Pension Schemes (Northern Ireland) Act 1993

1993 CHAPTER 49

PART III

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

CHAPTER I

CERTIFICATION

Preliminary

3 Issue of contracting-out and appropriate scheme certificates

(1) Regulations shall provide for the Board to issue certificates stating—

(a) that the employment of an earner in employed earner's employment is contracted-out employment by reference to an occupational pension scheme; or

(b) that a personal pension scheme is an appropriate scheme;

and in this Act a certificate under paragraph (a) is referred to as "a contracting-out certificate" and a certificate under paragraph (b) as "an appropriate scheme certificate".

(2) The regulations shall provide for contracting-out certificates to be issued to employers and to specify—

(a) the employments which are to be treated, either generally or in relation to any specified description of earners, as contracted-out employments; and

(b) the occupational pension schemes by reference to which those employments are to be so treated.

(3) An occupational pension scheme is a contracted-out scheme in relation to an earner's employment if it is for the time being specified in a contracting-out certificate in relation to that employment; and references in this Act to the contracting-out of a scheme are references to its inclusion in such a certificate.

(4) A personal pension scheme is an appropriate scheme if there is in force an appropriate scheme certificate issued by the Board in accordance with this Chapter that it is such a scheme.

(5) 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.

(6) Regulations shall provide that any question whether a personal pension scheme is or at any time was an appropriate scheme shall be determined by the Board.

(7) Except in prescribed circumstances, no contracting-out certificate or appropriate scheme certificate shall have effect from a date earlier than that on which the certificate is issued.

4 Meaning of "contracted-out employment", "guaranteed minimum pension" and "minimum payment"

(1) The employment of an earner in employed earner's employment is "contracted-out employment" in relation to him during any period in which he is under pensionable age and—

(a) either—

(i) his service in the employment is for the time being service which qualifies him for a guaranteed minimum pension provided by an occupational pension scheme, or

(ii) his employer makes minimum payments in respect of his employment to an occupational pension scheme which is contracted-out by virtue of satisfying section 5(3) (in this Act referred to as "a money purchase contracted-out scheme"); and

(b) there is in force a contracting-out certificate issued by the Board in accordance with this Chapter stating that the employment is contracted-out employment by reference to the scheme.

(2) In this Act—

"guaranteed minimum pension" means any pension which is provided by an occupational pension scheme in accordance with the requirements of sections 9 and 13 to the extent to which its weekly rate is equal to the earner's or, as the case may be, the earner's widow's or widower's guaranteed minimum as determined for the purposes of those sections respectively; and

"minimum payment", in relation to an earner's employment in any tax week, means the rebate percentage of so much of the earnings paid to or for the benefit of the earner in that week as exceeds the current lower earnings limit but not the current upper earnings limit (or the prescribed equivalents if he is paid otherwise than weekly);

and for the purposes of this subsection "rebate percentage" means the sum of the percentages for the time being mentioned in paragraphs (a) and (b) of section 37(1).

(3) Regulations may make provision—

(a) for the manner in which, and time at which or period within which, minimum payments are to be made;

(b) for the recovery by employers of amounts in respect of the whole or part of minimum payments by deduction from earnings;

(c) for calculating the amounts payable according to a scale prepared from time to time by the Department or otherwise adjusting them so as to avoid fractional amounts or otherwise facilitate computation;

(d) for requiring that the liability in respect of a payment made in a tax week, in so far as the liability depends on any conditions as to a person's age on retirement, shall be determined as at the beginning of the week or as at the end of it;

(e) for securing that liability is not avoided or reduced by the payment of earnings being made in accordance with any practice which is abnormal for the employment in respect of which the earnings are paid;

(f) without prejudice to paragraph (e), for enabling the Department, where it is satisfied as to the existence of any practice in respect of the payment of earnings whereby the incidence of minimum payments is avoided or reduced by means of irregular or unequal payments of earnings, to give directions for securing that minimum payments are payable as if that practice were not followed;

(g) for the intervals at which, for the purposes of minimum payments, payments of earnings are to be treated as made; and

(h) 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.

(4) Any contracting-out certificate for the time being in force in respect of an employed earner's employment shall be conclusive that the employment is contracted-out employment.

(5) Regulations shall provide for the determination by the Board of any question whether an employment is to be treated as contracted-out employment or as to the persons in relation to whom, or the period for which, an employment is to be so treated.

General requirements for certification

5 Requirements for certification of schemes: general

(1) Subject to subsection (4), an occupational pension scheme can be contracted-out in relation to an earner's employment only if it satisfies subsection (2) or (3).

(2) An occupational pension scheme satisfies this subsection only if—

(a) it complies in all respects with sections 9 to 20 or, in such cases or classes of case as may be prescribed, with those sections as modified by regulations; and

(b) the rules of the scheme applying to guaranteed minimum pensions are framed so as to comply with the relevant requirements.

(3) An occupational pension scheme satisfies this subsection only if—

(a) the requirements imposed by or by virtue of sections 18 and 22 to 28 and such other requirements as may be prescribed are satisfied in its case; and

(b) the rules of the scheme applying to protected rights are framed so as to comply with the relevant requirements.

(4) Where there are two or more occupational pension schemes in force in relation to an earner's employment, none of which can by itself be a contracted-out scheme, the Board may, if they think fit, treat them for contracting-out purposes as a single scheme.

(5) A personal pension scheme can be an appropriate scheme only if—

(a) the requirements imposed by or by virtue of sections 22 to 28 and such other requirements as may be prescribed are satisfied in its case; and

(b) the rules of the scheme applying to protected rights are framed so as to comply with the relevant requirements.

(6) In this section "relevant requirements" means—

(a) the requirements of any regulations prescribing the form and content of rules of contracted-out or, as the case may be, appropriate schemes; and

(b) such other requirements as to form and content (not inconsistent with regulations) as may be imposed by the Board as a condition of contracting-out or, as the case may be, of being an appropriate scheme, either generally or in relation to a particular scheme.

6 Protected rights and money purchase benefits

(1) Subject to subsections (2) and (3), the protected rights of a member of a pension scheme are his rights to money purchase benefits under the scheme.

(2) If the rules of an occupational pension scheme so provide, a member's protected rights are—

(a) his rights under the scheme which derive from the payment of minimum payments together with any payments by the Department to the scheme under Article 9 of the Social Security (Northern Ireland) Order 1986 in respect of the member;

(b) any rights of the member to money purchase benefits which derive from protected rights under another occupational pension scheme or under a personal pension scheme which have been the subject of a transfer payment; and

(c) such other rights as may be prescribed.

(3) If the rules of a personal pension scheme so provide, a member's protected rights are—

(a) his rights under the scheme which derive from any payment of minimum contributions to the scheme; and

(b) any rights of his to money purchase benefits which derive from protected rights under another personal pension scheme or protected rights under an occupational pension scheme which have been the subject of a transfer payment; and

(c) such other rights as may be prescribed.

7 Elections as to employments covered by contracting-out certificates

(1) Subject to the provisions of this Part, an employment otherwise satisfying the conditions for inclusion in a contracting-out certificate shall be so included if and so long as the employer so elects and not otherwise.

(2) Subject to subsections (3) and (4), an election may be so made, and an employment so included, either generally or in relation only to a particular description of earners.

(3) Except in such cases as may be prescribed, an employer shall not, in making or abstaining from making any election under this section, discriminate between different earners on any grounds other than the nature of their employment.

(4) If the Board consider that an employer is contravening subsection (3) in relation to any scheme, they may—
  (a) refuse to give effect to any election made by him in relation to that scheme; or
  (b) cancel any contracting-out certificate held by him in respect of it.

(5) Regulations may make provision—
  (a) for regulating the manner in which an employer is to make an election with a view to the issue, variation or surrender of a contracting-out certificate;
  (b) for requiring an employer to give a notice of his intentions in respect of making or abstaining from making any such election in relation to any existing or proposed scheme—
    (i) to employees in any employment to which the scheme applies or to which it is proposed that it should apply;
    (ii) to any independent trade union recognised to any extent for the purpose of collective bargaining in relation to those employees;
    (iii) to the trustees and managers of the scheme; and
    (iv) to such other persons as may be prescribed;
  (c) for requiring an employer, in connection with any such notice, to furnish such information as may be prescribed and to undertake such consultations as may be prescribed with any such trade union as is mentioned in paragraph (b)(ii);
  (d) for empowering the Board to refuse to give effect to an election made by an employer unless they are satisfied that he has complied with the requirements of the regulations;
  (e) for referring to an industrial tribunal any question—
    (i) whether an organisation is such a trade union as is mentioned in paragraph (b)(ii), or
    (ii) whether the requirements of the regulations as to consultation have been complied with.

8 Determination of basis on which scheme is contracted-out

(1) A contracting-out certificate shall state whether the scheme is contracted-out by virtue of subsection (2) or (3) of section 5.

(2) Where a scheme satisfies both of those subsections the employers, in their application for a certificate, shall specify one of those subsections as the subsection by virtue of which they wish the scheme to be contracted-out.

(3) A scheme which has been contracted-out by virtue of one of those subsections may not become contracted-out by reason of the other except in prescribed circumstances.

Requirements for certification of occupational pension schemes providing guaranteed minimum pensions

9 Minimum pensions for earners

(1) Subject to the provisions of this Part, the scheme must—

(a) provide for the earner to be entitled to a pension under the scheme if he attains pensionable age; and

(b) contain a rule to the effect that the weekly rate of the pension will be not less than his guaranteed minimum (if any) under sections 10 to 12.

(2) In the case of an earner who is a married woman or widow who is liable to pay primary Class 1 contributions at a reduced rate by virtue of section 19(4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, subject to the provisions of this Part, the scheme must—

(a) provide for her to be entitled to a pension under the scheme if she attains pensionable age and does not have a guaranteed minimum under sections 10 to 12; and

(b) satisfy such other conditions as may be prescribed.

