
STATUTORY RULES OF NORTHERN IRELAND

1996 No. 493

The Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996

Part I

Preliminary

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996 and shall come into operation on 6th April 1997.

(2) In these Regulations—

“the Act” means the Pension Schemes (Northern Ireland) Act 1993⁽¹⁾;

“the actuary” means the actuary appointed for the scheme in pursuance of Article 47(1) of the Order or the actuary otherwise authorised by virtue of these Regulations to provide certification in accordance with section 8A(6) of the Act⁽²⁾;

“the Administration Act” means the Social Security Administration (Northern Ireland) Act 1992⁽³⁾;

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

“age-related payment” means a payment made by the Department in accordance with section 38A(3) of the Act⁽⁴⁾;

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992⁽⁵⁾;

“earnings period” has the same meaning as in the Social Security (Contributions) Regulations (Northern Ireland) 1979⁽⁶⁾;

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

“employer” includes a person who, under paragraphs (3) or (4) or regulations 12 to 14, is treated as an employer;

(1) 1993 c. 49

(2) Section 8A was inserted by Article 133(5) of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22))

(3) 1992 c. 8

(4) Section 38A was inserted by Article 134(4) of the Pensions (Northern Ireland) Order 1995

(5) 1992 c. 7

(6) S.R. 1979 No. 186; relevant amending regulations are S.R. 1980 No. 463, S.R. 1983 No. 8 and S.R. 1987 No. 143

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

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

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

“minimum funding requirement” shall be construed in accordance with Article 56 of the Order;

“the Occupational Pensions Board” means the Occupational Pensions Board established under section 66 of the Social Security Act 1973(7) and dissolved under section 150 of the Pensions Act 1995(8);

“the Order” means the Pensions (Northern Ireland) Order 1995;

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

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

“principal appointed day” has the same meaning as in section 3(2B) of the Act(9);

“scheme” means an occupational pension scheme;

“section 5(2B) rights” are rights (other than rights attributable to voluntary contributions within the meaning of section 107 of the Act) which are attributable to an earner’s service on or after the principal appointed day in employment which is contracted out in accordance with section 5(2B) of the Act(10);

“the Taxes Act” means the Income and Corporation Taxes Act 1988(11);

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

(3) For the purposes of these Regulations, any person, government department or public authority who, under Part I of the Contributions and Benefits Act or regulations made thereunder, is, or is to be treated as, the secondary Class 1 contributor shall be treated as the employer of the earner in respect of whom the Class 1 contributions are payable.

(4) For the purposes of the Regulations and without prejudice to paragraph (3), there shall be treated as the employer of a self-employed earner to whom a scheme applies any person (other than that self-employed earner), government department or public authority who makes or is liable to make payments towards the resources of the scheme in respect of that self-employed earner (either under actual or contingent legal obligation or in the exercise of power conferred, or duty imposed, on a Minister of the Crown, government department or any other person, being a power or duty which extends to the disbursement or allocation of public money).

(5) For the purposes of these Regulations, a person is to be regarded as a member of a scheme during a period when his service in relevant employment is such that at the time when it is given it either—

(7) 1973 c. 38; section 66 was repealed by Part I of Schedule 5 to the Pension Schemes Act 1993 (c. 48), but the Occupational Pensions Board continued by virtue of section 2 of that Act

(8) 1995 c. 26

(9) Section 3(2B) was inserted by Article 133(1) of the Pensions (Northern Ireland) Order 1995

(10) Section 5(2B) was substituted by Article 133(3) of the Pensions (Northern Ireland) Order 1995

(11) 1988 c. 1

- (a) qualifies him for benefits (in the form of a pension or otherwise, payable on the termination of his service or on his retirement or his death) under the scheme which in the opinion of the Department are referable to that period, or
- (b) is certain so to qualify him subsequently if it continues for a sufficiently long time and the rules of the scheme and the terms of his contract of service remain unaltered during that time.

(6) Any document required or authorised to be sent to any person shall be deemed to have been sent if it was sent by post to that person's usual or last known address or (in the case only of a document required or authorised to be sent to an employer) to the address of the principal place at which any employment to which the document relates is last known to have been carried on.

(7) Subject to paragraph (8), the Interpretation Act (Northern Ireland) 1954(12) shall apply to these Regulations as it applies to a Measure of the Assembly.

(8) For the purposes of these Regulations and notwithstanding section 39(2) of the Interpretation Act (Northern Ireland) 1954, where a period of time is expressed to begin on, or to be reckoned from, a particular day, that day shall be included in the period.

Part II

Certification of Employments

Making of elections for the issue of contracting-out certificates

2.—(1) Subject to regulation 10, an election with a view to the issue of a contracting-out certificate—

- (a) may only be made—
 - (i) after notices to make such an election have been given by the employer in accordance with regulation 3, and
 - (ii) within the period after the expiry of those notices which is specified in regulation 5, and
- (b) shall be made in writing to the Department and shall include the particulars specified in regulation 6.

(2) An employer may elect that an employment of earners in an employment shall be contracted out by reference to a scheme in relation to all earners in that employment with the exception of those mentioned in either or both of sub-paragraphs (a) and (b)—

- (a) where an earner in an employment to which the scheme relates opts in writing not to join or, as the case may be, not to remain as a member of any contracted-out employment to which the scheme relates, any earner who so opts, and
- (b) in a case where it is possible for one or more earners to be unable to complete 5 years' service in that employment as members of that scheme before reaching the normal pension age of that scheme, the earner or earners whose length of service (consisting of service in that employment as a member of that scheme, or linked qualifying service in relation to such service, or both) falls short of a minimum length of service (not exceeding 5 years) specified in the rules of the scheme and who cannot (so far as is known when the contracting-out certificate is issued, or if later in the case of a particular earner, when he enters the employment) complete such a minimum length of service before reaching the normal pension age of the scheme.

Notices by employers of intended election

3.—(1) A notice of intention to make an election with a view to the issue of a contracting-out certificate shall be given by the employer, in the manner specified in paragraph (3), to—

- (a) the earners in respect of whose employment the election is proposed to be made, and those (if any) in that employment in relation to whom the employer is not electing that the employment shall be treated as contracted out;
- (b) the trustees and administrator of the scheme to which the election is to relate;
- (c) where there is a policy of insurance or annuity contract as a means of securing the protected rights, guaranteed minimum pensions or any benefits arising in respect of section 5(2B) rights to be payable under the scheme, the insurance company or friendly society concerned, and
- (d) all independent trade unions recognised in relation to the earners concerned.

(2) Notices given under this regulation shall be in writing and shall—

- (a) specify the scheme and the employments concerned and, if the election is not intended to be in relation to all earners in those employments, the categories or descriptions of the earners to be so affected;
- (b) specify the date from which it is intended that the contracting-out certificate shall have effect;
- (c) describe (whether or not by reference to another document) the benefits payable under the scheme to, and the contributions (if any) payable to the scheme by, the earners to be covered by the election, and the changes (if any) which would be made to those benefits and contributions if the employment were contracted out;
- (d) specify the date of expiry of the notice in accordance with paragraphs (4) and (5);
- (e) specify the name and business address of the person to whom representations may be made with respect to the matters included in the notice;
- (f) contain a statement that—
 - (i) such representations may also be made to the Department;
 - (ii) the Department may defer its determination to enable the election to be further considered in the light of representations made by or on behalf of the persons to whom the notice is given;
 - (iii) the Department has power to refuse to give effect to the election if it is not satisfied that the employer has undertaken consultations about the matters covered by the notice with all independent trade unions recognised in relation to the earners concerned, and
- (g) explain (whether or not by reference to another document)—
 - (i) whether the employment would be contracted out by reference to a salary related or money purchase contracted-out scheme and how benefits would accrue to a member under the scheme if the employment were contracted out;
 - (ii) how, if the employment were contracted out, the additional pensions of state retirement pensions and widows' and widowers' benefits payable to or in respect of the earners in that employment under the Contributions and Benefits Act, and the rates at which contributions payable by those earners under Part I of that Act, would be affected;
 - (iii) where further information about the scheme, state retirement pensions and the benefits mentioned in head (ii) can be obtained.

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

- (a) to any earner concerned by—
 - (i) sending or delivering it to him, or
 - (ii) exhibiting it conspicuously at the place of work or employment so that it may be read conveniently by him and by drawing his attention to it in writing;
- (b) to any other person, by sending or delivering it to that person.

(4) Subject to paragraph (5), a notice may specify a date of expiry which is not earlier than the date one month after that on which the notice is given.

(5) If any independent trade union recognised in relation to the earners concerned does not assent to the period of notice specified in accordance with paragraph (4), a notice must specify a date of expiry which is not earlier than the date 3 months after that on which the notice is given.

Consultation with trade unions

4.—(1) An employer who has given a notice under regulation 3 shall undertake consultations, if he has not already done so, about the matters covered by the notice with all independent trade unions recognised in relation to the earners concerned.

(2) Any question whether an organisation is an independent trade union recognised in relation to earners may be referred by the employer of those earners, or by the organisation, to an industrial tribunal.

(3) Any question whether an employer has complied with the requirements as to consultations specified in paragraph (1) may be referred by the employer, or by an independent trade union recognised in relation to the earners concerned, to an industrial tribunal.

Time for making an election

5. An election may be made only after the date of expiry of the notice given under regulation 3 and within 3 months of that date (or such longer period as the Department may in its discretion allow), but nothing in this regulation shall prevent an election from being made after the giving of further notices which comply with the requirements of that regulation.

Information to be included in an election

- 6.—(1) An election shall include the following particulars—
- (a) the name and address of the employer;
 - (b) the name by which the scheme to which the election relates is known;
 - (c) a description of the employments to which the contracting-out certificate is intended to relate and, if the certificate is not intended to be in relation to all earners in those employments, the categories or descriptions of the earners intended to be included in the certificate;
 - (d) the date from which it is desired that the certificate shall have effect;
 - (e) the names and addresses of the trustees and administrator of the scheme to which the election relates, and
 - (f) the person to whom notices were given under regulation 3(1)(b), (c) and (d).
- (2) The employer shall also confirm in writing—
- (a) that he has, in accordance with regulation 3(1), given the earners mentioned in regulation 3(1)(a) notice of the intention to make the election, and
 - (b) how that notice was given and its date of expiry;
 - (c) that the scheme is not one which is excluded from contracting out under these Regulations;

- (d) unless the scheme is one to which regulation 27 applies (modification applying to public service pension schemes), that the restrictions imposed under Article 40 of the Order (restrictions on employer-related investments) apply to the scheme and the scheme complies with those restrictions;
 - (e) in the case of a scheme to which Article 47 of the Order (professional advisers) applies, that the scheme complies with the requirement, under paragraph (1)(b) of that Article, to have an actuary;
 - (f) in the case of a trust scheme—
 - (i) that any fund manager to whom any discretion to make any decisions about investments has been delegated in accordance with Article 34 of the Order (power of investment and delegation) is capable of giving proper advice within the meaning of Article 36(6) of the Order;
 - (ii) that the requirements of Article 49 of the Order (other responsibilities of trustees, employers, etc.) and any regulations made under that provision to keep any money received by the trustees in a separate account and to keep proper books and records are complied with;
 - (g) in the case of a scheme to which Article 56 of the Order (minimum funding requirement) applies, that the requirements of Article 57(1) and (2) and 58 of the Order and any regulations made under those provisions to obtain actuarial valuations and certificates are complied with.
- (3) In the case of a scheme which is electing to contract out under section 5(2) of the Act⁽¹³⁾ (salary related contracted-out scheme) the employer shall also provide—
- (a) unless the scheme is one to which regulation 18(2) applies (public service pension scheme), written confirmation or evidence that the actuary is satisfied that the resources of the scheme are sufficient to meet the requirement prescribed in regulation 18 (requirement as to resources of the scheme) or, as the case may be, the transitional requirements as to resources prescribed in regulations 72 and 73, and
 - (b) a certificate signed by the actuary that the scheme satisfies the statutory standard in relation to any earner's service after the principal appointed day in accordance with section 8A of the Act.
- (4) In the case of a scheme which is electing to contract out under section 5(3) of the Act⁽¹⁴⁾ (money purchase contracted-out scheme) the employer shall also provide confirmation in writing—
- (a) that he will comply with obligations concerning minimum payments in accordance with section 4(1)(a)(ii) of the Act⁽¹⁵⁾ and regulations made under sections 4(3) and 5(3) of the Act, and
 - (b) that the requirements of regulation 30(1)(b) and (c) are satisfied.

