lay before each House of Parliament with the report the draft of an order specifying the percentages; 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.

(4) An order under subsection (3) shall have effect from the beginning of the tax year which begins with the principal appointed day\*, not being a tax year earlier than the second after that in which the order is made].

(5) No [4determination] of those percentages shall introduce any distinction on grounds of age or sex.

(6) A draft of [4such an order] may contain consequential provisions altering any percentage for the time being specified in paragraph 2(3) of Schedule 4 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.

*\*6.4.97. (See art. 2(7) of S.I. 1996/778 (c. 13).)*

**42A.**—[4(1) Subsections (2) to [5(2D and (3))] apply where—

- (a) 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, and
- (b) the earner’s service in the employment is service which qualifies him for a pension provided by a money purchase contracted-out scheme.

Reduced rates of Class 1 contributions, and rebates.

<sup>1</sup> Words substituted in s. 42(6) and para. (7) added (3.1.12) by the Pensions Act 2011, s. 28(1) & (2).

<sup>2</sup> Words in s. 42(1)(a) deleted by, and in the circumstances described in s. 137(4) of Pensions Act 1995 (c. 26).

<sup>3</sup> Text in s. 42 substituted by, and in the circumstances described in, s. 137(4) of Pensions Act 1995 (c. 26).

<sup>4</sup> Ss. 42A(1) and (2) substituted (6.4.99) by Sch. 7, para. 128 of S.S. Act 1998 (c. 8).

<sup>5</sup> Words substituted (22.12.99 for reg. making purposes, 6.4.00 for all other purposes) by the Welfare Reform and Pensions 1999 (c. 30), Sch. 9, para. 7(2).

S. 42A

[<sup>1</sup>(2) The amount of any primary Class 1 contribution [<sup>2</sup>attributable to section 8(1)(a) of the Social Security Contributions and Benefits Act 1992] in respect of the earnings shall be reduced by an amount equal to the appropriate flat-rate percentage of the relevant part of the earnings (“Amount R1”).

(2A) The amount of any secondary Class 1 contribution in respect of the earnings shall be reduced by an amount equal to the appropriate flat-rate percentage of the relevant part of the earnings (“Amount R2”).

(2B) The aggregate of Amounts R1 and R2 shall be set off—

- (a) first against the aggregate amount which the secondary contributor is liable to pay in respect of the contributions mentioned in subsections (2) and (2A); and
- (b) then (as to any balance) against any amount which the secondary contributor is liable to pay in respect of a primary or secondary Class 1 contribution in respect of earnings—
  - (i) paid to or for the benefit of any other employed earner (whether in contracted-out employment or not), and
  - (ii) in relation to which the secondary contributor is such a contributor;

and in this subsection any reference to a liability to pay an amount in respect of a primary Class 1 contribution is a reference to such a liability under paragraph 3 of Schedule 1 to the Social Security Contributions and Benefits Act 1992.

(2C) If—

- (a) any balance remains, and
- (b) the secondary contributor makes an application for the purpose to the Inland Revenue,

the Inland Revenue shall, in such manner and at such time (or within such period) as may be prescribed, pay to the secondary contributor an amount equal to the remaining balance.

But regulations may make provision for the adjustment of an amount that would otherwise be payable under this subsection so as to avoid the payment of trivial or fractional amounts.

(2D) If the Inland Revenue pay any amount under subsection (2C) which they are not required to pay, they may recover that amount from the secondary contributor in such manner and at such time (or within such period) as may be prescribed.]

(3) [<sup>3</sup>Subject to subsection (5A),] the [<sup>4</sup>Inland Revenue] shall except in prescribed circumstances or in respect of prescribed periods pay in respect of that earner and that tax week to the trustees or managers of the scheme or, in prescribed circumstances, to a prescribed person the amount by which—

- (a) the appropriate age-related percentage of that part of those earnings, exceeds
- (b) the appropriate flat-rate percentage of that part of those earnings.

*The appropriate flat-rate and age-related percentages referred to in s. 42A(2) and (3) above are specified in S.I. 1996/1055, reproduced in Part II of this volume.*

(4) Regulations may make provision—

- (a) as to the manner in which and time at which or period within which payments under subsection (3) are to be made,
- (b) for the adjustment of the amount which would otherwise be payable under that subsection so as to avoid the payment of trivial or fractional amounts.
- (c) for earnings to be calculated or estimated in such manner and on such basis as may be prescribed for the purpose of determining whether any, and if so what, payments under subsection (3) are to be made.

<sup>1</sup> Paras. (2) to (2D) substituted for paras. (2) to (2B) (22.12.99 for reg. making purposes, 6.4.00 for all other purposes) by the Welfare Reform & Pensions Act 1999 (c. 30), Sch. 9, para. 7(3).

<sup>2</sup> Words inserted in s. 42A(2) (6.4.03) by the National Insurance Contributions Act 2002 (c. 19), Sch. 1, para. 37.

<sup>3</sup> Words inserted in s. 42A(3) (6.4.12) by S.I. 2011/1730, art. 5(8)(a).

<sup>4</sup> Words in s. 42A(3) substituted (1.4.99) by the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), Sch. 1, para. 46.

(5) If the [<sup>1</sup>Inland Revenue pay] an amount under subsection (3) which [<sup>1</sup>they are] not required to pay or [<sup>1</sup>are] is not required to pay to the person to whom, or in respect of whom, [<sup>1</sup>they pay] it, [<sup>1</sup>they] may recover it from any person to whom, or in respect of whom, [<sup>1</sup>they] paid it.

[<sup>2</sup>(5A) Where—

- (a) a payment under subsection (3) is due in respect of an earner, and
- (b) apart from this subsection, the payment would under regulations under subsection (3) be made to the earner,

HMRC are not required to make the payment if they determine that the cost to them of administering the payment would exceed the amount of the payment.]

(6) 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 six weeks, or such other period as may be prescribed, from the day on which he so ceased,

that employment shall be treated for the purposes of his section 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.

(7) Subsection (3) of section 41 applies for the purposes of this section as it applies for the purposes of that.

*[<sup>3</sup>(8) For the purposes of this section “the appropriate age-related percentage” and “the appropriate flat-rate percentage”; in relation to a tax year beginning before the abolition date, are the percentages specified as such for that tax year in an order made under section 42B (as it had effect prior to that date).]*

**[<sup>3</sup>42B.—**(1) The Secretary of State shall at intervals of not more than five years lay before each House of Parliament—

- (a) a report by the Government Actuary or the Deputy Government Actuary on the percentages which, in his opinion, are required to be specified in an order under this section so as to reflect the cost of providing benefits of an actuarial value equivalent to that of the benefits [<sup>4</sup>(or parts of benefits) which, in accordance with section 48A below and Schedule 4A to the Social Security Contributions and Benefits Act 1992,] are foregone by or in respect of members of money purchase contracted-out schemes.
- (b) a report by the Secretary of State stating what, in view of the report under paragraph (a), he considers those percentages should be, and
- (c) a draft of an order under subsection (2).

(2) An order under this subsection shall have effect in relation to a period of tax years (not exceeding five) and may—

- (a) specify different percentages for primary and secondary Class 1 contributions, and
- (b) for each of the tax years for which it has effect—
  - (i) specify a percentage in respect of all earners which is ‘the appropriate flat-rate percentage’ for the purposes of section 42A, and
  - (ii) specify different percentages (not being less than the percentage specified by virtue of sub-paragraph (i)) in respect of earners by reference to their ages on the last day of the preceding year (the percentage for each group of earners being ‘the appropriate age-

Determination and alteration of rates of contributions, and rebates, applicable under section 42A.

<sup>1</sup> Words in s. 42A(5) substituted (1.4.99) by the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), Sch. 1, para. 46.

<sup>2</sup> Subsec. (5A) of 42A inserted (6.4.12) by S.I. 2011/1730, art. 5(8)(b).

<sup>3</sup> S. 42A(8) to be inserted & s. 42B. to be omitted (prosp.) by the Pensions Act 2007 (c. 22), Sch. 4, paras. 17 & 18.

<sup>4</sup> Words in s. 42B(1)(a) substituted (8.1.01 for reg. & order making purposes, 25.1.01 for certain purposes in art. 2(a)(i) of S.I. 2001/153 page 1.5907, 6.4.02 for all remaining purposes) by the Child Support, Pensions & Social Security Act 2000 (c. 19), s. 34.

**PENSION SCHEMES ACT 1993 (c. 48)**

**Ss. 42B-46**

related percentage' in respect of earners in that group for the purposes of section 42A).

(3) If the draft of an order under subsection (2) is approved by resolution of each House of Parliament, the Secretary of State shall make the order in the form of the draft.

(4) An order under subsection (2) shall have effect from the beginning of such tax year as may be specified in the order, not being a tax year earlier than the second after that in which the order is made.

(5) Subsection (2) is without prejudice to the generality of section 182.]

*Ss. 43-45A—see volume 5.*

Money purchase and personal pension schemes; verification of ages.

[<sup>1</sup>**45B.**—(1) Regulations may make provision for the manner in which an earner's age is to be verified in determining the appropriate age-related percentages for the purposes of sections 42A and 45(1).

(2) Information held by the Secretary of State [<sup>2</sup>or the Inland Revenue] as to the age of any individual may, whether or not it was obtained in pursuance of regulations under subsection (1), be disclosed by the Secretary of State [<sup>2</sup>or the Inland Revenue]—

(a) to the trustees or managers of a money purchase contracted-out scheme or an appropriate personal pension scheme, and

(b) to such other persons as may be prescribed,

in connection with the making of payments under section 42A(3) or the payment of minimum contributions.]

