



# Social Security Act 1973

## 1973 CHAPTER 38

### PART II

#### OCCUPATIONAL PENSION SCHEMES

##### *Recognition*

#### **51 Recognised pensionable employment.**

- (1) Subject to the provisions of this Act, the employment of an earner in employed earner's employment shall be recognised pensionable employment in relation to him during any period in which he is of requisite age and—
  - (a) his service in the employment is for the time being service which qualifies him (on the assumption that it continues for the appropriate period) for the minimum benefits of an occupational pension scheme ; and
  - (b) the scheme is a recognised scheme in relation to that employment; and
  - (c) there is in force a certificate, issued by the Occupational Pensions Board and known as a " recognition certificate ", that the employment is recognised pensionable employment by reference to the scheme.
- (2) For the purposes of this section, an earner is of requisite age at any time after the end of the income tax year in which he attained the age of 21 and before the beginning of the income tax year in which he will attain pensionable age.
- (3) In this Act—
  - (a) " occupational pension scheme " means any scheme or arrangement which is comprised in one or more instruments or agreements and which has, or is capable of having, effect in relation to one or more descriptions or categories of employments so as to provide benefits, in the form of pensions or otherwise, payable on termination of service, or on death or retirement, to or in respect of earners with qualifying service in an employment of any such description or category; and

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- (b) " public service pension scheme " means an occupational pension scheme established by or under an enactment or the Royal prerogative or a Royal charter, being a scheme—
- (i) all the particulars of which are set out in, or in a legislative instrument made under, an enactment, Royal warrant or charter, or
  - (ii) which cannot come into force, or be amended, without the scheme or amendment being approved by a Minister of the Crown or government department,
- and includes any occupational pension scheme prescribed by regulations made by the Secretary of State and the Minister for the Civil Service jointly as being a scheme which ought in their opinion to be treated as a public service pension scheme for the purposes of this Part of this Act.
- (4) An occupational pension scheme can be a recognised scheme in relation to an earner's employment only if—
- (a) the resources of the scheme are derived (in whole or in part) either—
    - (i) from payments made or to be made (either under actual or contingent legal obligation or in the exercise of a 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) by one or more employers of earners to whom the scheme applies, or
    - (ii) from such other payments by the earner or his employer, or both, as may be prescribed for different categories of schemes ; and
  - (b) it complies in all respects with sections 53 to 60 of this Act in respect of minimum personal and death benefits, and of the other matters mentioned in those sections, or, in such cases or classes of cases as may be prescribed, with those sections as modified by regulations; and
  - (c) it neither contains any provision (operating in relation to minimum benefits, their allowance or computation, or to any rights available in connection with minimum benefits) which by any of those sections is stated to be inadmissible in relation to the minimum benefits of a recognised scheme, nor is subject to the terms of any instrument or agreement containing or implying such a provision; and
  - (d) the rules of the scheme applying to minimum benefits are framed so as to comply with the requirements of any regulations prescribing the form and content of rules of recognised schemes, and with such other requirements as to form and content (not inconsistent with regulations) as may be imposed by the Board as a condition of recognition, either generally or in relation to a particular scheme ; and
  - (e) either it is a public service pension scheme or the Board are satisfied that it complies with regulations prescribing—
    - (i) the means by which the minimum benefits of occupational pension schemes are to be secured (whether irrevocable trust, policy of insurance, annuity contract or other means), and
    - (ii) the conditions which are required by the regulations to be satisfied in relation to any means adopted.
- (5) References in subsection (4)(a) above and in the following provisions of this Part of this Act to employers are to be treated, in relation to persons within the application of an occupational pension scheme and qualifying or prospectively qualifying for

its benefits, as including references to persons who in relation to them and their employments are treated by regulations as being employers for the purposes of this Part of this Act.

- (6) It is hereby declared that nothing in this section is to be taken—
- (a) to preclude an occupational pension scheme from being so framed as to provide benefits on any ampler scale, or payable at any earlier time, or otherwise more favourable to beneficiaries, than is required for recognition "purposes ;
  - (b) to require a scheme, or any rule contained in a scheme, to comply for recognition purposes with any provision in sections 53 to 60 of this Act by adopting the particular words of that provision, subject to any requirements of regulations, or of the Board, under subsection (4)(d) above, so long as the Board are satisfied that the provision is complied with in spirit and intent.
- (7) The Secretary of State may make such regulations as he thinks appropriate for securing that earners, notwithstanding their terms of employment, are freed from any liability to be or become members of, or to contribute to, an occupational pension scheme—
- (a) which is not for the time being recognised in relation to any employment; and
  - (b) in whose case the Board are satisfied that the benefits of the scheme are not adequately secured, or that it is otherwise unsound in respect of its management or financing.
- (8) In this Act any reference to the minimum benefits of an occupational pension scheme includes both minimum personal pension and minimum death benefit (except where the context otherwise requires) and is to be taken as referring only to benefit provided by the scheme in respect of employed earner's employment in accordance with such minimum requirements as must be complied with for recognition purposes.
- (9) Where by any provision in this Part of this Act recognition of a scheme in relation to an employment depends on the satisfaction of a particular condition, continued recognition of the scheme shall be dependent on continued satisfaction of the condition ; and if the condition ceases to be satisfied, that shall be a ground (without prejudice to any other) for cancellation of the recognition certificate.
- (10) Regulations may, for any purpose of this Part of this Act, prescribe the persons who are to be regarded as members or prospective members of an occupational pension scheme and as to the times at which, and the circumstances in which, a person is to be treated as becoming, or as ceasing to be, a member or prospective member.

## **52 Certification of employments.**

- (1) Regulations shall provide—
- (a) for the issue by the Occupational Pensions Board to employers of recognition certificates specifying the employments which are to be treated, either generally or in relation to any specified category or description of earners, as recognised pensionable employments; and
  - (b) for the cancellation, variation or surrender of any certificate, or the issue of an amended certificate on any change of circumstances affecting the treatment of an employment as recognised pensionable employment;

and (subject to the exclusion by section 51 of this Act of earners not of requisite age) any recognition certificate for the time being in force in respect of an employed earner's

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employment shall be conclusive that the employment is recognised pensionable employment.