Amendment of an election

7. An employer may amend his election at any time before the issue of a contracting-out certificate if the amendment does not alter the categories or descriptions of the earners to which the election relates.

⁽¹³⁾ Section 5(2) was substituted by Article 133(3) of the Pensions (Northern Ireland) Order 1995

⁽¹⁴⁾ Section 5(3) was amended by Article 133(4) of the Pensions (Northern Ireland) Order 1995 and is amended by paragraph 17 of Schedule 3 to that Order

⁽¹⁵⁾ Section 4(1)(a) was amended by Article 133(2) of the Pensions (Northern Ireland) Order 1995

Issue of contracting-out certificates

8.—(1) Subject to paragraph (2) when the Department has determined that an employment should be treated, either in relation to all earners in it or in relation to any specified category or description of earners, as contracted-out employment, it shall issue and send to the employer concerned a contracting-out certificate.

(2) The contracting-out certificate shall specify—

- (a) the name and address of the employer;
- (b) the name of the scheme by reference to which that employment is to be so treated;
- (c) the employments to which the certificate relates or, if the contracting-out certificate does not relate to all earners in those employments, the categories or descriptions of the earners to whom it relates, and
- (d) the date from which the certificate is to have effect, which may, where the Department considers it appropriate, be earlier than the date on which the certificate is issued, provided that the scheme satisfied any contracting-out conditions or requirements which apply to the scheme from the date from which the certificate is to have effect.

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

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

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

and shall be made in writing to the Department.

(2) Where a proposed variation is a change—

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

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

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

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

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

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

(5) Notices given under this regulation shall be given in writing and shall—

- (a) specify the scheme and the employments concerned and, if the election is not intended to be in relation to all earners in those employments, the categories or descriptions of the earners to be so affected;
- (b) specify the date from which it is intended that the variation or surrender is to have effect;
- (c) specify the date of expiry of the notice in accordance with regulation 3(4) and (5);
- (d) specify the name and business address of a person to whom representations may be made with respect to the matters included in the notice;
- (e) contain a statement that—
 - (i) such representations may also be made to the Department;
 - (ii) the Department may defer its determination to enable the election to be further considered in the light of representations made by or on behalf of persons to whom the notice is given, and
 - (iii) the Department has power to refuse to give effect to the election if it is not satisfied that the employer has undertaken consultations about the matters covered by the notice with all independent trade unions recognised in relation to the earners concerned;
- (f) explain (whether or not by reference to another document) how, if the proposed variation or surrender took place, the additional pensions of state retirement pensions and widows' benefits payable to or in respect of the earners concerned under the Contributions and Benefits Act, and the rates at which contributions payable by those earners under Part I of that Act, would be affected, and
- (g) describe (whether or not by reference to another document) any changes which would be made to the benefits provided under, and the contributions (if any) payable by earners concerned to, the scheme if the proposed variation or surrender took place.

(6) An employer who has given such a notice as is mentioned in this regulation shall undertake consultations, if he has not already done so, about the matters covered by the notice with all independent trade unions recognised in relation to the earners concerned and any question whether an employer has complied with this requirement may be referred to an industrial tribunal.

(7) An election under this regulation may only be made after the date of the expiry of the notice given in accordance with paragraphs (4) and (5) and within 3 months of that date (or such longer period as the Department may in its discretion allow), so however that nothing in this paragraph shall prevent an election from being made after the giving of further notices which comply with the requirements of this regulation.

(8) An employer may amend his election under this regulation at any time before the variation or surrender of the certificate if the amendment does not alter the categories or descriptions of the earners affected by the certificate.

Special provision with regard to elections for the issue, variation or surrender of certificates where the employment remains contracted out

10.—(1) Subject to regulation 71 (elections for replacement certificates by salary related schemes during transitional period) and to paragraphs (2) and (3), where in the case of an election with a view to the issue, variation or as the case may be, surrender of a contracting-out certificate the Department is satisfied, that—

- (a) any earner in respect of whose employment the election relates will continue to qualify for pensions which satisfy section 5(2) of the Act, or for protected rights, as the case may be, under the scheme when the election takes effect;

- (b) the accrued rights to pensions which satisfy section 5(2) of the Act, or to protected rights, as the case may be, of that earner under that scheme, will be unaffected, and
- (c) the employment of the earner will continue to be contracted-out employment by reference to that same scheme,

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

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

- (a) the earners to whose employment the election relates, and
 - (b) the persons referred to in regulation 3(1)(b) to (d).
- (3) Notices given under paragraph (2) shall specify—
- (a) the name of the scheme;
 - (b) the reason for the election;
 - (c) the date from which the change is to have effect, and
 - (d) the reasons why the election is being made without compliance with regulations 2(1), 4, 5 and 9(1) and (4) to (7).

Special circumstances in which the Department may determine earners to have been in contracted-out employment

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

- (a) that it was not contracted out in relation to him solely because he was not during that period a member of the relevant scheme, and
- (b) that he was not during that period a member of that scheme solely because of inadvertence,

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

Special provision for holding companies and subsidiaries

12.—(1) This regulation applies to cases where—

- (a) earners employed in employment under different employers qualify by virtue of their respective service in those employments for the benefits of the same scheme, and
- (b) each of the employers in the scheme is either—
 - (i) one of a group of companies consisting of a holding company and one or more subsidiaries;
 - (ii) one of a group of employers who are associated employers within the meaning of section 590A(3) and (4) of the Taxes Act(16), or
 - (iii) one of a group of employers who are associated by a common interest.

(2) In this regulation—

- (a) “associated by a common interest” means employers who share either management, shareholders, employees or business operations in common;

(16) Section 590A was inserted by paragraph 4 of Schedule 6 to the Finance Act 1989 (c. 26). See also paragraph 18(2) of Schedule 6 to that Act

- (b) “holding company” means a body corporate which is either—
- (i) a holding company within the meaning of Article 4 of the Companies (Northern Ireland) Order 1986⁽¹⁷⁾;
 - (ii) an employer who controls an associated employer within the meaning of section 590A(3) and (4) of the Taxes Act, or
 - (iii) an employer who is the principal employer for the purposes of the scheme in accordance with the scheme rules or the employer who has power to act on behalf of all employers in the scheme in relation to the scheme rules;
- (c) “subsidiary” means an employer in the scheme who is either—
- (i) a subsidiary within the meaning of Article 4 of the Companies (Northern Ireland) Order 1986;
 - (ii) an employer controlled by an associated employer within the meaning of section 590A(3) and (4) of the Taxes Act, or
 - (iii) an employer subject to the rules of the scheme.

(3) In a case to which this regulation applies, any notice which is required or authorised to be given under these Regulations shall, subject to paragraph (4), be treated as properly given if given by the holding company on behalf of any of its subsidiaries, and where this is done the holding company shall, subject to paragraphs (4) and (5), be treated as the employer of the earners for the purposes of sections 3(1)(a), (2) and (7), 7 and 30(1)(a), (2) and (8) of the Act⁽¹⁸⁾ and of any regulations made thereunder.

(4) The duty of an employer to undertake the consultations mentioned in regulations 3(2)(f)(iii), 4, 9(5)(e)(iii) and (6) shall be carried out by each subsidiary in respect of the earners employed by it, unless all the independent trade unions recognised in relation to those earners have signified in writing to the holding company that they agree that those consultations may be conducted on the subsidiary’s behalf by the holding company.

(5) The Department may refuse to give effect to an election made by a holding company if it is not satisfied either that each subsidiary has undertaken those consultations in respect of the earners employed by the holding company, or that the holding company has undertaken them with the agreement of those trade unions.

Special provision for public service pension schemes

13.—(1) This regulation applies to cases where earners in employments under different employers qualify by virtue of their respective service in those employments for the benefits of the same public service pension scheme.

(2) In a case to which this regulation applies, any notice which is required or authorised to be given under these Regulations shall be treated as properly given if given either by a government department or by the Minister of the Crown having responsibility for the scheme and where this is done the government department or that Minister, as the case may be, shall be treated as the employer of the earners for the purposes of sections 3(1)(a), (2) and (7), 7 and 30(1)(a), (2) and (8) of the Act and of any regulations made thereunder.

⁽¹⁷⁾ S.I. 1986/1032 (N.I. 6); Article 4 was substituted by Article 62(1) of the Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10))

⁽¹⁸⁾ Section 3(1) was amended by paragraph 15(a) of Schedule 3 to the Pensions (Northern Ireland) Order 1995 and section 30(1)(a) and (2) was amended by paragraphs 14 and 30 of that Schedule

Special provision for holders of pensionable judicial office

14. In respect of earners who are holders of pensionable judicial office, any notice which is required or authorised to be given under these Regulations shall be treated as properly given if given either by the Lord Chancellor or by a government department and where this is done the Lord Chancellor or that government department, as the case may be, shall be treated as the employer of the earners for the purposes of sections 3(1)(a), (2) and (7), 7 and 30(1)(a), (2) and (8) of the Act and of any regulations made thereunder.

Further information and change of circumstances

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

Requirement to confirm relevant requirements are satisfied

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

- (a) in the case of a scheme contracted out under section 5(2) of the Act (salary related contracted-out scheme)—
 - (i) that the scheme is not one which is excluded from contracting-out under these Regulations, and
 - (ii) that section 5(2) of the Act and any regulations which apply to the scheme by reason of its being a scheme to which that provision relates are satisfied;
- (b) in the case of a scheme contracted out under section 5(3) of the Act (money purchase contracted-out scheme)—
 - (i) that the scheme is not one which is excluded from contracting-out under these Regulations, and
 - (ii) that sections 4(1)(a)(ii) and 5(3) of the Act, and any regulations which apply to the scheme by reason of its being a scheme to which those provisions relate, are satisfied;
- (c) in the case of a scheme which has ceased to be contracted out under section 5(2) of the Act (salary related contracted-out scheme) and which preserves any of the rights specified in section 46(1)(a) of the Act⁽¹⁹⁾ within the scheme, that the requirements specified in regulation 45(3)(a) (approval of arrangements for salary related schemes ceasing to be contracted out) are satisfied;
- (d) in the case of a scheme which has ceased to be contracted out under section 5(3) of the Act (money purchase contracted-out scheme) and which preserves any protected rights within the scheme, that the requirements specified in regulation 45(3)(b) (approval of arrangements for money purchase schemes ceasing to be contracted out) are satisfied.

(2) In the case of a scheme which is contracted out under section 5(2) of the Act (salary related contracted-out scheme) the evidence to be provided to the Department referred to in paragraph (1) shall include a certificate signed by the actuary that the scheme continues to satisfy the statutory standard in accordance with section 8A of the Act⁽²⁰⁾.