*Effect of entitlement to guaranteed minimum pensions on payment of social security benefits*

Effect of entitlement to guaranteed minimum pensions on payment of social security benefits. 1992 c. 4.

**\*46.**—(1) Where for any period a person is entitled both—

(a) to a Category A or Category B retirement pension, a widowed mother's allowance [<sup>3</sup>, a widowed parent's allowance] [<sup>4</sup>or a widow's pension] under the Social Security Contributions and Benefits Act 1992; and

†(b) to one or more guaranteed minimum pensions

the weekly rate of the benefit mentioned in paragraph (a) shall for that period be reduced by an amount equal—

[<sup>5</sup>(i) to that part of its additional pension which is attributable to earnings factors for any tax years ending before the principal appointed day], or

(ii) to the weekly rate of the pension mentioned in paragraph (b) (or, if there is more than one such pension, their aggregate weekly rates),

whichever is the less.

†S. 46(1)(b) is 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. 2, w.e.f. 23.9.85.

(2) [...<sup>6</sup>]

[<sup>7</sup>(3) Where for any period—

(a) a person is entitled to one or more guaranteed minimum pensions; and

<sup>1</sup> S. 45B inserted (6.4.97) by s. 139 of Pensions Act 1995 (c. 26).

<sup>2</sup> Words substituted in s. 45B(2) (1.4.99) by the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), Sch. 1, para. 50.

<sup>3</sup> Words inserted (24.4.00 for reg. making purposes, 9.4.01 for all other purposes) in s. 46(1)(a) by s. 70 of the Welfare Reform and Pensions Act 1999 (c. 30).

<sup>4</sup> Words in s. 46(1)(a) substituted (13.4.95) by para. 56(2) of Sch. 1 to S.S. (Incapacity for Work) Act 1994 (c. 18).

<sup>5</sup> S. 46(1)(i) substituted (6.4.97) by para. 44 of Sch. 5 to Pensions Act 1995 (c. 26).

<sup>6</sup> S. 46(2) repealed (13.4.95) by S.S. (Incapacity for Work) Act 1994 (c. 18), Sch. 1, para. 56(3) and Sch. 2.

<sup>7</sup> S. 46(3) substituted (13.4.95) by para. 56(4) of Sch. 1 to S.S. (Incapacity for Work) Act 1994 (c. 18).

- (b) he is also entitled to long-term incapacity benefit under section 30A of the Social Security Contributions and Benefits Act 1992,

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for that period an amount equal to the weekly rate or aggregate weekly rates of the guaranteed minimum pension or pensions shall be deducted from any increase payable under regulations under section 30B(7) of that Act and he shall be entitled to such an increase only if there is a balance after the deduction and, if there is such a balance, at a weekly rate equal to it.]

(4) Where for any period—

- (a) a person is entitled to one or more guaranteed minimum pensions;
- (b) he is also entitled to a Category A retirement pension under section 44 of the Social Security Contributions and Benefits Act 1992; and
- (c) 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—

- (a) the additional pension; and
- (b) 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 46(1) of the Pension Schemes Act 1993.”.

(5) Where for any period—

- (a) a person is entitled to one or more guaranteed minimum pensions;
- (b) he is also entitled to a Category A retirement pension under section 44 of the Social Security Contributions and Benefits Act 1992; and
- (c) the weekly rate of his Category A retirement pension does not include an additional pension such as is mentioned in subsection (3)(b) of that section,

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 section only if there is a balance remaining after that deduction and, if there is such a balance, of an amount equal to it.

(6) Where for any period—

- (a) a person is entitled to one or more guaranteed minimum pensions;
- (b) he is also entitled—
  - (i) [...<sup>1</sup>]
  - (ii) to a Category A retirement pension under section 44 of that Act; or
  - (iii) to a Category B retirement pension under [<sup>2</sup>section 48A [<sup>3</sup>, 48B or 48BB] of that Act; 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 substituted for sub-paragraph (3)—

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

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

<sup>1</sup> S. 46(6)(b)(i) repealed (13.4.95) by S.S. (Incapacity for Work) Act 1994 (c. 18), Sch. 1, para. 56(5) and Sch. 2.

<sup>2</sup> Words in s. 46(6)(b)(iii) substituted (19.7.95) by Pensions Act 1995 (c. 26), Sch. 4, para. 22.

<sup>3</sup> Ref. to “48BB” added (24.4.00 for reg. making purposes, 9.4.01 for all other purposes) to s. 46(6)(b)(iii) by s. 70 of the Welfare Reform & Pensions Act 1999 (c. 30).

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### Ss. 46-46A

reduced by the amount of any reduction in the weekly rate of the pension made by virtue of section 46(1) of the Pension Schemes Act 1993.”.

(7) Where for any period—

- (a) a person is entitled to one or more guaranteed minimum pensions;
- (b) he is also entitled to any of the pensions under the Social Security Contributions and Benefits Act 1992 mentioned in subsection (6)(b); 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 paragraph 3 of Schedule 7 to that Act and the beneficiary shall be entitled to an increase only if there is a balance after that deduction and, if there is a balance, only to an amount equal to it.

(8) In this section “the relevant amount” means an amount equal to the weekly rate or aggregate weekly rates of the guaranteed minimum pension or pensions—

- (a) [...<sup>1</sup>]
- (b) in the case of subsection (5), reduced by the amount of any reduction in the weekly rate of the Category A retirement pension made by virtue of subsection (1);

and references in this section to the weekly rate of a guaranteed minimum pension are references to that rate without any increase under section 15(1).

(9) [...<sup>2</sup>]

*\*S. 46 modified (4.1.88) by regs. 2 and 3 of S.I. 1987/1113 where minimum contributions have been paid to a personal pension scheme, and (6.4.88) by regs. 4 and 5 *ibid*, where minimum payments have been made to a money purchase contracted-out scheme.*

### [<sup>3</sup>46A Retirement in tax year after 5th April 2020

(1) Subsection (2) applies where—

- (a) for any period a person is entitled to a Category A or Category B retirement pension, or a widowed parent’s allowance, under the 1992 Act (“the benefit”),
- (b) the person is entitled to one or more guaranteed minimum pensions for that period, and
- (c) the weekly rate of the additional pension in the benefit is determined under section 45(2A) of the 1992 Act (retirement in tax year after 5th April 2020).

(2) The weekly rate of the benefit shall, for the period mentioned in subsection (1)(a), be reduced by an amount calculated in accordance with regulations.

(3) Regulations under subsection (2) must provide for the amount of the reduction to be calculated in such a way that it does not exceed such part of the weekly rate of the additional pension in the benefit as is attributable to earnings factors for tax years ending before the principal appointed day.

(4) The effect of the reductions made under subsection (2) in relation to any person must be actuarially equivalent to the effect of the reductions that, but for section 46(1A), would be made under section 46(1) in relation to that person.

(5) The Secretary of State must require the Government Actuary or Deputy Government Actuary (“the Actuary”) to prepare a report on how actuarial equivalence should be determined for the purposes of this section.

(6) In preparing the report the Actuary must consult such persons as appear to the Actuary to be appropriate.

<sup>1</sup> S. 46(8)(a) repealed (13.4.95) by S.S. (Incapacity for Work) Act 1994 (c. 18), Sch. 1, para. 56(6) and Sch. 2.

<sup>2</sup> S. 46(9) repealed (13.4.95) by S.S. (Incapacity for Work) Act 1994 (c. 18), Sch. 1, para. 56(7) and Sch. 2.

<sup>3</sup> S. 46A inserted (8.4.10) by the Pensions Act 2008 (c. 30), s. 103(3).

(7) The Secretary of State must lay the report before Parliament.

(8) Having considered the report, the Secretary of State must by regulations make provision for determining actuarial equivalence for the purposes of this section.

(9) If any recommendation in the report is not followed in the regulations, the Secretary of State must prepare and lay before Parliament a report explaining why.

(10) In this section “the 1992 Act” means the Social Security Contributions and Benefits Act 1992.]

**47.—**(1) The reference in section 46(1) to a person entitled to a guaranteed minimum pension shall be construed as including a reference to a person so entitled by virtue of being the widower of an earner [<sup>1</sup>in any case where he is entitled to a benefit other than a widowed parent’s allowance] [...<sup>2</sup>] only if—

- [<sup>1</sup>(a) he is also entitled to a Category B retirement pension by input of the earner’s contributions (or would be so entitled but for section 43(1) of the Social Security Contributions and Benefit Act 1992; or]
- (b) he is also entitled to a Category A retirement pension by virtue of [<sup>1</sup>section 41(5)] of [<sup>1</sup>that Act].

Further provisions concerning entitlement to guaranteed minimum pensions for the purposes of s. 46.

(2) For the purposes of section 46 a person shall be treated as entitled to any guaranteed minimum pension to which he would have been entitled—

- (a) if its commencement had not been postponed, as mentioned in section 13(4); or
- (b) if there had not been made a transfer payment or transfer under regulations made by virtue of section 20 as a result of which—
  - (i) he is no longer entitled to guaranteed minimum pensions under the scheme by which the transfer payment or transfer was made, and
  - (ii) he has not become entitled to guaranteed minimum pensions under the scheme to which the transfer payment or transfer was made.

