



# Social Security Act 1986

## 1986 CHAPTER 50

### PART I

#### PENSIONS

##### *Personal pension schemes*

#### **1 Minimum contributions to personal pension schemes**

- (1) Subject to the following provisions of this Part of this Act, the Secretary of State shall pay, except in such circumstances as may be prescribed, minimum contributions in respect of an employed earner for any period during which the earner—
  - (a) is over the age of 16 but has not attained pensionable age;
  - (b) is not a married woman or widow who has made an election which is still operative that her liability in respect of primary Class 1 contributions shall be a liability to contribute at a reduced rate; and
  - (c) is a member of an appropriate personal pension scheme which is for the time being the earner's chosen scheme.
- (2) Regulations may make provision as to the manner in which, and time at which or period within which, minimum contributions are to be paid.
- (3) Subject to subsection (4) below, the Secretary of State shall pay minimum contributions in respect of an earner to the trustees or managers of the earner's chosen scheme.
- (4) In such circumstances as may be prescribed the Secretary of State shall pay minimum contributions to a prescribed person.
- (5) Where any of the conditions mentioned in subsections above ceases to be satisfied in the case of an earner in respect of whom the Secretary of State is required to pay minimum contributions, the duty of the Secretary of State to pay them shall cease as from a date determined in accordance with regulations.

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- (6) If the Secretary of State pays an amount by way of minimum contributions which he is not required to pay, he may recover it from the person to whom he paid it or from any person in respect of whom he paid it.
- (7) If he pays in respect of an earner an amount by way of minimum contributions which he is required to pay, but does not pay it to the trustees or managers of the earner's chosen scheme, he may recover it from the person to whom he paid it or from the earner.
- (8) A personal pension scheme is an appropriate scheme if there is in force a certificate (in this Act referred to as an "appropriate scheme certificate") issued by the Occupational Pensions Board in accordance with section 2 below that it is such a scheme.
- (9) Where an earner and the trustees or managers of an appropriate personal pension scheme have jointly given notice to the Secretary of State, in such manner and form and with such supporting evidence as may be prescribed—
  - (a) that the earner is, or intends to become, a member of the scheme and wishes minimum contributions in respect of him to be paid to the scheme;
  - (b) that the trustees or managers have agreed to accept him as a member of the scheme and to receive minimum contributions in respect of him,that scheme is the earner's chosen scheme as from a date determined in accordance with regulations and specified in the notice, unless at that date some other appropriate scheme is the earner's chosen scheme.
- (10) Either an earner or the trustees or managers of a scheme may cancel a notice under subsection (9) above by giving notice to that effect to the Secretary of State at such time and in such manner and form as may be prescribed.
- (11) Where a notice under subsection (10) above is given, the scheme ceases to be the earner's chosen scheme as from a date determined in accordance with regulations and specified in the notice.

## **2 Appropriate schemes**

- (1) Regulations shall provide—
  - (a) for the issue of appropriate scheme certificates by the Occupational Pensions Board;
  - (b) for the cancellation, variation or surrender of any such certificate, or the issue of an amended certificate, on any relevant change of circumstances; and
  - (c) that any question whether a personal pension scheme is or at any time was an appropriate scheme shall be determined by the Board.
- (2) A scheme can be an appropriate scheme only if the requirements imposed by or by virtue of Schedule 1 to this Act are satisfied in its case.
- (3) An appropriate scheme certificate may be withheld or cancelled by the Board if they consider that there are circumstances which make it inexpedient that it should be or continue to be an appropriate scheme, notwithstanding that they would otherwise issue such a certificate or not cancel such a certificate.
- (4) Where by or by virtue of any provision of Schedule 1 to this Act a scheme's being an appropriate scheme depends on the satisfaction of a particular condition, the scheme's continuing to be an appropriate 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 the cancellation or variation of an appropriate scheme certificate.

- (5) Except in prescribed circumstances, no appropriate scheme 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.
- (6) An appropriate scheme certificate for the time being in force in relation to a scheme shall be conclusive that the scheme is an appropriate scheme.
- (7) Every assignment of or charge on and every agreement to assign or charge protected rights or payments giving effect to protected rights shall be void.
- (8) On the bankruptcy of a person who is entitled to protected rights or a payment giving effect to protected rights, any protected rights or payment the assignment of which is or would be made void by subsection (7) above shall not pass to any trustee or person acting on behalf of his creditors.
- (9) In the application of this section to Scotland—
  - (a) references to assignment shall be construed as references to assignation and "assign" shall be construed accordingly; and
  - (b) the reference to a person's bankruptcy shall be construed as a reference to the sequestration of his estate or the appointment on his estate of a judicial factor under section 41 of the Solicitors (Scotland) Act 1980.

