

SCHEDULES

SCHEDULE 4

ABOLITION OF CONTRACTING-OUT FOR DEFINED CONTRIBUTION PENSION SCHEMES

PART 1

AMENDMENTS HAVING EFFECT AS FROM ABOLITION DATE

Pension Schemes Act 1993 (c. 48)

- 1 The Pension Schemes Act 1993 has effect subject to the following amendments.
- 2 (1) Section 7 (issue of contracting-out and appropriate scheme certificates) is amended as follows.
 - (2) For subsection (1) substitute—

“(1) Regulations shall provide for HMRC to issue certificates stating that the employment of an earner in employed earner’s employment is contracted-out employment by reference to an occupational pension scheme.

(1A) In this Act such a certificate is referred to as “a contracting-out certificate”.
 - (3) Omit subsections (4) to (6) (provisions relating to appropriate scheme certificates in respect of personal pension schemes).
 - (4) In subsection (7) (no certificate to have effect from a date earlier than its issue) omit “or appropriate scheme certificate”.
 - (5) After that subsection insert—

“(8) References in this Act to a contracting-out certificate, a contracted-out scheme and to contracting-out in a context relating to a money purchase contracted-out scheme are to be construed in accordance with section 181A.”
 - (6) In the sidenote, omit “and appropriate scheme”.
- 3 (1) Section 8 (definitions of certain terms) is amended as follows.
 - (2) In subsection (1) (definition of “contracted-out employment”) for the words from “he is under pensionable age” to the end of paragraph (a) substitute “—
 - (a) he is under pensionable age;
 - (aa) his service in the employment is for the time being service which qualifies him for a pension provided by an occupational pension scheme contracted out by virtue of satisfying section 9(2) (in this Act referred to as “a salary related contracted-out scheme”);”.
 - (3) After subsection (1) insert—

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- “(1A) In addition, in relation to any period before the abolition date, the employment of an earner in employed earner’s employment was “contracted-out employment” in relation to him during that period if—
- (a) he was under pensionable age;
 - (b) his employer made minimum payments in respect of his employment to a money purchase contracted-out scheme, and
 - (c) there was in force a contracting-out certificate issued in accordance with this Chapter (as it then had effect) stating that the employment was contracted-out employment by reference to the scheme.”
- (4) In subsection (2) for “for the purposes of section 42A” substitute “for the tax year in which the week falls as specified in an order made under section 42B (as it had effect before the abolition date)”.
- 4 (1) Section 9 (general requirements for certification of schemes) is amended as follows.
- (2) In subsection (1) (requirements for occupational pension schemes) omit “or (3)”.
- (3) Omit subsections (3) and (5) (requirements for money purchase occupational schemes and personal pension schemes).
- (4) In subsection (6) (meaning of “relevant requirements”)—
- (a) in paragraph (a) omit “or, as the case may be, appropriate”;
 - (b) in paragraph (b) omit “or, as the case may be, of being an appropriate scheme.”.
- 5 In section 10 (protected rights and money purchase benefits) in subsection (3) (protected rights under rules of personal pension schemes) in paragraph (a), for “of minimum contributions” substitute “under section 45(1)”.
- 6 Omit section 12 (determination of basis on which scheme is contracted-out).
- 7 In section 20 (transfer of accrued rights) in subsection (3) (regulations may provide for certain provisions to have effect subject to modifications) for “sections 26 to 33” substitute “sections 25A to 33”.
- 8 For the heading before section 26, substitute “*Requirements for schemes with members with protected rights*”.
- 9 Before section 26 (persons who may establish scheme) insert—

“25A Requirements for schemes with members with protected rights

- (1) This section applies to—
- (a) an occupational pension scheme which ceased to be a money purchase contracted-out scheme by virtue of section 15(1) of the Pensions Act 2007,
 - (b) a personal pension scheme which ceased to be an appropriate scheme by virtue of section 15(1) of that Act, or
 - (c) a registered pension scheme under section 153 of the Finance Act 2004—
 - (i) which is not a scheme falling within paragraph (a) or (b), and

(ii) to which the rights of a person who was at any time a member of a scheme mentioned in either of those paragraphs have been transferred.

