



# Social Security Act 1986

## 1986 CHAPTER 50

### PART I

#### PENSIONS

##### *Occupational pension schemes*

#### **6 Money purchase contracted-out schemes**

Schedule 2 to this Act has effect to make amendments of the Social Security Pensions Act 1975 in relation to the contracting-out of schemes which provide money purchase benefits.

#### **7 Schemes becoming contracted-out between 1986 and 1993**

- (1) Subject to subsection (3) below and except in such cases as may be prescribed, where an occupational pension scheme becomes a contracted-out scheme under Part III of the Social Security Pensions Act 1975 during the period beginning on 1st January 1986 and ending on 5th April 1993, having not previously been contracted-out during any part of that period, the Secretary of State shall make in relation to any tax week falling within the period beginning on 6th April 1988 and ending on 5th April 1993 a payment under this section in respect of each earner who is in employment which—
  - (a) is contracted-out by reference to the scheme during that tax week; and
  - (b) has not previously been contracted-out employment by reference to any other scheme during any part of the period beginning on 1st January 1986 and ending on 5th April 1993.
- (2) The Secretary of State shall make a payment under this section to the trustees or managers of the scheme except that in such circumstances as may be prescribed he shall make such a payment to a prescribed person.
- (3) A payment under this section shall not be made unless the prescribed person makes a claim for it in such manner and form, and at such time or within such period, as may be prescribed.

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- (4) The amount of a payment under this section in respect of a tax week is—
- (a) 2 per cent, of so much of any earnings paid to or for the benefit of the earner in respect of the employment which is contracted-out by reference to the scheme in the tax week as exceeds the lower earnings limit for that week but does not exceed the upper earnings limit for it; or
  - (b) if 2 per cent, of any such earnings is less than £1.00, £1.00.
- (5) The references to the upper and lower earnings limits in subsection (4) above are references, in the case of an earner who is paid otherwise than weekly, to their prescribed equivalents under section 4(2) and (6) of the Social Security Act 1975.
- (6) Regulations may make provision—
- (a) for earnings to be calculated or estimated in such manner and on such basis as may be prescribed for the purpose of determining whether any, and if so what, payments under this section are to be made in respect of them;
  - (b) for the adjustment of amounts which would otherwise be the amounts of payments under this section so as to avoid the payment of fractional amounts;
  - (c) for the intervals at which, for the purposes of payments under this section, payments of earnings are to be treated as made;
  - (d) for this section to have effect, in prescribed cases, as if for any reference to a tax week there were substituted a reference to a prescribed period and as if in any case so prescribed for the references to £1.00 in subsection (4)(b) above there were substituted references to such other sum as may be prescribed ; and
  - (e) as to the manner in which, and time at which or period within which, payments under this section are to be made.
- (7) Where in the case of a scheme a payment has been made under this section in relation to an earner—
- (a) if a premium is paid under section 42 of the Social Security Pensions Act 1975 in relation to him, the amount of the premium shall be increased by the amount of the payment; and
  - (b) if a premium is paid under section 44 or 44A of that Act in relation to him, the amount of the premium shall be increased by the amount of the payment and by a further amount representing interest on the payment and calculated in accordance with regulations.
- (8) If the Secretary of State makes a payment under this section which he is not required to make, he may recover the amount of the payment from the person to whom he paid it, or from any person in respect of whom he paid it.
- (9) If he makes in respect of an earner a payment under this section which he is required to make, but does not make it to the trustees or managers to whom he is required to make it, he may recover the amount of the payment from the person to whom he paid it or from the earner.

## **8 Abolition of requirement relating to requisite benefits**

The requirement of the Social Security Pensions Act 1975 that for an occupational pension scheme to be contracted-out in relation to an earner's employment it must provide requisite benefits shall cease except so far as it relates to guaranteed minimum pensions and except to that extent shall be treated for the purposes of section 50 of that

Act (requirement of consent of Occupational Pensions Board to alterations of rules of schemes) as if it had never existed.

## 9 Guaranteed minimum pensions

(1) The following subsection shall be substituted for subsection (3) of section 35 of the Social Security Pensions Act 1975 (earner's guaranteed minimum)—

“(3) In subsection (2) above—

“the appropriate percentage” means—

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

- (i) if the earner was not more than 20 years under pensionable age on 6th April 1978,  $1\frac{1}{4}$  per cent.;
- (ii) in any other case

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

per cent.;

(b) in respect of the earner's earnings factors for the tax year 1988-89 and for subsequent tax years—

- (i) if the earner was not more than 20 years under pensionable age on 6th April 1978, 1 per cent.;
- (ii) in any other case

$$\frac{20}{N}$$

per cent.;

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

“derived” means derived in accordance with the rules to be embodied in regulations.”.