⁽¹⁹⁾ Section 46 is amended by paragraphs 14 and 37 of Schedule 3 to the Pensions (Northern Ireland) Order 1995

⁽²⁰⁾ Section 8A was inserted by Article 133(5) of the Pensions (Northern Ireland) Order 1995

Part III

Salary Related Contracted-out Schemes

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

17. A scheme may be contracted out in relation to the employment of an earner under section 5(2) of the Act (requirements for certification of a salary related contracted-out scheme) only if, in relation to an earner's service on or after the principal appointed day, in addition to satisfying the conditions required by section 5(2B)(a) and (b) of the Act(21), it also satisfies the requirements of regulations 18 to 22.

Requirement as to resources of the scheme

18.—(1) Subject to paragraph (2) and regulations 72 and 73 (transitional arrangements concerning requirements as to resources) for the purposes of section 5(2B)(c)(i) of the Act (requirements as to amount of the resources of the scheme), the amount of the resources of the scheme must be sufficient either to enable the scheme to meet the minimum funding requirement provided for in Article 56(1) of the Order, or the actuary to the scheme must have certified under Article 58(6)(b) of the Order that in his opinion the rates of contributions are adequate for the purpose of securing that the minimum funding requirement will be met by the end of the period prescribed in relation to that Article.

(2) Paragraph (1) does not apply to a public service pension scheme to which Article 56 of the Order does not apply.

Lump sum benefits and salary related contracted-out schemes

19. A salary related contracted-out scheme may not provide for the payment of a lump sum instead of a pension except in accordance with regulation 20 (trivial commutation of section 5(2B) rights) and, as the case may be, regulation 60 (trivial commutation of guaranteed minimum pensions) or—

- (a) in the case of a scheme which is exempt approved within the meaning of section 592(1) of the Taxes Act or a scheme which has applied for such approval which has not yet been determined, to the extent permitted under the rules of that scheme in accordance with that approval, or
- (b) in the case of a relevant statutory scheme within the meaning of section 611A of the Taxes Act(22), to the extent permitted under the regulations or rules governing the scheme as a relevant statutory scheme.

Trivial commutation of benefits derived from section 5(2B) rights

20. For the purposes of section 8C(1)(c) of the Act(23) (regulations may prohibit or restrict the payment of a lump sum instead of a pension under a relevant scheme except in prescribed circumstances or on prescribed conditions), any benefits which have accrued in respect of an earner's section 5(2B) rights under a scheme may not be paid as a lump sum instead of a pension unless—

- (a) such benefits are payable under the rules of the scheme;
- (b) the aggregate of all benefits including benefits in respect of section 5(2B) rights payable to the earner (or his widow or widower) does not exceed £260 per annum, and

(21) Section 5(2B) was substituted by Article 133(3) of the Pensions (Northern Ireland) Order 1995

(22) Section 611A was inserted by paragraph 15 of Schedule 6 to the Finance Act 1989 (c. 26)

(23) Sections 8C and 8D were inserted by Article 133(5) of the Pensions (Northern Ireland) Order 1995

- (c) the Department is satisfied that the scheme provides a reasonable basis for ascertaining the sum to be paid on commutation.

Payable age in salary related contracted-out schemes

21. For the purposes of section 8D of the Act⁽²⁴⁾ (regulations may provide for the ages for payment of benefits in salary related contracted-out schemes) in respect of an earner's service on or after the principle appointed day, schemes must provide for benefits to be paid by reference to an age which is equal for men and women and which—

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

Each part of scheme to comply with section 8A of the Act

22.—(1) Where a scheme makes provision in relation to earners in one category of employment which differs from provision made in the case of earners in another such category, the Department must be satisfied that the scheme satisfies section 8A of the Act in relation to each of the categories of employment which is to be contracted out.

(2) Where a scheme makes provision in relation to one description of earners within a category of employment which differs from provision made in the case of another description of earners within that category, the Department must be satisfied that the scheme satisfies section 8A of the Act in relation to each such description of earners which is to be contracted out.

Requirements for meeting the statutory standard

23. For the purposes of section 8A(4) of the Act (regulations may provide for the manner of, and criteria for, determining whether pensions are broadly equivalent to those under a reference scheme) in determining whether the pensions provided under the scheme are broadly equivalent to or better than those which would be provided under a reference scheme, the actuary—

- (a) must follow guidance note GN 28 prepared from time to time by the Institute of Actuaries and Faculty of Actuaries⁽²⁵⁾ and approved by the Department;
- (b) may not certify that the pensions to be provided by the scheme for earners in employed earner's employment and their widows or widowers are collectively broadly equivalent to, or better than, those which would be provided for such persons under a reference scheme if the pensions to be provided for more than 10 per cent. of such earners or their widows or widowers are not broadly equivalent to the pensions which would be provided for them under a reference scheme;
- (c) must have regard to the pensions to be provided under the scheme for the persons specified in section 8A(1) of the Act who are in the scheme at the date from which the certificate has effect;
- (d) must not have regard to any pensions to be provided under the scheme in respect of earners who are not in contracted-out employment;
- (e) must not have regard to any money purchase benefits, and

⁽²⁴⁾ Sections 8C and 8D were inserted by Article 133(5) of the Pensions (Northern Ireland) Order 1995

⁽²⁵⁾ The Institute of Actuaries is at Staple Inn Hall, High Holborn, London WC1V 7QJ. The Faculty of Actuaries is at 40-44 Thistle Street, Edinburgh EH2 1EN

- (f) may have regard to the payment of a lump sum.

Circumstances when actuary other than actuary appointed under Article 47 of the Order may certify broad equivalence

24. For the purposes of section 8A(6) of the Act (actuary other than scheme actuary appointed under Article 47 of the Order to certify whether pensions are broadly equivalent to, or better than, those in a reference scheme in prescribed circumstances) the prescribed circumstances are where a scheme is not required to appoint an actuary for the scheme under Article 47 of the Order.

Requirements for a reference scheme

25. A reference scheme is a scheme which, in addition to complying with the requirements of section 8B(3) and (4) of the Act, complies with the requirements of Chapter II of Part IV of the Act (revaluation of benefits in the case of scheme members who leave pensionable service before attaining normal pension age) and Article 51 of the Order (indexation of pensions).

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

26. For the purposes of section 8B(4)(a) of the Act (reference scheme to provide widows' and widowers' pensions except in prescribed circumstances) the prescribed circumstances are where—

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

Modification applying to public service pension schemes

27. In the case of schemes which are public service pension schemes, section 5(2B) of the Act (requirements for salary related contracted-out schemes in relation to service on or after the principal appointed day) is modified by omitting paragraph (b) (a requirement that the restrictions on employer-related investments apply to the scheme and the scheme complies with those restrictions).

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

28.—(1) This regulation applies in cases in which any description of benefit under a salary related contracted-out scheme is subject to a limit (however imposed) operating so as to prevent service beyond a particular length from qualifying for further benefits.

(2) Subject to paragraph (3), in cases to which this regulation applies, the employment of an earner in employed earner's employment shall be treated as contracted-out employment in relation to him, notwithstanding that his further service in the employment does not qualify him for further benefits under the scheme, where the following conditions are satisfied—

- (a) the earner's service in employed earner's employment has qualified him for benefit up to a limit imposed by the scheme;
- (b) the annual rate of the benefit by way of pension for which that service has qualified him is not less than half the pensionable earnings on which it is calculated, and
- (c) the total benefits payable under the scheme (other than benefits attributable to voluntary contributions within the meaning of section 107 of the Act) are the same as or more

favourable than the guaranteed minimum pension and any benefits arising in respect of section 5(2B) rights to which the earner would be entitled in respect of service in that employment and any linked qualifying service during which the earner was in contracted-out employment and any periods of service in that employment which would be contracted-out employment by virtue of this regulation.

(3) For the purposes of paragraph (2)(c) “total benefits” includes benefits which have accrued to the earner in respect of service in employment whether or not contracted-out employment and whether with the same or another employer, except any part of such benefits which consists of equivalent pension benefits for the purposes of Part III of the National Insurance Act (Northern Ireland) 1966⁽²⁶⁾.

Schemes which cannot be certified under section 5(2B) of the Act

29. For the purposes of section 5(2B)(d) of the Act (prescribed class or description of schemes which may not be salary related contracted-out schemes) the prescribed schemes are—

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

Part IV

Money Purchase Contracted-out Schemes

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

30.—(1) For the purpose of section 5(3) of the Act⁽²⁷⁾ (money purchase schemes) the prescribed requirements are—

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

(2) The requirement referred to in paragraph (1)(b) shall not apply in a case where the rules of the scheme provide that the additional payments made shall entitle the member to benefits which

⁽²⁶⁾ 1966 c. 6 (N.I.); the relevant provisions were repealed by the Social Security Act 1973 (c. 38) but continued in force by S.R. 1975 No. 48

⁽²⁷⁾ Section 5(3) was amended by Article 133(4) of the Pensions (Northern Ireland) Order 1995 and is amended by paragraph 17 of Schedule 3 to that Order

are not money purchase benefits and such benefits are paid in addition to the benefits derived from minimum payments.

Deduction of minimum payments from earnings

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

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

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

- (a) A is the appropriate flat-rate percentage for primary Class 1 contributions specified in an order made under section 38B of the Act(28), and
- (b) B is the appropriate flat-rate percentage for secondary Class 1 contributions specified in that order.

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

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

(6) Paragraph (5) applies only where—

- (a) the underdeduction occurred by reason of an error made by the employer in good faith;
- (b) the emoluments in respect of which the underdeduction occurred are deemed to be earnings by virtue of regulations made under section 112 of the Contributions and Benefits Act;
- (c) the underdeduction occurred as a result of the variation of the contracting-out certificate issued in respect of the employment in respect of which the payment of emoluments is made, or
- (d) the emoluments in respect of which the underdeduction occurred are, under regulation 17B of the Social Security (Contributions) Regulations (Northern Ireland) 1979(29), not paid through the secondary contributor in relation to the employment.

Minimum payments to be made by employers to trustees

32.—(1) For the purposes of section 4(1) of the Act(30), the employer of an earner whose employment is contracted out by reference to a money purchase contracted-out scheme shall, subject to paragraph (2), make to the trustees of that scheme any minimum payments which fall to be made by him, other than amounts deductible by virtue of regulation 31(4) which he did not deduct, within 14 days of the end of the income tax month in which there arose the liability for Class 1 contributions in respect of the earnings to which those minimum payments relate.

(28) Section 38B was inserted by Article 134(4) of the Pensions (Northern Ireland) Order 1995

(29) S.R. 1979 No. 186; regulation 17B was inserted by regulation 2 of S.R. 1983 No. 64

(30) Section 4(1) was amended by Article 133(2) of the Pensions (Northern Ireland) Order 1995

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

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

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

Calculation of minimum payments

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

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

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

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

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

Manner of calculation or estimation of earnings

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

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

Manner of payment of the age-related payment

35. The Department shall make the age-related payment—

- (a) by automated credit transfer into a bank or building society account relating to the relevant scheme and which accepts payments made by automated credit transfer, or

- (b) in such other manner as the Department may in its discretion approve.

Verification of age

36.—(1) For the purposes of determining the appropriate age-related percentage in respect of an earner for the purposes of section 38A of the Act(**31**), the Department may require that earner to send documentary evidence of his date of birth.

(2) For the purposes of section 41B of the Act(**32**) (information held as to the age to be disclosed by the Department to trustees or managers of a money purchase scheme and such other persons as may be prescribed) the prescribed person shall be the person who is responsible for administering the scheme.

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

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

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

(2) Where effect has been given to protected rights under section 24 of the Act(**33**) (ways of giving effect to protected rights) age-related payments shall not, except as provided for by paragraphs (3) to (6), be paid in respect of an earner for any tax year or part of a tax year before effect had been given to that earner's protected rights.