(2) For so long as there are persons who have protected rights under a scheme to which this section applies, or who are entitled to any benefit giving effect to such rights under it, the scheme must satisfy the requirements mentioned in subsection (3).

(3) Those requirements are—

- (a) the requirements imposed by or by virtue of sections 26 to 32; and
- (b) such other requirements as may be prescribed.

(4) Regulations made under subsection (3)(b) may contain provision framed by reference to whether or not a scheme is a registered pension scheme under section 153 of the Finance Act 2004.”

10 After section 27 insert—

“27A Requirements in relation to giving effect to protected rights

(1) The rules of the scheme must provide that if, in the case of a member who is married or who has a civil partner, effect is to be given to the protected rights of the member by—

- (a) the provision by the scheme of a pension, or
- (b) the purchase by the scheme of an annuity,

the requirement set out in subsection (2) must be satisfied in relation to the pension or annuity.

(2) The requirement is that, in a case where—

- (a) the member dies while the pension or annuity is payable to him or her, and
- (b) the member is survived by a widow, widower or surviving civil partner (“the survivor”),

the pension or annuity is payable to the survivor 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.

(3) The rules of the scheme must provide that, if effect is to be given to a member’s protected rights by the provision of a lump sum, the prescribed conditions must be satisfied.

(4) The rules of the scheme must provide that, if—

- (a) a member has died without effect being given to his or her protected rights, and
- (b) the member is survived by a widow, widower or surviving civil partner,

effect is to be given to the protected rights in such manner as may be prescribed.”

11 Omit sections 28 to 29 (ways of giving effect to protected rights etc.).

12 For section 32A substitute—

“32A Discharge of protected rights on winding up: insurance policies

- (1) Where an occupational pension scheme is being wound up, effect may not be given to the protected rights of a member of the scheme by taking out a policy of insurance (or a number of such policies) under which the member is the beneficiary unless the policy (or each such policy) satisfies the requirement in subsection (2).
 - (2) The requirement is that the policy of insurance makes such provision in relation to giving effect to the protected rights of the beneficiary as a scheme to which section 25A applies is required to make under or by virtue of section 27A in relation to giving effect to the protected rights of a member of the scheme.”
- 13 (1) Section 33 (tax requirements to prevail over certification requirements) is amended as follows.
- (2) For “26” substitute “25A”.
 - (3) In the sidenote, for “certification requirements” substitute “requirements of sections 25A to 32”.
- 14 (1) Section 33A (appropriate schemes: “blowing the whistle”) is amended as follows.
- (2) In subsection (1) (obligation to report failure to satisfy requirements)—
 - (a) for “an appropriate scheme” substitute “a personal pension scheme to which section 25A applies”;
 - (b) for paragraph (a) substitute—
 - “(a) any requirement which, in the case of the scheme, is required by section 25A to be satisfied is not satisfied,”;
 - (c) in paragraph (b) for “appropriate schemes” substitute “personal pension schemes to which section 25A applies”.
 - (3) In the sidenote, for “appropriate schemes” substitute “personal pension schemes”.
- 15 (1) Section 34 (cancellation, variation, surrender and refusal of certificates) is amended as follows.
- (2) For subsection (1) (regulations to provide for cancellation etc. of contracting-out or appropriate scheme certificates) substitute—
 - “(1) Regulations shall provide for the cancellation, variation or surrender of a contracting-out certificate, or the issue of a new certificate—
 - (a) on any change of circumstances affecting the treatment of an employment as contracted-out employment; or
 - (b) where the certificate was issued on or after the principal appointed day, if any employer of persons in the description of employment to which the scheme in question relates, or the actuary of the scheme, fails to provide HMRC, at prescribed intervals, with such documents as may be prescribed for the purpose of verifying that the conditions of section 9(2B) are satisfied.”
 - (3) In subsection (3) (continued contracting-out of scheme dependent on conditions for contracting-out remaining satisfied)—