*S. 47(2)(b) modified, for payments transferring protected rights to schemes which are or were salary related contracted-out schemes, by reg. 4(3) of S.I. 1987/1118 w.e.f. 27.7.87 for personal pension schemes and 6.4.88 otherwise.*

(3) Where—

- (a) guaranteed minimum pensions provided for a member or the member’s widow or widower under a contracted-out scheme have been wholly or partly secured as mentioned in subsection (3) of section 19; and
- (b) either—
  - (i) the transaction wholly or partly securing them was carried out before 1st January 1986 and discharged the trustees or managers of the scheme as mentioned in subsection (1) of that section; or
  - (ii) it was carried out on or after that date without any of the requirements specified in subsection (5)(a) to (c) of that section being satisfied in relation to it and the scheme has been wound up; and
- (c) any company with which any relevant policy of insurance or annuity contract was taken out or entered into is unable to meet the liabilities under policies issued or securities given by it; and
- (d) the combined proceeds of—
  - (i) any relevant policies and annuity contracts, and
  - (ii) any cash sums paid or alternative arrangements made under the [<sup>3</sup>Financial Services Compensation Scheme],
 are inadequate to provide the whole of the amount secured,

the member and the member’s widow or widower shall be treated for the purposes of section 46 as only entitled to such part (if any) of the member’s or, as the case may be,

<sup>1</sup> Words in s. 47(1) inserted and substituted (3.9.02) by the State Pension Credit Act 2002 (c. 16), s. 18.

<sup>2</sup> Words in S. 47(1) repealed (13.4.95) by S.S. (Incapacity for Work) Act 1994 (c. 18), Sch. 1, para. 57 and Sch. 2

<sup>3</sup> Words substituted in s. 47(3)(d) (1.12.01) by art. 120 of S.I. 2001/3649.

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the member's widow's or widower's guaranteed minimum pension as is provided by the proceeds mentioned in paragraph (d).

(4) A policy or annuity is relevant for the purposes of subsection (3) if taking it out or entering into it constituted the transaction to which section 19 applies.

(5) For the purposes of section 46 a person shall be treated as entitled to any guaranteed minimum pension to which he would have been entitled—

- (a) if a lump sum had not been paid instead of that pension under provisions included in a scheme by virtue of section 21(1); or
- (b) if that pension had not been forfeited under provisions included in a scheme by virtue of section 21(2).

[<sup>1</sup>(6) For the purposes of section 46, a person shall be treated as entitled to any guaranteed minimum pension to which he would have been entitled but for any reduction under section 15A.]

[<sup>2</sup>(7) For the purposes of section 46, a person shall be treated as entitled to any guaranteed minimum pension to which he would have been entitled but for any order under section 342A of the Insolvency Act 1986 (recovery of excessive pension contributions) or under section 36A of the Bankruptcy (Scotland) Act 1985.]

Reduced benefits where minimum payment or minimum contributions paid.

[<sup>3</sup>48.—(1) Subject to subsection (3), this subsection applies where for any period—

- (a) minimum payments have been made in respect of an earner to an occupational pension scheme which is a money purchase contracted-out scheme in relation to the earner's employment, or
- (b) minimum contributions have been paid in respect of an earner under section 43.

(2) Where subsection (1) applies then, for the purposes of section 46—

- (a) the earner shall be treated, as from the date on which he reaches pensionable age, as entitled to a guaranteed minimum pension at a prescribed weekly rate arising from that period in that employment;
- (b) [...<sup>4</sup>], and
- (c) in prescribed circumstances [...<sup>4</sup>] any widow or widower or the earner shall be treated as entitled to a guaranteed minimum pension at a prescribed weekly rate arising from that period;

and where subsection (1)(b) applies paragraphs (a) to (c) of this subsection apply also for the purposes of [<sup>5</sup>section] 47(2) of the Social Security Contributions and Benefits Act 1992 and paragraph 3(2) of Schedule 7 to that Act, but with the omission from paragraph (a) of the words "in that employment".

1992 c. 4.

(3) Where the earner is a married woman or widow, subsection (1) shall not have effect by virtue of paragraph (a) of that subsection in relation to any period during which there is operative an election that her liability in respect of primary Class 1 contributions shall be a liability to contribute at a reduced rate.

(4) The power to prescribe a rate conferred by subsection (2)(a) includes power to prescribe a nil rate.]

<sup>1</sup> Ss. (6) inserted in s. 47 (1.12.00) by the Welfare Reform & Pensions Act 1999 (c. 30), s. 32(4).

<sup>2</sup> Ss. (7) inserted in s. 47 (6.4.02) by s. 18 of and by para. 6 of Sch. 2 to the Welfare Reform and Pensions Act 1999 (c. 30).

<sup>3</sup> S. 48 is to cease to have effect for minimum payments or minimum contributions paid from 6.4.97, in consequence of s. 140(3) of Pensions Act 1995 (c. 26).

<sup>4</sup> Para. (b) of, and words in para. (c) of, s. 48(2) repealed (13.3.96 for reg. making purposes only, 6.4.96 for all other purposes) by s. 140(2) of, and Part III of Sch. 7 to, Pensions Act 1995 (c. 26).

<sup>5</sup> Word in s. 48(2) substituted (13.4.95) by para. 58 of Sch. 1 to S.S. (Incapacity for Work) Act 1994 (c. 18).

*[<sup>1</sup>Effect of reduced contributions and rebates on social security benefits*

Additional pension and other benefits.

**48A.**—(1) In relation to any tax week where—

- (a) the amount of a Class 1 contribution [<sup>2</sup>attributable to section 8(1)(a) of the Social Security Contributions and Benefits Act 1992] in respect of the earnings paid to or for the benefit of an earner in that week is reduced under section 41 [<sup>3</sup>or 42A], or
- (b) [<sup>4</sup>an amount is paid under section 45(1)] in respect of the earnings paid to or for the benefit of an earner,

section 44(6) of the Social Security Contributions and Benefits Act 1992 (earnings factors for additional pension) shall have effect, except in prescribed circumstances, as if no [<sup>2</sup>such] primary Class 1 contributions had been paid or treated as paid upon those earnings for that week and section 45A of that Act did not apply (where it would, apart from this subsection, apply).

(2) Where the whole or part of a contributions equivalent premium has been paid or treated as paid in respect of the earner, the Secretary of State may make a determination reducing or eliminating the application of subsection (1).

(3) Subsection (1) is subject to regulations under paragraph 5(3A) to (3E) of Schedule 2.

(4) Regulations may, so far as is required for the purpose of providing entitlement to additional pension (such as is mentioned in section 44(3)(b) of the Social Security Contributions and Benefits Act 1992) but to the extent only that the amount of additional pension is attributable to provision made by regulations under section 45(5) of that Act, disapply subsection (1).

(5) In relation to earners where, by virtue of subsection (1), section 44(6) of the Social Security Contributions and Benefits Act 1992 has effect, in any tax year, as mentioned in that subsection in relation to some but not all of their earnings, regulations may modify the application of section 44(5) of that Act.]

*[<sup>5</sup>Women, married women and widows*

Women, married women and widows.

**49.** The Secretary of State may make regulations modifying, in such manner as he thinks proper—

- (a) this Chapter in its application to women born on or after 6th April 1950, and
- (b) sections 41, 42, 46(1), 47(2) and (5) and 48, in their application to women who are or have been married].

<sup>1</sup> S. 48A inserted (6.4.97) by s. 140(1) of Pensions Act 1995 (c. 26).

<sup>2</sup> Words inserted in s. 48A(1) (6.4.03) by the National Insurance Contributions Act 2002 (c. 19), Sch. 1, para. 39.

<sup>3</sup> Words “or, in the case of a week falling before the abolition date, under section 42A (as it then had effect)” to be substituted for words in brackets (prosp.) by the Pensions Act 2007 (c. 22), Sch. 4, para. 23(2).

<sup>4</sup> Words “in the case of a week falling before the abolition date, an amount is paid under section 45(1) (as it then had effect)” (prosp.) by the Pensions Act 2007 (c. 22), Sch. 4, para. 23(2).

<sup>5</sup> S. 49 and the cross heading above it substituted (19.7.95) by Pensions Act 1995 (c. 26), Sch. 4, para. 16.

**PENSION SCHEMES ACT 1993 (c. 48)**

## CHAPTER III

TERMINATION OF CONTRACTED-OUT OR APPROPRIATE SCHEME STATUS:  
STATE SCHEME PREMIUMS

Ss. 50-54—see volume 5.

*State scheme premiums*

Ss. 55-66—see volume 5.

**67.**—(1) If a person fails to pay any [<sup>1</sup>contributions equivalent premium] which is payable by him at or within the time prescribed for the purpose, he shall be liable on summary conviction to a fine of not more than level 3 on the standard scale.

Non-payment of state scheme premiums.

(2) Where—

(a) a person is convicted of the offence under subsection (1) of failing to pay a premium, and

(b) the premium remains unpaid at the date of the conviction,

he shall be liable to pay to the [<sup>2</sup>Inland Revenue] a sum equal to the amount which he failed to pay.

(3) Subject to subsection (4), where a person is convicted of an offence mentioned in subsection (2), evidence may be given of any previous failure by him to pay [<sup>1</sup>contributions equivalent premiums] within the time prescribed for the purpose; and in that subsection “the conviction” and “the offence” mean respectively the conviction referred to in this subsection and the offence of which the person is convicted.

(4) Such evidence may be given only if notice of intention to give it is served with the summons or warrant or, in Scotland, the complaint on which the person appeared before the court which convicted him.

**68.**—(1) Where in England and Wales a person charged with an offence to which section 67(2) applies is convicted of that offence in his absence under section 12(2) of the Magistrates’ Courts Act 1980, then if—

Unpaid premiums: supplementary.  
1980 c. 43.