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

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

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

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

(7) Where effect has been given to the earner's protected rights by means of an appropriate policy of insurance by virtue of section 28A of the Act(**34**) (discharge of protected rights on winding up: insurance policies), the age-related payment in respect of the tax year or part of the tax year before the tax year in which either the earner reaches pensionable age, or dies and in which he would reach

(31) Section 38A was inserted by Article 134(4) of the Pensions (Northern Ireland) Order 1995

(32) Section 41B was inserted by Article 136 of the Pensions (Northern Ireland) Order 1995

(33) Section 24(1) was amended by Articles 139 and 143(2) of the Pensions (Northern Ireland) Order 1995

(34) Section 28A was inserted by Article 143(1) of the Pensions (Northern Ireland) Order 1995

pensionable age, shall be payable to the insurance company with which that policy of insurance is or was taken out or entered into.

Adjustment of the amount of age-related payment

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

Circumstances in which schemes may change mode of contracting out

39. Subject to any regulations made under Article 146 of the Order, a scheme which has been contracted out by virtue of section 5(3) of the Act may become contracted out under section 5(2) of the Act only if its trustees have been discharged of all liability to give effect to protected rights.

Schemes which may not be contracted out under section 5(3) of the Act

40. For the purposes of section 5(3)(aa) of the Act(**35**) (prescribed class or description of scheme which may not be a money purchase contracted-out scheme) the prescribed class or description is a scheme which is not exempt approved within the meaning of section 592(1) of the Taxes Act, unless it either—

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

Part V

Further Requirements (all Schemes) and Overseas Schemes

Provision of information as to resources

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

Alteration of rules of contracted-out schemes

42.—(1) For the purposes of section 33(1) of the Act(**36**) (prohibition on alteration of rules of contracted-out scheme unless the alteration is of a prescribed description) the rules of a salary related contracted-out scheme cannot be altered—

- (a) in relation to any section 5(2B) rights under the scheme unless—
 - (i) the trustees of the scheme have informed the actuary in writing of the proposed alteration to the scheme rules;
 - (ii) the actuary has considered the proposed alteration and has confirmed to the trustees of the scheme in writing that he is satisfied that the scheme will continue to satisfy the statutory standard in accordance with section 8A of the Act after the alteration is made, and

(35) Section 5(3)(aa) was inserted by Article 133(4) of the Pensions (Northern Ireland) Order 1995

(36) Section 33 was substituted by paragraph 32 of Schedule 3 to the Pensions (Northern Ireland) Order 1995

- (iii) the alteration is not one which would otherwise prevent the scheme from satisfying the conditions of section 5(2B) of the Act, and
 - (b) in relation to any guaranteed minimum pensions under the scheme unless the alteration will not affect any of the matters dealt with in Part III of the Act and sections 83 to 88 (protection of increases in guaranteed minimum pensions) and 105 and 106 of the Act (annual increases of guaranteed minimum pensions) and any regulations made under those provisions which relate to guaranteed minimum pensions and that the alteration will not otherwise prevent the scheme from satisfying the conditions of section 5(2A) of the Act⁽³⁷⁾.
- (2) For the purposes of section 33(1) of the Act the rules of a scheme contracted-out under section 5(3) of the Act (a money purchase contracted-out scheme) cannot be altered in relation to any protected rights, unless the alteration will not affect any of the matters dealt with in Part III of the Act or any regulations made under those provisions which relate to protected rights and the alteration will not otherwise prevent the scheme from satisfying the conditions of section 5(3) of the Act.
- (3) Where section 33 of the Act continues to apply after a scheme has ceased to be contracted out, this regulation shall continue to apply so long as the circumstances provided for in subsections (3) or (4) of that section continue to apply.

Termination of periods of contracted-out employment

- 43.—**(1) Subject to paragraphs (2) and (7), an earner's employment shall be treated as having ceased to be contracted-out employment when any of the following circumstances applies—
- (a) the earner's contract of service has expired or been terminated;
 - (b) in the absence of a contract of service, the service itself has ended;
 - (c) the cancellation or surrender of the contracting-out certificate by virtue of which his employment was contracted-out employment has taken effect, except in a case where, within 6 months of the cancellation or surrender, or such longer period as the Department may allow in a particular case, he becomes a member in contracted-out employment of another contracted-out scheme under the same employer to which his accrued rights to guaranteed minimum pensions, section 5(2B) rights or his protected rights, as the case may be, are transferred;
 - (d) a variation of the contracting-out certificate by virtue of which his employment was contracted-out employment has taken effect such that the certificate no longer applies to his employment, except in a case where, within 6 months of the variation, or such longer period as the Department may allow in a particular case, he again comes within the description of earners in relation to which the said contracting-out certificate applies or he becomes a member in contracted-out employment of another contracted-out scheme under the same employer to which his accrued rights to guaranteed minimum pensions, section 5(2B) rights or his protected rights, as the case may be, are transferred;
 - (e) the earner has ceased to be within the description of earners in relation to which the contracting-out certificate applies or has ceased to be a member of the scheme, except in a case where, within 6 months of the ceasing, or such longer period as the Department may allow in a particular case, he again comes within the description of earners in relation to which the said contracting-out certificate applies or he becomes a member in contracted-out employment of another contracted-out scheme under the same employer to which his accrued rights to guaranteed minimum pensions, section 5(2B) rights or his protected rights, as the case may be, are transferred, and

(37) Section 5(2A) was substituted by Article 133(3) of the Pensions (Northern Ireland) Order 1995

- (f) the earner's employer dies or disposes of the whole or part of his business so that the earner ceases to be employed by that employer and the contracted-out employment is not, or cannot be, treated as continuing under the new employer under paragraph (5).
- (2) In such cases as are specified in paragraph (3), an earner's employment shall not be treated as having ceased to be contracted-out employment by reason only of the circumstances mentioned in paragraph (1)(a) and (b) where the service in question is one (other than the last) of a series of employments to all of which the same scheme applies.
- (3) The cases mentioned in paragraph (2) are—
- (a) where all the employments are with the same employer or where the earner is employed by another employer in employment which is contracted out by reference to the same scheme as the first employment and, in respect of the employment first mentioned in paragraph (2)—
- (i) no state scheme premium or contributions equivalent premium has been paid or any that has been paid has been refunded;
 - (ii) the calculation of the earner's guaranteed minimum pension arising out of his service in that employment is not subject to any provision of the scheme prescribed by regulations made under section 12(3) of the Act⁽³⁸⁾;
 - (iii) the earner's accrued rights to guaranteed minimum pensions or to section 5(2B) rights under the scheme arising out of his service in that employment have not been transferred in accordance with the provisions of the scheme under section 8C(1) or 16(1) of the Act or regulations made thereunder or, as the case may be, effect has not been given to protected rights under the scheme arising out of his service in that employment by the making of a transfer payment in accordance with the provisions of the scheme under section 24(2)(b)(i) of the Act;
 - (iv) the scheme is one for which there is a common fund, and any interval between one employment and the next is no longer than 6 months or such longer period as the Department may allow in a particular case, and
- (b) where a woman has a right to return to work under Article 20 of the Industrial Relations (No. 2) (Northern Ireland) Order 1976⁽³⁹⁾ (right to return to work following pregnancy or confinement) and does in fact return to work pursuant to that right.
- (4) The total period of contracted-out employment which consists of a series of employments to which paragraph (2) applies shall not include any interval between employments.
- (5) In cases where an earner's employer dies or otherwise ceases to be the employer in relation to the earner's contracted-out employment and his business is taken over by a new employer, the earner's service in contracted-out employment under the old employer may be treated as continuing under the new employer if—
- (a) the earner's service after the change of employer continues to qualify him for guaranteed minimum pensions, section 5(2B) rights or protected rights, as the case may be, under the contracted-out scheme by virtue of which he qualified for such benefits or such rights before the change, or if his service does not so qualify him the earner is nevertheless to be treated as being in contracted-out employment by virtue of regulation 28;
 - (b) the new employer accepts all the responsibilities of the former employer for any contributions to the scheme and any state scheme premiums or contributions equivalent premiums which are outstanding in respect of the scheme at the time of the change, and

⁽³⁸⁾ Section 12(3) was amended by paragraph 21(a) of Schedule 3 to the Pensions (Northern Ireland) Order 1995

⁽³⁹⁾ S.I. 1976/2147 (N.I. 28); Article 20 was substituted by Schedule 1 to the Industrial Relations (Northern Ireland) Order 1993 (S.I. 1993/2668 (N.I. 11))

(c) the new employer notifies the Department of the change within one month of its taking place or such longer period as the Department may consider reasonable in the particular case and provides the Department with such documents and information as it may reasonably require.

(6) In a case where an earner's service in contracted-out employment is to be treated as continuing by virtue of paragraph (5) the contracting-out certificate issued to the former employer shall be treated as issued to the new employer and the Department may vary that certificate in such respects as may be necessary in the circumstances.

(7) In cases where an earner is employed concurrently in two or more contracted-out employments by reference to the same scheme and with the same employer his employment in any one of those employments shall not be treated as having terminated by reason only of the circumstances mentioned in paragraph (1)(a) and (b) until all such employments are treated as having so terminated.

(8) Where an earner ceases to be liable for Class 1 contributions under the Contributions and Benefits Act in respect of any contracted-out employment because he is employed outside Northern Ireland and where, and for as long as, service in the employment outside Northern Ireland continues to qualify him for benefits under the scheme by reference to which his employment was contracted-out employment, the earner's service in that employment shall be treated as not having terminated.

(9) In this regulation—

“common fund” means a fund into which all contributions, however derived, are paid, and to the whole of which recourse may be had to meet any liabilities of the scheme for the payment of benefit;

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

“state scheme premium” means a premium paid or payable under Chapter III of Part III of the Act before the principal appointed day, or under those provisions as continued in force by an order made under Article 1 of the Order.

Notifications to the Department

44.—(1) Whenever an earner's service in contracted-out employment is treated as terminated under regulation 43, the employer of that earner in that service shall, except where the termination is due to the death of the earner or occurs on a date later than the end of the tax year preceding that in which he attains pensionable age, or where the amount of a contributions equivalent premium in respect of that service would not exceed £17, notify the Department of that termination.

(2) A notification required to be given under paragraph (1) may be given at any time within the period of one month before the expected date of termination but if not so given shall be given within 6 months from the date on which the service terminated or, if the Department is satisfied that the notification could not reasonably have been given within that period, such longer period as it may approve in a particular case or class of case.

(3) A notification required to be given under paragraph (1) shall be given in writing in such form as the Department may direct and shall contain such information as the Department may reasonably require for calculating guaranteed minimum pensions (including those to which persons are treated as entitled under section 44(2) of the Act⁽⁴⁰⁾), any entitlements arising in respect of section 5(2B) rights and contributions equivalent premiums and for related purposes.

(4) In any case where a person transfers his responsibility for, or makes a transfer payment in respect of, a guaranteed minimum pension or any section 5(2B) rights to another person, the first

⁽⁴⁰⁾ Section 44(2) was amended by paragraph 56 of Schedule 1 to the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12)) and Article 137(2) of the Pensions (Northern Ireland) Order 1995; *see also* Article 137(3) of that Order

person shall, within 5 weeks from the date of the transfer or transfer payment, notify the Department of its occurrence, giving such particulars as the Department may reasonably require to enable it to identify the second person.

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

- (a) to identify the means by which effect has been given to them;
- (b) where effect has been given to them by means of a pension, annuity or lump sum, to identify the recipient of it;
- (c) where effect has been given to them by means of an annuity, to identify the insurance company responsible for paying the annuity;
- (d) where effect has been given to them by means of a transfer payment, to identify the personal or occupational pension scheme to which the transfer payment was made, and
- (e) where effect has been given to them by means of an appropriate policy of insurance under section 28A(1) of the Act (discharge of protected rights on winding up: insurance policies), to identify the member in respect of whom, and the insurance company with which, that policy was taken out or entered into.