(3) Subject to subsection (4), 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.

(4) Subject to subsection (5), 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.

(5) The scheme must provide for the earner's consent to be required—

(a) for any such postponement by virtue of employment to which the scheme does not relate; and

(b) for any such postponement after the expiration of five years from the date on which he attains pensionable age.

(6) 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.

(7) The benefits referred to in subsection (6) 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 (6) excludes only so much of those benefits as had to be provided in order that the employment should for that period be treated as non-participating.

(8) In this section "the former legislation" means Part III of the National Insurance Act (Northern Ireland) 1966 and the previous corresponding enactments.

10 Earner's guaranteed minimum

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

(2) Subject to section 11(1), the guaranteed minimum shall be the weekly equivalent of an amount equal to the appropriate percentage of the total of the earner's earnings factors for the relevant years, so far as derived from earnings such as are mentioned in subsection (1) upon which primary Class 1 contributions have been paid or treated as paid.

(3) In determining the guaranteed minimum in a case where—

(a) earnings such as are mentioned in subsection (1) have been paid to a married woman or widow who is liable to pay primary Class 1 contributions at a reduced rate by virtue of section 19(4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, and

(b) the tax week in which those earnings are paid falls in the tax year 1991-92 or any subsequent tax year,

the married woman or widow shall be treated for the purposes of this section as having such earnings factors derived from those earnings as she would have had if primary Class 1 contributions had been payable, and paid, upon them otherwise than at a reduced rate.

(4) Where the amount of a person's earnings for any period is relevant for any purpose of subsection (1) or (2) and the Department is satisfied that records of those earnings have not been maintained or retained or are otherwise unobtainable, it may for that purpose—

(a) compute, in such manner as it thinks fit, an amount which shall be regarded as the amount of those earnings; or

(b) take their amount to be such sum as it may specify in the particular case.

(5) In subsection (2) 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, 1.25 per cent.;

(ii) in any other case 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 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.

(6) Regulations may prescribe rules as to the circumstances in which earnings factors are derived from earnings for the purposes of subsection (2).

(7) For the purposes of subsection (2) the weekly equivalent of the amount there mentioned shall be calculated by dividing that amount by 52.

(8) In this section "relevant year" means any tax year in the earner's working life (not being earlier than the tax year 1978-79).

11 Increase of guaranteed minimum where commencement of guaranteed minimum pension postponed

(1) Where in accordance with section 9(4) the commencement of an earner's guaranteed minimum pension is postponed for any period and there are at least seven complete weeks in that period, his guaranteed minimum in relation to the scheme shall, for each complete week in that period, be increased by one-seventh 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.

(2) In subsection (1) "week" means any period of seven consecutive days.

(3) Where an earner's guaranteed minimum pension is increased under subsection (1), 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.

(4) Where one or more orders have come into operation under section 105 during the period for which the commencement of a guaranteed minimum pension is postponed, the amount of the guaranteed minimum pension for any week in that period shall be determined as if the order or orders had come into operation before the beginning of the period.

12 Revaluation of earnings factors for purposes of s. 10: early leavers, etc

(1) Subject to subsection (2), for the purpose of section 10(2) the earner's earnings factor for any relevant year (so far as derived as mentioned in that section) shall be taken to be that factor as increased by the same percentage as that prescribed for the increase of that factor by the last order under Article 23 of the Social Security Pensions (Northern Ireland) Order 1975 or section 130 of the Social Security Administration (Northern Ireland) Act 1992 to come into operation before the end of the final relevant year.

(2) 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 the final relevant year shall be determined for the purposes of section 10(2) by reference to the last such order to come into operation before the end of the tax year in which that service ends ("the last service tax year").

(3) Where a scheme provides as mentioned in subsection (2) the scheme shall provide for the weekly equivalent mentioned in section 10(2) to be increased by at least—

(a) 5 per cent. compound for each relevant year after the last service tax year; or

(b) the amount by which an earnings factor for that year equal to that weekly equivalent would be increased by the last order under Article 23 of the Social Security Pensions (Northern Ireland) Order 1975 or section 130 of the Social Security Administration (Northern Ireland) Act 1992 to come into operation before the end of the final relevant year,

whichever makes the lesser increase; and the provisions included by virtue of this subsection may also conform with such additional requirements as may be prescribed for the purposes of section 51(5).

(4) Except in such cases or classes of case as may be prescribed, the provision made by virtue of subsections (2) and (3) must be the same for all members of the scheme.

(5) In this section—

"relevant year" has the meaning given in section 10(8), and

"final relevant year" means the last tax year which is a relevant year in relation to the earner.

13 Minimum pensions for widows and widowers

(1) Subject to the provisions of this Part, the scheme must provide that if the earner dies leaving a widow or widower (whether before or after attaining pensionable age), the widow or widower will be entitled to a guaranteed minimum pension under the scheme.

(2) The scheme must contain a rule to the effect that—

(a) if the earner is a man who has a guaranteed minimum under section 10, the weekly rate of the widow's pension will be not less than the widow's guaranteed minimum;

(b) if the earner is a woman who has a guaranteed minimum under that section, the weekly rate of the widower's pension will be not less than the widower's guaranteed minimum.

(3) The widow's guaranteed minimum shall be half that of the earner.

(4) The widower's guaranteed minimum 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.

(5) The scheme must provide for the widow's pension to be payable to her 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 43(1) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (persons entitled to more than one retirement pension).

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

(7) The trustees or managers of the scheme shall supply to the Department any such information as it may require relating to the payment of pensions under the scheme to widowers.

14 Treatment of insignificant amounts

(1) Where an amount is required to be calculated in accordance with the provisions of section 10(7), 11(1) or 13(2), (3) or (4) and, apart from this subsection, the amount so calculated is less than 0.5p, then, notwithstanding any other provision of this Act, that amount shall be taken to be zero, and other amounts so calculated shall be rounded to the nearest whole penny, taking 0.5p as nearest to the next whole penny above.

(2) Where a guaranteed minimum pension is attributable in part to earnings factors for the period before the tax year 1988-89 and in part to earnings factors for that tax year or for that tax year and subsequent tax years, the pension shall be calculated by—

(a) applying subsection (1) separately to the amount attributable to the period before the tax year 1988-89 and to the amount attributable to that and subsequent tax years, and

(b) aggregating the two amounts so calculated.

15 Discharge of liability where guaranteed minimum pensions secured by insurance policies or annuity contracts

(1) A transaction to which this section applies discharges the trustees or managers of an occupational pension scheme from their liability to provide for or in respect of any person guaranteed minimum pensions—

(a) if it is carried out not earlier than the time when that person's pensionable service terminates; and

(b) if and to the extent that it results in guaranteed minimum pensions for or in respect of that person being appropriately secured; and

(c) if and to the extent that the requirements set out in paragraph (a), (b) or (c) of subsection (5) are satisfied.

(2) This section applies to the following transactions—

(a) the taking out of a policy of insurance or a number of such policies;

(b) the entry into an annuity contract or a number of such contracts;

(c) the transfer of the benefit of such a policy or policies or such a contract or contracts.

(3) In this section "appropriately secured" means secured by an appropriate policy of insurance or an appropriate annuity contract, or by more than one such policy or contract.

(4) A policy of insurance or annuity contract is appropriate for the purposes of this section if—

(a) the insurance company with which it is or was taken out or entered into—

(i) is, or was at the relevant time, carrying on ordinary long-term insurance business in the United Kingdom or any other member State; and

(ii) satisfies, or at the relevant time satisfied, prescribed requirements; and

(b) it may not be assigned or surrendered except on conditions which satisfy such requirements as may be prescribed; and

(c) it contains or is endorsed with terms whose effect is that the amount secured by it may not be commuted except on conditions which satisfy such requirements as may be prescribed; and

(d) it satisfies such other requirements as may be prescribed.

(5) The requirements referred to in subsection (1) are—

(a) that the arrangement for securing the amount by means of the policy or contract was made—

(i) at the written request of the earner or, if the earner has died, of the earner's widow or widower; or

(ii) with the consent of the earner or the widow or widower given in writing in a prescribed form;

(b) that—

(i) the case is one such as is mentioned in section 92(2); and

(ii) the policy or contract only secures guaranteed minimum pensions;

(c) that—

(i) the case is not one such as is mentioned in section 92(2); and

(ii) such conditions as may be prescribed are satisfied.

(6) In subsection (4)(a), "the relevant time" means the time when the policy of insurance was taken out or the annuity contract was entered into or, as the case may be, when the benefit of the policy or contract was transferred.

(7) In this section "ordinary long-term insurance business" has the same meaning as in the Insurance Companies Act 1982.

16 Transfer of accrued rights

(1) Regulations may prescribe circumstances in which and conditions subject to which—

(a) a transfer of or a transfer payment in respect of—

(i) an earner's accrued rights to guaranteed minimum pensions under a contracted-out scheme;

(ii) an earner's accrued rights to pensions under an occupational pension scheme which is not contracted-out, to the extent that those rights derive from his accrued rights to guaranteed minimum pensions under a contracted-out scheme; or

(iii) the liability for the payment of guaranteed minimum pensions to or in respect of any person who has become entitled to them,

may be made by an occupational pension scheme to another such scheme or to a personal pension scheme;

(b) a transfer of or a transfer payment in respect of an earner's accrued rights to guaranteed minimum pensions which are appropriately secured for the purposes of section 15 may be made to an occupational pension scheme or a personal pension scheme.

(2) Any such regulations may be made so as to apply to earners who are not in employment at the time of the transfer.