(a) it is proved to the satisfaction of the court, on oath or in the manner prescribed by rules under section 144 of that Act, that notice under section 67(4) has been duly served specifying the other premiums in respect of which the prosecutor intends to give evidence; and

(b) the clerk of the court has received a statement in writing purporting to be made by the accused or by a solicitor acting on his behalf to the effect that if the accused is convicted in his absence of the offence charged he desires to admit failing to pay the other premiums so specified or any of them,

section 67(3) and (4) shall have effect as if the evidence had been given and the failure so admitted had been proved, and the court shall proceed accordingly.

(2) In England and Wales where—

(a) a person is convicted of an offence to which section 67(2) applies; and

(b) an order is made under Part I of the Powers of Criminal Courts Act 1973 placing the offender on probation or discharging him absolutely or conditionally,

1973 c. 62.

subsection (1) and section 67(2) to (4) shall apply as if it were a conviction for all purposes.

<sup>1</sup> Words in s. 67 substituted (6.4.97) by para. 61 of Sch. 5 to Pensions Act 1995 (c. 26).

<sup>2</sup> Words in s. 67(2) substituted (1.4.99) by the Transfer of Functions Act 1999 (c. 11), Sch. 1, para. 57.

**PENSION SCHEMES ACT 1993 (c. 48)**

**Ss. 68-109**

1975 c. 21.

- (3) In Scotland where—
- (a) a person is convicted on indictment of, or is charged before a court of summary jurisdiction with, any such offence; and
  - (b) an order is made under the Criminal Procedure (Scotland) Act 1975 discharging the offender absolutely or placing him on probation,
- section 67(2) to (4) shall apply as if—
- (i) the conviction on indictment were a conviction for all purposes; or
  - (ii) (as the case may be) the making of the order by the court of summary jurisdiction were a conviction.

(4) In England and Wales any sum which a person is liable to pay under subsection (1) or section 67(2) to (4) shall be recoverable from him as a penalty.

(5) [<sup>1</sup>Contributions equivalent premiums] recovered by the [<sup>2</sup>Inland revenue] under those provisions shall be treated for all purposes as premiums paid to the [<sup>2</sup>Inland revenue] in respect of the person in respect of whom they were originally payable.

*Ss. 69-101—see volume 5.*

**PART V**

**ANNUAL INCREASES OF PENSIONS IN PAYMENT**

*Ss. 102-108—see volume 5.*

**CHAPTER II**

**GUARANTEED MINIMUM PENSIONS**

Annual increase of guaranteed minimum pensions.

**109.**—(1) The Secretary of State shall in each tax year review the general level of prices in Great Britain for the period of 12 months commencing at the end of the period last reviewed under this section.

(2) Where it appears to the Secretary of State that that level has increased at the end of the period under review, 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

[<sup>3</sup>the tax years in the relevant period]

for—

- (a) earners who have attained pensionable age; and
- (b) widows and widowers.

(3) The percentage shall be—

- (a) the percentage by which that level has increased at the end of the period under review; or
- (b) 3 per cent.,

whichever is less.

[<sup>4</sup>(3A) The relevant period is the period—

- (a) beginning with the tax year 1988-89, and
- (b) ending with the last tax year that begins before the principal appointed day for the purposes of Part III of the Pensions Act 1995].

<sup>1</sup> Words in s. 68(5) substituted (6.4.97) by para. 61 of Sch. 5 to Pensions Act 1995 (c. 26).

<sup>2</sup> Words in s. 68(5) substituted (1.4.99) by the Transfer of Functions Act 1999 (c. 11), Sch. 1, para. 58.

<sup>3</sup> Words in s. 109(2) substituted (6.4.97) by s. 55(a) of Pensions Act 1995 (c. 26)

<sup>4</sup> S. 109(3A) inserted (6.4.97) by s. 55(b) of Pensions Act 1995 (c. 26)

(4) 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.

(5) 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 next tax year after that in which the order is made.

(6) Where the benefits mentioned in section 46(1) to (7) are not increased on the day on which an order under this section takes effect, the order shall be treated for the purposes of that section as not taking effect until the day on which those benefits are next increased.

*Ss. 110-118—see volume 5.*

## PART VII INSOLVENCY OF EMPLOYERS

*Ss. 119-127—see volume 5.*

### CHAPTER III PRIORITY IN BANKRUPTCY

**128.** Schedule 4 shall have effect for the purposes of paragraph 8 of Schedule 6 to the Insolvency Act 1986 and paragraph 4 of Schedule 3 to the Bankruptcy (Scotland) Act 1985 (by virtue of which sums to which Schedule 4 to this Act applies are preferential or, as the case may be, preferred debts in cases of insolvency).

Priority in bankruptcy  
etc.  
1986 c. 45.

*Ss. 129-152—see volume 5.*

**PART XI**  
**GENERAL AND MISCELLANEOUS PROVISIONS**

*Ss. 153-154—see volume 5.*

*Information about schemes*

Requirement to give information to the Secretary of State or the Board for the purposes of certain provisions.

**155.** Regulations may require the furnishing by prescribed persons to the Secretary of State [...] [<sup>2</sup>or the Inland Revenue] of such information as he [<sup>3</sup>requires] [<sup>2</sup>or they require] for the purposes of [<sup>3</sup>Part III], section 111 (and Part VIII and section 153 so far as they have effect for the purposes of section 111), section 117 and section 159 (so far as it relates to protected rights payments).

Information for purposes of contracting-out.

[<sup>3</sup>**156.**—(1) The Secretary of State or the Inland Revenue may give to the trustees or managers of an occupational pension scheme or appropriate scheme such information as appears to the Secretary of State or Inland Revenue appropriate to give to them for the purpose of enabling them to comply with their obligations under Part III.

(2) The Secretary of State or Inland Revenue may also give to such persons as may be prescribed any information that they could give under subsection (1) to trustees or managers of a scheme.]

*Ss. 157-167—see volume 5*

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<sup>1</sup> Words in s. 155 repealed (6.4.97) by para. 65(a) of Sch. 5, and Part III of Sch. 7, to Pensions Act 1995 (c. 26).

<sup>2</sup> Words in s. 155 substituted (1.4.99) by Transfer of Functions Act 1999 (c. 11), Sch. 1, para. 59.

<sup>3</sup> Words in s. 155 substituted (6.4.97) by para. 65(b) and (c) of Sch. 5, to Pensions Act 1995 (c. 26)

<sup>3</sup> S. 156 substituted (1.1.01) by the Child Support, Pensions & Social Security Act 2000 (c. 19), Sch. 5, para. 9

*General provisions as to offences*

[<sup>1</sup>168.—(1) Regulations under any provision of this Act (other than Chapter II of Part VII) may make such provision as is referred to in subsection (2) or (4) for the contravention of any provision contained in regulations made or having effect as if made under any provision of this Act. Breach of regulations.

(2) The regulations may provide for the contravention to be an offence under this Act and for the recovery on summary conviction of a fine not exceeding level 5 on the standard scale.

(3) An offence under any provision of the regulations may be charged by reference to any day or longer period of time; and a person may be convicted of a second or subsequent offence under such a provision by reference to any period of time following the preceding conviction of the offence.

(4) The regulations may provide for a person who has contravened the provision [<sup>2</sup>to be required by notice in writing] to pay the Regulatory Authority, within a prescribed period, a penalty not exceeding an amount specified in the regulations; and the regulations must specify different amounts in the case of individuals from those specified in other cases and any amount so specified may not exceed the amount for the time being specified in the case of individuals or, as the case may be, others in section 10(2)(a) of the Pensions Act 1995.

(5) Regulations made by virtue of subsection (4) do not affect the amount of any penalty recoverable under that subsection by reason of an act or omission occurring before the regulations are made.

(6) Where—

- (a) apart from this subsection, a penalty under subsection (4) is recoverable from a body corporate or Scottish partnership by reason of any act or omission of the body or partnership as a trustee of a trust scheme, and
- (b) the act or omission was done with the consent or connivance of, or is attributable to any neglect on the part of, any persons mentioned in subsection (7),

such a penalty is recoverable from each of those persons who consented to or connived in the act or omission or to whose neglect the act or omission was attributable.

<sup>1</sup> S. 168 substituted (1.6.96) for the purpose of making regulations, by s. 155(1) of Pensions Act 1995 (s. 26).

<sup>2</sup> Words inserted in s. 168(4) (6.4.06) by para. 27 of Sch. 12 to the Pensions Act 2004 (c. 35).

**PENSION SCHEMES ACT 1993 (c. 48)**

**Ss. 168-169**

(7) The persons referred to in subsection (6)(b)–

(a) in relation to a body corporate, are–

- (i) any director, manager, secretary, or other similar officer of the body, or a person purporting to act in any such capacity, and
- (ii) where the affairs of a body corporate are managed by its members, any member in connection with his functions of management, and

(b) in relation to a Scottish partnership, are the partners.

(8) Where the Regulatory Authority requires any person to pay a penalty by virtue of subsection (6), they may not also require the body corporate, or Scottish partnership, in question to pay a penalty in respect of the same act or omission.

(9) A penalty under subsection (4) is recoverable by the Authority and any such penalty recovered by the Authority must be paid to the Secretary of State.

(10) Where by reason of the contravention of any provision contained in regulations made, or having effect as if made, under this Act–

(a) a person is convicted of an offence under this Act, or

(b) a person pays a penalty under subsection (4),

then, in respect of that contravention, he shall not, in a case within paragraph (a), be liable to pay such a penalty or, in a case within paragraph (b), be convicted of such an offence.

(11) In this section “contravention” includes failure to comply, and “Scottish partnership” means a partnership constituted under the law of Scotland.]

*S. 168A—see volume 5.*

Offences by bodies corporate.