- (2) Subject to the provisions of this Act, an employment otherwise satisfying the conditions for inclusion in a recognition certificate shall be so included if and so long as the employer so elects and not otherwise; and subject to any prescribed restrictions an election may be so made, and an employment so included, either generally or in relation only to a particular description of earners.
- (3) Except in prescribed circumstances, no recognition certificate, and no cancellation, variation or surrender of such a certificate shall have effect from a date earlier than that on which the certificate is issued or the cancellation, variation or surrender is made.
- (4) A recognition certificate in respect of any employment—
  - (a) subject to subsection (5) below, may be issued by the Board notwithstanding that in respect of some earners in that employment the relevant scheme satisfies some, but not all the requirements of sections 53 to 58 of this Act (but only if the Board think it expedient to issue the certificate in particular circumstances where the number of earners in respect of whom the scheme fails to satisfy any particular requirement appears to them to be insignificant in relation to the number of those in respect of whom all the requirements of those sections are satisfied); and
  - (b) may be withheld or cancelled by the Board (notwithstanding that the scheme is one which they would otherwise treat as proper to be recognised in relation to all earners in that employment) if there appear to the Board to be circumstances relating to the scheme or its management which make it inexpedient that the employment should be or, as the case may be, continue to be recognised pensionable employment by reference to the scheme.
- (5) A recognition certificate may be issued by virtue of subsection (4)(a) above only if the Board are satisfied that, in the case of the earners in respect of whom the relevant scheme does not satisfy all the requirements of sections 53 to 58 of this Act and whose employments are to be included in the certificate, written consent to the exercise of the Board's powers under that paragraph has been given by or on behalf of those earners.
- (6) Where in relation to an earner's employment there are in force two or more occupational pension schemes, no one of which can by itself be a recognised scheme, the Board may if they think fit (but subject to section 51 of this Act and the foregoing provisions of this section) treat them for recognition purposes as one single scheme.
- (7) Regulations shall provide for the determination by the Board of any question whether an employment is to be treated as recognised pensionable employment, or as to the persons in relation to whom, or the period for which, an employment is to be so treated.
- (8) Regulations may for the purposes of recognition, and for any other purposes of this Part of this Act, prescribe persons who, in the case of a scheme of any prescribed category, are to be regarded as the trustees or managers of a scheme of that category.
- (9) The provisions of Schedule 15 to this Act shall have effect with respect to recognised pensionable employments, recognition certificates and recognised occupational pension schemes.

### **53 Minimum personal pension (entitlement).**

- (1) For an occupational pension scheme to be recognised in relation to an earner's employment it must, in accordance with this section, provide him with minimum personal pension on termination of recognised pensionable employment otherwise than by his death.
- (2) Subject to the provisions of this Part of this Act, minimum personal pension must be provided for an earner in any case in which, on termination of a period of service in recognised pensionable employment—
  - (a) he qualifies for a pension immediately payable under the scheme; or
  - (b) he is then no longer of requisite age for the purposes of section 51 of this Act; or
  - (c) he has attained the age of 26 and has at least 5 years' qualifying service accrued since the appointed day; or
  - (d) the period of service terminated is one in respect of which the scheme either—
    - (i) conforms with the preservation requirements (section 63 of this Act and Schedule 16), so as to entitle the earner to short service benefit within the meaning of those requirements ; or
    - (ii) makes any provision which under those requirements is permitted as an alternative to short service benefit (other than, in such cases as may be prescribed, provision for return of contributions or benefit in the form of a lump sum).
- (3) In subsection (2)(c) above, " 5 years' qualifying service " means 5 years (whether a single period of that duration or two or more periods, continuous or discontinuous, totalling 5 years) in which the earner was at all times employed either—
  - (a) in pensionable service under the scheme within the meaning of the preservation requirements ; or
  - (b) in service in recognised pensionable employment, by reference to the scheme ; or
  - (c) in service under another scheme, being linked qualifying service within the meaning of section 58 of this Act,no regard being had to whether or not it was the same description of service in the whole of the 5 years, but excluding, in the case of service specified in paragraph (a) or (b), any period of service in the same employment which has been previously terminated.
- (4) Minimum personal pension must be in the form either—
  - (a) of a pension payable as from termination of the relevant employment or from when the earner attains pensionable age, whichever is the later; or
  - (b) of a deferred pension, coming into payment when he attains that age or (with his consent in writing) at some later time.
- (5) The pension must, in either of the cases referred to in subsection (4) above, be a pension payable out of the resources of the scheme or secured by such means as may be prescribed (whether policy of insurance, annuity contract or other means), the security satisfying such conditions as may be prescribed in relation to the means adopted.
- (6) The scheme must conform with any regulations prescribing the time from which minimum personal pension (immediate or deferred) is to become payable.

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- (7) Any provision which has for its effect that qualification for minimum personal pension is conditional upon retirement being postponed beyond a certain time shall be inadmissible in relation to the minimum benefits of a recognised scheme, if that time is more than 6 months after pensionable age.
- (8) The scheme must so provide that minimum personal pension, as and from the time when it comes into payment, is payable for life, subject only to such provision (if any) as may be made by the scheme for the pension to be terminated or suspended in such circumstances as may be prescribed.
- (9) Subject to the approval of the Occupational Pensions Board, the scheme may provide, in the case of an earner who is a woman, for minimum personal pension to be at a lower rate where provision is made for the payment of benefit to dependants on her death.

#### **54 Rate of minimum personal pension.**

- (1) For an occupational pension scheme to be recognised in relation to an earner's employment, it must comply with the requirements of this section as respects the rate of minimum personal pension.
- (2) Subject to the following subsections, minimum personal pension must be at an annual rate equal to the following percentage of the earner's reckonable earnings from an employment to which the scheme applies—
 

(a) for a man—	
(i) if the pension is subject to increases complying with section 57 of this Act	1.00 per cent. 1.
(ii) if not	1.25 per cent.
(b) for a woman—	
(i) if the pension is so subject	0.70 per cent.
(ii) if not	0.90 per cent.
- (3) In this Part of this Act, references to an earner's reckonable earnings from any employment are to his earnings from that employment so far as comprised in any payment of earnings made to him or for his benefit (at a time when the employment was recognised pensionable employment) where the payment either—
  - (a) gave rise to liability under Part I of this Act for a primary Class 1 contribution ; or
  - (b) was made in such circumstances that regulations require it to be treated (for the purposes of this subsection only) as giving rise to such liability.
- (4) If regulations so permit, but subject to subsection (5) below and to any prescribed conditions, the rate of minimum personal pension may be calculated—
  - (a) by reference to contributions paid from time to time by the earner, or by the employer in respect of him, and the earner's age at the time when contributions were paid; or
  - (b) as a prescribed fraction or percentage of—
    - (i) the annual rate of the earner's reckonable earnings in any prescribed period of 12 months before termination of service, or

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- (ii) his average annual reckonable earnings in any prescribed period before termination of service,  
the fraction or percentage being determined by reference to the period (expressed as a number of years or of months, or a combination of years and months) of the earner's service in recognised pensionable employment and varying (to any extent required by the regulations) by reference to the duration of any period of such service.
- (5) Regulations shall enable the rate of minimum personal pension to be calculated in accordance with paragraph (a) of subsection (4) above only if the scheme so provides that—
- (a) the contributions of the earner and those of the employer together, or those of the employer alone, amount to, or to the equivalent of, at least 5 per cent, of the earner's reckonable earnings ; and
  - (b) the contributions of the employer alone amount to, or to the equivalent of, at least 2-5 per cent, of those earnings.
- (6) Regulations—
- (a) may enable the basis of calculating the rate of minimum personal pension to be varied (subject to any prescribed conditions) where the rules of the scheme require an earner who is a man and is married when he attains pensionable age to surrender part of his minimum personal pension in order to provide minimum death benefit for his widow or other dependants;
  - (b) so far as made for the purposes of subsection (4) above, may prescribe different bases of calculation according to whether minimum personal pension is or is not subject to increases complying with section 57 of this Act.
- (7) Where minimum personal pension is subject to increases complying with section 57 of this Act, but does not come into payment at its full rate until after pensionable age, the scheme must make such provision as is necessary to secure that its full rate when it comes into payment is not less than what would have been the increased rate if it had come into payment at its full rate at that age.
- (8) Without prejudice to subsection (7) above, the scheme must provide, in the case of minimum personal pension not coming into payment at its full rate until after pensionable age (where the earner remains in the relevant employment after attaining that age, or consents in writing to postponement), for the pension to be adjusted so as to take into account any period between pensionable age and the time when the pension comes into payment at its full rate ; and—
- (a) this provision must be made in such a way as to satisfy the Occupational Pensions Board as to its adequacy; and
  - (b) recognition of the scheme may be made subject to prescribed conditions as to the adjustment of benefit in such cases.

