



Social Security Pensions Act 1975

1975 CHAPTER 60

PART III

CONTRACTING-OUT

Requirements for contracting-out

33 Requisite benefit for earner

- (1) Subject to the provisions of this Part of this Act, for an occupational pension scheme to be contracted-out in relation to an earner's employment it must provide for him to be entitled to a pension under the scheme if he attains pensionable age and contain—
 - (a) rules for determining the annual rate of the pension that comply with the requirements of section 34 below ; and
 - (b) a rule to the effect that if the earner has a guaranteed minimum under section 35 below the weekly rate of the pension will be not less than his guaranteed minimum under that section.
- (2) Subject to subsections (3) and (4) below, the scheme must provide for the pension to commence on the date on which the earner attains pensionable age and to continue for his life.
- (3) The scheme may provide for the commencement of the earner's guaranteed minimum pension to be postponed for any period for which he continues in employment after attaining pensionable age but so that his consent is required—
 - (a) for any postponement by virtue of employment to which the scheme does not relate; and
 - (b) for any postponement after the expiration of five years from the date on which he attains pensionable age.
- (4) The scheme may provide for any part of the pension in excess of the earner's guaranteed minimum to commence from a date not more than three months after that on which he attains pensionable age or to be postponed for any period for which he

continues in employment (whether or not employment to which the scheme relates) after attaining that age.

- (5) Equivalent pension benefits for the purposes of the former legislation are not to be regarded as constituting any part of the earner's guaranteed minimum pension.
- (6) The benefits referred to in subsection (5) above are any to which the earner may be immediately or prospectively entitled in respect of a period of employment which—
 - (a) was for him non-participating employment under that legislation; and
 - (b) was not on its termination the subject of any payment in lieu of contributions; but subsection (5) excludes so much only of those benefits as (and no more than) had to be provided in order that the employment should for that period be treated as non-participating.
- (7) In this section " the former legislation " means Part III of the National Insurance Act 1965 and the previous corresponding enactments.

34 Annual rate of earner's pension

- (1) The requirements mentioned in section 33(1)(a) above are as follows.
- (2) Subject to the provisions of this section, the rules of the scheme must provide for the annual rate of the earner's pension to be not less than 1 ¼ cent, of either—
 - (a) his average annual salary in the whole period of his service in contracted-out employment by reference to the scheme; or
 - (b) his final salary,
 multiplied by the number of his years of such service or by such number of those years as will produce an annual rate equal to not less than half the salary on which it is calculated.
- (3) Where it is a condition of the scheme that the earner shall complete a specified minimum period of service before qualifying for requisite benefits in excess of guaranteed minimum pensions, the scheme's rules need not provide as in subsection (2) above for an earner whose service is terminated before completion of that minimum period.
- (4) The earner's pension need not be in accordance with subsection (2) above in case of his service in the relevant employment being terminated before he attains the scheme's normal pension age and when—
 - (a) he has completed in that employment less than five years' qualifying service for the purposes of Schedule 16 to the Social Security Act 1973 (preservation); or
 - (b) he is under the age of 26 on termination of that employment.
- (5) Where the scheme provides for the annual rate of the pension to be calculated by reference to the earner's average annual salary—
 - (a) the method of computing average annual salary must be approved by the Occupational Pensions Board ; and
 - (b) the scheme must provide that earnings for any period falling within any tax year shall, for the purposes of the calculation, be treated as increased by the same percentage as that prescribed for the increase of earnings factors for that year.