(3) Regulations under subsection (1) may provide that any provision of this Part (other than sections 14, 15 and 39 to 41, and sections 22 to 29 so far as they apply to personal pension schemes) or of Chapter III of Part IV or Chapter II of Part V shall have effect, where there has been a transfer to which they apply, subject to such modifications as may be specified in the regulations.

(4) Regulations under subsection (1) shall have effect in relation to transfers whenever made unless they provide that they are only to have effect in relation to transfers which take place after they come into operation.

(5) The power conferred by subsection (1) is without prejudice to the generality of section 177(2) or section 17(5) of the Interpretation Act (Northern Ireland) 1954.

(6) In the provisions mentioned in subsection (3) "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 the earner and the earner's widow or widower in accordance with sections 9 and 13, and references to an earner's accrued rights to guaranteed minimum pensions shall be construed accordingly.

17 Commutation, surrender and forfeiture

(1) Where the annual rate of a pension required to be provided by a scheme in accordance with section 9 or 13 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) Neither section 9 nor section 13 shall preclude a scheme from providing for the earner's or the earner's widow's or widower's guaranteed minimum pension to be suspended or forfeited in such circumstances as may be prescribed.

18 Financing of benefits

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.

19 Securing of benefits

(1) The 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.

(2) Subject to subsection (3), the scheme must contain a rule by which 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 9(6) from earners' guaranteed minimum pensions;

(c) pensions and other benefits (whether or not within paragraph (a) or (b)) 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.

(3) The rule may also accord priority, on a winding up occurring after an earner has attained normal pension age, to liabilities of the scheme in respect of pensions and other benefits to which—

(a) he will be entitled on ceasing to be in employment, or

(b) the earner's widow or widower or any dependant of the earner's will be entitled on the earner's death.

(4) Subsections (1) to (3) do not apply to public service pension schemes.

(5) The duties imposed on the Board by subsection (1) shall cease to subsist in relation to guaranteed minimum pensions for a member and the member's widow or widower where a scheme has ceased by virtue of section 15 to be liable to provide those pensions.

(6) Subsections (2) and (3) do not apply to schemes falling within any category or description prescribed as being exempt from the requirements of those subsections.

(7) If the scheme 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, it must make provision so that there may be no payment out in relation to guaranteed minimum pensions except in such circumstances as may be prescribed.

20 Sufficiency of resources

(1) The 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—

(i) the liabilities accorded priority in accordance with section 19(2) and (3), and

(ii) the expenses of administration so far as those expenses are payable out of the resources of the scheme.

(2) Subsection (1) does not apply to public service schemes and the duties imposed on the Board by that subsection shall cease to subsist in relation to guaranteed minimum pensions for a member and the member's widow or widower where a scheme has ceased by virtue of section 15 to be liable to provide those pensions.

(3) Regulations may provide for subsection (1) to have effect in prescribed cases—

(a) with the omission of paragraphs (b) and (c), or

(b) with the omission of either of those paragraphs, or

(c) with the substitution for both or either of those paragraphs of provisions specified in the regulations.

(4) In considering a scheme by reference to the considerations of subsection (1), the Board shall have regard to any investments held for the purposes of the scheme.

Discretionary requirements

21 Power for Board to impose conditions as to investments and resources

(1) The Board may by reference to the considerations of section 20(1) make it a condition of the contracting-out or continued contracting-out of a scheme to which that section applies 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; or

(b) 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 shall be realised before the end of a specified period.

(2) Where contracting-out or continued contracting-out depends on the Board's being satisfied as mentioned in section 20(1), 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 they are kept informed about 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.

(3) Conditions imposed by the Board for the purpose mentioned in subsection (2)(b) 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.

Requirements for certification of occupational and personal money purchase schemes

22 Persons who may establish scheme

The Department may prescribe descriptions of persons by whom or bodies by which the scheme may be established and, if the Department does so, the scheme may only be established by a person or body of a prescribed description.

23 Identification and valuation of protected rights

(1) Where the rules of the scheme make such provision as is mentioned in section 6(2) or (3), they must also make provision for the identification of the protected rights.

(2) The value of such protected rights as are mentioned in section 6(2) or (3) must be calculated in a manner no less favourable than that in which the value of any other rights of the member to money purchase benefits under the scheme are calculated.

(3) Subject to subsection (2), the value of protected rights must be calculated and verified in such manner as may be prescribed.

24 Ways of giving effect to protected rights

(1) The rules of the scheme must provide for effect to be given to the protected rights of a member—

(a) in any case where subsection (3) so requires, by the purchase of such an annuity as is mentioned in that subsection, and

(b) in any other case, in such of the ways permitted by the following subsections as the rules may specify,

and they must not provide for any part of a member's protected rights to be discharged otherwise than in accordance with those subsections.

(2) Effect may be given to protected rights—

(a) by the provision by the scheme of a pension which—

(i) complies with the pension requirements (within the meaning of section 25(1)), and

(ii) satisfies such conditions as may be prescribed; or

(b) in such circumstances and subject to such conditions as may be prescribed, by the making of a transfer payment—

(i) in the case of an occupational pension scheme, to another occupational pension scheme or to a personal pension scheme, and

(ii) in the case of a personal pension scheme, to another personal pension scheme or to an occupational pension scheme,

where the scheme to which the payment is made satisfies such requirements as may be prescribed.

(3) Subject to subsections (5) and (7), if—

(a) the rules of the scheme do not provide for a pension; or

(b) the member so elects,

then, except to the extent that effect is given to protected rights in accordance with subsection (4), effect shall be given to them by the purchase by the scheme of an annuity which—

(i) complies with the annuity requirements (within the meaning of section 25(3)), and

(ii) satisfies such conditions as may be prescribed.

(4) Effect may be given to protected rights by the provision of a lump sum if—

(a) the lump sum is payable on a date which is—

(i) in the case of an occupational pension scheme, a date not earlier than that on which the member attains the age of 60 nor later than that on which he attains the age of 65, or

(ii) in the case of a personal pension scheme, the date on which the member attains pensionable age, or

(iii) in either case, such later date as has been agreed by him;

(b) the annual rate of a pension under subsection (2) or an annuity under subsection (3) giving effect to the protected rights and commencing on the date on which the lump sum is payable would not exceed the prescribed amount;

(c) the circumstances are such as may be prescribed; and

(d) the amount of the lump sum is calculated in a manner satisfactory to the Board by reference to the amount of the pension or annuity.

(5) If the member has died without effect being given to protected rights under subsection (2), (3) or (4), effect may be given to them in such manner as may be prescribed.

(6) No transaction is to be taken to give effect to protected rights unless it falls within this section.

(7) Effect need not be given to protected rights if they have been extinguished—
- (a) in the case of an occupational pension scheme, by the payment of a contracted-out protected rights premium under section 51; or
- (b) in the case of a personal pension scheme, by the payment of a personal pension protected rights premium under that section.

25 The pension and annuity requirements

(1) For the purposes of section 24 a pension complies with the pension requirements if—
- (a) it commences—
  - (i) in the case of an occupational pension scheme, on a date not earlier than that on which the member attains the age of 60 nor later than that on which he attains the age of 65, or
  - (ii) in the case of a personal pension scheme, on the date on which the member attains pensionable age, or
  - (iii) in either case, on such later date as has been agreed by him,

  and continues until the date of his death; and
- (b) in a case where the member dies while it is payable to him and is survived by a widow or widower—
  - (i) it is payable to the widow or widower in prescribed circumstances and for the prescribed period at an annual rate which at any given time is one-half of the rate at which it would have been payable to the member if the member had been living at that time; or
  - (ii) where that annual rate would not exceed a prescribed amount and the circumstances are such as may be prescribed, a lump sum calculated in a manner satisfactory to the Board is provided in lieu of it.

(2) As respects the period of 5 years beginning with the commencement of the pension referred to in subsection (1), that subsection shall have effect in relation to that pension as if the words "at least" were inserted immediately before the words "one-half" in paragraph (b)(i).

(3) For the purposes of section 24 an annuity complies with the annuity requirements if—
- (a) it satisfies the requirements mentioned in subsections (1) and (2) (taking the references in those subsections to pensions as references to annuities); and
- (b) it is provided by an insurance company which—
  - (i) satisfies prescribed conditions;
  - (ii) complies with such conditions as may be prescribed as to the calculation of annuities provided by it and as to the description of persons by or for whom they may be purchased; and
  - (iii) subject to subsection (4), has been chosen by the member.

(4) A member is only to be taken to have chosen an insurance company if he gives notice of his choice to the trustees or managers of the scheme within the prescribed period and in such manner and form as may be prescribed, and with any such supporting evidence as may be prescribed; and, if he does not do so, the trustees or managers may themselves choose the insurance company instead.

26 Securing of liability for protected rights

(1) The Board must be satisfied that the scheme complies with any such requirements as may be prescribed for meeting the whole or a prescribed part of any liability in respect of protected rights under the scheme which the scheme is unable to meet from its own resources—

(a) by reason of the commission by any person of a criminal offence;

(b) in such other circumstances as may be prescribed.

(2) Subsection (1) does not apply to a public service pension scheme.

27 Investment and resources of schemes

(1) The scheme must comply with such requirements as may be prescribed as regards the investment of its resources and with any direction of the Board—

(a) that 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) that the whole or a specified proportion of investments of a specified class or description forming part of the scheme's resources when the direction is given shall be realised before the end of a specified period.

(2) The scheme must comply with such requirements as may be prescribed as regards the part—

(a) of any payment that is made to the scheme by or on behalf of a member of the scheme;

(b) of any income or capital gain arising from the investment of such a payment; or

(c) of the value of rights under the scheme,

that may be used—

(i) to defray the administrative expenses of the scheme;

(ii) to pay commission; or

(iii) in any other way which does not result in the provision of benefits for or in respect of members.