### **3 Amount of minimum contributions**

- (1) Subject to subsection (2) below, in relation to any tax week falling within a period for which the Secretary of State is required to pay minimum contributions in respect of an earner, the amount of those contributions shall be the aggregate of—
  - (a) the rebate percentage of so much of any earnings paid to or for the benefit of the earner with respect to any employment which is not contracted-out employment in relation to him as exceeds the lower earnings limit but does not exceed the upper earnings limit; and
  - (b) where the tax week ends before 6th April 1993, 2 per cent, of any such earnings or, if 2 per cent of any such earnings is less than £1.00 and the prescribed person applies within such time, in such form and manner and with such supporting evidence as may be prescribed, £1.00.
- (2) In relation to earnings paid with respect to any such employment as may be prescribed, subsection (1) above shall have effect as if the words "the aggregate of" and paragraph (b) and the word "and" immediately preceding it were omitted.
- (3) In subsection (1) above—
  - "employment" means employed earner's employment; and
  - "rebate percentage" means the percentage arrived at by adding—
    - (a) the percentage by which for the time being under section 27(2) of the Social Security Pensions Act 1975 the contracted-out percentage of primary Class 1 contributions is less than the normal percentage; and
    - (b) the percentage by which for the time being under that subsection the contracted-out percentage of secondary Class 1 contributions is less than the normal percentage.

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- (4) The references to the upper and lower earnings limits in subsection (1)(a) 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.
- (5) Regulations may provide—
- (a) that earnings shall 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, minimum contributions are payable in respect of them ;
  - (b) for the adjustment of the amount which would otherwise be payable by way of minimum contributions so as to avoid the payment of trivial or fractional amounts;
  - (c) for the intervals at which, for the purposes of minimum contributions, 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 (1)(b) above there were substituted references to such other sum as may be prescribed.

#### **4 Effect of payment of minimum contributions on rate of certain benefits**

- (1) Where for any period minimum contributions have been paid in respect of an earner, sections 16(2B), 28(7A) and 59 (1A) of the Social Security Act 1975 and section 29 of the Social Security Pensions Act 1975 shall have effect—
- (a) in relation to him, as from the date on which he reaches pensionable age, as if he were entitled to a guaranteed minimum pension at a prescribed weekly rate arising from that period;
  - (b) in prescribed circumstances, in relation to any widow or widower of the earner—
    - (i) if the earner died after reaching pensionable age, as if the widow or widower were entitled to a guaranteed minimum pension at a rate equal to one-half of the rate prescribed under paragraph (a) above; and
    - (ii) if the earner died before reaching pensionable age, as if the widow or widower were entitled to a guaranteed minimum pension at a prescribed weekly rate arising from that period.
- (2) The power to prescribe a rate conferred by subsection (1) (a) above includes power to prescribe a nil rate.

#### **5 Personal pension protected rights premium**

- (1) In the case of a personal pension scheme which is or has been an appropriate scheme the Occupational Pensions Board may, for the event of, or in connection with, its ceasing to be an appropriate scheme, approve any arrangements made or to be made in relation to the scheme, or for its purposes, for the preservation or transfer of protected rights under the scheme.
- (2) If the scheme ceases to be an appropriate scheme (whether by being wound up or otherwise) and the Board either—
- (a) have withdrawn their approval of previously approved arrangements relating to it; or
  - (b) have declined to approve arrangements relating to it,

the Board may issue a certificate to that effect.