(6) Where the member is a married woman or widow, and effect has been given to her protected rights at a time when an election is operative that her liability in respect of primary Class 1 contributions shall be a liability to contribute at a reduced rate, paragraph (5) shall not apply.

(7) An employer to whom a contracting-out certificate has been issued or the trustees of the scheme to which the certificate relates shall, if required to do so by the Department, in such manner and at such times as the Department may reasonably require, furnish to the Department such information relating to members of that scheme to which the contracting-out certificate relates as it may reasonably require for the purpose of calculating guaranteed minimum pensions (including those to which persons are treated as entitled under section 44(2) of the Act), any entitlement arising in respect of section 5(2B) rights and in order to know for what, if any, protected rights the scheme is responsible, and from what minimum contributions, minimum payments or transfer payments they derive, and for related purposes.

Approval of arrangements for schemes ceasing to be contracted out

45.—(1) Subject to regulation 74 (transitional arrangements relating to schemes ceasing to contract out before the principal appointed day), for the purposes of section 46(1B) of the Act⁽⁴¹⁾ (prescribed conditions to be met in order for arrangements to be approved on the cessation of contracting-out) arrangements shall not be approved by the Department unless the conditions specified in paragraphs (2) or (3) are satisfied.

(2) To the extent that the arrangements concern the transfer of rights or the discharge of liabilities they must meet the requirements of (as the case may be) section 8C of the Act⁽⁴²⁾ (transfer or discharge of section 5(2B) rights), section 15 of the Act (discharge of liability for guaranteed minimum pensions secured by insurance policies or annuity contracts), section 16 of the Act (transfer of accrued rights), section 24(2)(b) and (3) of the Act⁽⁴³⁾ (transfer of protected rights) or section 28A of the Act (discharge of protected rights on winding up) and any regulations made under those provisions and the Department must be satisfied that such arrangements will be completed within 2 years of the date of cessation or such later date as the Department may specify in relation to a particular case or class of case.

⁽⁴¹⁾ Section 46(1B) was inserted by paragraph 37(b) of Schedule 3 to the Pensions (Northern Ireland) Order 1995

⁽⁴²⁾ Section 8C was inserted by Article 133(5) of the Pensions (Northern Ireland) Order 1995

⁽⁴³⁾ Section 24(3) was amended by Article 139 of the Pensions (Northern Ireland) Order 1995

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

- (a) in the case of a scheme where the employment was contracted out under section 5(2) of the Act⁽⁴⁴⁾ (salary related contracted-out scheme) the scheme must continue to satisfy the requirements of that section and any regulations which would apply to the scheme by reason of its being a scheme to which section 5(2) of the Act relates, other than section 5(2B)(a) of the Act (requirement to comply with section 8A of the Act) and any regulations which relate to compliance with that section, and the scheme must contain a rule which provides that the amount of any benefits under the scheme arising in respect of section 5(2B) rights and guaranteed minimum pensions for each member and his widow or widower shall, at normal pension age, be the higher of A and B where—

A is the aggregate of—

- (i) the amount of such benefits calculated on an early leaver basis in accordance with Chapter I of Part IV of the Act and any regulations made under that Chapter as if the member had ceased to be in pensionable service at the date on which the scheme ceased to be contracted out, and
- (ii) the amount of any benefits due in respect of rights which have accrued to the member in relation to service which was not contracted out, and

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

- (b) in the case of a scheme where employment was contracted out under section 5(3) of the Act (money purchase contracted-out scheme) the scheme must, subject to paragraph (4), continue to satisfy the requirements of section 5(3) of the Act and any regulations which apply to the scheme by reason of its being a scheme to which section 5(3) of the Act relates.

(4) For the purposes of paragraph (3)(b), in determining whether a scheme complies with the requirements concerning the calculation of protected rights in accordance with section 23(2) of the Act, regard shall be had only to any rights of the member to money purchase benefits which have accrued under the scheme up to the date it ceased to be contracted out.

Supervision of schemes that have ceased to contract out

46.—(1) Subject to such directions as the Department may give under section 49(1) of the Act⁽⁴⁵⁾ (supervision of formerly contracted-out schemes) for the purposes of section 49(3) of the Act⁽⁴⁶⁾ (requirement to discharge liabilities following issue of certificate of non-approval), the liabilities in respect of such entitlement or rights as are referred to in section 48(2A)(a) or (b) of the Act⁽⁴⁷⁾ must, subject to paragraphs (2) to (4), be transferred or discharged in the manner permitted by regulation 45(2) within 6 months of the date a certificate of non-approval under section 46(2) of the Act⁽⁴⁸⁾ is issued, unless the certificate has been cancelled.

(2) In the case of a scheme where employment was contracted out under section 5(2) of the Act (salary related contracted-out scheme), the discharge may be arranged in accordance with the requirements of regulation 5(4) of the Occupational Pension Schemes (Discharge of Liability) Regulations (Northern Ireland) 1985⁽⁴⁹⁾, notwithstanding that a member's pensionable service has not terminated and the scheme is not winding up.

⁽⁴⁴⁾ Subsections (2) to (2C) were substituted for section 5(2) by Article 133(3) of the Pensions (Northern Ireland) Order 1995

⁽⁴⁵⁾ Section 49(1) was substituted by paragraph 40 of Schedule 3 to the Pensions (Northern Ireland) Order 1995

⁽⁴⁶⁾ Section 49(3) was substituted by paragraph 40(c) of Schedule 3 to the Pensions (Northern Ireland) Order 1995

⁽⁴⁷⁾ Section 48(2A) was substituted by paragraph 39 of Schedule 3 to the Pensions (Northern Ireland) Order 1995

⁽⁴⁸⁾ Section 46(2) is amended by paragraph 14 of Schedule 3 to the Pensions (Northern Ireland) Order 1995

⁽⁴⁹⁾ S.R. 1985 No. 356; regulation 5 was substituted by paragraph 1 of Schedule 1 to S.R. 1991 No. 37 and was amended by paragraph 4(9) of Schedule 2 to S.R. 1994 No. 300

(3) In the case of a scheme where employment was contracted out under section 5(3) of the Act (money purchase contracted-out scheme), the discharge may be arranged in the manner specified by regulations made under section 28A of the Act, notwithstanding that the scheme is not winding up.

(4) Every active and deferred member with any entitlement to protected rights, guaranteed minimum pensions or section 5(2B) rights under the scheme must be notified of the issue of the certificate of non-approval and the reasons for it and allowed a period of 3 months from the date of such notification in which he may elect to transfer any such rights before they are discharged.

Circumstances in which the Department may vary or cancel a contracting-out certificate

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

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

- (a) in a case of a salary related contracted-out scheme where the Department considers that the resources of the scheme have not been maintained at a sufficient level for maintaining all claims in respect of guaranteed minimum pensions and section 5(2B) rights so far as falling to be met out of those resources, the date may be the latest date on which in the opinion of the Department those resources were maintained at such a sufficient level;
- (b) in a case of a salary related contracted-out scheme where the earners in employments to which the contracting-out certificate applies have ceased to qualify for guaranteed minimum pensions or benefits arising from section 5(2B) rights under the scheme, the date may be a date not earlier than the date on which, in the opinion of the Department, the said cessation occurred;
- (c) in a case where the Department discovers that the scheme did not satisfy the requirements for being a contracted-out scheme at the date the contracting-out certificate was issued, the date may be the date from which the certificate had effect or any later date, or
- (d) in a case where the Department considers that the scheme has ceased to satisfy the requirements for being a contracted-out scheme, the date may be any date not earlier than when, in the Department's opinion, the scheme ceased to satisfy those requirements.

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

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

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

Special provision for overseas schemes

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

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

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

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

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

(a) the trustees or managers must appoint an actuary to the scheme who satisfies the requirements of regulations made under Article 47(5) of the Order and such an actuary may provide certification to the Department in accordance with section 8A(6) of the Act⁽⁵⁰⁾;

(b) regulation 18 shall not apply;

(c) subject to regulation 73, for the purposes of section 5(2B)(c)(i) of the Act⁽⁵¹⁾, the requirement as to the amount of resources of the scheme is that such resources, were the scheme to wind up at any time, are sufficient to meet any liability for the following—

(i) pensions or other benefits which, in the opinion of the trustees, are derived from the payment by any member of the scheme of voluntary contributions;

(ii) where a person's entitlement to payment of a pension or other benefit has arisen, liability for that pension or benefit and for any pension or other benefit which will be payable to dependants of that person on his death and any increases to such pensions;

(iii) equivalent pension benefits, guaranteed minimum pensions and protected rights which have accrued to or in respect of any members of the scheme and any increases to such pensions;

(iv) pensions or other benefits which have accrued after the principal appointed day to or in respect of members whose employment is contracted out by reference to the scheme and any increases to such pensions;

(v) in respect of members with less than two years' pensionable service who are not entitled to accrued rights under the scheme, the return of contributions,

and such liabilities and resources shall be calculated, determined and valued in a manner approved by the Department, and

(d) section 5(2B)(b) of the Act is modified with effect that the Department must be satisfied that not more than 5 per cent. of the current market value of the scheme's resources are invested in a person who is an employer, or connected with an employer, in relation to the scheme if such investments are required to meet the liabilities specified in subparagraph (c) and the value of such investments shall be calculated and determined in a manner approved by the Department.

(6) In the case of an overseas scheme which is a money purchase scheme—

(a) the trustees or managers of the scheme must appoint an auditor who satisfies the requirements of regulations made under Article 47(5) of the Order;

(b) regulation 30(1)(a) shall not apply, and

(c) the Department must be satisfied that not more than 5 per cent. of the current market value of the scheme's resources are invested in a person who is an employer, or connected with an

⁽⁵⁰⁾ Section 8A was inserted by Article 133(5) of the Pensions (Northern Ireland) Order 1995

⁽⁵¹⁾ Section 5(2B) was substituted by Article 133(3) of the Pensions (Northern Ireland) Order 1995

employer, in relation to the scheme if such investments are required to meet the scheme's liabilities for protected rights and the value of such investments shall be calculated and determined in a manner approved by the Department.

(7) An overseas scheme must provide, in respect of any members who are resident in Northern Ireland, for revaluation of accrued rights in accordance with sections 79 to 82 of the Act(52) and for indexation of pensions in accordance with Articles 51 to 54 of the Order.

Part VI

Restoration of State Scheme Rights

Insolvent schemes

49.—(1) Where paragraph 5(3B) of Schedule 1 to the Act(53) applies in relation to a member of a contracted-out scheme which is being wound up and the conditions set out in paragraph (3) are satisfied, the member shall be treated as if sections 42 to 44(54) or, as the case may be, 44A(1) of the Act(55)—

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

(2) For the purposes of paragraph 5(3B)(b) of Schedule 1 to the Act, the debt due from the trustees of the scheme to the Department shall be only such part of the amount required for restoring the member's state scheme rights as does not exceed the amount which, in the opinion of the Department, is the amount available from the resources of the scheme to meet the liability for the cash equivalent of the member's rights.

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

- (a) in the case of a money purchase contracted-out scheme, there has been a determination by the Compensation Board that the conditions set out in Article 79(1) of the Order (cases where compensation provisions apply) are satisfied, and
- (b) no later than 3 months after the date on which the trustees notify the member in accordance with regulation 50, or such further period as the Department may allow in a particular case, the Department has received from—
 - (i) the member, or
 - (ii) where the Department is satisfied that the member cannot be traced, the trustees, a written application for the member's state scheme rights to be restored in accordance with this regulation.