**169.**—(1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and be liable to be proceeded against accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

*General provisions as to determinations and appeals*

[<sup>1</sup>170.—(1) Section 2 (use of computers) of the Social Security Act 1998 (“the 1998 Act”) applies as if, for the purposes of subsection (1) of that section, this Act were a relevant enactment.

Decisions and appeals.

[<sup>2</sup>(2) It shall be for an officer of the Inland Revenue—

- (a) to make any decision that falls to be made under or by virtue of Part III of this Act, other than a decision which under or by virtue of that Part falls to be made by the Secretary of State;
- (b) to decide any issue arising in connection with payments under section 7 of the Social Security Act 1986 (occupational pension schemes becoming contracted-out between 1986 and 1993); and
- (c) to decide any issue arising by virtue of regulations made under paragraph 15 of Schedule 3 to the Social Security (Consequential Provisions) Act 1992 (continuing in force of certain enactments repealed by the Social Security Act 1973).

(3) In the following provisions of this section a “relevant decision” means any decision which under subsection (2) falls to be made by an officer of the Inland Revenue, other than a decision under section 53 [...<sup>3</sup>].

(4) Sections 9 and 10 of the 1998 Act (revision of decisions and decisions superseding earlier decisions) apply as if—

- (a) any reference in those sections to a decision of the Secretary of State under section 8 of that Act included a reference to a relevant decision; and
- (b) any other reference in those sections to the Secretary of State were, in relation to a relevant decision, a reference to an officer of the Inland Revenue.

(5) Regulations may make provision—

- [<sup>4</sup>(a) generally with respect to the making of relevant decisions;
- (b) with respect to the procedure to be adopted on any application made under section 9 or 10 of the 1998 Act by virtue of subsection (4); and
- (c) generally with respect to such applications, revisions under section 9 and decisions under section 10;]

but may not prevent [<sup>4</sup>a revision under section 9 or decision under section 10] being made without such an application.

(6) Section 12 of the 1998 Act (appeal to appeal tribunal) applies as if, for the purposes of subsection (1)(b) of that section, a relevant decision were a decision of the Secretary of State falling within Schedule 3 to the 1998 Act.

(7) The following provisions of the 1998 Act (which relate to decisions and appeals)—  
 — sections 13 to 18,  
 — sections 25 and 26,  
 — section 28, and

Schedules 4 and 5, shall apply in relation to any appeal under section 12 of the 1998 Act by virtue of subsection (6) above as if any reference to the Secretary of State were a reference to an officer of the Inland Revenue.]

<sup>1</sup> S. 170 substituted (4.3.99) by Sch. 7, para. 131 of S.S. Act 1998 (c. 12).

<sup>2</sup> Paras. (2) to (7) substituted (5.7.99) for (2) to (4) by the Social Security Contributions (Transfer of Functions, etc.) Act 1999, (c. 2), s. 16(2).

<sup>3</sup> Words omitted in s. 170(3) (6.4.12) by S.I. 2011/1730, art. 5(19).

<sup>4</sup> Sub-paras. (a) to (c) substituted for (a) & (b) & words in s. 170(5) substituted (11.11.99) by the Welfare Reform & Pensions Act 1999 (c. 30), Sch. 11, para. 22.

**PENSION SCHEMES ACT 1993 (c. 48)**

**Ss. 171-171A**

Questions arising in proceedings.

**171.**—(1) Where in any proceedings—

- (a) for an offence under this Act; or
- (b) involving any question as to the payment of a [<sup>1</sup>contributions equivalent premium];

[<sup>2</sup>any relevant decision as defined by section 170(3) is made by the Inland Revenue, the decision] shall be conclusive for the purpose of the proceedings.

[<sup>2</sup>(2) If—

- (a) any such decision is necessary for the determination of the proceedings, and
- (b) the decision of the Inland Revenue has not been obtained or an application with respect to the decision has been made under section 9 or 10 of the Social Security Act 1998,

the decision shall be referred to the Inland Revenue to be made in accordance (subject to any necessary modifications) with Chapter II of Part I of that Act.

(3) Subsection (1) does not apply where, in relation to the decision—

- (a) an appeal has been brought but not determined,
- (b) an application for leave to appeal has been made but not determined,
- (c) an appeal has not been brought (or, as the case may be, an application for leave to appeal has not been made) but the time for doing so has not yet expired, or
- (d) an application has been made under section 9 or 10 of that Act.

(4) In a case falling within subsection (3) the court shall adjourn the proceedings until such time as the final decision is known and that decision shall be conclusive for the purposes of the proceedings.]

Reports by Inland Revenue.

[<sup>2</sup>**171A.**—(1) The Inland Revenue shall prepare, either annually or at such times or intervals as may be prescribed, a report on the standards achieved by their officers in the making of decisions against which, by virtue of section 170(6), an appeal lies to an appeal tribunal constituted under Chapter I of Part I of the Social Security Act 1998.

(2) Any report under this section—

- (a) may be included in any annual report by the Inland Revenue of which a copy is laid before each House of Parliament, or
- (b) may be annexed to any report of the Secretary of State under section 81 of the Social Security Act 1998.

(3) A copy of every report under this section shall be laid before each House of Parliament, unless the report is included in, or annexed to, a report of which a copy is so laid.]

*Ss. 172-193—see volume 5.*

<sup>1</sup> Words in s. 171(1)(b) substituted (6.4.97) by para. 71 of Sch. 5 to Pensions Act 1995 (c. 26).

<sup>2</sup> Words & paras substituted and inserted (5.7.99) by the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), Sch. 7, paras 19 & 20.

## SCHEDULES

*Schedule 1—see volume 5.*

## SCHEDULE 2

## CERTIFICATION REGULATIONS

Section 39.

## PART 1

## OCCUPATIONAL PENSION SCHEMES

*General regulations: beginning and ending of employment*

1.—(1) In relation to employments which are or at any time have been contracted-out employments, and to the operation of schemes by reference to which employments are or have been contracted-out, regulations may make provision generally as to the circumstances in which an earner's employment is or is not to be treated as having begun, or as having come to an end and, in particular, as to the matters mentioned in sub-paragraphs (2) to(4).

(2) Regulations may make provision for treating an earner's employment which ends before a person succeeds to the business of the earner's employer as having been employment under the employer's successor.

(3) Regulations may make provision—

- (a) for changes in an earner's employment due to the death of an employer or another cause, or any cesser of contracted-out employment so due, to be disregarded; or
- (b) for employment under one employer to be treated as a continuation of that under another and any contracting-out certificate issued to, or election made by, the former employer to be treated as issued to or made by the latter.

(4) Regulations may also make provision—

- (a) for temporary interruptions in an earner's employment or contracted-out employment to be disregarded; and
- (b) for the employment in either case to be treated as continuing during the interruption.

(5) References in this paragraph to an earner's employment beginning or ending shall include references to his employment becoming or ceasing to be contracted-out employment.

2.—(1) Subject to sub-paragraph (2), regulations may enable the [<sup>1</sup>Inland Revenue] to determine in prescribed circumstances that an earner, or any group of earners whose employment falls within a particular category or description of contracted-out employments, has been in such employment from a date ("the determined date") earlier than would otherwise be the case.

(2) The determined date for any earner may not be earlier than—

- (a) the date on which his relevant employment began, or
- (b) the date on which a contracting-out certificate was issued in respect of it,

whichever is the later.

<sup>1</sup> Words substituted in Sch. 2, para. 2(1) (1.4.99) by the Transfer of Functions Act 1999 (c. 11), Sch. 1, para. 62(2).

Sch. 2

(3) Provision may be made by regulations for requiring an employer to give notice to the [<sup>1</sup>Inland Revenue]—

- (a) when an earner's employment becomes or ceases to be contracted-out employment; and
- (b) when an earner's employment in contracted-out employment begins or ends.

*Power to modify Part III etc.*

4.—(1) Regulations may modify the provisions of Part III (other than sections 18, 19 and 66 to 68), Chapter III of Part IV and Chapter II of Part V (except, so far as they relate to personal pension schemes, the members of such schemes or rights in respect of them) in their application to cases in which—

- (a) a person is employed at the same time in two or more employments (whether or not under the same employer); and
- (b) at least one but not all of those employments is contracted-out employment,

with a view to enabling the employments to be treated either separately or together for the purposes of those provisions.

(2) Regulations may also modify those provisions in their application to cases in which—

- (a) any description of benefit under a scheme is subject to a limit (however imposed) operating so as to prevent service beyond a particular length from qualifying for further benefits; or
- (b) earners qualify for the benefits of a scheme by reference to both—
  - (i) service in employment which is contracted-out in relation to them by reference to the scheme; and
  - (ii) service in the same employment or another employment (whether or not contracted-out employment) before the scheme was contracted-out in relation to them or their employment.

(3) Regulations under this paragraph may include provision for securing that in the cases to which they apply an earner's employment [<sup>2</sup>which, apart from the regulations, would not be contracted-out employment is treated as contracted-out employment where any benefits provided under the scheme are attributable to a period when the scheme was contracted-out].

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<sup>1</sup> Words in para. 2(3) substituted (1.4.99) by Transfer of Functions Act 199 (c. 11), Sch. 1, para. 62(3).

<sup>2</sup> Words in para. 4(3) substituted (6.4.97) by para 84(b) of Sch. 5 to Pensions Act 1995 (c. 26).

*State scheme premiums*

5.—(1) Regulations may make provision for requiring persons to furnish the [<sup>1</sup>Inland Revenue] [...] with such information as [<sup>1</sup>they] [...] may require for the purposes of sections 37, 38, 50 to [<sup>3</sup>63], 139(1), 142(5) and (6) and 159(1) to (3), (5) and (6) (except as they apply to personal pension schemes, the members of such schemes or rights in respect of them).