- (3) A certificate issued under subsection (2)(a) or (b) above shall be cancelled by the Board if they subsequently approve the arrangements.
- (4) If the scheme ceases to be an appropriate scheme (whether by being wound up or otherwise), a state scheme premium shall be payable, except in prescribed circumstances—
  - (a) in respect of each earner whose protected rights under the scheme are not subject to approved arrangements; and
  - (b) in respect of each person who has become entitled to receive a pension under the scheme giving effect to protected rights which are not subject to approved arrangements.
- (5) A premium under subsection (4) above may be referred to as a " personal pension protected rights premium ".
- (6) If at any time regulations are in force by virtue of which section 52C of or paragraph 16 of Schedule 1A to the Social Security Pensions Act 1975 has effect in relation to personal pension schemes, subsection (4)(a) above shall have effect as if after the word " arrangements " there were inserted the words " and have not been disposed of so as to discharge the trustees or managers of the scheme under section 52C of or paragraph 16 of Schedule 1A to the Social Security Pensions Act 1975 ".
- (7) A personal pension protected rights premium shall be paid by the prescribed person, within the prescribed period, to the Secretary of State.
- (8) The amount of a personal pension protected rights premium payable in respect of any person shall be the cash equivalent of the protected rights in question, calculated and verified in the prescribed manner.
- (9) Where a personal pension protected rights premium is paid in respect of a person—
  - (a) the rights whose cash equivalent is included in the premium shall be extinguished; and
  - (b) section 4 above and section 29(2) and (2A) of the Social Security Pensions Act 1975 shall have effect in relation to that person and a widow or widower of that person as if any guaranteed minimum pension to which that person or any such widow or widower is treated as entitled under those provisions and which derives from the minimum contributions, minimum payments (within the meaning of the Social Security Pensions Act 1975) or transfer payment or payments from which those rights derive were reduced by the appropriate percentage.
- (10) In subsection (9) above " the appropriate percentage " means, subject to the following provisions of this section,
$$\frac{X}{Y} \times 100$$
, where—
  - (a) X = the amount of the premium together with, if the person in respect of whom it falls to be paid gives notice to the prescribed person within the prescribed period—
    - (i) the cash equivalent, calculated and verified in the prescribed manner and paid to the Secretary of State within the prescribed period, of any

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- other rights which he has under the scheme and specifies in the notice;  
and
- (ii) the amount of any voluntary contribution paid to the Secretary of State within the prescribed period by, or in respect of, the person concerned ; and
- (b)  $Y$  = the cost of providing any guaranteed minimum pension such as is mentioned in subsection (9) above.
- (11) If the appropriate percentage, as calculated under subsection (10) above, would fall between two whole numbers, it is to be taken to be the lower number.
- (12) If it would be over 100, it is to be taken to be 100.
- (13) The remainder after the reduction for which subsection (9) above provides—
- (a) if it would contain a fraction of 1p, is to be treated as the nearest lower whole number of pence ; and
- (b) if it would be less than a prescribed amount, is to be treated as nil.
- (14) The power to make regulations conferred by subsections (8) and (10) above includes power to provide that cash equivalents are to be calculated and verified in such manner as may be approved in particular cases—
- (a) by prescribed persons;
- (b) by persons with prescribed professional qualifications or experience; or
- (c) by persons approved by the Secretary of State,
- and power to provide that they shall be calculated and verified in accordance with guidance prepared by a prescribed body.
- (15) The cost of providing the appropriate percentage of the guaranteed minimum pension shall be certified by the Secretary of State, and in calculating and certifying it the Secretary of State—
- (a) shall apply whichever of the prescribed actuarial tables (as in force at the time when the scheme ceases to be appropriate) is applicable in accordance with the regulations prescribing the tables; and
- (b) may make such adjustments as he thinks necessary for avoiding fractional amounts.

### *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.
- (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.

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- (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 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);

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- (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 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

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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.”.

*Provisions applying to personal and occupational pension schemes*

**12 Voluntary contributions**

- (1) Except in such cases as may be prescribed, and except so far as is necessary to ensure that a personal or occupational pension scheme has, or may be expected to qualify for, tax-exemption or tax-approval, the rules of the scheme—
  - (a) must not prohibit, or allow any person to prohibit, the payment by a member of voluntary contributions;
  - (b) must not impose, or allow any person to impose, any upper or lower limit on the payment by a member of voluntary contributions;
  - (c) must secure that any voluntary contributions paid by a member are to be used by the trustees or managers of the scheme to provide additional benefits for or in respect of him ; and
  - (d) must secure that the value of the additional benefits is reasonable, having regard—
    - (i) to the amount of the voluntary contributions; and
    - (ii) to the value of the other benefits under the scheme;and the requirements specified in this subsection may be referred to as " the voluntary contributions requirements ".
- (2) Where the rules of a personal or occupational pension scheme do not comply with the voluntary contributions requirements it shall be the responsibility of—
  - (a) the trustees and managers of the scheme; or
  - (b) in the case of a public service pension scheme, the Minister, government department or other person or body concerned with its administration,to take such steps as are open to them for bringing the rules of the scheme into conformity with those requirements.
- (3) The Occupational Pensions Board may at any time, and shall if requested by any such persons as are mentioned in subsection (2) above, advise whether the rules of a scheme do or do not in the Board's opinion conform with the voluntary contributions requirements and, where the Board advise that the rules do not conform, they shall indicate what steps they consider should be taken with a view to securing conformity.