- (a) for paragraphs (a) and (b) substitute “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”;
- (b) omit “or, as the case may be, the scheme’s continuing to be an appropriate scheme”;
- (c) omit “or appropriate scheme”.
- (4) Omit subsection (5) (circumstances in which HMRC can withhold etc. appropriate scheme certificate).
- (5) In subsection (8) (cancellation etc. of certificates not to have effect from a time earlier than when cancellation etc. made) omit “or appropriate scheme certificate”.
- (6) After subsection (8) insert—
- “(9) A reference in this section to a contracting-out certificate does not include a reference to a contracting-out certificate issued in respect of a money purchase contracted-out scheme.”
- 16 (1) Section 38 (alteration of rules of appropriate schemes) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) No alteration of the rules of a personal pension scheme which was an appropriate scheme shall be made so as—
- (a) to affect any of the matters dealt with in sections 26 to 33; or
- (b) to cause the scheme to take a different permitted form from that previously taken.”
- (3) For subsection (5) substitute—
- “(5) This section has effect in relation to a personal pension scheme for so long as there are persons who have protected rights under the scheme or who are entitled to any benefit giving effect to such rights under it.”
- (4) In the sidenote, for “appropriate schemes” substitute “personal pension schemes”.
- 17 In section 42A (reduced rates of Class 1 contributions, and rebates) at the end insert—
- “(8) For the purposes of this section “the appropriate age-related percentage” and “the appropriate flat-rate percentage”, in relation to a tax year beginning before the abolition date, are the percentages specified as such for that tax year in an order made under section 42B (as it had effect prior to that date).”
- 18 Omit section 42B (determination and alteration of rates of contributions, and rebates, applicable under section 42A).
- 19 In section 43 (payment of minimum contributions to personal pension schemes) at the end insert—
- “(7) In this section “the earner’s chosen scheme” means the scheme which was immediately before the abolition date the earner’s chosen scheme in accordance with section 44 (as it had effect prior to that date).”
- 20 Omit section 44 (earner’s chosen scheme).
- 21 In section 45 (amount of minimum contributions) at the end insert—

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- “(4) For the purposes of this section “the appropriate age-related percentage”, in relation to a tax year beginning before the abolition date, is the percentage (or percentages) specified as such for that tax year in an order made under section 45A (as it had effect prior to that date).”
- 22 Omit section 45A (determination and alteration of rates of minimum contributions under section 45).
- 23 (1) Section 48A (additional pension and other benefits) is amended as follows.
- (2) In subsection (1) (effect of reductions and payments for contracted-out schemes on earnings factors) in paragraph (a) for “or 42A” substitute “or, in the case of a week falling before the abolition date, under section 42A (as it then had effect)”.
- (3) In paragraph (b) of that subsection, for “an amount is paid under section 45(1)” substitute “in the case of a week falling before the abolition date, an amount is paid under section 45(1) (as it then had effect)”.
- 24 (1) Section 50 (powers of HMRC to approve arrangements for scheme ceasing to be certified) is amended as follows.
- (2) In subsection (1) (HMRC may approve arrangements for preservation etc. of rights and liabilities under a scheme which ceases to be contracted-out)—
- (a) after “ceasing to be such a scheme” insert “(including by virtue of section 15(1) of the Pensions Act 2007)”;
- (b) in paragraph (a) after “other than” insert “one that was”;
- (c) in paragraph (b) for “in the case of a” substitute “in the case of an occupational pension scheme that was a”.
- (3) In subsection (2) (HMRC to issue a certificate if they withdraw etc. approval for arrangements) after “whether by” insert “virtue of section 15(1) of the Pensions Act 2007, by”.
- (4) In subsection (4) (regulations may provide for various provisions of the Act to have effect with modifications where arrangements are approved) for “26 to 33” substitute “25A to 33”.
- (5) In subsection (6) (approval of arrangements for salary related occupational scheme may be withdrawn at any time) for “which is not a money purchase contracted-out scheme” substitute “to which subsection (1)(a) applies”.
- 25 (1) Section 52 (supervision of schemes which have ceased to be certified) is amended as follows.
- (2) In subsection (2) (occupational pension schemes to which section applies) in paragraph (a) after “contracted-out scheme” insert “(whether by virtue of section 15(1) of the Pensions Act 2007 or otherwise)”.
- (3) In subsection (3) (personal pension schemes to which section applies) in paragraph (a) after “appropriate scheme” insert “(whether by virtue of section 15(1) of the Pensions Act 2007 or otherwise)”.
- 26 In section 55 (payment of state scheme premiums on termination of certified status) in subsection (2) (prescribed person to pay contributions equivalent premium) in paragraph (a) omit “(other than a money purchase contracted-out scheme)”.