(2) Regulations may provide that for the purposes of sections 50, 55 to 60 and 63 [...] (except as they so apply) the prescribed person shall be treated as the employer—

- (a) of any employed earners who, in any period of service in contracted-out employment—
  - (i) have been paid earnings in any income tax week by more than one person in respect of different employments; or
  - (ii) have worked under the general control or management of a person other than their immediate employer, or
- (b) of any other employed earners in the case of whom it appears to the Secretary of State that such provision is needed.

(3) Regulations may, [...<sup>5</sup>], provide—

- (a) for dispensing with the payment of a premium where its amount would be inconsiderable;
- (b) [...<sup>5</sup>]
- (c) for treating part of a premium payable in prescribed circumstances in respect of a person as having been paid and for modifying the provisions mentioned in paragraph 4(1) in relation to a case in which such a part is so treated;
- (d) for treating a premium wrongly paid or an overpayment in respect of a premium as paid (wholly or in part) in discharge of a liability for another premium or for contributions under Part I of the Social Security Contributions and Benefits Act 1992;
- (e) for the return of premiums paid in error or, in prescribed circumstances, of premiums which the [<sup>1</sup>Inland Revenue] is satisfied ought to be repaid;
- (f) for the [<sup>1</sup>Inland Revenue], in prescribed circumstances where a premium has been paid in respect of a person, to direct the payment out of the National Insurance Fund to that person or his estate of an amount equal to a prescribed part of the premium;
- (g) for any other matters incidental to the payment, collection or return of premiums

1992 c. 4.

[<sup>6</sup>and in this sub-paragraph and the following provisions of this paragraph “premium” means a contributions equivalent premium].

<sup>1</sup> Words in para. 5 substituted (1.4.99) by Transfer of Functions Act 1999 (c. 11), Sch. 1, para. 62(4) & (5).

<sup>2</sup> Words in para. 5(1) repealed (6.4.97) by para. 84(c)(i) of Sch. 5, and by Part III of Sch. 7, to Pensions Act 1995 (c. 26).

<sup>3</sup> Ref. in para. 5(1) substituted (6.4.97) by para. 84(c)(ii) of Sch. 5 to Pensions Act 1995 (c. 26).

<sup>4</sup> Words in para. 5(2) repealed (6.4.97) by para. 84(d) of Sch. 5, and by Part III of Sch. 7, to Pensions Act 1995 (c. 26).

<sup>5</sup> Words in, and sub-para. (b) of, para 5(3) repealed (6.4.97) by s. 141(2)(a) of, and by Part III of Sch. 7 to, Pensions Act 1995 (c. 26).

<sup>6</sup> Words added (6.4.97) at end of para. 5(3) by s. 141(2)(a)(iii) of Pensions Act 1995 (c. 26).

Sch. 2

[<sup>1</sup>(3A) Sub-paragraph (3B) applies in relation to a member of a contracted-out occupational pension scheme which is being wound up if, in the opinion of the [<sup>2</sup>Inland Revenue]—

- (a) the resources of the scheme are insufficient to meet the whole of the liability for the cash equivalent of the member's rights under the scheme, and
- (b) if the resources of the scheme are sufficient to meet a part of that liability, that part is less than the amount required for restoring his State scheme rights.

(3B) Where this sub-paragraph applies—

- (a) regulations may provide for treating the member as if sections 46 to 48 or, as the case may be, section 48A(1) did not apply or applied only to such extent as is determined in accordance with the regulations, and
- (b) the amount required for restoring the member's State scheme rights, or a prescribed part of that amount, shall be a debt due from the trustees or managers of the scheme to the [<sup>2</sup>Inland Revenue].

(3C) Regulations may make provision—

- (a) for determining the cash equivalent of a member's rights under a scheme and the extent (if any) to which the resources of the scheme are insufficient to meet the liability for that cash equivalent,
- (b) for the recovery of any debt due under sub-paragraph (3B)(b), and
- (c) for determining the amount required for restoring a member's State scheme rights including provision requiring the [<sup>2</sup>Inland Revenue] to apply whichever prescribed actuarial table in force at the appropriate time is applicable.

(3D) Section 155 shall apply as if sub-paragraphs (3A) and (3B)(a), and regulations made by virtue of this sub-paragraph and sub-paragraph (3B)(b), were included among the provisions there referred to.

(3E) In sub-paragraphs (3A) and (3B), 'State scheme rights', in relation to a member of a scheme, are the rights for which, if the scheme had not been a contracted-out scheme, the member would have been eligible by virtue of section 44(6) of the Social Security Contributions and Benefits Act 1992 (earnings factors for additional pension).]

(4) The [<sup>2</sup>Inland Revenue] may accept payments in connection with a case in which a premium or part of it is treated as having been paid.

(5) [...<sup>3</sup>]

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<sup>1</sup> Para. 5(3A)-(3E) inserted (6.4.97) by s. 141(2)(b) of Pensions Act 1995 (c. 26).

<sup>2</sup> Words in sub-para. (3A), (3B), (3C) & (4) substituted (1.4.99) by Transfer of Functions Act 1999 (c. 11), Sch. 1, para. 62(5).

<sup>3</sup> Para. 5(5) repealed (6.4.97) by s. 141(2)(c) of, and by Part III of Sch. 7 to, Pensions Act 1995 (c. 26).

*Schemes covering different employers*

6.—(1) Regulations may modify Chapters I and III or Part III (other than sections 8, 18, 19, 35 to 39, and 66 to 68), Chapter III of Part IV and Chapter II of Part V (except so far as they relate to personal pension schemes, the members of such schemes or rights in respect of them) in their application to employments in the case of which earners under different employers qualify by virtue of their respective service in those employments for the benefits of the same occupational pension scheme.

(2) Regulations under this paragraph may provide for the adjustment of rights and liabilities as between employers, earners and the trustees or managers.

*Special provisions for certain public service pension schemes*

7.—(1) This paragraph applies to the following classes of employments, that is to say employments in which an earner's service qualifies him for benefit under—

- |  |             |
|--|-------------|
| (a) section 26 of the Fire Service Act 1947;         | 1947 c. 41. |
| (b) the Police Pensions Act 1976;                    | 1976 c. 35. |
| (c) sections 7 to 10 of the Superannuation Act 1972. | 1972 c. 11. |

(2) Where employment would fall within one of the classes specified in sub-paragraph (1) but for rules having effect under section 2 of the Superannuation (Miscellaneous Provisions) Act 1948 (persons transferring to and from certain employments), the employment shall be treated as falling within that class and not within any other class to which this paragraph applies. 1948 c. 33.

(3) Where a local Act contains a provision for the payment of benefits in respect of service which but for the provision would qualify a person for such benefits under the enactments specified in sub-paragraph (1), that provision shall be deemed to be included among the enactments so specified.

(4) In relation to employments of any class to which this paragraph applies, the Secretary of State may by regulations—

- (a) direct that elections with a view to the issue, variation or surrender of contracting-out certificates shall be made and revoked by him instead of by the employer;
- (b) make provision for other things which by or under the provisions mentioned in paragraph 4(1) are required or authorised to be done by or to an employer to be done instead by or to the [<sup>1</sup>Inland Revenue];
- (c) make provision for treating any employments of the class in question as employments under a single employer different from the employer in any other employment;
- (d) make provision for the recovery by the [<sup>1</sup>Inland Revenue] of any state scheme premium from any person where it has been paid by the [<sup>1</sup>Inland Revenue] instead of by that person.

<sup>1</sup> Words in sub-para. (4) substituted (1.4.99) by the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), Sch. 1, para. 62(5).

*Incidental matters*

8. Regulations may make provision—
- (a) for any incidental matters connected with the provisions mentioned in paragraph 4(1) in relation to any employment which is, has been or may become contracted-out employment; and
  - (b) for any incidental matters otherwise connected with those provisions.

PART II

PERSONAL PENSION SCHEMES

9.—(1) Subject to the following provisions, paragraph 5 applies in relation to personal pension schemes as it applies to occupational pension schemes.

(2) In sub-paragraph (1) the words from “(except” onwards and in sub-paragraph (2) the words “(except as they so apply)” shall be omitted.

[<sup>1</sup>(2A) Sub-paragraphs (3) and (4) shall be omitted].

[<sup>2</sup>(3) In sub-paragraph (3)(c) for the reference to the provisions there mentioned there shall be substituted a reference to Part III (other than sections 18, 19 and 66 to 68) so far as it relates to personal pension schemes, the members of such schemes or rights in respect of them.

(4) In sub-paragraph (3)(d) the words “or for” onwards shall be omitted.

(5) In sub-paragraph (5)(a) for the words from “that” to “state scheme premium” there shall be substituted the words “that for the purposes of extinguishing protected rights and reducing any guaranteed minimum pension to which a person is treated as entitled, a personal pension protected rights premium”.]

*Schedule 3—see volume 5.*

SCHEDULE 4

PRIORITY IN BANKRUPTCY ETC

*Earners' contributions to occupational pension scheme*

1. This Schedule applies to any sum owed on account of an earner's contributions to an occupational pension scheme being contributions deducted from earnings paid in the period of four months immediately preceding the relevant date or otherwise due in respect of earnings paid or payable in that period.

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<sup>1</sup> Para. 9(2A) substituted (6.4.97) for para. 9(3)-(5) by para. 84(e) of Sch. 5 to Pensions Act 1995 (c. 26).

<sup>2</sup> Para. 9(3)-(5) as continuing in force until prosp. substitution required by para. 84(e) of Sch. 5 to Pensions Act 1995 (c. 26).