(3) Subject to subsection (4)—

(a) in the case of an occupational pension scheme, all minimum payments and any payments made by the Department under Article 9 of the Social Security (Northern Ireland) Order 1986, and

(b) in the case of a personal pension scheme, all minimum contributions,

which are paid to a scheme in respect of one of its members must be applied so as to provide money purchase benefits for or in respect of that member, except so far as they are used—

(i) to defray the administrative expenses of the scheme; or

(ii) to pay commission.

(4) If regulations are made under subsection (2), the payments mentioned in paragraph (a) of subsection (3) and the contributions mentioned in paragraph (b) of that subsection may be used in any way which the regulations permit, but not in any way not so permitted except to provide money purchase benefits for or in respect of the member.

28 Suspension or forfeiture

Except in such circumstances as may be prescribed, the rules of the scheme must not permit the suspension or forfeiture of a member's protected rights or of payments giving effect to them.

29 Tax requirements to prevail over certification requirements

Nothing in sections 22 to 28 shall be taken to prejudice any requirements with which a scheme must comply if it is to qualify for tax-exemption or tax-approval.

Cancellation, variation, surrender and refusal of certificates

30 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 22 to 28 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 21 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.

31 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 7 in respect of any employment which was specified by virtue of section 3(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 Department 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 3(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.

32 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 3(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 31(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 Department considers necessary or expedient.

(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 Department in respect of an earner's liability under section 6(3) of the Social Security Contributions and Benefits (Northern Ireland) 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 3(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.

Alteration of scheme rules after certification

33 Alteration of rules of contracted-out schemes

(1) Subject to subsection (2), where a contracting-out certificate has been issued, no alteration of the rules of the relevant scheme shall be made so as to affect any of the matters dealt with in this Part (other than sections 14, 15 and 39 to 41, and sections 22 to 29 so far as they apply to personal pension schemes) or Chapter III of Part IV or Chapter II of Part V without the consent of the Board.

(2) Subsection (1) does not apply—

(a) to an alteration consequential on a provision of the Health and Social Security (Northern Ireland) Order 1984, the Social Security (Northern Ireland) Order 1985 or the Social Security (Northern Ireland) Order 1986 (or any provision of this Act derived from any such provision); or

(b) to an alteration of a prescribed description.

(3) Subject to subsection (4), any alteration to which subsection (1) applies shall be void if it is made without the consent of the Board.

(4) A consent given by the Board for the purposes of this section shall, if and to the extent that the Board so direct, operate so as to validate with retrospective effect any alteration of the rules which would otherwise be void under this section.

(5) This section shall continue in force in relation to a scheme after it has ceased to be contracted-out so long as—

(a) any person is entitled to receive, or has accrued rights to, a guaranteed minimum pension under the scheme, or

(b) any person has protected rights under it or is entitled to any benefit giving effect to protected rights under it.

(6) The reference in subsection (5) to a person entitled to receive a guaranteed minimum pension includes a reference to a person so entitled by virtue of being the widower of an earner only in such cases as may be prescribed.

34 Alteration of rules of appropriate schemes

(1) Where an appropriate scheme certificate has been issued, no alteration of the rules of the relevant scheme shall be made so as—

(a) to affect any of the matters dealt with in sections 22 to 29; or

(b) to cause the scheme to take a different permitted form from that previously taken,

unless—

(i) the Board have given their consent to the alteration; and

(ii) notice of intention to apply for their consent was given in accordance with the requirements mentioned in subsection (7) or was so given except in so far as the Board dispenses with the necessity for such a notice.

(2) Subsection (1) does not apply to an alteration of a prescribed description.

(3) Subject to subsection (4), any alteration to which subsection (1) applies shall be void if it is made without the conditions mentioned in subsection (1) being satisfied.

(4) A consent given by the Board for the purposes of this section shall, if and to the extent that the Board so direct, operate so as to validate with retrospective effect any alteration of the rules which would otherwise be void under this section.

(5) This section shall continue in force in relation to a scheme after it has ceased to be an appropriate scheme so long as any person has protected rights under the scheme.

(6) The reference in subsection (1)(b) to a permitted form is to one of the following forms, namely—

(a) an arrangement for the issue of insurance policies or annuity contracts;

(b) a unit trust scheme of a kind mentioned in Part I of Schedule 1 to the Personal Pension Schemes (Appropriate Schemes) Regulations (Northern Ireland) 1988 which has been authorised under section 78(1) of or by virtue of paragraph 9 of Schedule 15 to the Financial Services Act 1986;

(c) an arrangement for the investment of contributions in an interest-bearing account (including shares in or deposits with a building society (within the meaning of the Building Societies Act 1986)).

(7) The requirements referred to in subsection (1)(ii) are—

(a) that the notice is given in writing—

(i) to any member of the scheme who has protected rights under it; and

(ii) to any earner who has given a notice under section 40(1) jointly with the managers or trustees of the scheme, being a notice which has not been cancelled,

by sending it to his last known address; and

(b) that the notice specifies—

(i) the name of the scheme,

(ii) the nature of the proposed alteration and its effect on the persons to whom the notice is given, and

(iii) the date on which it is proposed that the alteration should take effect (which must not be less than 3 months after that on which the notice is given).

General regulations as to administration of Part III

35 General power to make regulations

Schedule 1 shall have effect for enabling regulations to be made in relation to the operation and administration of this Part, and Part I of that Schedule has effect as respects occupational pension schemes, and Part II of that Schedule as respects personal pension schemes.

CHAPTER II

REDUCTION IN STATE SCHEME CONTRIBUTIONS AND SOCIAL SECURITY BENEFITS FOR MEMBERS OF CERTIFIED SCHEMES

Preliminary

36 Scope of Chapter II

This Chapter has effect for the purpose—

(a) of reducing the rates at which certain national insurance contributions are payable by or in respect of earners whose employment is contracted-out by reference to contracted-out occupational pension schemes;

(b) of providing for contributions to be paid by the Department in respect of earners who are members of appropriate personal pension schemes; and

(c) of making provision concerning the payment of certain social security benefits payable in respect of members and former members of such schemes.

Reduced rates of state scheme Class 1 contributions

37 Reduced rates of Class 1 contributions for earners in contracted-out employment

(1) Where the earnings paid to or for the benefit of an earner in any tax week are in respect of an employment which is contracted-out employment at the time of the payment, the amount of a Class 1 contribution in respect of so much of the earnings paid in that week as exceeds the current lower earnings limit but not the current upper earnings limit for that week (or the prescribed equivalents if he is paid otherwise than weekly) shall be reduced—

(a) in the case of a primary Class 1 contribution, by an amount equal to 1.8 per cent. of that part of those earnings; and

(b) in the case of a secondary Class 1 contribution, by an amount equal to 3 per cent. of that part of those earnings.

(2) Where—

(a) an earner has ceased to be employed in an employment; and

(b) earnings are paid to him or for his benefit within the period of 6 weeks, or such other period as may be prescribed, from the day on which he so ceased,

that employment shall be treated for the purposes of subsection (1) as contracted-out employment at the time when the earnings are paid if it was contracted-out employment in relation to the earner when he was last employed in it.

(3) This section shall not affect the amount of any primary Class 1 contribution which is payable at a reduced rate by virtue of regulations under section 19(4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (reduced rates for married women and widows).

38 Alteration of rates of contributions under s. 37

(1) Whenever the Secretary of State makes an order under section 42 of the Pension Schemes Act 1993 altering, with effect from any date, either or both of the contracted-

out percentages for the time being applying under section 41 of that Act, the Department may make a corresponding order for Northern Ireland altering, with effect from the same date, either or both of the contracted-out percentages applying under section 37.

(2) An order under subsection (1) may contain consequential provisions altering any percentage for the time being specified in paragraph 2(3) of Schedule 3 as that percentage applies in relation to earnings paid or payable on or after the day as from which the order is to have effect.

Minimum contributions: members of appropriate personal pension schemes

39 Payment of minimum contributions to personal pension schemes

(1) Subject to the following provisions of this Part, the Department shall, except in such circumstances as may be prescribed, pay 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) Subject to subsection (3), minimum contributions in respect of an earner shall be paid to the trustees or managers of the earner's chosen scheme.

(3) In such circumstances as may be prescribed minimum contributions shall be paid to a prescribed person.

(4) Where the condition mentioned in subsection (1)(a) or (c) ceases to be satisfied in the case of an earner in respect of whom the Department is required to pay minimum contributions, the duty of the Department to pay them shall cease as from a date determined in accordance with regulations.

(5) If the Department pays an amount by way of minimum contributions which it is not required to pay, the Department may recover it—
   (a) from the person to whom the Department paid it, or
   (b) from any person in respect of whom the Department paid it.

(6) If the Department pays in respect of an earner an amount by way of minimum contributions which the Department is required to pay, but does not pay it to the trustees or managers of the earner's chosen scheme, the Department may recover it from the person to whom the Department paid it or from the earner.

40 Earner's chosen scheme

(1) Where an earner and the trustees or managers of an appropriate personal pension scheme have jointly given notice to the Department, 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 under section 39;

(b) that the trustees or managers have agreed to accept him as a member of the scheme and to receive such minimum contributions in respect of him,

that scheme is the earner's chosen scheme for the purposes of section 39 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 for those purposes.

(2) Either an earner or the trustees or managers of the scheme may cancel a notice under subsection (1) by giving notice to that effect to the Department at such time and in such manner and form as may be prescribed.

(3) When a notice under subsection (2) 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.

41 Amount of minimum contributions

(1) Subject to subsection (2), in relation to any tax week falling within a period for which the Department is required to pay minimum contributions in respect of an earner, the amount of those contributions shall be an amount equal to the aggregate amount of the reductions in Class 1 contributions which would fall to be made under section 37(1) if any employment of his which is not contracted-out were contracted-out employment.