## **55 Minimum death benefit (entitlement).**

- (1) For an occupational pension scheme to be recognised in relation to an earner's employment, it must provide for minimum death benefit to be payable on his death in the cases specified in subsection (2) below, if at his death he leaves a widow.
- (2) The cases above referred to are the following—
- (a) where the earner at the time of his death was in recognised pensionable employment by reference to the scheme;

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- (b) where the earner at his death had ceased to be in recognised pensionable employment by reference to the scheme and had become entitled thereunder to minimum personal pension (whether deferred or in payment) and either—
  - (i) he had not surrendered his entitlement in exchange for recognition credits allowed under another scheme, or by way of commutation, or
  - (ii) he had so surrendered it, but the surrender extended only to minimum personal pension and not to minimum death benefit.
- (3) Regulations may provide for the requirements of this section and section 56 of this Act to apply with prescribed modifications in relation to an earner whose marriage takes place after the termination of his service in recognised pensionable employment by reference to the scheme, and may restrict their application to cases where the marriage takes place not less than a prescribed period before the earner's death.
- (4) For the purposes of subsection (2)(a) above the length of the earner's period of service in recognised pensionable employment must be treated as immaterial.
- (5) In any of the cases specified in subsection (2) above the scheme may, with the approval of the Occupational Pensions Board, exclude minimum death benefit where the deceased earner had on the appointed day attained an age within 5 years of pensionable age or (if earlier) an age within 5 years of whatever age was for him normal pension age under the scheme.
- (6) Minimum death benefit must be payable to the widow, except that the scheme may, with the approval of the Board, confer on the trustees or managers discretion to direct that the benefit be paid instead to any dependant of the deceased earner, or be apportioned between the widow and one or more dependants, or between dependants other than the widow.
- (7) Minimum death benefit must—
  - (a) in a case where at his death the earner had attained pensionable age, be in the form of a pension; and
  - (b) in any other case, be in the form either of a pension or of a lump sum ;
 but subject to the foregoing paragraphs the scheme may deal differently, as respects the form of the benefit, with different cases and classes of cases.
- (8) The scheme must so provide that minimum death benefit must be payable as from the earner's death and, in the case of benefit in pension form, be payable for the pensioner's life, subject only—
  - (a) to regulations prescribing the provision which may or must be included in the scheme with respect to the time when the benefit (whether in pension form or otherwise) is to become payable ;
  - (b) to such provision (if any) as may be made by the scheme for the pension to be terminated or suspended in prescribed circumstances.

## **56 Rate or amount of minimum death benefit.**

- (1) For an occupational pension scheme to be recognised in relation to an earner's employment it must comply with the requirements of this section as respects the rate or amount of minimum death benefit.
- (2) Subject to the provisions of this section, minimum death benefit, if in the form of a pension, must be at an annual rate not less than one half that of the deceased earner's own pension; and if in the form of a lump sum, it must be either—



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- (a) an amount not less than 14 times that rate if the pension was subject to increases complying with section 57 of this Act and 11 times that rate if it was not so subject; or
  - (b) an amount not less than 1.5 times—
    - (i) the annual rate of the deceased's reckonable earnings in any prescribed period of not more than 12 months before his death, or
    - (ii) his average annual reckonable earnings in any prescribed longer period before his death, (which period need not in either case be a period ending with the death).
- (3) Where the scheme provides for the earner's minimum personal pension to be subject to increases complying with section 57 of this Act, minimum death benefit in pension form must be also subject to increases complying with that section.
- (4) Where minimum personal pension is calculated on any basis prescribed under section 54(4) of this Act or varied under section 54(6)(a), the rate or amount of minimum death benefit must be not less than a rate or amount calculated on any basis prescribed for the purposes of this section.
- (5) In subsection (2) above, references to the deceased earner's own pension are—
- (a) in a case where he died in service in recognised pensionable employment, to the minimum personal pension for which he would have qualified had he at his death attained pensionable age ; and
  - (b) in any other case, to the minimum personal pension (whether immediate or deferred) for which he qualified at any time before his death,
- allowing in the last-mentioned case for increases of pension (being increases complying with section 57 of this Act) which were or would have been payable between pensionable age and death.
- (6) Subsection (5) of section 53 of this Act shall apply in relation to minimum death benefit as it applies in relation to minimum personal pension.
- (7) To such extent, and in such cases, as may be authorised by regulations, a scheme may provide—
- (a) for excluding minimum death benefit where the rate or amount of benefit would be less than a prescribed rate or amount;
  - (b) for less than the rate specified in subsection (2) above, or prescribed under subsection (4), to be payable where the deceased earner's widow or, in a case to which section 55(6) of this Act applies, any dependant of his, was more than a prescribed number of years younger than he was.

## **57 Increase of pension after it comes into payment.**

- (1) For an occupational pension scheme to be recognised in relation to an earner's employment, in so far as recognition depends on provisions of the scheme relating to pension-increases complying with this section, the scheme must (subject to subsection (2) below) by its rules provide such increases of minimum pension (whether personal pension or death benefit in pension form) as to satisfy the Occupational Pensions Board—
- (a) that the first increase after the pension comes into payment is payable after a period which is reasonable, and that the increase is of an adequate amount;

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- (b) that increases thereafter will be payable at not more than yearly intervals and will be calculated on a basis which either—
- (i) appears to the Board to correspond with that adopted in relation to official pensions under section 2 of the Pensions (Increase) Act 1971 (increase by reference to rise in cost of living), or
  - (ii) provides increases at a rate of not less than 3 per cent, a year compound;

and, where the scheme's rules provide for the increase of any year (computed on either of the alternative bases specified in paragraph (b) above) to be withheld if it is of less than a prescribed amount, the rules must provide for that year's increase to be carried forward and brought into computation in calculating the increases of subsequent years.

- (2) The scheme may be recognised in relation to the employment in question (if otherwise qualifying for recognition) in any case where the Board, having regard—
- (a) to the nature and scope of the provision made by the scheme's rules for increasing pensions after they come into payment;
  - (b) to the means adopted, or to be adopted, for financing the scheme; and
  - (c) to any increases which have been made of pensions already in payment under the scheme,

are satisfied that, taking one year with another, present and future pensioners under the scheme are likely to be protected to the same extent as they would have been if subsection (1)(b)(ii) above were complied with.

- (3) Subject to the foregoing provisions of this section, the scheme may in respect of pension-increases deal differently with different categories of pensioners.
- (4) The scheme may include provision enabling the basis of calculating pension-increases to be altered from time to time, whether in relation to all pensioners present and future, or to any particular category or categories of pensioners; but a scheme rule to this effect must provide for the alteration to be made only with the Board's approval.