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

- (6) In subsection (5)(b) above, "prescribed" means prescribed by any order or orders coming into force under section 21 above before the earner attains whatever is the scheme's normal pension age or (if earlier) his service in the relevant employment is terminated.
- (7) Where the scheme provides for the annual rate of the pension to be calculated by reference to the earner's final salary—
- (a) the method of ascertaining final salary; and
 - (b) the scheme's provisions for calculating the rate of pension by reference to it, must be approved by the Board.
- (8) In deciding whether or not to give their approval under subsection (7)(b) above the Board shall have regard to any aspects of the scheme which appear to them to be relevant, but in particular to the interval (if any) between the end of the period by reference to which final salary is to be determined and the scheme's normal pension age and to what provision (if any) is made for revaluing the salary during any such interval.
- (9) Subject to the foregoing provisions, the scheme may provide—
- (a) for excluding earnings of any kind from the salary by reference to which the annual rate of the earner's pension is to be calculated; and
 - (b) for excluding any amount of earnings of the kind that are to constitute that salary except so much (if any) as would, if expressed as a weekly rate, exceed one and a half times the lower earnings limit but would not exceed the upper earnings limit;
- and if the salary is to include the amount of earnings up to one and a half times the lower earnings limit the scheme may provide for reducing the rate of pension to what it would have been if that amount had been excluded.
- (10) In subsection (9) above references to the lower and upper earnings limits, in relation to any earnings, are references to those limits as in force when the earnings are paid.
- (11) The scheme may, with the approval of the Occupational Pensions Board, provide for a lower percentage than that specified in subsection (2) above; but the Board shall not approve any such provision unless they are satisfied that it will not result in the benefits of the scheme, taken as a whole, being less favourable to the earner than would otherwise have been the case; and in deciding whether or not to give their approval the Board shall have regard to—
- (a) whether any lump sum payments are provided in addition to the pension;
 - (b) the extent, if any, to which earnings of any kind or amount are excluded from the salary by reference to which the pension is to be calculated; and
 - (c) any other features of the scheme that appear to the Board to be relevant.

35 Earner's guaranteed minimum

- (1) An earner has a guaranteed minimum in relation to the pension provided by a scheme in accordance with section 33 above if, in any tax week in a relevant year, earnings have been paid to or for the benefit of the earner in respect of contracted-out employment by reference to the scheme, being earnings in excess of the current lower earnings limit or the prescribed equivalent if he is paid otherwise than weekly.

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

(2) Where an earner has a guaranteed minimum as aforesaid, that minimum shall, subject to subsection (6) below, be the weekly equivalent of an amount equal to the appropriate percentage of the total of his earnings factors for the relevant years so far as derived from contributions paid in respect of such earnings as are mentioned in subsection (1) above.

(3) In subsection (2) above " the appropriate percentage" means—

- (a) if the earner is not more than 20 years under pensionable age when this section comes into force, 1 ¼ per cent.;
- (b) in any other case

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

per cent, where N is the number of years in the earner's working life (assuming that he will attain pensionable age) which fall after the coming into force of this section;

and " derived " means derived in accordance with rules to be embodied in regulations.

(4) For the purposes of subsection (2) above the weekly equivalent of the amount there mentioned shall be calculated by dividing that amount by 52 and rounding the result to the nearest whole penny, taking ½ p as nearest to the next whole penny above.

(5) For the purposes of subsection (2) above the earner's earnings factor for any relevant year (so far as derived as mentioned in that subsection) shall, subject to subsection (7) below, be taken to be that factor as increased by any order or orders that have come into force under section 21 above before the end of the final relevant year.

(6) Where in accordance with section 33(3) above the commencement of an earner's guaranteed minimum pension is postponed for any period and there are at least eight complete weeks in that period, his guaranteed minimum in relation to the scheme shall, for each complete week in that period, be increased by 1/8th per cent.—

- (a) of the amount of that minimum apart from this subsection ; or
- (b) if for that week (or a period which includes that week) a pension is paid to him under the scheme at a weekly rate less than that minimum, of the difference between that pension and that minimum.

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

(7) The scheme may provide that the earnings factors of an earner whose service in contracted-out employment by reference to the scheme is terminated before he attains the scheme's normal pension age shall be determined for the purposes of subsection (2) above without reference to any order that comes into force under section 21 above after the relevant year in which his service is terminated ; but in that event the scheme shall provide for the weekly equivalent mentioned in that subsection to be increased by at least—

- (a) 5 per cent, compound for each relevant year after that year; or
- (b) the amount by which an earnings factor for that year equal to that weekly equivalent would be increased by any order or orders that come into force under the said section 21 before the end of the final relevant year,

whichever makes the lesser increase (so however that this subsection is not to be taken as preventing the scheme from providing increases above those alternative minima).