(2) Where—

(a) subsection (1) applies;

(b) the tax year in which the tax week falls ends before such date as may be prescribed; and

(c) the earner was over the age of 30 on the 6th April with which the tax year began,

there shall be added to the amount payable under that subsection an amount equal to 1 per cent. of so much of those earnings as respects which those reductions would fall to be made.

(3) 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, 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 the manner in which an earner's age is to be verified for the purposes of subsection (2);

(e) 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 for the references to a tax week in section 37(1) to have effect accordingly so far as they apply for the purposes of this section;

(f) as to the manner in which and time at which or period within which minimum contributions are to be made.

Effect of entitlement to guaranteed minimum pensions on payment of social security benefits

42 Effect of entitlement to guaranteed minimum pensions on payment of social security benefits

(1) Where for any period a person is entitled both—

(a) to a Category A or Category B retirement pension, a widowed mother's allowance, a widow's pension or a widower's invalidity pension under the Social Security Contributions and Benefits (Northern Ireland) Act 1992; and

(b) to one or more guaranteed minimum pensions,

the weekly rate of the benefit mentioned in paragraph (a) shall for that period be reduced by an amount equal—

(i) to its additional pension, or

(ii) to the weekly rate of the pension mentioned in paragraph (b) (or, if there is more than one such pension, their aggregate weekly rates),

whichever is the less.

(2) Where for any period—

(a) a person is entitled to one or more guaranteed minimum pensions;

(b) he is also entitled to an invalidity pension under section 33 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992; and

(c) the weekly rate of his invalidity pension includes an additional pension such as is mentioned in section 44(3)(b) of that Act,

for that period section 34 of that Act shall have effect as if the following subsection were substituted for subsection (5)—

"(5) In this section "the relevant amount" means an amount equal to the aggregate of—

(a) the additional pension; and

(b) the weekly rate or aggregate weekly rates of the guaranteed minimum pension or pensions,

reduced by the amount of any reduction in the weekly rate of the invalidity pension made by virtue of section 42(1) of the Pension Schemes (Northern Ireland) Act 1993.".

(3) Where for any period—

(a) a person is entitled to one or more guaranteed minimum pensions;

(b) he is also entitled to an invalidity pension under section 33 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992; and

(c) the weekly rate of his invalidity pension does not include an additional pension such as is mentioned in section 44(3)(b) of that Act,

for that period the relevant amount shall be deducted from the appropriate weekly rate of invalidity allowance and he shall be entitled to invalidity allowance only if there is a balance after the deduction and, if there is such a balance, at a weekly rate equal to it.

(4) Where for any period—

(a) a person is entitled to one or more guaranteed minimum pensions;

(b) he is also entitled to a Category A retirement pension under section 44 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992; and

(c) the weekly rate of his pension includes an additional pension such as is mentioned in section 44(3)(b) of that Act,

for that period section 47 of that Act shall have effect as if the following subsection were substituted for subsection (3)—

"(3) In subsection (2) above "the relevant amount" means an amount equal to the aggregate of—

(a) the additional pension; and

(b) the weekly rate or aggregate weekly rates of the guaranteed minimum pension or pensions,

reduced by the amount of any reduction in the weekly rate of the Category A retirement pension made by virtue of section 42(1) of the Pension Schemes (Northern Ireland) Act 1993.".

(5) Where for any period—

(a) a person is entitled to one or more guaranteed minimum pensions;

(b) he is also entitled to a Category A retirement pension under section 44 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992; and

(c) the weekly rate of his Category A retirement pension does not include an additional pension such as is mentioned in subsection (3)(b) of that section,

for that period the relevant amount shall be deducted from the amount that would otherwise be the increase under section 47(1) of that Act and the pensioner shall be entitled to an increase under that section only if there is a balance remaining after that deduction and, if there is such a balance, of an amount equal to it.

(6) Where for any period—

(a) a person is entitled to one or more guaranteed minimum pensions;

(b) he is also entitled—

(i) to an invalidity pension under section 33 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

(ii) to a Category A retirement pension under section 44 of that Act; or

(iii) to a Category B retirement pension under section 49 of that Act; and

(c) the weekly rate of the pension includes an additional pension such as is mentioned in section 44(3)(b) of that Act,

for that period paragraph 3 of Schedule 7 to that Act shall have effect as if the following sub-paragraph were substituted for sub-paragraph (3)—

"(3) In this paragraph "the relevant amount" means an amount equal to the aggregate of—

(a) the additional pension; and

(b) the weekly rate or aggregate weekly rates of the guaranteed minimum pension or pensions,

reduced by the amount of any reduction in the weekly rate of the pension made by virtue of section 42(1) of the Pension Schemes (Northern Ireland) Act 1993.".

(7) Where for any period—

(a) a person is entitled to one or more guaranteed minimum pensions;

(b) he is also entitled to any of the pensions under the Social Security Contributions and Benefits (Northern Ireland) Act 1992 mentioned in subsection (6)(b); and

(c) the weekly rate of the pension does not include an additional pension such as is mentioned in section 44(3)(b) of that Act,

for that period the relevant amount shall be deducted from the amount that would otherwise be the increase under paragraph 3 of Schedule 7 to that Act and the beneficiary shall be entitled to an increase only if there is a balance after that deduction and, if there is such a balance, only to an amount equal to it.

(8) In this section "the relevant amount" means an amount equal to the weekly rate or aggregate weekly rates of the guaranteed minimum pension or pensions—

(a) in the case of subsection (3), reduced by the amount of any reduction in the weekly rate of the invalidity pension made by virtue of subsection (1); and

(b) in the case of subsection (5), reduced by the amount of any reduction in the weekly rate of the Category A retirement pension made by virtue of subsection (1);

and references in this section to the weekly rate of a guaranteed minimum pension are references to that rate without any increase under section 11(1).

(9) Where subsection (3) applies, section 34(7) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 shall have effect as if for the words "subsection (4) above" there were substituted the words "section 42(3) of the Pension Schemes (Northern Ireland) Act 1993".

43 Further provisions concerning entitlement to guaranteed minimum pensions for the purposes of s. 42

(1) The reference in section 42(1) 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 where he is entitled to any other benefit that reference shall be so construed 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 41(7) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

(2) For the purposes of section 42 a person shall be treated as entitled to any guaranteed minimum pension to which he would have been entitled—

(a) if its commencement had not been postponed, as mentioned in section 9(4); or

(b) if there had not been made a transfer payment or transfer under regulations made by virtue of section 16 as a result of which—

(i) he is no longer entitled to guaranteed minimum pensions under the scheme by which the transfer payment or transfer was made, and

(ii) he has not become entitled to guaranteed minimum pensions under the scheme to which the transfer payment or transfer was made.

(3) Where—

(a) guaranteed minimum pensions provided for a member or the member's widow or widower under a contracted-out scheme have been wholly or partly secured as mentioned in subsection (3) of section 15; and

(b) either—

(i) the transaction wholly or partly securing them was carried out before 1st January 1986 and discharged the trustees or managers of the scheme as mentioned in subsection (1) of that section; or

(ii) it was carried out on or after that date without any of the requirements specified in subsection (5)(a) to (c) of that section being satisfied in relation to it and the scheme has been wound up; and

(c) any company with which any relevant policy of insurance or annuity contract was taken out or entered into is unable to meet the liabilities under policies issued or securities given by it; and

(d) the combined proceeds of—

(i) any relevant policies and annuity contracts, and

(ii) any cash sums paid or alternative arrangements made under the Policyholders Protection Act 1975,

are inadequate to provide the whole of the amount secured,

the member and the member's widow or widower shall be treated for the purposes of section 42 as only entitled to such part (if any) of the member's or, as the case may be, the member's widow's or widower's guaranteed minimum pension as is provided by the proceeds mentioned in paragraph (d).

(4) A policy or annuity is relevant for the purposes of subsection (3) if taking it out or entering into it constituted the transaction to which section 15 applies.

(5) For the purposes of section 42 a person shall be treated as entitled to any guaranteed minimum pension to which he would have been entitled—

(a) if a lump sum had not been paid instead of that pension under provisions included in a scheme by virtue of section 17(1); or

(b) if that pension had not been forfeited under provisions included in a scheme by virtue of section 17(2).

44 Reduced benefits where minimum payments or minimum contributions paid

(1) Subject to subsection (3), this subsection applies where for any period—

(a) minimum payments have been made in respect of an earner to an occupational pension scheme which is a money purchase contracted-out scheme in relation to the earner's employment, or

(b) minimum contributions have been paid in respect of an earner under section 39.

(2) Where subsection (1) applies then, for the purposes of section 42—

(a) the earner shall be treated, as from the date on which he reaches pensionable age, as entitled to a guaranteed minimum pension at a prescribed weekly rate arising from that period in that employment;

(b) in prescribed circumstances if the earner dies after reaching pensionable age any widow or widower of the earner shall be treated as entitled to a guaranteed minimum pension at a rate equal to one-half of the rate prescribed under paragraph (a); and

(c) in prescribed circumstances if the earner dies before reaching pensionable age any widow or widower of the earner shall be treated as entitled to a guaranteed minimum pension at a prescribed weekly rate arising from that period;

and where subsection (1)(b) applies, paragraphs (a) to (c) of this subsection apply also for the purposes of sections 34(4) and 47(2) of the Social Security Contributions and

Benefits (Northern Ireland) Act 1992 and paragraph 3(2) of Schedule 7 to that Act, but with the omission from paragraph (a) of the words "in that employment".

(3) Where the earner is a married woman or widow, subsection (1) shall not have effect by virtue of paragraph (a) of that subsection in relation to any period during which there is operative an election that her liability in respect of primary Class 1 contributions shall be a liability to contribute at a reduced rate.

(4) The power to prescribe a rate conferred by subsection (2)(a) includes power to prescribe a nil rate.