## **58 Transfer of benefit between schemes: linked qualifying service.**

- (1) In this Act-
- (a) " transfer credits " means rights allowed to an earner under the rules of an occupational pension scheme by reference to a transfer to that scheme of his accrued rights from another scheme ;
  - (b) " accrued rights ", in relation to a scheme, includes any transfer credits allowed under that scheme; and
  - (c) " recognition credits " means transfer credits allowed to an earner under the rules of a scheme in respect of—
    - (i) minimum benefits (whether minimum personal pension or minimum death benefit, or both) accrued under, and transferred from, another scheme by reference to which the earner has previously been in recognised pensionable employment, or benefits which include minimum benefits so accrued, or
    - (ii) transfer credits previously allowed under any scheme, so far as representing or replacing, or otherwise allowed in respect of, minimum benefits so accrued (or benefits including them),

and in this subsection " rights " includes rights to benefit and also options to have benefit paid in a particular form or at a particular time.

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- (2) For the purposes of this Act, any period of an earner's service in an employment is linked qualifying service in relation to a later period of service (whether in the same or another employment) if—
- (a) under the rules of a scheme applying to him in the earlier period of service there was made a transfer of his accrued rights under that scheme to another scheme applying to him in the later period of service ; and
  - (b) in consequence of that transfer, there are (or were) allowed to him transfer credits under the rules of that other scheme,
- except that, for any service to be taken into account as linked qualifying service, it must be actual service, no regard being had to any scheme rule which provides for service to be treated, for any purposes of benefit or otherwise, as longer or shorter than it actually is.
- (3) Where in relation to any employment the rules of a scheme allow for the transfer of accrued rights to another scheme, then for the scheme to be recognised in relation to that employment it must so provide that any transfer of minimum benefits (or benefits including them) or recognition credits can be made only to a scheme which—
- (a) is recognised in relation to any employment; or
  - (b) falls within some category or description of schemes prescribed for the purpose of this subsection.
- (4) Where the rules of a scheme provide for the allowance of transfer credits, then for the scheme to be recognised in relation to any employment it must provide for them, if and so far as they consist of recognition credits, to be in such form, and subject to such conditions, as may be prescribed.
- (5) Any provision which has for its effect that a transfer of accrued rights can be made otherwise than with the earner's consent shall be inadmissible in relation to the minimum benefits of an occupational pension scheme, except in such cases as may be prescribed.

## **59 Financing and security of minimum benefits.**

- (1) For the purposes of this Part of this Act, the resources of an occupational pension scheme are the funds out of which the benefits provided by the scheme (whether minimum or other benefits) are payable from time to time, including the proceeds of any policy of insurance taken out, or annuity contract entered into, for the purposes of the scheme.
- (2) For a scheme (other than a public service pension scheme) to be recognised in relation to an earner's employment, the Occupational Pensions Board must be satisfied—
- (a) that the resources of the scheme are sufficient for all claims in respect of the minimum benefits of the scheme (so far as falling to be met out of those resources) to be met from time to time having regard to the anticipated extent of the scheme's resources, and to its other liabilities, at any time when claims may be expected to arise; and
  - (b) generally as to the arrangements in force or to be in force from time to time for securing the minimum benefits of the scheme.
- (3) If the scheme contains a rule as to the priority of claims on a winding up, and the rule is so framed as to accord priority, in the event of a winding up, to particular liabilities, and those liabilities consist of or include—

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- (a) pensions and other benefits in respect of which entitlement to payment has arisen ;
  - (b) prospective minimum benefits; and
  - (c) equivalent pension benefits under Part III of the former principal Act or the corresponding Northern Ireland legislation,
- (with or without priority as between particular liabilities), over all other liabilities under the scheme except any arising in respect of the expenses of administration (so far as those expenses are payable out of the resources of the scheme), then, subject to the following subsection, the Board must be satisfied that, in the event of an immediate winding up, those resources would be sufficient for the particular liabilities accorded priority, and also liabilities in respect of the expenses of administration (so far as so payable), to be met.
- (4) In applying subsection (3) above, the Board may disregard liabilities with priority, in so far as their priority ranks lower than that of the liabilities specified in paragraphs (a) to (c) of the subsection and lower also than liabilities in respect of the expenses of administration.
- (5) References in subsections (2) and (3) above to the minimum benefits of the scheme are to be taken as including references to recognition credits.
- (6) If the scheme contains no such rule as is referred to in subsection (3) above the Board must be satisfied that the resources of the scheme would be sufficient, in the event of an immediate winding-up, to meet in full all the liabilities falling to be discharged out of those resources.
- (7) Where recognition or continued recognition depends on the Board being satisfied as mentioned in subsection (2), (3) or (6) above, the scheme may be recognised or continue to be recognised (as the case may be) in relation to any employment subject to such conditions as the Board think fit to impose for securing that the resources of the scheme are brought to, and maintained at, a level satisfactory to them (including conditions requiring steps to be taken, at the instance of the Board, to increase those resources at any time after recognition, including a time when the scheme has ceased to be recognised); and non-compliance with any condition imposed by the Board under this subsection shall be grounds on which the Board may cancel a recognition certificate issued in respect of any employment within the application of the scheme.
- (8) In considering a scheme by reference to the considerations of subsections (2), (3) or (6) above, the Board shall have regard to any investments held for the purposes of the scheme; and the Board may by reference to those considerations make it a condition of recognition (or continued recognition) that—
- (a) no part, or no more than a specified proportion, of the scheme's resources shall be invested in investments of a specified class or description;
  - (b) there shall be realised, before the expiration of a specific period, the whole or a specified proportion of investments of a specified class or description forming part of the scheme's resources when the condition is imposed;
- and in the event of any such condition not being complied with, this shall be a ground on which the Board may withhold recognition or cancel a recognition certificate issued in respect of any employment within the application of the scheme.
- (9) Any provision which permits the payment out, otherwise than in prescribed circumstances, of any sum representing the surrender value of a policy of insurance

taken out for the purposes of the scheme shall be inadmissible in relation to the minimum benefits of a recognised scheme.

#### **60 Provisions barring commutation, surrender or forfeiture of minimum benefit.**

- (1) Except as provided by the following subsections, any provision having effect so as to enable the whole or part of any minimum benefit to be commuted or surrendered, or to be subject to any charge, hen or set-off, shall be inadmissible in relation to the minimum benefits of a recognised scheme.
- (2) Subsection (1) above shall not prevent a scheme qualifying for recognition with any of the following provisions—
  - (a) provisions enabling an earner (subject to section 58 of this Act) to surrender his accrued minimum benefits in exchange for recognition credits allowed under another scheme;
  - (b) provisions enabling minimum benefit in the form of a pension (whether personal benefit alone, or death benefit alone, or both benefits together) to be commuted, in prescribed circumstances, where the annual rate would not exceed a prescribed amount; or
  - (c) provisions approved by the Occupational Pensions Board and permitting an earner to commute his mini-mum personal pension in exceptional circumstances of serious ill-health;nor shall that subsection prevent a scheme qualifying for recognition with provisions whereby minimum personal pension is calculated on any basis prescribed under section 54(4) of this Act or varied under section 54(6)(a).
- (3) Any provision having effect so as to involve the forfeiture of any minimum benefit, otherwise than in such circumstances as may be prescribed, shall be inadmissible in relation to the minimum benefits of a recognised scheme.