(8) Subsection (7) above applies only so as to permit the same such provision to be made for all members of the scheme.

- (9) In this section " relevant year " means any tax year in the earner's working life (not being earlier than the first tax year for which lower and upper earnings limits are specified under section 1 above) and " final relevant year " means the last tax year which is a relevant year in relation to the earner.

36 Requisite benefit for widow

- (1) Subject to the provisions of this Part of this Act, for an occupational pension scheme to be contracted-out in relation to an earner's employment it must provide, in the event of his dying (whether before or after attaining pensionable age) and leaving a widow, for her to be entitled to a pension under the scheme.
- (2) Subject to subsections (4) and (5) below, the scheme must contain rules whereby the annual rate of the pension will be not less than the requisite minimum under this section, which is $\frac{5}{8}$ ths per cent, of either—
- (a) the earner's average annual salary in the whole period of his service in contracted-out employment by reference to the scheme ; or
 - (b) his final salary (or last salary before death),
- multiplied by the number of his years of such service; and section 37 below applies as to the relationship which the widow's pension must bear to the earner's salary.
- (3) To comply with this section the scheme must also contain a rule to the effect that if the earner had a guaranteed minimum under section 35 above the weekly rate of the widow's pension will be not less than her guaranteed minimum, which shall be half that of the earner.
- (4) Where it is a condition of the scheme that the earner shall complete a specified minimum period of service before qualifying for requisite benefits in excess of guaranteed minimum pensions the scheme need not contain the rules specified in subsection (2) above for the case of the earner's service being terminated (by death or otherwise) before completion of that minimum period.
- (5) The widow's pension need not be in accordance with subsection (2) above in case of the earner dying after termination of his service in the relevant employment and either—
- (a) his having completed in that employment less than five years' qualifying service for the purposes of Schedule 16 to the Social Security Act 1973 (preservation); or
 - (b) his being under the age of twenty-six on termination of that employment.
- (6) Subject to the following provisions of this section, the scheme must provide for the widow's pension to be payable for any period for which a Category B retirement pension, widowed mother's allowance or widow's pension is payable to her by virtue of the earner's contributions or for which a Category B retirement pension would be so payable but for section 27(6) of the principal Act.
- (7) The scheme may, with the approval of the Occupational Pensions Board, contain provisions not complying with this section in relation to any part of the pension in excess of the widow's guaranteed minimum where the marriage of the widow to the earner takes place after the termination of his service in contracted-out employment by reference to the scheme and not more than six months before his death.

- (8) The widow's guaranteed minimum pension must be payable to her; but the scheme may, with the approval of the Occupational Pensions Board, contain provisions whereby, at the discretion of the trustees or managers, any other part of the pension required by this section is not paid to her, but instead comparable benefits are provided for one or more dependants of the deceased earner.
- (9) The scheme may, with the approval of the Occupational Pensions Board, provide for reducing any part of the pension in excess of the widow's guaranteed minimum where the person to whom it is payable (whether the widow or by virtue of subsection (8) above another dependant of the deceased) was more than ten years younger than he was.

37 Earner's salary as factor of widow's pension

- (1) The following additional provisions apply as to a scheme's compliance with section 36 above.
- (2) If the scheme provides for the annual rate of the widow's pension to be calculated by reference to the earner's average annual salary—
- (a) the method of computing average annual salary must be approved by the Occupational Pensions Board ; and
 - (b) the scheme must provide that earnings for any period falling within any tax year shall, for the purposes of the calculation, be treated as increased by the same percentage as that prescribed for the increase of earnings factors for that year.
- (3) In subsection (2)(b) above, " prescribed " means prescribed by any order or orders coming into force under section 21 above before whichever is the earliest of the following events, namely—
- (a) termination of the earner's service in the relevant employment;
 - (b) his attaining the scheme's normal pension age ;
 - (c) his death.
- (4) Where the scheme provides for the annual rate of the widow's pension to be calculated by reference to the earner's final salary (or last salary before death)—
- (a) the method of ascertaining final or last salary ; and
 - (b) the scheme's provisions for calculating the rate of pension by reference to it, must be approved by the Board.
- (5) In deciding whether or not to give their approval under subsection (4)(b) above the Board shall have regard to any aspects of the scheme which appear to them to be relevant, but in particular—
- (a) to the interval (if any) between the end of the period by reference to which final or last salary is to be determined and the scheme's normal pension age or, as the case may be, the date of the earner's death ; and
 - (b) to what provision (if any) is made for revaluing the salary during any such interval.
- (6) Subject to the foregoing provisions, the scheme may provide—
- (a) for excluding earnings of any kind from the salary by reference to which the annual rate of the widow's pension is to be calculated ; and