*Employer's contributions to occupational pension scheme*

2.—<sup>[1]</sup>(1) This Schedule applies to any sum owed on account of an employer's contributions to a salary related contracted-out scheme which were payable in the period of 12 months immediately preceding the relevant date.

(1A) The amount of the debt having priority by virtue of sub-paragraph (1) shall be taken to be an amount equal to the appropriate amount.

(2) This Schedule applies to any sum owed on account of an employer's minimum payments to a money purchase contracted-out scheme falling to be made in the period of 12 months immediately preceding the relevant date.

(3) In so far as payments cannot from the terms of the scheme be identified as falling within sub-paragraph (2), the amount of the debt having priority by virtue of that sub-paragraph shall be taken to be an amount equal to the appropriate amount.

(3A) In sub-paragraph (1A) or (3) "the appropriate amount" means the aggregate of—

- (a) the percentage for non-contributing earners of the total reckonable earnings paid or payable, in the period of 12 months referred to in sub-paragraph (1) or (2) (as the case may be), to or for the benefit of non-contributing earners; and
- (b) the percentage for contributing earners of the total reckonable earnings paid or payable, in that period, to or for the benefit of contributing earners.]

(4) For the purposes of [sub-paragraph (3A)]—

- (a) the earnings to be taken into account as reckonable earnings are those paid or payable to or for the benefit of earners in employment which is contracted-out by reference to the scheme in the whole or any part of the period of 12 months there mentioned; and
- (b) earners are to be identified as contributing or non-contributing in relation to service of theirs in employment which is contracted-out by reference to the scheme according to whether or not in the period in question they were liable under the terms of the scheme to contribute in respect of that service towards the provision of pensions under the scheme.

(5) In this paragraph—

<sup>[2]</sup>"appropriate flat-rate percentage" has the same meaning as in section 42A]

"employer" shall be construed in accordance with regulations made under section 181(2); and

<sup>[2]</sup>"the percentage for contributing earners" means—

- (a) in relation to a salary related contracted-out scheme, 3 per cent, and
- (b) in relation to a money purchase contracted-out scheme, the percentage which is the appropriate flat-rate percentage for secondary Class 1 contributions,

"the percentage for non-contributing earners" means—

- (a) in relation to a salary related contracted-out scheme, <sup>[3]</sup>4.6 per cent], and

<sup>1</sup> Sub-paras. 2(1) to (3A) substituted for 2(1) to (3) & words in (4) substituted (25.4.00) by the Welfare Reform & Pensions Act 1999 (c. 30), Sch. 2, para. 8.

<sup>2</sup> Definitions of "appropriate flat-rate percentage", "the percentage for contributing earners" and "the percentage for non-contributing earners" to be inserted (prosp., but as from 6.4.96 for reg. making purposes) in para. 2(5) by s. 137(7) of Pensions Act 1995 (c. 26).

<sup>3</sup> Words "4.6 per cent." effectively substituted for "4.8 per cent." for earnings from 6.4.97 in consequence of art. 3 of S.I. 1996/1054, which, in respect of para. 2(3)(a) (to which this definition relates), specifies 4.6 per cent. for such earnings.

Sch. 4

(b) *in relation to a money purchase contracted-out scheme, a percentage equal to the sum of the appropriate flat-rate percentages for primary and secondary Class 1 contributions]*

“reckonable earnings”, in relation to any employment means the earner’s earnings from that employment so far as those earnings—

- (a) were comprised in any payment of earnings made to him or for his benefit at a time when the employment was contracted-out employment; and
- (b) exceeded the current lower earnings limit but not [<sup>1</sup>the applicable limit].

[<sup>1</sup>(6) “The applicable limit” means—

- (a) in relation to a payment made in a tax week falling in a tax year before the flat rate introduction year, the upper earnings limit for the week in question;
- (b) in relation to a payment made in a tax week falling in the flat rate introduction year or any subsequent tax year, the upper accrual point divided by 52.]

*State scheme premiums*

3.—(1) This Schedule applies to any sum owed on account of a [<sup>2</sup>contributions equivalent premium] payable at any time before, or in consequence of, a person going into liquidation or being adjudged bankrupt, or in Scotland, the sequestration of a debtor’s estate, or (in the case of a company not in liquidation)—

1986 c. 45.

- (a) the appointment of a receiver as mentioned in section 40 of the Insolvency Act 1986 (debenture-holders secured by floating charge), or
- (b) the appointment of a receiver under section 53(6) or 54(5) of that Act (Scottish company with property subject to floating charge), or
- (c) the taking of possession by debenture-holders (so secured) as mentioned in section 196 of the Companies Act 1985.

1985 c. 6.

(2) Where any such premium is payable in respect of a period of service of more than 12 months (taking into account any previous linked qualifying service), the amount to be paid in priority by virtue of this paragraph shall be limited to the amount of the premium that would have been payable if the service had been confined to the last 12 months taken into account in fixing the actual amount of the premium.

(3) Where—

- (a) by virtue of this paragraph the whole or part of a premium is required to be paid in priority to other debts of the debtor or his estate; and
- (b) the person liable for the payment would be entitled to recover the whole or part of any sum paid on account of it from another person either under section 61 or under any provision made by the relevant scheme for the purposes of that section or otherwise.

then, subject to sub-paragraph (4), that other person shall be liable for any part of the premium for the time being unpaid.

(4) No person shall be liable by virtue of sub-paragraph (3) for an amount in excess of the sum which might be so recovered from him if the premium had been paid in full by the person liable for it, after deducting from that sum any amount which has been or may be recovered from him in respect of any part of that payment paid otherwise than under that sub-paragraph.

(5) The payment under sub-paragraph (3) of any amount in respect of a premium shall have the same effect on the rights and liabilities of the person making it (other than his liabilities under that sub-paragraph) as if it had been a payment of that amount on account of the sum recoverable from him in respect of a premium as mentioned in sub-paragraph (3)(b).

<sup>1</sup> Words substituted in defn. of “reckonable earnings” and para. 2(6) inserted (27.9.07) by the Pensions Act 2007 (c. 22), Sch. 1, para. 39.

<sup>2</sup> Words in para. 3(1) substituted (6.4.97) by para. 85 of Sch. 5 to Pensions Act 1995 (c. 26).

*Interpretation*

4.—(1) In this Schedule—

- (a) in its application in England and Wales, section 196(3) of the Companies Act 1985 and section 387 of the Insolvency Act 1986 apply as regards the meaning of the expression “the relevant date”; and
- (b) in its application in Scotland, that expression has the same meaning as in Part I of Schedule 3 to the Bankruptcy (Scotland) Act 1985.

1985 c. 66.

(2) In this Schedule references to a contracted-out scheme, contracted-out employment and a state scheme premium include references to a contracted-out scheme, contracted-out employment and a state scheme premium (other than a personal pension protected rights premium) within the meaning of any provisions in force in Northern Ireland and corresponding to the provisions of this Act.

*Schedules 5-9—see volume 5.*

**PENSION SCHEMES ACT 1993 (c. 48)**

**Sch. 9**

## Pension Schemes Act 1993

*(There is no Annex 1 to this Act)*

### **Annex 2**

This Act is a consolidation on, and came into force on 7.2.94 under art. 2 of S.I. 1994/86 (C. 3). reproduced in Pt. II of volume 5 at page 5.4723.

The derivations of those provisions of the Act which are reproduced or annotated in this volume are shown at Annex 3 below.

The destinations of the repealed provisions re-enacted in those provisions of the Act which are reproduced or annotated in this volume are set out in the Appendix to Part I of volume 5.

**PENSION SCHEMES ACT 1993 (c. 48)**

## Pension Schemes Act 1993

### TABLE OF DERIVATIONS

*Notes:*

1. This Table shows the derivation of the provisions of the consolidation.
2. The following abbreviations are used in the Table:-

*Acts of Parliament*

1975P =	Social Security Pensions Act 1975 (c. 60)
1980 =	Social Security Act 1980 (c. 30)
1985 =	Social Security Act 1985 (c. 53)
1986 =	Social Security Act 1986 (c. 50)
1989 =	Social Security Act 1989 (c. 24)
1990 =	Social Security Act 1990 (c. 27)
1992 =	Social Security (Consequential Provisions) Act 1992 (c. 6)
1990 =	Social Security Act 1993 (c. 3)

*Subordinate legislation*

S.I. 1987/1116 =	Personal and Occupational Pension Schemes (Modification of Enactments) Regulations 1987
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3. The abbreviation “Law Com Rec No.” followed by a number refers to the recommendation set out in the paragraph of that number in the Appendix to the Report of the Law Commission and the Scottish Law Commission (Cm. 2184).

4. The entry “drafting” indicates a provision of a mechanical or editorial nature only affecting the arrangement of the consolidation.

5. The Table does not show the effect of transfer of functions orders.

6. The Table does not show the effect of the saving by paragraph 10 of Schedule 3 to the Social Security (Consequential Provisions) Act 1992 (c. 6), which preserves provisions of the Social Security Act 1975 (c. 14) as that Act continues to operate for the purposes of the Social Security Pensions Act 1975 (c. 60) by virtue of s. 66(2) of the latter Act.

Provision	Derivation
<i>Sections 7, 8:-</i>	
7(1)	1975P ss. 30(1)(pt.), 31(1)(pt.); 1986 ss. 1(8), 2(1)(a).
(2)	1975P s. 31(1)(pt.).
(3)	1975P s. 32(1).
(4)	1986 s. 1(8).
(5)	1986 s. 2(6).
(6)	1986 s. 2(1)(c).
(7)	1975P s. 31(7)(pt.); 1986 s. 2(5)(pt.).
8(1)	1975P s. 30(1); 1986 Sch. 2 para. 4(a), Sch. 10 para. 15.
(2)	1975P ss. 26(2), 30(1A), (1B); 1986 s. 9(4), Sch. 2 para. 4(b), Sch. 10 para. 12(b).
(3)	1975P s. 30(1C); 1986 Sch. 2 para. 4(b).
(4)	1975P s. 30(3).
(5)	1975P s. 30(4).