#### **61 Minimum benefit to be inalienable.**

- (1) Where a person is entitled or prospectively entitled to minimum benefit under an occupational pension scheme, and the person's entitlement is in respect of his or another person's service in recognised pensionable employment by reference to that scheme, every assignment of, or charge on, that benefit, and every agreement to assign or charge the benefit (whether or not made at a time when the employment was recognised pensionable employment or the scheme a recognised scheme in relation to that employment) shall be void.
- (2) On the bankruptcy of a person who is entitled, or prospectively entitled, as mentioned in subsection (1) above, minimum benefit the assignment of which is or would be made void by that subsection shall not pass to any trustee or other person acting on behalf of his creditors.
- (3) The foregoing subsections apply to recognition credits as they apply to minimum benefits.
- (4) In the application of this section to Scotland—
  - (a) the reference to assignment of benefit shall be read as a reference to its assignation, " assign " being construed accordingly; and
  - (b) the reference to a person's bankruptcy shall be read as a reference to the sequestration of his estate or the appointment on his estate of a judicial factor

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under section 14 of the Bankruptcy (Scotland) Act 1913 or section 15 of the Solicitors (Scotland) Act 1958,

and in its application to Northern Ireland the reference to a person's bankruptcy shall be read as including the vesting of a person's estate and effects in the official assignee under section 349 of the Irish Bankrupt and Insolvent Act 1857.

## **62 Supervision of schemes after withdrawal of recognition.**

- (1) Where a recognition certificate in respect of any employment is cancelled or surrendered, the following provisions of this section shall apply in respect of any occupational pension scheme (not being a public service pension scheme) by reference to which that employment was recognised pensionable employment ; and those provisions shall continue so to apply for as long as any person qualifies (immediately or prospectively) for any of the minimum benefits of the scheme.
- (2) The Occupational Pensions Board shall be under a duty to satisfy themselves from time to time as to—
  - (a) the matters in respect of which they are required to be satisfied for recognition purposes under section 59 of this Act (that is to say, the matters dealt with in subsection (2) of that section and those dealt with in subsection (3) or (6), whichever is applicable); and
  - (b) the soundness and adequacy of any investments held for the purposes of the scheme (so far as relevant to the considerations of those subsections);

and where the scheme was recognised subject to such conditions as are referred to in section 59(7) or (8), those conditions shall continue to be binding notwithstanding that there is no recognition certificate in force.
- (3) For the purposes of subsection (2) (a) above the Board may (either by way of enforcement of such conditions as are referred to in section 59(7), or otherwise) by order require employers to make such payments to increase the resources of the scheme or for any other purpose as the Board think expedient for securing the minimum benefits of the scheme; and in the case of an employer failing to make any payment required by such an order—
  - (a) the Board may make a further order declaring the amount which the employer has failed to pay to be a debt due from him to the Board and may recover it from him accordingly; and
  - (b) any amount so recovered shall be paid over by the Board (on the employer's behalf) in accordance with the terms of the original order.
- (4) In so far as the Board are not satisfied as mentioned in subsection (2)(b) above, they may by order modify the scheme's rules or by order direct the scheme's trustees or managers to take such steps as the order may specify, in either case with a view to ensuring that the minimum benefits of the scheme are adequately secured to its beneficiaries, both present and future.
- (5) If it appears to the Board that there has been, or is likely to be, a breach of any rule of the scheme relating to the matters dealt with in sections 53 to 60 of this Act, the Board may take such steps as they think expedient with a view to remedying or preventing the breach; and for this purpose they may themselves take any proceedings for enforcement of the rules which would be open to a person as an actual or prospective beneficiary under the scheme, or as one of its trustees or managers, or as being otherwise concerned with the scheme or its benefits, and may assume the conduct of proceedings for enforcement brought by any such person.

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- (6) Where the Board are satisfied that the minimum benefits of the scheme are not, and cannot be, adequately secured to its beneficiaries, they may by order—
- (a) require the scheme to be wound up in accordance with such directions in that behalf as may be contained in the order; or
  - (b) direct the trustees or managers to take such steps for the winding-up of the scheme as the order may specify;
- and, on a winding-up in pursuance of an order of theirs under this subsection, the same powers shall be exercisable by the Board in relation to the scheme's winding-up rules as are exercisable by them under subsection (5) above in relation to other rules.
- (7) References in this section to the minimum benefits of a scheme—
- (a) include references to recognition credits ; but
  - (b) subject to paragraph (a) above, are only to benefits to which immediate or prospective entitlement arises by virtue of service in employment which has been recognised pensionable employment by reference to the scheme;
- and, in relation to a scheme of any prescribed category, the reference in subsection (3) above to employers shall include such persons as may be prescribed as among those to whom an order of the Board under that subsection may be directed in the case of a scheme of that category after it has ceased to be recognised.

*Preservation of benefit under occupational pension schemes*

**63 Requirements relating to preservation of benefits.**

- (1) The requirements of this Part of this Act relating to preservation of benefit under occupational pension schemes (" the preservation requirements ") are those set out in Part I of Schedule 16 to this Act; and Part II of that Schedule shall have effect for enabling the Secretary of State to make regulations modifying the preservation requirements and generally in relation to the preservation of benefit under occupational pension schemes.
- (2) This section shall have effect for securing that occupational pension schemes in force on the appointed day or coming into force thereafter conform with the preservation requirements in so far as conformity can be achieved by the use of powers conferred by this section (in addition to any powers otherwise exercisable) on those concerned with such schemes and on the Occupational Pensions Board.
- (3) It is hereby declared that nothing in the foregoing provisions of this section or in Schedule 16 to this Act is to be taken—
- (a) to apply with direct effect to any scheme (whether having effect before or after this section comes into force), or to the rights or liabilities of any person in, under or by virtue of a scheme ; or
  - (b) to preclude a scheme from being so framed as to provide benefits on any ampler scale, or (subject to any express provision made in the Schedule) payable at any earlier time or otherwise more favourable to beneficiaries, than is called for by the preservation requirements.
- (4) In the case of an occupational pension scheme whose resources are derived as mentioned in section 51(4)(a) of this Act, it shall be the responsibility—
- (a) of the trustees and managers of the scheme or, in the case of a public service pension scheme, of the Minister, government department or other person or

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body concerned with its administration, to take such steps as are open to them for bringing the scheme into conformity (if it does not otherwise conform) with the preservation requirements; and

- (b) of the Occupational Pensions Board to advise the trustees and managers, or, if it is a public service pension scheme, the Minister, department or others concerned with the scheme as to whether it does or does not (in the Board's opinion) conform with those requirements and, if the Board are of opinion that the scheme does not conform, to indicate the steps which they consider should be taken with a view to securing conformity;

and the following provisions of this section shall have effect in relation to schemes whose resources are so derived, but not in relation to public service pension schemes.

