



Pension Schemes Act 1993

1993 CHAPTER 48

PART III

CERTIFICATION OF PENSION SCHEMES AND EFFECTS ON MEMBERS' STATE SCHEME RIGHTS AND DUTIES

CHAPTER I

CERTIFICATION

Cancellation, variation, surrender and refusal of certificates

34 Cancellation, variation, surrender and refusal of certificates

- (1) Regulations shall provide for the cancellation, variation or surrender of any contracting-out certificate or appropriate scheme certificate, or the issue of an amended certificate—
 - (a) in the case of a contracting-out certificate, on any change of circumstances affecting the treatment of an employment as contracted-out employment; and
 - (b) in the case of an appropriate scheme certificate, on any relevant change of circumstances.
- (2) Regulations may enable the Board to cancel or vary a contracting-out certificate where—
 - (a) they have reason to suppose that any employment to which it relates ought not to be treated as contracted-out employment in accordance with the certificate; and
 - (b) the employer does not show that it ought to be so treated.
- (3) Where—

- (a) by or by virtue of any provision of this Part the contracting-out of a scheme in relation to an employment depends on the satisfaction of a particular condition, or
 - (b) by or by virtue of any provision of sections 26 to 32 a scheme's being an appropriate scheme depends on the satisfaction of a particular condition,
- the continued contracting-out of the scheme or, as the case may be, 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 the contracting-out or appropriate scheme certificate.
- (4) A contracting-out certificate in respect of any employment may be withheld or cancelled by the Board if they consider that there are circumstances which make it inexpedient that the employment should be or, as the case may be, continue to be, contracted-out employment by reference to the scheme, notwithstanding that the relevant scheme is one that they would otherwise treat as proper to be contracted-out in relation to all earners in that employment.
 - (5) An appropriate scheme certificate may be withheld or cancelled by the Board if they consider that there are circumstances which make it inexpedient that the scheme should be or continue to be an appropriate scheme, notwithstanding that they would otherwise issue such a certificate or not cancel such a certificate.
 - (6) Without prejudice to their powers apart from this subsection, the Board may withhold or cancel a contracting-out certificate in respect of a scheme if they consider that the rules of the scheme are such that persons over particular ages may be prevented from participating in the scheme.
 - (7) Without prejudice to the previous provisions of this section—
 - (a) non-compliance with any such condition as is mentioned in subsection (1) of section 25 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; and
 - (b) non-compliance with any such condition as is mentioned in subsection (2) of that section shall be a ground on which the Board may cancel a contracting-out certificate issued in respect of any such employment.
 - (8) Except in prescribed circumstances, no cancellation, variation or surrender of a contracting-out certificate or appropriate scheme certificate shall have effect from a date earlier than that on which the cancellation, variation or surrender is made.

35 Surrender and cancellation of contracting-out certificates: issue of further certificates

- (1) This section applies in any case where—
 - (a) a contracting-out certificate (“the first certificate”) has been surrendered by an employer or cancelled by the Board; and
 - (b) at any time before the end of the period of 12 months beginning with the date of the surrender or cancellation, that or any connected employer makes an election under section 11 in respect of any employment which was specified by virtue of section 7(2)(a) in the first certificate, with a view to the issue of a further contracting-out certificate.

- (2) This section applies whether or not the scheme specified in the first certificate in relation to the employment concerned is the same as the scheme which would be specified in the further certificate if it were issued.
- (3) The Board shall not give effect to the election referred to in subsection (1) by issuing a further certificate unless they consider that, in all the circumstances of the case, it would be reasonable to do so.
- (4) Regulations may make such supplemental provision in relation to cases falling within this section as the Secretary of State considers necessary or expedient.
- (5) For the purposes of subsection (1)—
 - (a) an employment (“the second employment”) in respect of which an election of the kind referred to in subsection (1)(b) has been made; and
 - (b) an employment (“the first employment”) which was specified by virtue of section 7(2)(a) in the first certificate,shall be treated as one employment if, in the opinion of the Board—
 - (i) they are substantially the same, however described; or
 - (ii) the first employment falls wholly or partly within the description of the second employment or the second employment falls wholly or partly within the description of the first employment.
- (6) Regulations shall prescribe the cases in which employers are to be treated as connected for the purposes of this section.

36 Surrender and cancellation of contracting-out certificates: cancellation of further certificates

- (1) This section applies in any case where—
 - (a) a contracting-out certificate (“the first certificate”) has been surrendered by an employer or cancelled by the Board;
 - (b) a further contracting-out certificate (“the further certificate”) has been issued, after the surrender or cancellation of the first certificate but before the end of the period of 12 months beginning with the date of the surrender or cancellation, in respect of any employment which was specified by virtue of section 7(2)(a) in the first certificate; and
 - (c) the Board have formed the opinion that had they been aware of all the circumstances of the case at the time when the further certificate was issued they would have been prevented by section 35(3) from issuing it.
- (2) This section applies whether or not the scheme specified in the first certificate in relation to the employment concerned is the same as the scheme specified in the further certificate.
- (3) The Board may, before the end of the period of 12 months beginning with the date on which the further certificate was issued, cancel that certificate.
- (4) Where a contracting-out certificate is cancelled under subsection (3) the provisions of this Act and of any regulations and orders made under it shall have effect as if the certificate had never been issued.
- (5) Regulations may make such supplemental provision in relation to cases falling within this section as the Secretary of State considers necessary or expedient.

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

- (6) Without prejudice to subsection (5), regulations may make provision, in relation to any case in which the Board have cancelled a contracting-out certificate under subsection (3), preventing the recovery by the employer concerned (whether by deduction from emoluments or otherwise) of such arrears which he is required to pay to the Secretary of State in respect of an earner's liability under section 6(3) of the Social Security Contributions and Benefits Act 1992 as may be prescribed.
- (7) For the purposes of subsection (1)—
- (a) an employment (“the second employment”) in respect of which a further contracting-out certificate of the kind referred to in subsection (1)(b) has been issued; and
 - (b) an employment (“the first employment”) which was specified by virtue of section 7(2)(a) in the first certificate,
- shall be treated as one employment if, in the opinion of the Board—
- (i) they are substantially the same, however described; or
 - (ii) the first employment falls wholly or partly within the description of the second employment or the second employment falls wholly or partly within the description of the first employment.