- (b) for excluding any amount of earnings of the kind that are to constitute that salary except so much (if any) as would, if expressed as a weekly rate, exceed one and a half times the lower earnings limit but would not exceed the upper earnings limit;

and if the salary is to include the amount of earnings up to one and a half times the lower earnings limit the scheme may provide for reducing the rate of pension to what it would have been if that amount had been excluded.

- (7) In subsection (6) above references to the lower and upper earnings limits, in relation to any earnings, are references to those limits as in force when the earnings are paid.

38 Transfer of accrued rights

- (1) Where an earner's service in contracted-out employment by reference to a scheme is terminated before he attains pensionable age the scheme may provide for his accrued rights to the requisite benefits under the scheme to be transferred to another scheme but, except where regulations otherwise provide, only with his consent and to another contracted-out scheme.

- (2) Where under the rules of a scheme transfer credits have been allowed in respect of an earner's accrued rights to guaranteed minimum pensions under another scheme, the reference in section 35(1) above to contracted-out employment by reference to the scheme shall include a reference to employment in any period of linked qualifying service which was contracted-out employment by reference to the other scheme.

- (3) In this Part of this Act—

" accrued rights ", in relation to an earner, means the rights conferring prospective entitlement under the scheme in question to the pensions to be provided for him and his widow in accordance with sections 33 and 36 above, and references to an earner's accrued rights to guaranteed minimum pensions shall be construed accordingly;

" 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.

- (4) For the purposes of this Part 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 and no regard shall be had to any scheme rule which provides for service to be treated for any purposes of benefit or otherwise as longer or shorter than it actually was.

39 Commutation, surrender and forfeiture

- (1) Where the annual rate of a pension required to be provided by a scheme in accordance with section 33 or 36 above would not exceed the prescribed amount and the

circumstances are such as may be prescribed, the scheme may provide for the payment of a lump sum instead of that pension.

- (2) A scheme may, with the approval of the Occupational Pensions Board, provide for the payment to the earner of a lump sum instead of any part of the pension required to be provided for him under section 33 which exceeds the guaranteed minimum ; but—
- (a) the manner in which the amount of the lump sum is arrived at under the scheme must be satisfactory to the Board; and
 - (b) the Board shall not give their approval under this subsection unless they are satisfied that it will not result in the benefits of the scheme, taken as a whole, being less favourable to the earner than would otherwise have been the case.
- (3) Without prejudice to subsection (1) above, a scheme may, in relation to a case where the earner dies before attaining pensionable age, provide for the payment of a lump sum instead of any part of the pension required to be provided for his widow in accordance with section 36 above which exceeds her guaranteed minimum, being a lump sum equal to not less than eleven times what would have been the annual rate of that part; and subsection (8) of that section shall have effect in relation to any such lump sum as it has effect in relation to any part of a pension in excess of the widow's guaranteed minimum.
- (4) Neither section 33 nor section 36 above shall preclude a scheme from providing—
- (a) for any part of a pension in excess of the earner's or widow's guaranteed minimum, as the case may be, to be forfeited or surrendered or to be subject to any charge, lien or set-off; or
 - (b) for the earner's or widow's guaranteed minimum pension to be suspended or forfeited in such circumstances as may be prescribed.