(4) For the purposes of this regulation and paragraph 5(3A) to (3D) of Schedule 1 to the Act(56)—

- (a) the cash equivalent of a member's rights under a scheme shall be determined—

(52) Section 80(5) is amended by paragraph 52 of Schedule 3 to the Pensions (Northern Ireland) Order 1995

(53) Paragraph 5(3B) of Schedule 1 was inserted by Article 138(2) of the Pensions (Northern Ireland) Order 1995

(54) Section 42 was amended by paragraph 54 of Schedule 1 to the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 and is amended by paragraph 19 of Schedule 2 to, and paragraph 36 of Schedule 3 to, the Pensions (Northern Ireland) Order 1995; section 43 was amended by paragraph 55 of Schedule 1 to the Social Security (Incapacity for Work) (Northern Ireland) Order 1994; section 44 was amended by paragraph 56 of Schedule 1 to that Order and Article 137(2) of the Pensions (Northern Ireland) Order 1995

(55) Section 44A was inserted by Article 137(1) of the Pensions (Northern Ireland) Order 1995

(56) Paragraph 5(3A) to (3D) of Schedule 1 was inserted by Article 138(2) of the Pensions (Northern Ireland) Order 1995

- (i) in the case of a scheme to which Article 56 of the Order applies (minimum funding requirement) as if the requirement of Article 56(1) were satisfied, or
 - (ii) in the case of a money purchase scheme, as if there had been no reduction in the value of its assets attributable to an act or omission constituting a prescribed offence for the purposes of Article 79(1)(c) of the Order;
 - (b) the extent (if any) to which the resources of the scheme are insufficient to meet that cash equivalent shall be determined—
 - (i) on the assumption that those resources include any payment to the trustees under the compensation provisions, and
 - (ii) where Article 73 of the Order (preferential liabilities on winding up) applies, in accordance with the requirements of that Article;
 - (c) the amount required for restoring the member's state scheme rights shall be an amount determined in accordance with regulations made under paragraph 5(3C)(c) of Schedule 1 to the Act.
- (5) In this regulation “Compensation Board” and “compensation provisions” have the same meaning as in Article 121(1) of the Order.

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

50. Where the Department has advised the trustees of a scheme that it is of the opinion that the conditions referred to in paragraph 5(3A) of Schedule 1 to the Act are satisfied in respect of any member, the trustees must inform the member in writing of that fact—

- (a) when they give notice of any proposal to discharge a liability of the scheme in respect of the member in accordance with regulations under Article 74 of the Order (discharge of liabilities by insurance, etc.) or under section 28A of the Act⁽⁵⁷⁾ (discharge of protected rights on winding up: insurance policies);
- (b) if no notice is given by the trustees in accordance with paragraph (a), when the member is advised of any other option available to discharge a liability of the scheme in respect of him.

Election to pay contributions equivalent premium

51.—(1) For the purposes of section 51(2) of the Act⁽⁵⁸⁾ (which provides for the prescribed person to elect to pay a contributions equivalent premium on termination of certified status) the prescribed person is the trustees of the scheme.

(2) The obligation under section 53(2) of the Act (not to discriminate between different earners when making or abstaining from making elections to pay contributions equivalent premiums) shall not apply to—

- (a) cases where an earner's rights are transferred in accordance with regulations under section 16 (transfer of accrued rights) or under section 8C (transfer, commutation, etc.) of the Act;
- (b) married women and widows who, by virtue of regulations made under section 19(4) and (5) of the Contributions and Benefits Act, have elected to pay contributions under that Act at a reduced rate;
- (c) cases where, on the death of an earner, there arises an entitlement to a widow's or widower's pension which comprises amounts of pension which have accrued by reference

⁽⁵⁷⁾ Section 28A was inserted by Article 143(1) of the Pensions (Northern Ireland) Order 1995

⁽⁵⁸⁾ Section 51(2) was substituted by Article 138(1) of the Pensions (Northern Ireland) Order 1995

to the earner's service in employment which was not contracted-out employment and to his service in employment which was contracted-out;

- (d) cases where the earner has completed less than 2 years' qualifying service for the purposes of Chapter I of Part IV of the Act (preservation) but where, nevertheless, he is entitled under the rules of the scheme to elect, and he has elected, that his accrued rights shall be preserved, and
- (e) cases where an earner's accrued rights to guaranteed minimum pensions are appropriately secured within the meaning of section 15 of the Act (discharge of liability for guaranteed minimum pensions) or where any liability to provide pensions to that earner has been discharged in accordance with regulations under section 8C of the Act,

but in respect of any of the classes of case mentioned in this paragraph an employer shall not discriminate between different earners falling within the same class of case.

(3) An election under section 51(2) of the Act shall be notified to the Department in writing in such form as it may reasonably require for the purpose of identifying the earner to whom the election relates. Such notification shall be given—

- (a) where the circumstances specified in section 51(2A)(d) of the Act⁽⁵⁹⁾ apply (the scheme is wound up), within 2 years of the cessation of the scheme, or
- (b) where the circumstances specified in section 51(2A)(a) to (c) or (e) of the Act apply, within the period beginning one month before, and ending 6 months after, the date on which the person ceases to serve in employment which is contracted-out employment by reference to the scheme.

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

Payment of a contributions equivalent premium

52.—(1) A contributions equivalent premium which the trustees have elected to pay shall be paid on or before whichever is the later of the following days—

- (a) the day 6 months after the date of termination of contracted-out employment in respect of which the premium is payable, or
- (b) the day one month after the day on which the Department sends to the trustees a notice certifying the amount of the premium payable.

(2) Where the amount of any contributions equivalent premium which is payable does not exceed £17, the trustees shall not be liable to pay it and, accordingly, if it is not paid, it shall be treated as paid for the purposes of section 44A(2) (additional pension and other benefits) and section 56 (effect of payment of premium on rights) of the Act.

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

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

53.—(1) For the purposes of section 57(10) of the Act (payments in lieu of benefit) a payment in lieu of benefit shall include a payment made or to be made out of the resources of the scheme towards the provision of deferred benefits for the earner.

⁽⁵⁹⁾ Section 51(2A) was substituted by Article 138(1) of the Pensions (Northern Ireland) Order 1995

(2) Where on the coming to an end of an employed earner's service in contracted-out employment, he (or, by virtue of a connection with him, any other person) is or may be entitled to a refund of any payments made under a contracted-out scheme by or in respect of him towards the provision of benefits under the scheme, paragraphs (3) to (6) shall apply for the purpose of enabling any right of recovery conferred by section 57 of the Act to be exercised.

(3) Where in such a case a contributions equivalent premium falls to be paid in respect of the earner under the Act, the person liable for the refund shall not, after he has been given notice in accordance with paragraph (5) ("notice of delay"), make the refund in whole or in part until the expiration of the period of delay specified in paragraph (4), but this paragraph shall not apply to so much, if any, of the refund as exceeds the amount certified by the Department under section 59(1)(d) of the Act (further provisions concerning calculations relating to premiums).

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

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

- (a) the name of the earner or such particulars as will sufficiently identify the class of case concerned;
- (b) such particulars as will sufficiently identify the refund concerned, and
- (c) a memorandum in a form approved by the Department giving brief particulars of the effect of paragraphs (3) and (4).

(6) Where the trustees of a scheme have given notice of delay they shall from time to time inform any person to whom they have given notice of the ending of the period of delay in relation to any refund affected by the notice.

Refund of a contributions equivalent premium

54.—(1) The Department shall refund a contributions equivalent premium if—

- (a) that premium was paid in error;
- (b) it is satisfied that the employment to which that premium relates will be linked with another employment in the circumstances set out in regulation 43(2) and (3);
- (c) it is satisfied that the earner in respect of whom that premium was paid has entered into employment which is contracted-out employment by reference to the same contracted-out scheme as that by reference to which the employment to which that premium relates was contracted-out employment, and that for the purpose of calculating the earner's accrued rights under the scheme the two employments will be linked;
- (d) it is satisfied that a transfer of the earner's accrued rights will be made in accordance with regulations under section 16 (transfer of accrued rights) or under section 8C (transfer, commutation etc.) of the Act, or
- (e) the scheme is one under which a member may qualify for benefits by virtue of service either in employed earner's employment or as a self-employed earner (within the meaning of section 2 of the Contributions and Benefits Act) or both and the Department is satisfied that the earner in respect of whom that premium was paid has completed a period of membership of the scheme as a self-employed earner which, when aggregated with his service in employed earner's employment, amounts to not less than 2 years,

and, where a contributions equivalent premium is refunded under this paragraph the earner's accrued rights under the scheme, which were extinguished by payment of the premium, shall be restored.

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

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

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

(4) Where—

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

there shall be paid out of the National Insurance Fund to the earner (or his estate) an amount which bears the same proportion to the amount of the excess as the reduction under paragraph (a) of subsection (1A) of section 37 of the Act⁽⁶⁰⁾ (reduced rates of Class 1 contributions for earners in contracted-out employment), in the normal percentage of primary Class 1 contributions bears to the total reduction under that subsection in the total normal percentage of Class 1 contributions.

(5) The Department shall refund a contributions equivalent premium if it is satisfied that—

- (a) where that premium was paid in the circumstances mentioned in section 51(2A)(a), (b), (d) or (e) of the Act, the person in respect of whom it was paid has died, without leaving a widow or widower, on or before the later of the days first mentioned in sub-paragraphs (a) and (b) respectively of regulation 52(1), or
- (b) where that premium was paid in the circumstances mentioned in section 51(2A)(c) of the Act, there are no accrued rights to guaranteed minimum pensions or section 5(2B) rights under the scheme in question in respect of the widow or widower in question.

Part VII

Guaranteed Minimum Pensions

Scheme rules about guaranteed minimum pensions

55.—(1) For a scheme to be contracted out in relation to an earner’s employment it must include a rule to the effect that if the earner has a guaranteed minimum under section 10 of the Act (earner’s guaranteed minimum)⁽⁶¹⁾—

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

⁽⁶⁰⁾ Section 37(1A) was substituted by Article 134(2) of the Pensions (Northern Ireland) Order 1995

⁽⁶¹⁾ Section 10 is amended by paragraph 20 of Schedule 3 to the Pensions (Northern Ireland) Order 1995

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

(2) In paragraph (1) “weekly rate” means, in cases where the pension is paid otherwise than at weekly intervals, a rate which is equivalent to the earner’s guaranteed minimum having regard to the period in respect of which the pension is paid.

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

56. A scheme may make provision under section 12(2) of the Act (revaluation of guaranteed minimum pensions under section 130 of the Administration Act by reference to last service year⁽⁶²⁾) for the case of those of its members whose guaranteed minimum pensions are, or are to be, appropriately secured within the meaning of section 15(3) of the Act, notwithstanding that it makes no such provision for any other case.

Circumstances in which widower’s guaranteed minimum pension is to be payable

57. For the purposes of section 13(6) of the Act (for a scheme to be contracted out it must provide for a widower’s guaranteed minimum pension to be payable in prescribed circumstances and for a prescribed period) the prescribed circumstances are that—

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

Period for which widower’s guaranteed minimum pension is to be payable

58.—(1) For the purposes of section 13(6) of the Act the prescribed period is—

- (a) in a case where the circumstances described in regulation 57(a) exist, the remainder of the widower’s life;
 - (b) in a case where the circumstances described in paragraph (b), but not either paragraph (a) or paragraph (c), of regulation 57 exist, the period (subject to paragraph (2)) during which the circumstances described in paragraph (b) of regulation 57 continue to exist, and
 - (c) in a case where the circumstances described in paragraph (c), but not paragraph (a), of regulation 57 exist, the remainder of the widower’s life (subject to paragraph (2)).
- (2) There is excluded from the periods prescribed under paragraph (1)(b) and (c) any period—

⁽⁶²⁾ Section 130 was amended by paragraph 40 of Schedule 7 to the Pension Schemes (Northern Ireland) Act 1993. *See also* Article 125(3) and (4) of the Pensions (Northern Ireland) Order 1995

- (a) after the widower's remarriage under pensionable age;
- (b) during which he is under pensionable age and he and a woman to whom he is not married are living together as husband and wife, or
- (c) after the widower has attained pensionable age if immediately before he attained that age he and a woman to whom he was not married were living together as husband and wife.