- 27 In section 68A (safeguarded rights) in subsection (5) (interpretation) for “or (3)” substitute “or a money purchase contracted-out scheme”.
- 28 In section 87 (general protection principle) in subsection (1) (when subsection applies) in paragraph (a)(i), for “which is not a money purchase contracted-out scheme” substitute “that satisfies the requirements of section 9(2)”.
- 29 In section 96 (further provisions concerning exercise of option to take cash equivalent under section 95) in subsection (2) (circumstances in which option must be exercised in relation to balance of cash equivalent after deducting amount sufficient to meet certain liabilities of trustees etc.) in paragraph (a)(ii) omit “which is not an appropriate scheme”.
- 30 (1) Section 156 (information for the purposes of contracting-out) is amended as follows.
- (2) In subsection (1) (Secretary of State or HMRC may give information to managers or trustees of scheme) for “or appropriate scheme” substitute “or personal pension scheme”.
- (3) In the sidenote, for “contracting-out” substitute “of obligations under Part III”.
- 31 In section 163 (exemption of certain schemes from rule against perpetuities) in subsection (2) (schemes to which the exemption applies) omit paragraph (c) (appropriate schemes).
- 32 In section 164 (Crown employment) for subsection (2) substitute—
- “(2) A person who is employed by or under the Crown shall be treated as an employed earner for the purposes of—
- (a) sections 25A to 33A, so far as they relate to personal pension schemes;
 - (b) sections 38, 43 and 45;
 - (c) section 48, so far as it relates to minimum contributions;
 - (d) section 50, so far as it relates to personal pension schemes;
 - (e) section 54;
 - (f) section 111 (and Part VIII and section 153 so far as they have effect for the purposes of section 111);
 - (g) sections 117, 154 and 155;
 - (h) section 159, so far as it relates to protected rights payments; and
 - (i) sections 160 and 166.”
- 33 In section 177 (general financial arrangements) in subsection (3) (amounts to be paid out of National Insurance Fund into Consolidated Fund) in paragraph (b) (administrative expenses incurred in carrying into effect remaining provisions of the Act) for sub-paragraph (ii) substitute—
- “(ii) sections 25A to 33A, so far as they relate to personal pension schemes;
 - (iii) section 38;
 - (iv) section 50, so far as it relates to personal pension schemes;
 - (v) section 54;
 - (vi) section 111 (and Part VIII and section 153 so far as they have effect for the purposes of section 111);
 - (vii) sections 117, 154 and 155;