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

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- (4) On application made to them in respect of a personal or occupational pension scheme (other than a public service 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 rules of the scheme conform with the voluntary contributions requirements.
- (5) The persons competent to make an application under this section 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) in the case of an occupational pension scheme, 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 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.
- (6) The Board may at any time of their own motion issue in respect of a scheme which has come to their notice any determination which they could issue in the case of that scheme on an application made to them under subsection (4) above.
- (7) If the Occupational Pensions Board determine under subsection (4) or (6) above that the rules of a scheme do not conform with the voluntary contributions 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 in relation to an occupational pension scheme 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 purpose above-mentioned.
- (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 subsection (4) or (6) above, 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)(b) 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 of 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) above may operate retrospectively ; and in this subsection " retrospectively " means with effect from the 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 coming into operation of this section.
- (11) In section 64(3) of the Social Security Act 1973 (modification and winding up by order of Occupational Pensions Board) the following paragraph shall be inserted after paragraph (f)—
  - “(g) to comply with the voluntary contributions requirements specified in subsection (1) of section 12 of the Social Security Act 1986, but without prejudice to anything in subsections (2) to (10) of that section.”.

### **13 Regulations as to form and content of advertisements**

Regulations may be made relating to the form and content of advertisements and such other material as may be prescribed issued by or on behalf of the trustees or managers of a personal or occupational pension scheme for the purposes of the scheme.

### **14 Information**

Regulations may require the furnishing by prescribed persons to the Secretary of State or the Occupational Pensions Board of such information as he or they require for the purposes of the preceding provisions of this Part of this Act.

### **15 Terms of contracts of service or schemes restricting choice to be void**

- (1) Subject to such exceptions as may be prescribed—
  - (a) any term of a contract of a service (whenever made) or any rule of a personal or occupational pension scheme to the effect that an employed earner must be a member of a personal or occupational pension scheme, of a particular personal or occupational pension scheme or of one or other of a number of particular personal or occupational pension schemes shall be void ; and
  - (b) any such term or rule to the effect that contributions shall be paid by or in respect of an employed earner to a particular personal or occupational pension scheme of which the earner is not a member, or to one or other of a number of personal or occupational pension schemes of none of which he is a member, shall be unenforceable for so long as he is not a member of the scheme or any of the schemes.
- (2) Subsection (1) above shall not be construed so as to have the effect that an employer is required, when he would not otherwise be—
  - (a) to make contributions to a personal or occupational pension scheme; or
  - (b) to increase an employed earner's pay in lieu of making contributions to a personal or occupational pension scheme.

**16 Actuarial tables**

- (1) Regulations prescribing actuarial tables for the purposes of any of the provisions to which this section applies—
  - (a) shall be made only after consultation with the Government Actuary; and
  - (b) shall not be made unless a draft of them has been laid before Parliament and approved by a resolution of each House.
- (2) This section applies—
  - (a) to sections 44, 44ZA, 44A and 45 of the Social Security Pensions Act 1975 ; and
  - (b) to section 5 above.
- (3) The tables—
  - (a) shall embody whatever appears to the Secretary of State to be the best practical estimate of the average cost, expressed in actuarial terms and relative to a given period, of making such provision as is mentioned in section 44(5)(a) or (b), 44ZA(9)(b), 44A(3) or 45(2) of the Social Security Pensions Act 1975 or in section 5(10)(b) above, as the case may be; and
  - (b) shall assume for any period an average yield on investments which is not less than the average increase during that period in the general level of earnings obtaining in Great Britain,