Statutory references to persons entitled to guaranteed minimum pensions — application to widowers

59. Sections 46(1)(a)(ii)(**63**) and 48(2A)(a)(i) of the Act(**64**) shall be construed as if the reference to a person entitled to receive a guaranteed minimum pension included a reference to a person so entitled by virtue of being the widower of an earner only in the case where the earner and the widower were both over pensionable age when the earner died.

Trivial commutation of guaranteed minimum pensions

60.—(1) For the purposes of section 17(1) of the Act (provisions of a scheme relating to commutation), the prescribed circumstances are—

- (a) that a guaranteed minimum pension has become payable;
- (b) that the aggregate amount of all benefits currently payable to the earner or, as the case may be, the amount of the pension payable to his widow or her widower under all schemes relating to employment with the same employer as the employment in respect of which the guaranteed minimum pension is payable, does not exceed £260 per annum, and
- (c) that the Department is satisfied that the scheme provides a reasonable basis for ascertaining the amount to be paid on commutation.

(2) Where, under paragraph (1), a scheme permits an earner to commute benefit in accordance with this regulation it may also permit him or her to commute any prospective widow's or widower's benefit payable under the scheme (provided that the aggregate amount of such benefit prospectively payable under all schemes relating to employment with the same employer as the employment in respect of which the benefit is payable does not exceed £260 per annum) and the value of any such widow's or widower's benefit shall not be taken into account for the purpose of the limit of £260 per annum mentioned in paragraph (1).

(3) For the purposes of paragraph (1)(c), any benefit in lump sum form payable to the earner (but excluding for this purpose any benefit by way of a refund of the earner's contributions to the scheme) shall be treated as the annual amount of benefit in pension form which, in the opinion of the trustees or administrator of the scheme, is its equivalent.

(4) The condition in paragraph (1)(b) shall not apply in cases where the scheme is being wound up or an earner retires before pensionable age, and a contributions equivalent premium has been paid or treated as paid under Part VI, provided that—

- (a) for the purposes of paragraph (1)(c) the aggregate amount of benefit which has accrued to the earner at the date of winding up or, as the case may be, of his retirement, increased, where appropriate, in accordance with section 12(2) and (3) of the Act(**65**) or in either case to the amount that would have been payable at pensionable age, shall be treated as the amount of benefit currently payable to him under the scheme;

(63) Section 46(1)(a)(ii) is amended by paragraph 37 of Schedule 3 to the Pensions (Northern Ireland) Order 1995

(64) Section 48(2A) is substituted by paragraph 39 of the Schedule 3 to the Pensions (Northern Ireland) Order 1995

(65) Section 12(3) was amended by paragraph 21(a) of Schedule 3 to the Pensions (Northern Ireland) Order 1995

- (b) in the case of an earner who retires before normal pension age, commutation is not permitted before the date on which benefits become payable to the earner under the scheme's early retirement provisions;
- (c) in cases where the earner is a member of more than one scheme relating to the same employment, all those schemes are being wound up or, as the case may be, he is treated by all those schemes as having retired and, in each case, all those schemes have paid a contributions equivalent premium.

Suspension and forfeiture of guaranteed minimum pensions

61.—(1) For the purposes of section 17(2) of the Act (suspension and forfeiture of guaranteed minimum pension) the circumstances in which a scheme may provide for an earner's or an earner's widow's or widower's guaranteed minimum pension to be suspended are—

- (a) that the pensioner is, in the opinion of the trustees of the scheme, unable to act by reason of mental disorder or otherwise and there is provision in the scheme for amounts equivalent to the guaranteed minimum pension to be paid or applied, while the pensioner is so unable, for the maintenance of the pensioner or, at the discretion of the trustees, of the pensioner together with his dependants or of his dependants only, and to the extent that they are not so applied, to be held for the pensioner until he is again able to act or, as the case may be, for his estate;
- (b) that the pensioner is in prison or detained in legal custody, and there is provision in the scheme for amounts equivalent to the guaranteed minimum pension to be paid or applied during such circumstances for the maintenance of such one or more of the pensioner's dependants as the trustees of the scheme may in their discretion determine, and
- (c) that the earner is re-employed by the employer who had previously employed him in contracted-out employment in respect of which the guaranteed minimum pension became payable or in any other employment to which the scheme paying the guaranteed minimum pension applies and there is provision in the scheme for the guaranteed minimum pension which becomes payable when the suspension is lifted to be increased in accordance with section 11(1) of the Act.

(2) For the purposes of section 17(2) of the Act the circumstances in which a scheme may provide for an earner's or an earner's widow's or widower's guaranteed minimum pension (whether current or prospective) to be forfeited are—

- (a) that the person entitled to that pension has been convicted of—
 - (i) an offence of treason, or
 - (ii) one or more offences under the Official Secrets Acts 1911 to 1989⁽⁶⁶⁾ for which he has been sentenced on the same occasion to a term of imprisonment of, or to two or more consecutive terms amounting in the aggregate to, at least 10 years;
- (b) in the case of a widow's or widower's guaranteed minimum pension, that the earner by reference to whose contracted-out employment that pension is payable has been convicted of an offence of treason, or has been convicted of offences and has been sentenced to terms of imprisonment as set out in sub-paragraph (a)(ii);
- (c) in the case of any payment of guaranteed minimum pension for which a claim has not been made, that a period of at least 6 years has elapsed from the date on which that payment became due.

(66) 1911 c. 28; 1920 c. 75; 1939 c. 121; 1989 c. 6

Fixed rate revaluation of guaranteed minimum pensions for early leavers

62.—(1) This regulation applies to a case where a scheme provides, under section 12(2) of the Act (revaluation of earnings factors), for the earnings factors of an earner whose service in contracted-out employment by reference to the scheme is terminated before he attains pensionable age to be determined by reference to the last order that comes into force under section 130 of the Administration Act before the end of the tax year in which his service is terminated.

(2) Subject to paragraph (3), in a case to which this regulation applies, the prescribed percentage for the purpose of section 12(3) of the Act is, in relation to each period of service in respect of which accrued rights to guaranteed minimum pension have been acquired under, or transferred to, the scheme—

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

(3) Paragraph (2) only applies so as to permit the same provision to be made for all members of the scheme, so however that separate provision may be made for members as regards their rights to guaranteed minimum pensions under the scheme arising in respect of a transfer or transfer payment made in accordance with section 16(1) (transfer of accrued rights) or section 24 (ways of giving effect to protected rights) of the Act⁽⁶⁷⁾ or regulations made under those provisions or for members whose guaranteed minimum pensions are, or are to be, appropriately secured within the meaning of section 15(3) of the Act.

Provision of information about guaranteed minimum pensions

63.—(1) The prescribed persons to whom, under section 152 of the Act, the Department may furnish information as to the amount of guaranteed minimum pension to which it appears to the Department a person is immediately or prospectively entitled under a scheme or as to any other matter required for calculating that amount, are (in addition to the persons mentioned in that section) —

- (a) the earner or widow or widower to whom the information relates;
- (b) the employer in relation to the contracted-out employment of an earner to whom the information relates;
- (c) any independent trade union recognised in relation to those earners who are members of a contracted-out scheme, and
- (d) any person who is, or who in the opinion of the Department is likely to become, the responsible paying authority.

(2) Paragraph (1)(c) has effect subject to the condition that the information to be furnished is either—

- (a) as to the total amount of the guaranteed minimum pensions to which it appears to the Department that all persons immediately or prospectively entitled under the scheme are so entitled, or
- (b) to be furnished with the written consent of the earner or widow or widower to whom the information relates.

⁽⁶⁷⁾ Section 24 was amended by Article 139 of, and paragraph 27(b) of Schedule 3 to, the Pensions (Northern Ireland) Order 1995 and is amended by Article 143(2) of that Order

Meaning of “connected employer”

64.—(1) The cases in which employers are to be treated as connected for the purposes of section 31 of the Act (surrender and cancellation: issue of further certificates) are those specified in paragraph (2).

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

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

(3) In this regulation an employer is to be regarded as an employer at the relevant time where, as the case may require, he is the employer at the time of the surrender or cancellation of the first certificate or the employer at the time of the making of an election with a view to the issue of a further contracting-out certificate.

Modification of section 12 of the Act

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

- (a) section 12(1) of the Act shall be modified so as to have effect as if there were added at the end thereof “or, in respect of the earner’s earnings factor or the weekly equivalent mentioned in section 10(2) of the Act for any relevant year in a period of linked qualifying service, shall be taken to be that factor or weekly equivalent as increased in accordance with the provisions of the scheme under regulations made under section 12(3)”, and
- (b) where earnings factors of an earner whose accrued rights to guaranteed minimum pensions, including such rights derived from linked qualifying service, have been transferred under section 16(1) of the Act or regulations made thereunder to another contracted-out scheme, section 12(2) and (3) of the Act shall be modified so as to have effect as if it permitted that scheme to provide for those earnings factors to be determined for the purpose of section 10(2) of the Act without reference to any order coming into force under section 130 of the Administration Act—
 - (i) after the relevant year in which his service in the contracted-out employment, by reference to the scheme from which those rights were transferred, was terminated where such earnings factors have previously fallen to be determined by reference to orders under section 130 of the Administration Act, or
 - (ii) in and after the relevant year in which that service was terminated in any other case, and as if section 12(3) of the Act had effect accordingly, save, in a case to which sub-paragraph (ii) applies, for treating the reference to the amount of the increase in section 12(3) of the Act as a reference to the amount by which the earnings factors relevant to the weekly equivalent would be increased.

Circumstances in which the modifications to the Act set out in regulation 65 apply

66. The case referred to in regulation 65 is where, following the termination of an earner’s service in contracted-out employment by reference to a scheme the following conditions are satisfied—

- (a) a transfer under section 16(1) of the Act, or regulations made thereunder, of the earner’s accrued rights to guaranteed minimum pensions under that scheme (in this regulation called the “transferring scheme”) to another contracted-out scheme (in this regulation called the “receiving scheme”) is made, or if already begun is completed, on or after 5th April 1983;

- (b) the earner commences or has commenced employment which is contracted out by reference to the receiving scheme;
- (c) by virtue of section 10(1) of the Act as modified by regulations made under section 16 of the Act, the calculation, under the provisions of the receiving scheme, of the earner's guaranteed minimum pension for the purposes of section 10(2) of the Act falls to include earnings factors, or the weekly equivalent derived therefrom, arising out of contracted-out employment in any period of linked qualifying service which was contracted-out employment by reference to the transferring scheme, and
- (d) either—
 - (i) the receiving scheme provides for the earnings factors or weekly equivalent derived therefrom to be increased at the rate by which they, or it, fell to be increased under the provisions of the transferring scheme or would have fallen to be increased under the provisions of that scheme relating to an earner whose service in contracted-out employment by reference to the scheme is terminated before he attains pensionable age;
 - (ii) if the provisions of the transferring scheme provided for those earnings factors to be increased by reference to orders under section 130 of the Administration Act, the receiving scheme provides for those earnings factors or the weekly equivalent derived therefrom to be increased in accordance with section 12(2) and (3) of the Act, or regulations made under section 12(3) of the Act;
 - (iii) if the transferring scheme provided for those earnings factors or the weekly equivalent derived therefrom to be increased in accordance with either section 12(2) and (3) of the Act or of regulations made under section 12(3) of the Act, the receiving scheme includes provision for those earnings factors to be increased by reference to orders under section 130 of the Administration Act from the date of termination of the earner's service in the period of contracted-out employment from which those earnings factors arose, or
 - (iv) if a transfer of the earner's accrued rights to the receiving scheme is not one to which sub-paragraph (d)(iii) applies and those rights were previously being increased at a rate calculated by reference to orders under section 130 of the Administration Act, the receiving scheme includes provision for those earnings factors or the weekly equivalent derived therefrom to be increased at a rate calculated otherwise than by reference to orders under section 130 of the Administration Act.