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- (viii) section 159, so far as it relates to protected rights payments;
and
(ix) sections 160 and 166;”.
- 34 (1) Section 181 (general interpretation) is amended as follows.
- (2) In subsection (1)—
- (a) at the appropriate places insert—
- ““abolition date” means the day appointed for the commencement of section 15(1) of the Pensions Act 2007;”;
- ““HMRC” means the Commissioners for Her Majesty’s Revenue and Customs;”;
- (b) for the definition of “appropriate scheme certificate” and references to an appropriate scheme, substitute—
- ““appropriate scheme” and “appropriate scheme certificate” are to be construed in accordance with section 181A;”;
- (c) in the definition of “contracting-out certificate” and references to contracted-out scheme and to contracting-out, at the end insert “and section 181A”;
- (d) for the definition of “money purchase contracted-out scheme” substitute—
- ““money purchase contracted-out scheme” is to be construed in accordance with section 181A;”.
- (3) In subsection (4) (regulations may prescribe the persons who are to be regarded as members or prospective members of an occupational scheme etc.) omit “, 44”.
- 35 After section 181 insert—

“181A Interpretation of references to money purchase contracted-out schemes or appropriate schemes after abolition date

- (1) This section applies for the interpretation of this Act on and after the abolition date.
- (2) An occupational pension scheme was a money purchase contracted-out scheme at a time before the abolition date if, at that time, the scheme was contracted-out by virtue of satisfying section 9(3) (as it then had effect).
- (3) A money purchase contracted-out scheme was, at a time before the abolition date, a contracted-out scheme in relation to an earner’s employment if it was, at that time, specified in a contracting-out certificate in relation to that employment; and references to the contracting-out of a scheme are, in relation to a money purchase contracted-out scheme, references to its inclusion in such a certificate.
- (4) Any reference to a contracting-out certificate is, in relation to a money purchase contracted-out scheme, a reference to a certificate issued by virtue of section 7, as it had effect before the abolition date, in relation to the employment of an earner in employed earner’s employment which was contracted-out by reference to that scheme.

- (5) Any certificate so issued that was, at a time before the abolition date, in force in respect of an employed earner's employment is to be taken as conclusive that the employment was, at that time, contracted-out employment.
- (6) A personal pension scheme was an appropriate scheme at a time before the abolition date if, at that time, there was in force a certificate issued under section 7(1)(b) (as it then had effect) stating that the scheme was an appropriate scheme; and "appropriate scheme certificate" means such a certificate.
- (7) Any appropriate scheme certificate in force in relation to a scheme at any time before the abolition date is to be taken as conclusive that the scheme was, at that time, an appropriate scheme."

Pensions Act 1995 (c. 26)

- 36 (1) Section 149 of the Pensions Act 1995 (hybrid occupational pension schemes) is amended as follows.
- (2) In subsection (1) (regulations may make provision for hybrid schemes to be treated as two contracted-out schemes) for "sections 9 and 12" substitute "section 9".
- (3) In paragraph (b) of that subsection, for "section 9(3)" substitute "the requirements mentioned in section 25A(3)".

Welfare Reform and Pensions Act 1999 (c. 30)

- 37 In section 1 of the Welfare Reform and Pensions Act 1999 (meaning of "stakeholder pension scheme")—
- (a) in subsection (1) in paragraph (a), for "(10)" substitute "(9)";
- (b) omit subsection (10) (stakeholder pension scheme must be contracted-out).
- 38 In section 2 of that Act (registration of stakeholder pension schemes) in subsection (2) (when Authority to register schemes) in paragraph (b)(i), for "to (10)" substitute "to (9)".
- 39 Omit section 7 of that Act (reduced rates of contributions for money purchase contracted-out schemes and appropriate personal pension schemes etc.: power to specify different percentages).
- 40 In Schedule 5 to that Act (pension credits: mode of discharge) in paragraph 7(6) (disqualification as destination for pension credit) in the definition of "contracted-out rights"—
- (a) in paragraph (a), omit "or (3)";
- (b) after paragraph (a) insert—
- “(ab) an occupational pension scheme constituting a money purchase contracted-out scheme for the purposes of that Act, or”;
- (c) in paragraph (b), for "which is" substitute "constituting".

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

Pensions Act 2004 (c. 35)

- 41 In section 257 of the Pensions Act 2004 (conditions for pension protection on transfer of employment) omit subsection (7) (minimum payments made under contracted-out money purchase scheme to be disregarded).