Married women and widows

45 Married women and widows

The Department may make regulations modifying sections 37, 38, 42(1), 43(2) and (5) and 44 in such manner as it thinks proper, in their application to women who are or have been married.

CHAPTER III

TERMINATION OF CONTRACTED-OUT OR APPROPRIATE SCHEME STATUS: STATE SCHEME PREMIUMS

Approval of arrangements for schemes ceasing to be certified

46 Powers of Board to approve arrangements for scheme ceasing to be certified

(1) In the case of an occupational pension scheme or a personal pension scheme which is or has been certified as a contracted-out or, as the case may be, an appropriate scheme, the Board may, for the event of, or in connection with, its ceasing to be such a scheme, approve any arrangements made or to be made in relation to the scheme, or for its purposes, for the preservation or transfer—

(a) in the case of an occupational pension scheme other than a money purchase contracted-out scheme—

(i) of earners' accrued rights to guaranteed minimum pensions under the scheme;

(ii) of the liability for the payment of guaranteed minimum pensions under the scheme in respect of persons who have then become entitled to receive them;

(b) in the case of a money purchase contracted-out scheme or a personal pension scheme, of protected rights under the scheme.

(2) If the scheme ceases to be a contracted-out scheme or 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) shall be cancelled by the Board if they subsequently approve the arrangements.

(4) Regulations may provide that where the Board have approved arrangements under subsection (1) in respect of an occupational pension scheme (other than a money purchase scheme) any provision of this Part (other than sections 14, 15, 22 to 29 and 39 to 41) or Chapter III of Part IV or Chapter II of Part V shall have effect subject to such modifications as may be specified in the regulations.

(5) Any such regulations shall have effect in relation to arrangements whenever approved, unless they provide that they are only to have effect in relation to arrangements approved after they come into operation.

(6) It is hereby declared that an approval of arrangements relating to an occupational pension scheme which is not a money purchase contracted-out scheme may be withdrawn at any time, notwithstanding that the scheme has been wound up.

(7) For the purposes of this Chapter an earner's accrued rights or, as the case may be, a person's guaranteed minimum pension rights or protected rights are subject to approved arrangements if—

(a) the Board have approved arrangements under subsection (1) (either before or after the scheme ceased to be certified as contracted-out or, as the case may be, as an appropriate scheme) which operate as respects him and the rights in question, and

(b) they have not since withdrawn their approval of those arrangements.

47 Calculation of guaranteed minimum pensions preserved under approved arrangements

(1) This section applies where—

(a) an earner's guaranteed minimum pension rights or accrued rights to guaranteed minimum pensions under a scheme are subject to approved arrangements, and

(b) one or more of the five tax years ending with the tax year in which the scheme ceases to be contracted-out is a relevant year in relation to the earner.

(2) Where this section applies then, except in such circumstances as may be prescribed, section 12(1) shall have effect, subject to the following provisions, that is to say—

(a) any earnings factor shall be taken to be that factor as increased by the last order under Article 23 of the Social Security Pensions (Northern Ireland) Order 1975 or section 130 of the Social Security Administration (Northern Ireland) Act 1992 to come into operation before those five tax years; and

(b) any relevant earnings factors derived from contributions or earnings in respect of any year ("the relevant contributions year") shall be treated as increased by 12 per cent. compound for each of those five tax years, other than any of those years which—

(i) constitutes or begins before the relevant contributions year, or

(ii) begins after the final relevant year in relation to the earner.

(3) Subsection (2) shall not apply in any case where its application would result in the amount of the guaranteed minimum being greater than it would have been apart from that subsection.

(4) Regulations may provide that subsections (1) to (3) shall have effect with prescribed modifications in relation to a scheme which, immediately before it ceased to be contracted-out, contained provisions authorised by section 12(2).

(5) In this section "relevant year" and "final relevant year" have the same meanings as in section 12.

Supervision of formerly certified schemes

48 Supervision of schemes which have ceased to be certified

(1) Section 49 shall apply for the purpose of making provision for securing the continued supervision of occupational pension schemes as respects which subsection (2) applies and section 50 shall apply for the purpose of making corresponding provision in relation to personal pension schemes as respects which subsection (3) applies.

(2) This subsection applies as respects any occupational pension scheme, other than a public service pension scheme, where—
- (a) the scheme has ceased to be a contracted-out scheme otherwise than by being wound up; and
- (b) there has not been a payment of a premium under section 51(1) in respect—
  - (i) of each person entitled to receive, or having accrued rights to, guaranteed minimum pensions under the scheme; or
  - (ii) of each person who has protected rights under it or is entitled to any benefit giving effect to protected rights under it.

(3) This subsection applies as respects any personal pension scheme where—
- (a) the scheme has ceased to be an appropriate scheme otherwise than by being wound up; and
- (b) there has not been a payment of a premium under section 51(1) in respect of each person who has protected rights under it or is entitled to any benefit giving effect to protected rights under it.

(4) Section 49 shall continue to apply so long as there is any such person as is mentioned in paragraph (b)(i) or (ii) of subsection (2) (but, where by virtue of section 15 a scheme has ceased to be liable to provide guaranteed minimum pensions for a member and the member's widow or widower, the duties imposed on the Board by section 49 shall cease to subsist in relation to those pensions), and section 50 shall continue to apply so long as there is any such person as is mentioned in paragraph (b) of subsection (3).

(5) For the purposes of subsections (2) and (4) a person in respect of whom a premium is not payable by virtue of regulation 17(2A) of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1985 shall not be treated as such a person as is mentioned in paragraph (b)(ii) of subsection (2).

(6) For the purposes of subsections (3) and (4) a person in respect of whom a premium is not payable by virtue of regulation 3 of the Personal Pension Schemes (Personal Pension Protected Rights Premiums) Regulations (Northern Ireland) 1987 shall not be treated as such a person as is mentioned in paragraph (b) of subsection (3).

49 Supervision: former contracted-out schemes

(1) The Board shall be under a duty to satisfy themselves as to—

(a) the matters in respect of which they are required to be satisfied for contracting-out purposes under sections 19(1) and 20(1) or, as the case may be, under section 26(1); and

(b) the soundness and adequacy of any investments held for the purposes of the scheme (so far as relevant to the considerations of section 20(1)).

(2) Where the scheme was contracted-out subject to such conditions as are referred to in section 21(1) and (2) those conditions shall continue to be binding, notwithstanding that there is no contracting-out certificate in force.

(3) Subsection (1) does not apply in the case of any scheme as to which the Board have issued a certificate under subsection (2) of section 46 which has not been cancelled under subsection (3) of that section.

(4) If it appears to the Board that there has been, or is likely to be, a breach of any rule of the scheme relating to the matters dealt with in sections 5(2) and 9 to 21 or, as the case may be, sections 5(3) and 22 to 28, the Board may take such steps as they think expedient with a view to remedying or preventing the breach.

(5) For that purpose they may themselves take any proceedings for enforcement of the rules which would be open to a person—

(a) as an actual or prospective beneficiary under the scheme, or

(b) as one of its trustees or managers, or

(c) as being otherwise concerned with the scheme or its benefits,

and may assume the conduct of proceedings for enforcement brought by any such person.

50 Supervision: former appropriate personal pension schemes

(1) The Board shall be under a duty to satisfy themselves as to the matters in respect of which they are required to be satisfied under section 26(1) for the purposes of determining whether a personal pension scheme should be or continue to be an appropriate scheme.

(2) Subsection (1) does not apply in the case of any scheme as to which the Board have issued a certificate under subsection (2) of section 46 which has not been cancelled under subsection (3) of that section.

(3) If it appears to the Board that there has been, or is likely to be, a breach of any rule of the scheme relating to the matters dealt with in sections 5(5) and 22 to 28, the Board may take such steps as they think expedient with a view to remedying or preventing the breach, and section 49(5) applies for that purpose as it applies for the purpose there mentioned.

State scheme premiums

51 Payment of state scheme premiums on termination of certified status

(1) If a scheme ceases to be a contracted-out scheme or an appropriate scheme (whether by being wound up or otherwise) a state scheme premium shall be payable—

(a) in respect of each earner whose accrued rights to guaranteed minimum pensions or protected rights under the scheme are not subject to approved arrangements and have not been disposed of so as to discharge the trustees or managers of the scheme under section 15 or 95;

(b) in the case of an occupational pension scheme other than a money purchase contracted-out scheme, in respect of each person who has then become entitled to receive a guaranteed minimum pension under the scheme and whose guaranteed minimum pension rights are not subject to approved arrangements; and

(c) in the case of a money purchase contracted-out scheme or a personal pension scheme, 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.

(2) Where—

(a) an earner's service in employment which is contracted-out by reference to an occupational pension scheme, which is not a money purchase contracted-out scheme, is terminated before he attains the scheme's normal pension age or (if earlier) the end of the tax year preceding that in which he attains pensionable age; and

(b) he has served for less than two years in employment which is contracted-out by reference to the scheme,

then if—

(i) the earner's service is terminated otherwise than by his death or by the scheme's ceasing to be contracted-out and his period of service is not one in respect of which the scheme conforms to the appropriate extent with the preservation requirements; or

(ii) the earner's service is terminated by his death and he dies leaving a widow,

the prescribed person may elect to pay a premium under this subsection.

(3) The Department may by regulations provide that, in such cases and subject to such conditions as may be prescribed, if—

(a) an earner in employment to which an occupational pension scheme which is not a money purchase contracted-out scheme applies has ceased (whether before or after the commencement of this subsection) to be in that employment before attaining normal pension age;

(b) there has been a transfer from that scheme to another scheme of his accrued rights other than his accrued rights to guaranteed minimum pensions;

(c) the scheme to which his accrued rights are transferred is neither a contracted-out scheme nor one which was formerly contracted-out and in respect of which the Board have duties under section 49 at the time of the transfer;

(d) no premium under subsection (1)(a) is payable in respect of the earner; and

(e) the circumstances in which by virtue of paragraphs (a) and (b) of subsection (2) a premium is payable under that subsection do not exist,

a state scheme premium may be paid under this subsection.