- (5) On an application made to them in respect of an occupational pension scheme by persons competent to make such an application in respect of it, the Occupational Pensions Board shall issue a determination as to whether or not the scheme conforms with the preservation requirements; and the persons competent to make such an application in respect of a scheme are—
  - (a) the trustees or managers of the scheme;
  - (b) any person other than the trustees or managers who has power to alter any of the rules of the scheme;
  - (c) any person who is an employer of persons in service in an employment to which the scheme applies;
  - (d) any member or prospective member of the scheme;
  - (e) such other persons as regulations may specify, in relation to any category of schemes into which the scheme falls, as being proper persons to make an application for the purposes of this section in respect of a scheme of that category.
- (6) The Board may at any time of their own motion issue, in respect of a scheme which has come to their notice (including in particular a scheme which they are considering with a view to recognition, or one in respect of which an application has been made to them under section 64 of this Act for an order authorising the modification of the scheme, or modifying it), any determination which they could issue in the case of that scheme on an application to them under subsection (5) above.
- (7) If the Board determine, in the case of a scheme, that it does not conform with the preservation requirements they shall, either at the time of issuing their determination or as soon thereafter as they think expedient—
  - (a) by order direct the trustees or managers of the scheme, or any such persons as are referred to in subsection (5) (b) above, to exercise such powers as they possess for modifying the scheme with a view to bringing it into conformity with those requirements (for which purpose the Board shall include in their order such directions as they think appropriate to indicate the modification appearing to them to be called for); or
  - (b) if there is no person with power to modify the scheme as required by the Board, by order authorise the trustees or managers, or other persons named in the order (who may in particular include such an employer as is specified in subsection (5)(c) above) to make that modification; or
  - (c) themselves by order modify the scheme with a view to achieving the purposes above-mentioned.



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- (8) The Board may exercise their powers under subsection (7) above from time to time in relation to any scheme in respect of which they have issued a determination under this section, and may exercise the powers together or separately.
- (9) Any modification of a scheme made in pursuance of an order of the Board under subsection (7)(6) or (c) above shall be as effective in law as if it had been made under powers conferred by or under the scheme; and such an order may be made and complied with in relation to a scheme—
- (a) notwithstanding any enactment or rule of law, or any rule of the scheme, which would otherwise operate to prevent the modification being made;
  - (b) without regard to any such enactment, rule of law or rule of the scheme as would otherwise require, or might otherwise be taken to require, the implementation of any procedure, or the obtaining of any consent, with a view to the making of the modification.
- (10) An order of the Board under subsection (7) (a) above may require persons to exercise a power retrospectively (whether or not the power could otherwise be so exercised), and an order under subsection (7)(b) or (c) may operate retrospectively; and in this subsection " retrospectively " means with effect from a date before that on which the power is exercised or, as the case may be, the order is made, not being in either case a date earlier than the appointed day.
- (11) At any time when the Board are concerned with an occupational pension scheme for the purposes of issuing a determination under this section, they may include a determination (whether or not applied for) as to any of the particular matters specified in Part I of Schedule 16 to this Act (including that Part as modified by regulations under Part II of that Schedule).
- (12) For the purpose of arriving at a determination under this section in respect of a scheme the Board may, if they think it expedient having regard—
- (a) to the structure and character of the scheme ; and
  - (b) to any anomalous or impractical consequences that may be expected to follow from its modification to achieve conformity with any particular provision of Part I of Schedule 16 to this Act (including that Part as modified under Part II of that Schedule),
- disregard that provision in relation to the scheme, or direct that it be applied with such modification as may be specified in their determination.

#### *Modification and winding-up of schemes*

### **64 Modification and winding-up by order of Occupational Pensions Board.**

- (1) On an application made to them in respect of an occupational pension scheme by persons competent to make such an application in respect of it the Occupational Pensions Board may make an order—
- (a) authorising the modification of the scheme with a view to achieving any one or more of the purposes specified in subsection (3) below ;
  - (b) modifying the scheme with a view to achieving any one or more of those purposes; or
  - (c) directing or authorising the scheme to be wound up on grounds specified in subsection (4) below.

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- (2) Nothing in this section applies to public service pension schemes.
- (3) The purposes referred to in subsection (1)(a) and (b) above are those of enabling the scheme—
- (a) to be so treated that an employment to which it applies may be recognised pensionable employment by reference to it;
  - (b) to qualify for the approval of the Inland Revenue for the purposes of Chapter II of Part II of the Finance Act 1970 or to provide benefits enhanced up to the limits suitable in a scheme for which such approval is sought;
  - (c) to provide for the transfer of accrued rights to another scheme with a view to the acquisition, for those whose rights are transferred, of rights under the other scheme in connection with change of employment or otherwise, and for the allowance of transfer credits;
  - (d) to comply with the preservation requirements (without prejudice, however, to anything in section 63(5) to (12) of this Act);
  - (e) to provide for accrued entitlement to benefit (whether in payment or not), so far as payable out of the resources of the scheme, to be surrendered by beneficiaries (at their option and not otherwise, so long as the scheme remains in force and is not being, or to be, wound up) in exchange for other rights assured by means of one or more policies of insurance or annuity contracts, or by other means;
  - (f) to qualify under section 69 of this Act or to have included in, or removed from, it provisions designed to avoid the effect of the rules of law relating to perpetuities,
- or of enabling the trustees or managers of the scheme, or others concerned with, or having rights under, it to enter into alternative arrangements having regard to any provision of this Act, or of any other Act (passed or to be passed) amending or replacing any such provision, or making provision for similar purposes.
- (4) The grounds on which the Board may direct or authorise a scheme to be wound up, on an application made to them in that behalf under subsection (1) above, are that, having regard to any provision of this Act, or to any other Act (passed or to be passed) amending or replacing any such provision or making provision for similar purposes, the scheme ought to be replaced (in whole or in part) by a different scheme, or is no longer required.
- (5) In relation to an occupational pension scheme, the persons competent to make an application to the Board under this section are—
- (a) the trustees or managers of the scheme ;
  - (b) any person other than the trustees or managers who has power to alter any of the rules of the scheme;
  - (c) any person who is an employer of persons in service in an employment to which the scheme applies; and
  - (d) such other persons as regulations may specify, in relation to any category of schemes into which the scheme falls, as being proper persons to make an application for the purposes of this section in respect of a scheme of that category.
- (6) The Board shall not entertain an application for an order by them under this section unless they are satisfied that the purposes of the application (whether the modification or the winding-up of the scheme in question)—

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- (a) cannot be achieved otherwise than by means of such an order; or
- (b) can only be achieved in accordance with a procedure which is liable to be unduly complex or protracted, or involves the obtaining of consents which cannot be obtained, or can only be obtained with undue delay or difficulty;

but subject to this the Board may on such an application make (with the consent of the applicants) any one or more such orders as are specified in subsection (1) above and may exercise any of the powers of this section from time to time; and the extent of their powers under this section is not limited, in relation to any purposes for which they are exercisable, to the minimum necessary to achieve those purposes.