but the regulations may provide for them to be adjusted according to whatever is from time to time the actual yield on prescribed investments or the average yield, as shown in prescribed published indices, on prescribed classes of investments.
- (4) The Secretary of State may from time to time, and shall when required by subsection (6) below, lay before each House of Parliament—
  - (a) a report by the Government Actuary on any changes in the factors affecting any of the actuarial tables prescribed for the purposes of any of the provisions to which this section applies (including changes affecting adjustments under the regulations); and
  - (b) a report by the Secretary of State stating whether he considers that the regulations ought to be altered in view of the Government Actuary's report and, if so, what alterations he proposes.
- (5) The changes referred to in subsection (4) (a) above are, in the case of the first report under that paragraph, changes since the last report under section 46(3)(a) of the Social Security Pensions Act 1975 and, in the case of a subsequent report under this section, changes since the preparation of the last such report.
- (6) The Secretary of State shall lay the first report under this section not later than 6th April 1987 and subsequent reports at intervals of not more than five years.
- (7) If in a report under this section the Secretary of State proposes alterations in the regulations, he shall prepare and lay before each House of Parliament with the report draft regulations giving effect to the regulations and to be in force—
  - (a) from the beginning of such tax year as may be specified in the regulations not earlier than the second tax year after that in which the regulations are made ; or
  - (b) where it appears to him to be expedient for reasons of urgency, an earlier date not earlier than the date on which the regulations are made.
- (8) If the draft regulations are approved by resolution of each House, the Secretary of State shall make the regulations in the form of the draft.



## 17 General power to modify statutory provisions

- (1) Regulations may provide that any provision which is contained in the Social Security Act 1973 or the Social Security Acts 1975 to 1986, other than a provision contained in this Part of this Act, and which relates to occupational pension schemes—
  - (a) shall have effect in relation to personal pension schemes subject to prescribed modifications;
  - (b) shall have effect subject to such other modifications as the Secretary of State may consider necessary or expedient in consequence of this Part of this Act.
- (2) Regulations may provide that any provision contained in an Act to which this subsection applies shall have effect subject to such modifications as the Secretary of State may consider necessary or expedient in consequence of this Part of this Act or in consequence of any corresponding enactment extending to Northern Ireland.
- (3) The Acts to which subsection (2) above applies are—
  - (a) the Fire Services Act 1947;
  - (b) the Sheriffs' Pensions (Scotland) Act 1961;
  - (c) the Superannuation Act 1972;
  - (d) the Parliamentary and other Pensions Act 1972;
  - (e) the Police Pensions Act 1976 ;
  - (f) the Parliamentary Pensions Act 1978 ;
  - (g) the Judicial Pensions Act 1981.

### *State earnings-related pension scheme*

## 18 Additional pensions

- (1) In any enactment or instrument made under an enactment—
  - (a) a reference to a basic pension shall be substituted for any reference to the basic component of a long-term benefit; and
  - (b) a reference to an additional pension shall be substituted for any reference to an additional component of such a benefit.
- (2) In subsection (2) of section 6 of the Social Security Pensions Act 1975 (rate of Category A retirement pension) the words " for a pensioner who attained pensionable age in a tax year before 6th April 1999 " shall be inserted before the word " shall " .
- (3) The following subsections shall be inserted after that subsection—
  - “(2A) The additional pension for a pensioner who attained pensionable age in a tax year after 5th April 1999 shall be—
    - (a) in relation to any surpluses in the pensioner's earnings factors for the tax years in the period beginning with the tax year 1978-79 and ending with the tax year 1987-88, the weekly equivalent of
$$\frac{25}{N}$$
per cent, of the amount of those surpluses; and
    - (b) in relation to any surpluses in the pensioner's earnings factors in a tax year after the tax year 1987-88, the weekly equivalent of the relevant

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percentage of the amount of those surpluses; and in this paragraph "relevant percentage" means—

- (i) where the pensioner attained pensionable age in the tax year 2009-10 or any subsequent year,

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

;

- (ii) where the pensioner attained pensionable age in a tax year falling within the period commencing with the tax year 1999-2000 and ending with the tax year 2008-2009,

$$\frac{20+X}{N}$$

(2B) In this section—

X=0.5 for each tax year by which the tax year in which the pensioner attained pensionable age precedes the tax year 2009-2010 ; and

N=the number of tax years in the pensioner's working life which fall after 5th April 1978 ;

and regulations may direct that in prescribed cases or classes of cases any tax year shall be disregarded for the purpose of calculating N, if it is a tax year after 5th April 1978 in which the pensioner—

- (a) was credited with contributions or earnings under the principal Act by virtue of regulations under section 13(4) of that Act (credits to enable a person to satisfy contribution conditions); or
- (b) was precluded from regular employment by responsibilities at home; or
- (c) in prescribed circumstances, would have been treated as falling within paragraph (a) or (b) above,

but not so as to reduce the number of years below 20.”.