(2) The following subsections shall be inserted after subsection (6) of that section—

“(6A) Where an earner's guaranteed minimum pension is increased under subsection (6) above, the increase of that part of it which is attributable to earnings factors for the tax year 1987-88 and earlier tax years shall be calculated separately from the increase of the rest.

(6B) Where one or more orders have come into force under section 37A below during the period for which the commencement of a guaranteed minimum pension is postponed, the amount of the pension for any week in that period shall be determined as if the order or orders had come into force before the beginning of the period.”.

(3) In section 36 of that Act (widows)—

(a) the following subsections shall be substituted for subsection (1)—

“(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 the earner dying (whether before or after attaining pensionable age) and leaving a widow or

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widower, for the widow or widower to be entitled to a guaranteed minimum pension under the scheme.

(1A) A scheme need not provide for widowers of earners who die before 6th April 1989 to be entitled to guaranteed minimum pensions.”;

(b) the following subsection shall be substituted for subsection (3)—

“(3) To comply with this section the scheme must also contain a rule to the effect that—

(a) if the earner is a man who 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;

(b) if the earner is a woman who had such a guaranteed minimum, the weekly rate of the widower's pension will be not less than his guaranteed minimum, which shall be one-half of that part of the earner's guaranteed minimum which is attributable to earnings factors for the tax year 1988-89 and subsequent tax years.”; and

(c) the following subsections shall be inserted after subsection (7)—

“(7A) The scheme must provide for the widower's pension to be payable in prescribed circumstances and for the prescribed period.

(7B) The trustees or managers of the scheme shall supply to the Secretary of State any such information as he may require relating to the payment of pensions under the scheme to widowers.”.

(4) The following provisions of that Act shall be construed as if the references to " widow " included references to " widower"—

- (a) section 26(2);
- (b) section 32(2)(a);
- (c) section 36(8) ;
- (d) section 38(3);
- (e) section 39(4)(b);
- (f) section 41B(1)(c), (2)(a) and (b) and (3);
- (g) section 44(9);
- (h) section 52D,

and with consequential modifications.

(5) The reference in section 29(1) of that Act to a person entitled to a guaranteed minimum pension shall be construed as including a reference to a person so entitled by virtue of being the widower of an earner in any case where he is entitled to a widower's invalidity pension, but that reference shall be so construed where he is entitled to any other benefit only if—

- (a) at the time of the earner's death she and her husband had both attained pensionable age; or
- (b) he is also entitled to a Category A retirement pension by virtue of section 16(5) of that Act.

(6) The following provisions of that Act shall be construed as if the references to a person entitled to receive a guaranteed minimum pension included references to a person so

entitled by virtue of being the widower of an earner only in such cases as may be prescribed—

- (a) section 44(1)(b) and (2)(b); and
- (b) section 49(1); and
- (c) section 50(3);

and the references to "widow" in section 44(5) of that Act shall be construed as including references to "widower", and the reference in section 49(6) of that Act to guaranteed minimum pensions as including a reference to the guaranteed minimum pension of such a person, only in those cases.

(7) The following section shall be inserted after section 37 of that Act—

**“37A Annual increases of guaranteed minimum pensions.**

- (1) The Secretary of State shall in the tax year 1989-90 review the general level of prices obtaining in Great Britain for a period of twelve months commencing in the previous tax year.
- (2) The Secretary of State shall in each subsequent tax year review the general level of prices obtaining in Great Britain for the period of twelve months commencing at the end of the period last reviewed under this section.
- (3) Where it appears to the Secretary of State that the general level of prices is greater at the end of the period under review than it was at the beginning of that period, he shall lay before Parliament the draft of an order specifying a percentage by which there is to be an increase of the rate of that part of guaranteed minimum pensions which is attributable to earnings factors for the tax year 1988-89 and subsequent tax years for—
  - (a) earners who have attained pensionable age; and
  - (b) widows and widowers.
- (4) The percentage shall be—
  - (a) the percentage by which the general level of prices is greater at the end of the period under review than it was at the beginning of that period; or
  - (b) 3 per cent.,whichever is less.
- (5) If a draft order laid before Parliament in pursuance of this section is approved by a resolution of each House, the Secretary of State shall make the order in the form of the draft.
- (6) An order under this section shall be so framed as to bring the alterations to which it relates into force on the first day of the tax year next following the making of the order.
- (7) Where the benefits mentioned in sections 16(2B), 28(7A) and 59(1A) of the Social Security Act 1975 and section 29(1) above are not increased on the day on which an order under this section takes effect, the order shall be treated for the purposes of those subsections as not taking effect until the day on which the benefits mentioned in them are next increased.
- (8) Except as permitted by subsection (13), (14) or (15) below, the trustees or managers of a scheme may not make an increase in a person's pension which