- (7) The Board shall not make an order under this section (whether related to the modification or to the winding-up of a scheme) unless they are satisfied that it is reasonable in all the circumstances to make it; and they shall not make any such order as would or might in their opinion result in any existing or prospective entitlement of a member of the scheme, in respect of a period of service before the coming into force of the order or of any modification which the order authorises, being diminished or curtailed without his consent, unless they are satisfied that it is in the interests of the generality of members that the order should be made.
- (8) In considering whether or not to make an order, the Board shall have regard to the structure and character of the scheme and the benefits provided by it, to the provisions of this Act and Chapter II of Part II of the Finance Act 1970, and generally to all the circumstances.
- (9) An order of the Board under this section—
  - (a) if it is an order authorising the modification of a scheme, shall be framed so as to confer the power of modification on such persons as the Board think proper (including persons who were not parties to any application made to the Board) and shall include directions indicating the modifications which they consider to be called for;
  - (b) if it is an order authorising a scheme to be wound up, shall include directions with respect to the manner and timing of the winding-up;

and any reference in this subsection to directions is to such directions as the Board think appropriate having regard to the purposes of the order.

- (10) Subsection (9) of section 63 of this Act shall apply with the necessary modifications in relation to an order of the Board under this section as it applies in relation to an order of theirs under subsection (7)(b) or (c) of that section, references in subsection (9) to modification being construed for this purpose as including references to winding-up; and—
  - (a) an order authorising modification may enable those exercising any power conferred by the order to exercise it retrospectively (whether or not the power could otherwise be so exercised); and
  - (b) an order modifying a scheme may modify it retrospectively ;and in this subsection " retrospectively " means with effect from a date before that on which the power is exercised or, as the case may be, the order is made, but only such date as may be proposed for the purposes of this subsection by the persons applying for the order.
- (11) In section 22 of the Finance Act 1971 (provisions for amendment of schemes with a view to obtaining Inland Revenue approval), subsections (4) to (10) (powers of Chief Registrar of Friendly Societies to amend schemes) shall cease to have effect.

## **65 Modification, etc., of public service pension schemes.**

- (1) Subject to the provisions of this section, the appropriate authority shall, in relation to a public service pension scheme, have power to make such provision for the modification or winding-up of the scheme as could be made by an order of the Occupational Pensions Board under section 64(1)(6) or (c) of this Act in the case of a scheme other than a public service pension scheme ; and in this section " the appropriate authority ", in relation to a scheme, means such Minister of the Crown or government department as may be designated by the Minister for the Civil Service or, in Northern Ireland, the Ministry of Finance as having responsibility for the particular scheme.
- (2) The powers of the appropriate authority under this section shall be exercisable by means of an order—
- (a) directly modifying the scheme (without regard, in the case of a scheme contained in, or made under powers conferred by, an enactment, to the terms of the enactment or any of its restrictions);
  - (b) modifying an enactment under which the scheme was made or by virtue of which it has effect; or
  - (c) directing that the scheme be wound up and including directions with respect to the manner and timing of the winding-up;

and any such order shall contain such incidental, supplementary and transitional provisions as the appropriate authority considers to be required for the purposes of the order, including provisions adapting, amending or repealing any such enactment as is referred to in paragraph (a) or (b) above.

### *The Occupational Pensions Board*

## **66 Establishment of the Board; their functions and procedure.**

- (1) The Occupational Pensions Board shall be a body corporate by that name and have—
- (a) the functions conferred on them by this Act; and
  - (b) such advisory functions as may be conferred on them by the Secretary of State in respect of occupational pension schemes (including public service pension schemes).
- (2) The Board shall consist of a chairman, a deputy chairman and not less than 8 nor more than 12 other members, all appointed by the Secretary of State; and of the members other than the chairman and deputy chairman, one shall be appointed after consultation with organisations representative of employers, and one shall be appointed after consultation with organisations representative of employed earners (being in either case such organisations as the Secretary of State thinks it appropriate to consult).
- (3) In Part II of Schedule 1 to the House of Commons Disqualification Act 1957 (bodies of which all members are disqualified) there shall be inserted at the appropriate place in alphabetical order—
- “The Occupational Pensions Board”;
- and the same words shall also be inserted at the appropriate place in alphabetical order in the Part substituted for Part II by Schedule 3 to that Act in relation to the Senate and House of Commons of Northern Ireland.

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- (4) The Board shall be included among the tribunals in relation to which the Council on Tribunals may under section 5 of the Tribunals and Inquiries Act 1971 make general recommendations as to appointments to membership ; and the functions of the Council shall include that of keeping under review, and from time to time reporting on—
  - (a) the constitution of the Board; and
  - (b) their working, so far as relating to matters dealt with by the Board by means of a formal hearing, or on review.
- (5) Schedule 17 to this Act shall have effect with respect to the Board and their affairs.
- (6) It shall be the duty of the Board, as soon as practicable after the end of each calendar year, to make to the Secretary of State a report on the exercise of their functions in that year; and the Secretary of State shall lay a copy of the report before each House of Parliament.
- (7) The Secretary of State may make regulations generally as to the procedure to be followed by the Board in the exercise of their functions and the manner in which their functions are to be exercised and may in particular make provision—
  - (a) as to the procedure to be adopted in connection with the issue, cancellation, variation or surrender of recognition certificates, and with applications, determinations and the making of orders ;
  - (b) as to the hearing of parties, the taking of evidence and the circumstances (if any) in which a document of any prescribed description is to be treated, for the purposes of any proceedings before the Board, as evidence, or conclusive evidence, of any prescribed matter;
  - (c) as to the time to be allowed for making any application or renewed application to the Board (whether for an order or determination of the Board, or for the review of a determination, or otherwise);
  - (d) as to the manner in which parties to any proceedings before the Board may, or are to, be represented for the purposes of the proceedings.
- (8) Regulations under subsection (7) above may provide for enabling the Board to summon persons to attend before them and give evidence (including evidence on oath) for any purposes of proceedings in connection with an occupational pension scheme, to produce any documents required by the Board for those purposes, or to furnish any information which the Board may require relating to any such scheme which is the subject matter of proceedings pending before them.
- (9) So far as regulations under subsection (7) above relate to procedure on any formal hearing by the Board, the power of the Secretary of State to make them shall be exercisable only after consultation with the Council on Tribunals.

## **67 Review of Board's determinations.**

- (1) Subject to the provisions of this section and section 86 of this Act (appeal on point of law), where the Occupational Pensions Board have—
  - (a) determined to issue, cancel or vary a recognition certificate ; or
  - (b) determined to make, or not to make, any order which they have power to make under this Part of this Act; or
  - (c) determined any other question which it is within their functions to determine, their determination shall be final.

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- (2) The Board may on the application of a person appearing to them to be interested—
  - (a) at any time review any such determination of theirs as is mentioned in subsection (1) above, or a determination given by them on a previous review, if they are satisfied that there has been a relevant change of circumstances since the determination was made, or that the determination was made in ignorance of a material fact or based on a mistake as to a material fact;
  - (b) at any time within a period of 6 months from the date of the determination, or within such longer period as they may allow in any particular case, review such a determination on any ground.
- (3) The Board's powers on a review under this section shall include power to vary or revoke any determination or order previously made, to substitute a different determination or order, and generally to deal with the matters arising on the review as if they had arisen on the original determination.
- (4) Subject to subsection (5) below, regulations made by the Secretary of State may make provision with respect to the procedure to be adopted on any application for a review under this section and generally with respect to such applications and reviews; but nothing in this subsection shall be taken to prevent such a review being entered upon by the Board without an application being made.
- (5) The power of the Secretary of State to make regulations under subsection (4) above shall be exercisable only after consultation with the Council on Tribunals.