(4) Subject to subsection (5), where—

(a) an earner's service in contracted-out employment by reference to an occupational pension scheme which is not a money purchase contracted-out

scheme is terminated before he attains pensionable age (otherwise than by his death);

(b) no premium is payable in respect of the earner under subsection (1) or (2); and

(c) the weekly rate of the guaranteed minimum pensions to which he has accrued rights under the scheme will fall to be determined in accordance with provisions included in the scheme by virtue of section 12(2) and (3),

a state scheme premium shall be payable in respect of the earner under this subsection.

(5) Subsection (4) does not apply if the provisions mentioned in paragraph (c) of that subsection conform with such additional requirements as may be prescribed.

(6) In this Act—

(a) a premium payable under paragraph (a) of subsection (1) in the case of an occupational pension scheme other than a money purchase contracted-out scheme is referred to as an "accrued rights premium";

(b) a premium payable under paragraph (b) of that subsection in such a case is referred to as a "pensioner's rights premium";

(c) a premium payable under paragraph (a) or (c) of that subsection in the case of a money purchase contracted-out scheme is referred to as a "contracted-out protected rights premium";

(d) a premium payable under paragraph (a) or (c) of that subsection in the case of a personal pension scheme is referred to as a "personal pension protected rights premium";

(e) a premium under subsection (2) is referred to as a "contributions equivalent premium";

(f) a premium under subsection (3) is referred to as a "transfer premium"; and

(g) a premium under subsection (4) is referred to as a "limited revaluation premium".

52 Provisions supplementary to s. 51

(1) Regulations may prescribe circumstances in which a contracted-out protected rights premium or a personal pension protected rights premium shall not be payable under section 51(1).

(2) A premium under section 51 shall be paid by the prescribed person to the Department within the prescribed period or, in the case of a transfer premium, within a prescribed period after the prescribed event.

(3) It is hereby declared that on the withdrawal of an approval of arrangements under section 46 of an occupational pension scheme other than a money purchase contracted-out scheme after the winding up of the scheme a premium becomes payable in pursuance of section 51(1).

(4) Where under the rules of the scheme transfer credits have been allowed in respect of the earner's accrued rights under another scheme, the reference in section 51(2) to employment which is contracted-out by reference to the scheme shall include references to employment in any period of linked qualifying service which was contracted-out employment by reference to the other scheme.

(5) For the purposes of section 51(2), a scheme conforms to the appropriate extent with the preservation requirements if—

(a) it entitles the earner to short service benefit; or

(b) it makes any provision which under those requirements is permitted as an alternative to short service benefit (other than provision for return of contributions or for benefit in the form of a lump sum).

(6) Subject to regulations made under paragraph 1 of Schedule 1, an employment which is terminated by the death of the employer shall be treated for the purposes of section 51(2) and (4) as terminated immediately before the death.

53 Elections to pay contributions equivalent premiums

(1) An election under section 51(2) must be made within the prescribed period and in the prescribed manner.

(2) Except in such cases as may be prescribed, the prescribed person shall not, in making or abstaining from making elections under that section, discriminate between different earners on any grounds other than their respective lengths of relevant service.

(3) In subsection (2) "relevant service" means service in contracted-out employment by reference to the scheme, together with any service in contracted-out employment which in relation to service in that employment is linked qualifying service.

(4) If the Board consider that the prescribed person is contravening subsection (2), they may cancel any contracting-out certificate held by the earner's employer in respect of the scheme in question.

54 Amount of premiums payable under s. 51

(1) Subject to section 59(3), the amount of an accrued rights premium shall be the cost of providing guaranteed minimum pensions for the earner and his widow in accordance with his accrued rights under the scheme.

(2) Subject to section 59(3), the amount of a pensioner's rights premium shall be the cost of providing or continuing to provide any guaranteed minimum pension under the scheme, whether for the earner (or former earner) or for his widow.

(3) Subject to section 59(3), the amount of a contracted-out protected rights premium or a personal pension protected rights premium payable in respect of any person shall be the cash equivalent of the protected rights in question.

(4) The amount of a contributions equivalent premium shall be the difference between—

(a) the amount of the Class 1 contributions payable in respect of the earner's employment in employment which was contracted-out by reference to the scheme, and

(b) the amount of those contributions which would have been payable if the employment had not been contracted-out.

(5) The amount of a transfer premium shall be determined in the manner in which the amount of an accrued rights premium under subsection (1) falls to be determined under subsection (1) (but subject to the provisions of sections 55(2) and 60(1)).

(6) The amount of a limited revaluation premium shall be the difference between—

(a) the cost of providing the guaranteed minimum pensions in accordance with the provisions included in the scheme by virtue of section 12(2) and (3); and

(b) what would have been the cost of providing them if no such provisions had been included.

(7) Section 52(4) applies for the purposes of subsection (4) as it applies for the purposes of section 51(2).

55 Alternative basis for revaluation of earnings factors for calculation of certain premiums

(1) In determining the amount of any accrued rights premium or pensioner's rights premium payable where one or more of the five tax years ending with the tax year in which the relevant scheme ceases to be contracted-out is a relevant year in relation to the earner, the costs referred to in subsections (1) and (2) of section 54 shall be calculated as follows—

(a) any relevant earnings factor shall be taken to be that factor as increased by the last order under Article 23 of the Social Security Pensions (Northern Ireland) Order 1975 or section 130 of the Social Security Administration (Northern Ireland) Act 1992 to come into operation before those five tax years; and

(b) any relevant earnings factor derived from contributions in respect of any year ("the relevant contributions year") shall be treated as increased by 12 per cent. compound for each of those five tax years, other than any of those years which—

(i) constitutes or begins before the relevant contributions year, or

(ii) begins after the final relevant year in relation to the earner.

(2) Subsection (1) shall not apply if the person liable for the premium elects in the prescribed manner that it should not and, notwithstanding section 54(5), it shall not apply in the determination of the amount of a transfer premium.

(3) Regulations may provide that subsections (1) and (2) shall have effect with prescribed modifications in relation to a scheme which has ceased to be contracted-out and, immediately before it so ceased, contained provisions authorised by section 12(2) and (3).

(4) Subject to subsection (5), where a limited revaluation premium is payable in respect of an earner, and the case is one in which his service in contracted-out employment is terminated in consequence of the relevant scheme ceasing to be contracted-out, the costs referred to in subsection (6) of section 54 shall be calculated as follows—

(a) any relevant earnings factor shall be taken to be that factor as increased by the last order under Article 23 of the Social Security Pensions (Northern Ireland) Order 1975 or section 130 of the Social Security Administration (Northern Ireland) Act 1992 to come into operation before the five tax years ending with the tax year in which the scheme ceases to be contracted-out; and

(b) any relevant earnings factor derived from earnings upon which primary Class 1 contributions have been paid or treated as paid in respect of any year ("the relevant contributions year") shall be treated as increased by 12 per cent. compound for each of those five tax years, other than any of those years which constitutes or begins before the relevant contributions year.

(5) Subsection (4) shall not apply in any case where its application would result in the amount of the premium being greater than it would have been apart from that subsection.

(6) In subsection (1) "relevant year" and "final relevant year" have the same meanings as in section 12, and references to the earner shall be construed as references to the earner in respect of whom the premium in question has become payable.

56 Effect of payment of premiums on rights

(1) Payment of an accrued rights premium shall extinguish the earner's rights to guaranteed minimum pensions under the scheme.

(2) Payment of a pensioner's rights premium shall extinguish any right to receive guaranteed minimum pensions under the scheme, whether for the earner (or former earner) or for the earner's (or former earner's) widow or widower.

(3) Where a contracted-out protected rights premium or 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) sections 43(2) and (5) and 44(2) 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 payments, minimum contributions or transfer payment or payments from which those rights derive were reduced by the appropriate percentage.

(4) Payment of a contributions equivalent premium in the circumstances mentioned in section 51(2)(i) shall extinguish the earner's accrued rights to guaranteed minimum pensions under the relevant scheme.

(5) Payment of a contributions equivalent premium in the circumstances mentioned in section 51(2)(ii) shall extinguish any such accrued rights in respect of the earner's widow.

(6) Payment of a transfer premium shall extinguish the earner's accrued rights to guaranteed minimum pensions under the scheme from which his other accrued rights have been transferred.

(7) In subsection (3) "the appropriate percentage" means, subject to the following provisions of this section—

$$\frac{X \times 100}{Y}$$

where—

X is the amount of the contracted-out protected rights premium or, as the case may be, the personal pension protected rights premium together, if the person in respect of whom it falls to be paid gives notice to the prescribed person within the prescribed period—

(a) with the cash equivalent, paid to the Department within the prescribed period, of any other rights which he has under the scheme and specifies in the notice; and

(b) with the amount of any voluntary contribution paid to the Department within the prescribed period by, or in respect of, the person concerned; and

Y is the cost of providing any guaranteed minimum pension such as is mentioned in subsection (3).

(8) If the appropriate percentage, as calculated under subsection (7), would fall between two whole numbers, it is to be taken to be the lower number.

(9) If it would be over 100, it is to be taken to be 100.

(10) The remainder after the reduction for which subsection (3) 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.

57 Deduction of contributions equivalent premium from refund of scheme contributions

(1) This section applies where—

(a) an earner's service in contracted-out employment is terminated; and

(b) he (or, by virtue of a connection with him, any other person) is entitled to a refund of any payments made by or in respect of him towards the provision of benefits under the scheme by reference to which that employment was contracted-out; and

(c) a contributions equivalent premium falls to be paid by any person in respect of him.