- (4) In subsection (3) of that section, after " (2)" there shall be inserted " or (2A) ".
- (5) For the purpose of determining the additional pension falling to be calculated under section 6 of the Social Security Pensions Act 1975 by virtue of section 7, 13 or 16(4) of that Act in a case where the deceased spouse died under pensionable age, the following definition shall be substituted for the definition of " N " in section 6(2B)—
- “N = the number of tax years which begin after 5th April 1978 and end before the date when entitlement to the additional pension commences, except that where—
- (a) in a case in which the deceased spouse was a man, that number would be greater than 49 ; or
  - (b) in a case in which the deceased spouse was a woman, that number would be greater than 44,
- N = 49 or 44, as the case may be ;”.
- (6) For the purpose of determining the additional pension falling to be calculated under section 6 of that Act by virtue of section 14 of that Act (invalidity pension for persons

under pensionable age), the following definition shall be substituted for the definition of "N" in section 6(2B)—

“N = the number of tax years which begin after 5th April 1978 and end before the first day of entitlement to the additional pension in the period of interruption of employment in which that day falls, except that where—

- (a) in a case in which the person entitled to the pension is a man, that number would be greater than 49; or
- (b) in a case in which the person so entitled is a woman, that number would be greater than 44,

N = 49 or 44, as the case may be;”.

## 19 Additional pensions-supplementary

(1) The additional pension falling to be calculated under section 6 of the Social Security Pensions Act 1975 by virtue of any of the following provisions—

- (a) section 7 (rate of widow's Category B retirement pension) ;
- (b) section 8 (Category B retirement pension for widower);
- (c) section 13 (rate of widowed mother's allowance and widow's pension); and
- (d) section 16(4) (invalidity pension for widowers),

shall be one-half of the amount so calculated if the deceased spouse died after 5th April 2000.

(2) In paragraph 4 of Schedule 1 to that Act—

- (a) the words " Subject to sub-paragraph (2A) below, where " shall be substituted for the word " Where ", in sub-paragraphs (1) and (2); and
- (b) the following sub-paragraph shall be inserted after sub-paragraph (2)—

“(2A) If a married person dies after 5th April 2000, the rate of the retirement pension for that person's widow or widower shall be increased by an amount equivalent to the sum of—

- (a) the increase in the basic pension to which the deceased spouse was entitled ; and
- (b) one-half of the increase in the additional pension.”.

(3) In sub-paragraph (1) of paragraph 4A of that Schedule after the word "increased" there shall be inserted the words " , subject to sub-paragraph (1A) below, ".

(4) The following sub-paragraph shall be inserted after that sub-paragraph—

“(1A) Where the husband dies after 5th April 2000, sub-paragraph (1) above shall have effect in relation to his widow as if for the words from " the following amounts " onwards there were substituted the words " the following amounts—

- (i) one-half of the appropriate amount after it has been reduced by the amount of any increases under section 37A of this Act; and
- (ii) one-half of any increase to which he had been entitled under this paragraph.”.

(5) In sub-paragraph (2), after the word "increased" there shall be inserted the words " , subject to sub-paragraph (2A) below, ".

(6) The following sub-paragraph shall be inserted after that sub-paragraph—

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- “(2A) Where the wife dies after 5th April 1989, sub-paragraph (2) above shall have effect as if for the words from “an amount”, in the first place where those words occur, to the end there were substituted—
- (a) if she dies before 6th April 2000, the words “an amount equal to the sum of—
    - (i) that increase, so far as attributable to employment before 6th April 1988 ;
    - (ii) one-half of that increase, so far as attributable to employment after 5th April 1988 ;
    - (iii) the appropriate amount reduced by the amount of any increases under section 37A of this Act; and
    - (iv) any increase to which she had been entitled under this paragraph.”; and
  - (b) if she dies after 5th April 2000, the words “an amount equal to the sum of—
    - (i) one-half of that increase so far as attributable to employment before 6th April 1988;
    - (ii) one-half of the appropriate amount after it has been reduced by the amount of any increases under section 37A of this Act; and
    - (iii) one-half of any increase to which she had been entitled under this paragraph.””.