Modification of section 47(1) of the Act in relation to revaluation and schemes which have ceased to be contracted out

67. Subject to regulation 68, in relation to a scheme which has ceased to be contracted out and, immediately before it so ceased, contained provision authorised by section 12(2) and (3) of the Act, section 47(1) to (3) of the Act(68) shall be modified so as to provide that, in the case of an earner whose service in contracted-out employment by reference to the scheme is terminated before he attains pensionable age—

- (a) if it is so terminated before the period of 5 years ending with the tax year in which the scheme ceases to be contracted out, the provision for taking his earnings factor for any relevant year to be that factor as increased by 12 per cent. for some or all of those tax years shall not apply, and
- (b) if it is so terminated within that period of 5 years, the provision for taking his earnings factor for any relevant year to be that factor as increased by 12 per cent. for some or all

(68) Section 47(1) was amended by paragraph 38 of Schedule 3 to the Pensions (Northern Ireland) Order 1995

of those tax years shall apply, but his weekly equivalent shall not be increased pursuant to any provision required by section 12(2) and (3) of the Act for the years for which that factor is taken to be that factor as increased by 12 per cent.

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

68.—(1) Subject to the provisions of paragraphs (2) and (3), in any case where an earner’s accrued rights to guaranteed minimum pensions are or have been transferred under section 16 of the Act or regulations made under that section to another contracted-out scheme, or have arisen in such a scheme by reason of a transfer payment giving effect to his protected rights in accordance with regulations made under section 24(2)(b) of the Act, references in regulation 67(b) to an increase of 12 per cent. of an earner’s earnings factor for any year shall be construed as references only to the increase of earnings factors arising from the earner’s service in employment by reference to which the scheme ceasing to contract out was contracted out.

(2) For the purposes of paragraph (1), any service of the earner which is linked qualifying service shall be included in that service only where the earnings factors to which it relates are being increased by reference to orders under section 130 of the Administration Act.

(3) For the purposes of paragraph (1), where an earner has a guaranteed minimum pension in consequence of a transfer payment made in accordance with regulations made under section 24(2) of the Act—

- (a) that pension shall be treated as if it had arisen as a result of his service in the employment by reference to which the scheme ceasing to be contracted out was contracted out, and
- (b) the reference to earnings factors, to the extent that they relate to that pension, shall be construed so as to include only those which do not fall to be revalued in accordance with section 12(2) and (3) of the Act as modified by those regulations.

Miscellaneous provisions affecting section 47 of the Act

69.—(1) Section 47(1) to (3) of the Act shall not apply where an earner’s accrued rights to guaranteed minimum pensions under the scheme which is ceasing to be contracted out are transferred to another contracted-out scheme in accordance with arrangements approved by the Department, and the same employer is the earner’s employer in relation to both the first and second schemes or the employers in relation to those schemes are connected employers.

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

Part VIII

Transitional Arrangements and Savings

Transitional arrangements for certification of schemes

70.—(1) In the case of a scheme contracted out under section 5(2) of the Act(69), a contracting-out certificate issued before the principal appointed day shall continue to have effect during the period beginning with that day and ending on either—

- (a) whichever is the earlier of—

(69) Section 5(2) was substituted by Article 133(3) of the Pensions (Northern Ireland) Order 1995

(i) the day before the effective date of a replacement contracting-out certificate issued by the Department, and

(ii) 31st January 1998, or

(b) such later date as the Department may in its discretion permit in any particular case,

provided that it is not otherwise cancelled or surrendered and the scheme satisfies all contracting-out conditions or requirements which apply to the scheme from the principal appointed day by virtue of its being a scheme to which section 5(2) of the Act applies.

(2) In the case of a scheme contracted out under section 5(3) of the Act(70), a contracting-out certificate issued before the principal appointed day shall continue to have effect on and after that date provided that it is not cancelled or surrendered and the scheme satisfies all contracting-out conditions or requirements which apply to the scheme from the principal appointed day by virtue of its being a scheme to which section 5(3) of the Act applies.

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

Elections for replacement certificates by salary related schemes during transitional period

71. During the period beginning with the principal appointed day and ending on 31st January 1998 or such later date as the Department may allow in relation to a particular case or class of case, an election made with a view to the issue of a contracting-out certificate in relation to an employment which is to remain contracted out under section 5(2) of the Act on or after the principal appointed day must be made in compliance with regulation 2 and regulation 10 shall not apply.

Transitional requirements as to sufficiency of resources of salary related schemes

72.—(1) Except in cases to which regulation 73 applies (schemes which have begun winding up before the principal appointed day), for the purposes of section 5(2B)(c)(i) of the Act(71) (requirement as to the amount of the resources of the scheme) and section 21(2) of the Act(72) (scheme to comply with prescribed requirements in relation to securing that the resources of the scheme are brought to and maintained at satisfactory level in respect of any earner's service before the principal appointed day) at any time during the period of 10 years beginning with the principal appointed day or such longer period as the Department may specify in a particular case or class of case, the amount of resources of the scheme must be sufficient to meet the liabilities specified in paragraph (2).

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

- (a) pensions or other benefits which, in the opinion of the trustees, are derived from the payment by any member of the scheme of voluntary contributions;
- (b) where a person's entitlement to payment of a pension or other benefit has arisen, liability for that pension or benefit and for any pension or other benefit which will be payable to dependants of that person on his death and any increases to such pensions;
- (c) equivalent pension benefits, guaranteed minimum pensions and protected rights which have accrued to or in respect of any members of the scheme and any increases to such pensions;

(70) Section 5(3) was amended by Article 133(4) of the Pensions (Northern Ireland) Order 1995

(71) Section 5(2B) was substituted by Article 133(3) of the Pensions (Northern Ireland) Order 1995

(72) Section 21(2) was substituted by paragraph 26(b) of Schedule 3 to the Pensions (Northern Ireland) Order 1995

- (d) pensions or other benefits which have accrued after the principal appointed day to or in respect of members whose employment is contracted out by reference to the scheme and any increases to such pensions, and
- (e) in respect of members with less than 2 years' pensionable service who are not entitled to accrued rights under the scheme, the return of contributions.

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

(4) In calculating the amount of resources of a scheme for the purposes of paragraph (1) during the period of 5 years beginning with the principal appointed day there shall be excluded any employer-related investments within the meaning of Article 40 of the Order (other than any such investments to which the restrictions imposed by regulations made under that Article do not apply) which are—

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

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

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

(6) This regulation does not apply to a public service pension scheme to which Article 56 of the Order does not apply.

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

73. Notwithstanding the revocations in Schedule 2, in the case of a scheme to which section 19(2) and (3) of the Act(**73**) applies (securing of benefits on winding up)—

- (a) regulation 37 of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1985(**74**) (priorities on the winding-up of a scheme) shall continue to have effect, and
- (b) the resources of the scheme must be sufficient to meet the liabilities specified in section 20(1)(c) of the Act, such resources and liabilities being calculated, determined and verified in a manner approved by the Department.

Transitional arrangements in relation to the powers of the Department to approve arrangements for schemes ceasing to contract out before the principal appointed day

74. In the case of a scheme which ceased to be certified as contracted out before the principal appointed day, the Department may approve arrangements under section 46(1) or (1A) of the Act(**75**), notwithstanding that the conditions prescribed under section 46(1B) of the Act are not met.

(73) See paragraph 24 of Schedule 3 to the Pensions (Northern Ireland) Order 1995

(74) S.R. 1985 No. 259; regulation 37 was amended by S.R. 1994 No. 300

(75) Section 46(1A) and (1B) was inserted by paragraph 37(b) of Schedule 3 to the Pensions (Northern Ireland) Order 1995

Transitional modifications to sections 31 and 32 of the Act

75. Sections 31 and 32 of the Act (surrender and cancellation of contracting-out certificates: issue and cancellation of further certificates) shall be modified for transitional purposes until the coming into operation of an order under Article 1 of the Order repealing those provisions as follows—

- (a) in section 31(1)(a) of the Act, after “the Board” there shall be added “or the Department”;
- (b) in sections 31 and 32 of the Act in each other place where the word occurs, for “Board” there shall be substituted “Department”;
- (c) in section 31(3) of the Act, for “they consider” there shall be substituted “it considers”;
- (d) in section 32(1)(c) of the Act, for “have formed” there shall be substituted “has formed”, for “had they been aware” there shall be substituted “had it been aware” and for “they would have been prevented” there shall be substituted “it would have been prevented”, and
- (e) in section 32(6) of the Act, for “have cancelled” there shall be substituted “has cancelled”.

Prevention of recovery by employers of Class 1 contributions where certificate cancelled under section 32(3) of the Act

76.—(1) This regulation shall apply in any case where the Occupational Pensions Board or the Department has cancelled a contracting-out certificate under section 32(3) of the Act.

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

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

Transitional arrangements for schemes contracted out under section 5(2) of the Act to become contracted out under section 5(3) of the Act

77.—(1) This regulation applies where a scheme, which is a salary related contracted-out scheme immediately before the principal appointed day, satisfies the requirements of section 5(3) of the Act in respect of all earners' service on or immediately after that day.

(2) The circumstances referred to in paragraph (1) shall, for the purposes of section 8(3) of the Act (determination of basis on which a scheme is contracted out) be circumstances in which a scheme which has been contracted out by virtue of section 5(2) of the Act may become contracted out by virtue of section 5(3) of the Act.

(3) Where this regulation applies, sections 46, 48 and 49 of the Act shall be modified so as to have effect as if the guaranteed minimum pensions provided by the scheme were provided by a separate scheme which has ceased to be certified as a contracted-out scheme.

(4) Where this regulation applies, a contracting-out certificate issued before the principal appointed day shall be cancelled at the end of the period beginning with that day and ending on either—

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

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but shall continue to have effect during that period if it is not otherwise cancelled or surrendered and the scheme satisfies the conditions of section 5(3) of the Act.

Savings in respect of State Scheme Premiums

78. Notwithstanding the revocations in Schedule 2, the following regulations shall continue to have effect in relation to any state scheme premium which has been paid before the principal appointed day or is payable immediately before that day—

- (a) regulations 17 to 25, 31, 41, 42, and 44 to 46 of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1985⁽⁷⁶⁾;
- (b) the Occupational Pension Schemes (Contracted-out Protected Rights Premiums) Regulations (Northern Ireland) 1987⁽⁷⁷⁾.

Part IX

Revocations

Revocations

79. Subject to the savings provided for in regulations 73, 77 and 78 the Regulations listed in column 2 of Schedule 2 are revoked to the extent specified in column 3 of that Schedule.

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland
on

16th October 1996.

John O'Neill
Assistant Secretary

(76) S.R. 1985 No. 259; relevant amending regulations are S.R. 1985 No. 355, S.R. 1986 Nos. 57 and 342, S.R. 1987 Nos. 281, 284 and 292, S.R. 1988 No. 108, S.R. 1989 No. 105, S.R. 1990 No. 203, S.R. 1992 No. 304, S.R. 1993 No. 126 and S.R. 1994 No. 300

(77) S.R. 1987 No. 281 as amended by S.R. 1994 No. 300