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is required by virtue of this section out of money which would otherwise fall to be used for the payment of benefits under the scheme to or in respect of that person unless—

- (a) the payment is to an earner in respect of the tax year in which he attains pensionable age and the increase is the one required to be made in the following year; or
  - (b) the payment is to a person as the widow or widower of an earner who died before attaining pensionable age in respect of the tax year in which the person became a widow or widower and the increase is the one required to be made in the next following tax year.
- (9) Subsection (8) above overrides any provision of a scheme to the extent that it conflicts with it.
- (10) The Occupational Pensions Board may at any time, and shall if requested by the trustees and managers of a scheme, advise on any question whether or not subsection (8) above overrides any provision of the scheme.
- (11) On an application made to them in respect of a scheme (other than a public service pension scheme) by persons competent to make such an application in respect of it, the Board shall issue a determination on any such question as is mentioned in subsection (10) above.
- (12) The persons competent to make an application under subsection (11) above 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 was an employer of persons in service in an employment to which the scheme applies;
  - (d) any member or prospective member of the scheme; and
  - (e) such other persons as may be prescribed, 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.
- (13) Where in the tax year 1989-90 the trustees or managers of an occupational pension scheme make an increase in the rate of pensions currently payable to the members of the scheme who have attained pensionable age or to the widows or widowers of members, they may deduct the amount of the increase from any increase which, but for this subsection, they would be required to make under this section in the tax year 1990-91.
- (14) Where the trustees or managers of such a scheme make an increase otherwise than in pursuance of this section in a tax year subsequent to 1989-90, they may deduct the amount of the increase from any increase which, but for this subsection, they would be required to make under this section in the next following tax year.
- (15) Where in any tax year subsequent to 1989-90 the trustees or managers of a scheme make an increase which is partly made otherwise than in pursuance of this section, they may deduct the part of the increase made otherwise than in pursuance of this section from any increase which, but for this subsection, they would be required to make under this section in the next following year.

- (16) Where by virtue of subsection (13), (14) or (15) above guaranteed minimum pensions are not required to be increased in pursuance of this section, their amount shall be calculated for any purpose as if they had been so increased.
- (17) Where by virtue of any of those subsections guaranteed minimum pensions are required to be increased in pursuance of this section by an amount less than they otherwise would be, their amount shall be calculated for any purpose as if they had been increased by that full amount”.
- (8) In section 59 of that Act (increase of official pensions) the following subsection shall be inserted after subsection (5)—
- “(5A) Nothing in section 37A(13), (14) or (15) above authorises any deduction from an increase in the rate of an official pension under this section.”.
- (9) In section 59A of that Act (modification of effect of section 59(5)) the following subsection shall be inserted after subsection (2)—
- “(2A) Where in any tax year—
- (a) an increase is calculated in accordance with a direction under this section; and
  - (b) the amount by reference to which the increase is calculated, or any part of it, is increased in that tax year under section 37A above,
- the increase calculated in accordance with the direction shall be reduced by the amount of the increase under section 37A above.”.

## **10 Short-service benefit: qualifying service**

In paragraphs 6(1)(b) and 7 of Schedule 16 to the Social Security Act 1973 (preservation of benefits under occupational pension scheme) for " 5 " wherever occurring there shall be substituted " 2 ".

## **11 Auditors**

The following shall be inserted after section 56N of the Social Security Pensions Act 1975—

### *“Auditors*

#### **56P Regulations as to auditors.**

The Secretary of State may by regulations make provision as to—

- (a) the appointment, resignation and removal of auditors of occupational pension schemes;
- (b) the duty of employers and auditors of employers to disclose information to the trustees or managers of occupational pension schemes and the auditors of such schemes;
- (c) the duty of trustees or managers of an occupational pension scheme to disclose information and to make available documents to the auditors of the scheme.”.