## **68 Submission to the Board of proposals to make regulations.**

- (1) Where the Secretary of State proposes to make any regulations under this Part of this Act (other than regulations to be made before the expiration of 6 months after the passing of this Act) he shall refer the proposals, in the form of draft regulations or otherwise, to the Occupational Pensions Board.
- (2) The Board shall consider any proposals referred to them under this section and make a report to the Secretary of State containing such recommendations as they think fit with regard to the subject-matter of the proposals; and if after receiving the Board's report the Secretary of State lays before Parliament regulations or draft regulations which comprise the whole or any part of the subject-matter of proposals referred to the Board he shall lay with the regulations or draft a copy of the report and a statement showing—
  - (a) the extent (if any) to which the Secretary of State has, in framing the regulations, given effect to the recommendations contained in the Board's report; and
  - (b) in so far as effect has not been given to any such recommendations, his reasons why not.
- (3) In relation to any regulations required or authorised under this Act to be made by the Secretary of State in conjunction with the Treasury, any reference in the foregoing provisions of this section to the Secretary of State shall be construed as a reference to him and the Treasury acting jointly.

*Miscellaneous*

**69 Rule against perpetuities.**

- (1) At any time when an occupational pension scheme qualifies under this section it shall be exempt from the operation of any rules of law relating to perpetuities which would otherwise invalidate, or might be taken to invalidate, any of the trusts of the scheme or any disposition made under it or for its purposes (whether trusts created, or dispositions made, before or after the scheme first qualified under this section).
- (2) A public service pension scheme qualifies under this section at all times ; and otherwise a scheme qualifies at any time when—
  - (a) it is recognised under this Part of this Act in relation to any employment; or
  - (b) it satisfies the requirements of regulations under this subsection.
- (3) Regulations under subsection (2) above may require a scheme—
  - (a) to contain provisions in any prescribed form, or to any prescribed effect; or
  - (b) to have, or to be such that it may be expected to qualify for, tax-exemption or tax-approval;and the regulations may be so framed that, in prescribed circumstances, the requirements can be treated as satisfied if application has been duly made to the Inland Revenue with a view to obtaining tax-approval for the scheme.
- (4) In subsection (3) above, " tax-exemption " and " tax-approval " mean respectively exemption from tax and approval of the Inland Revenue in either case under any such provision of the Income Tax Acts as may be prescribed by regulations.
- (5) Regulations may include provision whereby a scheme which ceases to be recognised, or ceases to satisfy the requirements of regulations under subsection (2) above, may nevertheless be treated as continuing to qualify under this section for a further period of 2 years from the cesser, or for such longer period as the Occupational Pensions Board consider to be reasonable in the case of a particular scheme.
- (6) As respects the operation of the rules of law referred to in subsection (1) above—
  - (a) this section does not validate with retrospective effect any trusts created or dispositions made under or for the purpose of a scheme if (taking into account, where applicable, section 3(1) of the Perpetuities and Accumulations Act 1964 (" wait and see ") or the corresponding Northern Ireland enactment) those trusts or dispositions were already required to be treated as void under the rules before the scheme qualified under this section ; and
  - (b) if a scheme ceases to qualify, trusts so created and dispositions so made shall then again be subject to the rules as if the scheme had never qualified (but without prejudice to any rights which vested during the period of qualification).
- (7) There shall cease to have effect—
  - (a) the Superannuation and other Trust Funds (Validation) Act 1927 (power to register superannuation schemes, with consequent exemption from the rule against perpetuities), except section 9 and section 11 so far as it provides for citation and extends section 9 to Northern Ireland; and
  - (b) the corresponding Northern Ireland enactment, that is to say the Superannuation and other Trust Funds (Validation) Act (Northern Ireland) 1928 ;

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but regulations may provide, in relation to a scheme whose fund was registered under either Act immediately before its repeal took effect, for the scheme to retain the benefit of the Act, subject to prescribed conditions and either indefinitely or for a prescribed period.

- (8) The said Acts of 1927 and 1928 shall each, until its repeal by subsection (7) above, have effect with the following modifications—
- (a) no new application shall be made under section 3 of the Act for the registration of any fund (without prejudice to the effectiveness of any application previously made or pending); and
  - (b) the registration of a fund may be cancelled notwithstanding that the fund has not been wound up, if the trustees apply in writing to the registrar stating that they desire its cancellation.

## **70 Legal restrictions of doubtful application.**

- (1) This section has effect for the removal of doubt as to the application, or possible application, of certain enactments in relation to occupational pension schemes.
- (2) Nothing in the Truck Acts 1831 to 1940, or the Truck Acts (Northern Ireland) 1831 to 1940, the Hosiery Manufacture (Wages) Act 1874 or the Stannaries Act 1887 has, or ever has had, effect so as to prevent the deduction from a person's earnings, on their payment to him, of his contributions to an occupational pension scheme, or of sums to be applied for the purpose of acquiring rights under such a scheme, whether for himself or for his widow or dependants.
- (3) An occupational pension scheme is not, nor ever has been, a shop club or thrift fund for the purposes of the Shop Clubs Act 1902.

## **71 Friendly societies.**

- (1) The Secretary of State may, after consultation with the Chief Registrar of Friendly Societies or, in Northern Ireland, the Registrar of Friendly Societies for Northern Ireland, make such regulations as he thinks appropriate for enabling a registered society to conduct approved group insurance business with a view to the establishment of occupational pension schemes by reference to which the employment of members of the society can be recognised pensionable employment.
- (2) The power to make regulations under this section shall extend to enabling registered societies to conduct such business as is mentioned in subsection (1) above freed from any restrictions of the relevant legislation as to the amounts which a member, or a person claiming through a member, is entitled to receive from any one or more societies or branches.
- (3) Regulations under this section may include such adaptations and modifications of the relevant legislation, and such other supplementary and incidental provisions, as the Secretary of State considers to be necessary or expedient for achieving the purposes referred to in subsection (1) above.
- (4) In this section—
  - (a) as it applies to Great Britain—
    - (i) " the relevant legislation " means the Friendly Societies Acts 1896 to 1971 and Part II of Schedule 8 to the Finance Act 1966,



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*Status: This is the original version (as it was originally enacted).*

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- (ii) " registered society " has the same meaning as in the said Acts of 1896 to 1971, and
  - (iii) " approved group insurance business " has the same meaning as in section 10 of the Friendly Societies Act 1971;
- (b) as it applies to Northern Ireland—
- (i) " the relevant legislation " means the Friendly Societies Act (Northern Ireland) 1970,
  - (ii) " registered society " has the same meaning as in that Act, and
  - (iii) " approved group insurance business " has the same meaning as in paragraph 11(5) of Schedule 2 to that Act.

## **72 Fees for official services to schemes.**

Where at the request of the trustees or managers of an occupational pension scheme or of any employer of earners who are members of such a scheme, official services are provided in connection with the operation or administration of the scheme either by the Secretary of State or by the Occupational Pensions Board on his behalf, the Secretary of State may require the payment of fees for the provision of those services.