40 Financing and assurance of benefits

- (1) For an occupational pension scheme to be contracted out the resources of the scheme must be derived in whole or in part from—
- (a) payments made or to be made by one or more employers of earners to whom the scheme applies, being payments either—
 - (i) under an actual or contingent legal obligation ; or
 - (ii) in the exercise of a power conferred, or the discharge of a duty imposed, on a Minister of the Crown, government department or any other person, being a power or duty which extends to the disbursement or allocation of public money; or
 - (b) such other payments by the earner or his employer, or both, as may be prescribed for different categories of scheme.
- (2) For an occupational pension scheme, other (than a public service pension scheme, to be contracted-out the Occupational Pensions Board must be satisfied that the scheme complies with—
- (a) regulations prescribing the means by which guaranteed minimum pensions under contracted-out schemes are to be secured (whether irrevocable trust, policy of insurance, annuity contract or other means); and
 - (b) the conditions which are required by the regulations to be satisfied in relation to any means adopted;
- and generally as to the arrangements in force or to be in force from time to time for securing those pensions.

- (3) For an occupational pension scheme to be contracted-out it must contain a rule whereby any liabilities of the scheme in respect of—
- (a) guaranteed minimum pensions and accrued rights to guaranteed minimum pensions;
 - (b) any such benefits as are excluded by section 33(5) above from earners' guaranteed minimum pensions ;
 - (c) pensions and other benefits (whether or not within paragraph (a) or (b) above) in respect of which entitlement to payment has already arisen; and
 - (d) state scheme premiums,
- are accorded priority on a winding up over other liabilities under the scheme in respect of benefits attributable to any period of service after the rule has taken effect.

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

- (4) For an occupational pension scheme to be contracted-out it must, if it provides for the payment out of any sum representing the surrender value of a policy of insurance taken out for the purposes of the scheme, so provide that there shall be no payment out in relation to guaranteed minimum pensions except in such circumstances as may be prescribed.

41 Sufficiency of resources

- (1) For an occupational pension scheme, other than a public service scheme, to be contracted-out the Occupational Pensions Board must be satisfied that the resources of the scheme are sufficient—
- (a) for meeting from time to time all claims in respect of guaranteed minimum pensions so far as falling to be met out of those resources, having regard to the expected extent of the scheme's resources and its other liabilities at any time when claims may be expected to arise; and
 - (b) for paying state scheme premiums in respect of all persons at any time entitled to, or having accrued rights to, guaranteed minimum pensions under the scheme; and
 - (c) for meeting in full, in the event of an immediate winding up, the liabilities accorded priority in accordance with section 40(3) above and the expenses of administration so far as those expenses are payable out of the resources of the scheme.
- (2) Where contracting-out or continued contracting-out depends on the Board being satisfied as mentioned in subsection (1) above, the scheme may be contracted-out or continue to be contracted-out, as the case may be, in relation to any employment subject to such conditions as the Board think fit to impose for securing—
- (a) that the Board are kept informed as to any matters affecting the security of the minimum pensions guaranteed under the scheme;
 - (b) that the resources of the scheme are brought to and maintained at a level satisfactory to the Board ;

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

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

- (3) Conditions imposed by the Board for the purpose mentioned in subsection (2)(b) above may require steps to be taken, at the instance of the Board, to increase the scheme's resources at any time after contracting-out, including a time when the scheme has ceased to be contracted-out.
- (4) With a view to enforcing a condition imposed for that purpose, the Board may by order require an employer to make such payments as the Board think necessary to bring the resources of the scheme to a satisfactory level; 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,
- (5) In considering a scheme by reference to the considerations of subsection (1) above, the Board shall have regard to any investments held for the purposes of the scheme; and the Board may by reference to those considerations make it a condition of contracting-out or continued contracting-out that—
- (a) no part, or no more than a specified proportion, of the scheme's resources shall be invested in investments of a specified class or description ;
 - (b) there shall be realised, before the expiration of a specified period, the whole or a specified proportion of investments of a specified class or description forming part of the scheme's resources when the condition is imposed;
- and non-compliance with any such condition shall be a ground on which the Board may withhold or cancel a contracting-out certificate in respect of any employment within the application of the scheme.