(2) Where this section applies, then, subject to the following provisions of this section, the person by whom the premium falls to be paid shall be entitled on paying it to recover an amount equal to so much of the premium as is attributable to primary Class 1 contributions (and on paying any part of it to recover a proportionate part of that amount) from the person liable for the refund.

(3) The amount recoverable under this section shall not exceed the amount of the refund or so much of it as has not been made.

(4) Where the period taken into account in arriving at the amount mentioned in subsection (2) does not coincide with that in respect of which the refund is to be made, the sum recoverable under this section shall be determined by reference to so much of that amount and of the refund as are referable to the same period.

(5) Where the refund—

(a) is made in respect of more than one period of service, and one or more of those periods is a period of previous linked qualifying service; and

(b) includes any amount paid under a contracted-out scheme in relation to that service on or in connection with a transfer of accrued rights to another scheme,

the amount which may be recovered under this section shall be increased by such amount as may be prescribed.

(6) Where the person liable for the premium is himself liable for the refund, he shall be entitled to retain out of the refund the amount which he could recover under this section from another person liable for the refund.

(7) The amount of the refund shall be reduced by the amount recovered or retained under this section; and provision shall be made by regulations for requiring the making of refunds to be delayed for the purpose of enabling any right of recovery or retainer conferred by this section to be exercised, notwithstanding anything in any enactment relating to the making of the refund.

(8) Where—

(a) an earner's service in contracted-out employment is terminated;

(b) he (or, by virtue of a connection with him, any other person) is entitled to a refund of any payments made by or in respect of him under the scheme by reference to which that employment was contracted-out in relation to any previous contracted-out employment of his, being payments towards the provision of benefits under that scheme;

(c) a contributions equivalent premium falls to be paid in respect of him; and

(d) the period taken into account in arriving at the amount mentioned in subsection (2) includes the period of the previous contracted-out employment,

then the person liable for that premium shall have the like right of recovery from that refund (so far as the premium is not recoverable or retainable out of a refund in respect of a later employment) as a person has under this section where the refund relates to service in the employment on the termination of which the premium falls to be paid (and subsection (7) shall apply accordingly).

(9) This section shall apply in relation to such a refund as is referred to in subsection (1)(b) which becomes payable after the termination of an earner's service in contracted-out employment as it applies to such a refund becoming payable on the termination of an earner's service in such employment.

(10) Where the earner (or, by virtue of a connection with him, any other person) becomes entitled to any payment in lieu of benefit, this section shall apply in relation to the payment as if it were such a refund as is referred to in subsection (1)(b).

(11) For the purposes of subsection (10), a payment in lieu of benefit is any payment falling to be made to or for the benefit of, or in respect of, a person by virtue of his being or having been a member of an occupational pension scheme, being a payment which either—

(a) is made or to be made otherwise than out of the resources of the scheme; or

(b) is made or to be made out of those resources but by way of distribution on a winding up; or

(c) falls within such other description of payments as may be prescribed for the purposes of that subsection.

58 No recovery of state scheme premiums from earners, etc

(1) Notwithstanding any contract to the contrary, a person shall not be entitled—

(a) to recover any part of a state scheme premium from any earner in respect of whom it is payable; or

(b) except in accordance with section 57, to recover or retain any part of such a premium out of any money payable to or for the benefit of the earner or any other person.

(2) Nothing in subsection (1) affects the right of the trustees or managers of a scheme—

(a) in a case where an accrued rights premium or a pensioner's rights premium has been paid, to reduce the pension of the person in respect of whom the premium has been paid by the amount of his guaranteed minimum pension;

(b) in a case where a limited revaluation premium has been paid, to recoup it—

(i) out of the resources of the scheme, in so far as they derive from contributions; or

(ii) in prescribed cases, out of payments made to them in respect of an earner's transfer to their scheme from some other scheme;

(c) in a case where a state scheme premium has been paid, to make the deduction for which section 92(3) provides when they calculate the cash equivalent to which the earner in respect of whom the premium has been paid has a right under Chapter IV of Part IV.

59 Further provisions concerning calculations relating to premiums

(1) The following amounts shall be certified by the Department—

(a) the costs mentioned in subsections (1), (2) and (6) of section 54,

(b) the amount of the difference mentioned in subsection (4) of that section,

(c) the cost of providing the appropriate percentage of the guaranteed minimum pension for the purposes of section 56, and

(d) the amount mentioned in section 57(2).

(2) The cash equivalents mentioned in section 54(3) and section 56(7)(a) shall be calculated and verified in the prescribed manner.

(3) If the Department—

(a) cannot readily ascertain the amount of any earnings in any tax week relevant for determining the costs referred to in subsection (1) or (2) of section 54, or

(b) is satisfied that records of earnings relevant for determining the amount mentioned in subsection (4) of that section have not been maintained or retained or are otherwise unobtainable,

then the Department may for that purpose—

(i) compute, in such manner as it thinks fit, an amount which shall be regarded as the amount of those earnings; or

(ii) take their amount to be such sum as it may specify in the particular case,

and it may certify the costs referred to in section 54(1) and (2) accordingly.

(4) Where the Department subsequently ascertains the amount of such earnings as are mentioned in paragraph (a) of subsection (3)—

(a) if it appears to the Department that the amount of the accrued rights premium or, as the case may be, the pensioner's rights premium would have been less if the Department had not made the calculation on the basis described in subsection (3), it shall refund the difference to the prescribed person, and

(b) if it appears to the Department that that premium would have been greater if the Department had not made the calculation on that basis, the prescribed person shall pay the difference to the Department.

(5) For the purposes of subsection (1) the Department may make such adjustments as it thinks necessary for avoiding fractional amounts.

60 Actuarial tables for purposes of calculations relating to premiums

(1) In calculating and certifying the costs mentioned in subsections (1), (2) and (6) of section 54 and the cost of providing the appropriate percentage of the guaranteed minimum pension for the purposes of section 56 the Department shall apply whichever of the prescribed actuarial tables (as in force at the appropriate time) is applicable in accordance with the regulations prescribing the tables, but for the purpose of calculating the amount of a transfer premium the Department shall apply the actuarial

table prescribed for the purpose of calculating the amount of an accrued rights premium in such manner as may be prescribed.

(2) In subsection (1) "the appropriate time" means the time when the scheme ceases to be contracted-out or, as the case may be, to be appropriate or, in the case of costs mentioned in section 54(6), the time when the earner's service in contracted-out employment is terminated.

(3) The tables to be used in calculating the costs referred to in section 54(6) shall be so framed as to embody the assumption that the increase of weekly equivalent required by section 12(3) is 5 per cent. compound for each relevant year after that in which the earner's service is terminated; and that assumption shall prevail over any different provision made by the scheme.

61 Inclusion of former and future earners for some purposes of this Chapter

Any reference to earners in sections 46(1)(a) and (7), 54(1) and (2), 55(1) and (6) and 56(1) and (2) and in section 51(1)(a), as it applies in relation to an occupational pension scheme which is not a money purchase contracted-out scheme, includes, in relation to any particular time, not only a reference to earners who are in employment at that time but also a reference to earners who are not in employment at that time but who have been in employment before it or will be in employment after it.

62 Power to apply certain provisions to widowers

The following provisions 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 46(1)(a)(ii);

(b) section 48(2); and

(c) section 51(1)(b);

and the references to a widow in section 54(1) and (2) shall be construed as including references to a widower and the reference in section 138(5) to guaranteed minimum pensions as including a reference to the guaranteed minimum pension of a widower only in those cases.

63 Non-payment of state scheme premiums

(1) If a person fails to pay any state scheme premium which is payable by him at or within the time prescribed for the purpose, he shall be liable on summary conviction to a fine of not more than level 3 on the standard scale.

(2) Where—

(a) a person is convicted of the offence under subsection (1) of failing to pay a premium, and

(b) the premium remains unpaid at the date of the conviction,

he shall be liable to pay to the Department a sum equal to the amount which he failed to pay.

(3) Subject to subsection (4), where a person is convicted of an offence mentioned in subsection (2), evidence may be given of any previous failure by him to pay state scheme premiums within the time prescribed for the purpose; and in that subsection

"the conviction" and "the offence" mean respectively the conviction referred to in this subsection and the offence of which the person is convicted.

(4) Such evidence may be given only if notice of intention to give it is served with the summons or warrant on which the person appeared before the court which convicted him.

64 Unpaid premiums: supplementary

(1) Where a person charged with an offence to which section 63(2) applies is convicted of that offence in his absence under Article 24(2) of the Magistrates' Courts (Northern Ireland) Order 1981, then if—

(a) it is proved to the satisfaction of the court, on oath or by affidavit or in the manner prescribed by magistrates' courts rules, that notice under section 63(4) has been duly served specifying the other premiums in respect of which the complainant intends to give evidence; and

(b) the clerk of petty sessions has received a statement in writing purporting to be made by the accused or by a solicitor acting on his behalf to the effect that if the accused is convicted in his absence of the offence charged he desires to admit failing to pay the other premiums so specified or any of them,

section 63(3) and (4) shall have effect as if the evidence had been given and the failure so admitted had been proved, and the court shall proceed accordingly.

(2) Where—

(a) a person is convicted of an offence to which section 63(2) applies; and

(b) an order is made under the Probation Act (Northern Ireland) 1950 placing the offender on probation or discharging him absolutely or conditionally,

subsection (1) and section 63(2) to (4) shall apply as if it were a conviction for all purposes.

(3) Any sum which a person is liable to pay under subsection (1) or section 63(2) to (4) shall be recoverable from him as a penalty.

(4) State scheme premiums recovered by the Department under those provisions shall be treated for all purposes as premiums paid to the Department in respect of the person in respect of whom they were originally payable.