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**Annex 3**

Provision	Derivation
<i>Section 11:-</i>	
11(1), (2)	1975P s. 31(3).
(3), (4)	1975P s. 31(4).
(5)	1975P s. 31(5).
<i>Sections 13, 14, 15, 16, 17, 18:-</i>	
13(1)	1975P s. 33(1); 1986 Sch. 2 para. 6(1)(a).
(2)	1975P s. 33(1A); 1986 Sch. 10 para. 17; 1990 Sch. 4 para. 7(1); 1992 Sch. 2 para.2 6.
(3)	1975P s. 33(2).
(4), (5)	1975P s. 33(3).
(6) to (8)	1975P s. 33(5) to (7).
14(1)	1975P s. 35(1).
(2)	1975P s. 35(2); 1986 Sch. 8 para. 8.
(3)	1975P s. 35(2ZA); 1990 Sch. 4 para. 7(2); 1992 Sch. 2 para. 27(1).
(4)	1975P s. 35(2A); 1989 Sch. 6 para. 5.
(5), (6)	1975P s. 35(3); 1986 s. 9(1).
(7)	1975P s. 35(4).
(8)	1975P s. 35(9).
15(1), (2)	1975P s. 35(6); 1977 s. 3(2).
(3), (4)	1975P s. 35(6A), (6B); 1986 s. 9(2).
16(1)	1975P s. 35(5); Social Security Act 1979 (c. 18) Sch. 3 para. 18(a); Social Security Act 1988 (c. 7) Sch. 2 para. 1(2),(3); 1992 Sch. 2 para. 27(2).
(2)	1975P s. 35(7)(pt.); 1985 Sch. 3 paras. 2, 7.
(3)	1975P ss. 35(7)(pt.), 45(1)(b); Social Security Act 1979 (c. 18) Sch. 3 para. 18; 1992 Sch. 2 para. 27(2).
(4)	1975P s. 35(8); 1985 Sch. 3 para. 8.
(5)	1975P s. 35(9).
17(1)	1975P s. 36(1); 1986 s. 9(3)(a), Sch. 2 para. 6(1)(b).
(2), (3), (4)	1975P s. 36(3); 1986 s. 9(3)(b).
(5)	1975P s. 36(6), (8); 1992 Sch. 2 para. 28.
(6)	1975P s. 36(7A), (8); 1986 s. 9(3)(c), (4).
(7)	1975P s. 36(7B); 1986 s. 9(3)(c).
18(1)	1975P s. 60A; Social Security Act 1979 (c. 18) s. 18.
(2)	1975P s. 60B; Social Security Act 1988 (c. 7) Sch. 2 para. 2.
<i>Sections 39, 40, 41, 42:-</i>	
39	1975P s. 52.
40	Drafting; 1975P s. 26(1), (1A); 1986 Sch. 2 para. 2, Sch. 10 para. 12; 1992 Sch. 2 para. 20.
41(1)	1975P s. 27(1) to (3); 1985 Sch. 5 para.17; Social Security (Class 1 Contributions: Contracted-out Percentages) Order 1992 (S.I. 1992/795) art. 2.
(2)	1975P s. 27(4); 1986 Sch. 10 para. 13.

Provision	Derivation
(3)	1975P s. 27(5); 1992 Sch. 2 para. 21.
42(1)	1975P s. 28(1), (2); 1992 Sch. 2 para. 22.
(2) to (5)	1975P s. 28(3) to (6).
(6)	1975P s. 28(7); 1985 Sch. 5 para. 18.
<i>Sections 46, 47, 48, 49:-</i>	
46(1)	1975P s. 29(1); 1986 s. 18, Sch. 10 para. 14; 1992 Sch. 2 para. 23(1).
(2)	1975P s. 29A(1); 1992 Sch. 2 para. 24.
(3)	1975P s. 29A(2); 1992 Sch. 2 para. 24.
(4), (5)	1975P s. 29B(1), (2); 1992 Sch. 2 para. 24.
(6), (7)	1975P s. 29C(1), (2); 1992 Sch. 2 para. 24.
(8)	1975P ss. 29(3), 29A(3), 29B(3), 29C(3); 1992 Sch. 2 para. 23(3), 24.
(9)	1975P s. 29A(4); 1992 Sch. 2 para. 24.
47(1)	1986 s. 9(5); 1992 Sch. 2 para. 79.
(2)	1975P s. 29(2)(d), (c); 1986 Sch. 10 para. 14; 1989 Sch.1 para.11; 1992 Sch. 2 para. 23(2).
(3), (4)	1975P s. 52D(1); 1985 Sch. 1 para. 2; 1986 s. 9(4)(h), Sch. 10 para. 27(1)(a), (b), (2); 1992 Sch. 2 para. 33.
(5)	1975P s. 29(2)(a), (b); 1986 Sch. 10 para. 14; 1989 Sch. 1 para.11; 1992 Sch. 2 para. 23(2).
48(1), (2)	1975P s. 29(2A); 1986 s. 4(1), Sch. 2 para. 3; 1992 Sch. 2 paras. 23(2), 77.
(3)	1975P s. 29(2B); 1986 Sch. 2 para. 3.
(4)	1975P s. 29(2C); 1986 s. 4(2), Sch. 2 para. 3.
49	1975 s. 130(1); 1975P s. 66(2); 1992 Sch. 2 para. 40, Sch. 3 para. 10.
<i>Sections 67, 68:-</i>	
67(1)	1975P s. 60ZB; 1992 Sch. 2 para. 36.
(2)	1975P s. 60ZD; 1992 Sch. 2 para. 36.
(3), (4)	1975P s. 60ZE(1), (2); 1992 Sch. 2 para. 3 6.
68	1975P s. 60ZF; 1992 Sch. 2 para. 36; Law Com Rec. No. 2.
<i>Section 109:-</i>	
109(1)	1975P s. 37A(2); 1986 s. 9(7).
(2) to (6)	1975P s. 37A(3) to (7); 1986 s. 9(7); 1992 Sch. 2 para. 29.
<i>Section 128:-</i>	
128	1975P s. 58; Bankruptcy (Scotland) Act 1985 (c. 66) Sch. 7 para. 13.

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**Annex 3**

Provision	Derivation
<i>Sections 155, 156:-</i>	
155	1986 s. 14.
156	1975P s. 51; 1986 Sch. 2 para. 6(1)(j).
<i>Sections 168, 169, 170, 171:-</i>	
168	1986 s. 54(1).
169	1986 s. 57.
170(1)	1975P ss. 52D(5), 60(1); 1985 Sch. 1 para. 2, Sch. 5 para. 34; 1986 ss. 9(4)(h), 52(2), Sch. 5 Pt. II(a); 1992 Sch. 2 paras. 35(a), 82.
(2)	1975P s. 52D(6); 1985 Sch. 1 para. 2.
(3), (4)	1975P s. 60(2), (3); Health and Social Services and Social Security Adjudications Act 1983 (c. 41) Sch. 8 para. 1(3)(a); 1992 Sch. 2 para. 35(b).
(5), (6)	1975P s. 55(4), (5).
171	1975P s. 60ZC; 1992 Sch. 2 para. 36.
<i>Schedule 2:-</i>	
Sch. 2	
para. 1(1)	1975P Sch. 2 para. 1(1)(d).
(2) to (5)	1975P Sch. 2 para. 1(pt.).
para. 2	1975P Sch. 2 para. 2.
para. 3	1975P Sch. 2 para. 3.
para. 4	1975P Sch. 2 para. 5.
para. 5	1975P Sch. 2 para. 6; 1980 s. 3(12); 1992 Sch. 2 para. 42.
para. 6	1975P Sch. 2 para. 7.
para. 7	1975P Sch. 2 para. 8(1), (3) to (5); Police Pensions Act 1976 (c. 35) Sch. 2 para. 11.
para. 8	1975P Sch. 2 para. 9.
para. 9	S.I. 1987/1116 reg. 3(11) Sch. 5; 1975P Sch. 2 para. 6; 1980 s. 3(12); 1992 Sch. 2 para. 42.
<i>Schedule 4:-</i>	
Sch. 4	
para. 1	1975P Sch. 3 para. 1; Insolvency Act 1985 (c. 65) Sch. 8 para. 26(2), (3).
para. 2	1975P Sch. 3 para. 2(1), (1A), (2)(pt.), (3), (4); 1985 s. 29(1), Sch. 5 para. 36; Insolvency Act 1985 (c. 65) Sch. 8 para. 26(2) (3), (4); 1986 Sch. 2 para. 12; Social Security (Class 1 Contributions- Contracted-out Percentages) Order 1992 (S.I. 1992/795) art. 3.
para. 3	1975P Sch. 3 para. 3; Insolvency Act 1985 (c. 65) Sch. 8 para. 26(2), (3), (4); Bankruptcy (Scotland) Act 1985 (c. 66) Sch. 7 para. 13(i); Insolvency Act 1986 (c. 45) Sch. 14.
para. 4	1975P Sch. 3 para. 4; Insolvency Act 1985 (c. 65) Sch. 8 para. 26(5); Bankruptcy (Scotland) Act 1985 (c. 66) Sch. 7 para. 13(ii); Insolvency Act 1986 (c. 45) Sch. 14.