



Social Security Pensions Act 1975

1975 CHAPTER 60

PART III

CONTRACTING-OUT

State scheme premiums

42 Premium on termination of contracted-out employment

(1) This section has effect as to the cases in which an earner's employer may pay a state scheme premium where—

- (a) the earner's service in contracted-out employment by reference to an occupational pension 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 five years in contracted-out employment by reference to the scheme ;

and a premium under this section may be referred to as a " contributions equivalent premium ".

(2) If—

- (a) the earner's service is terminated in any way except by his death or by the scheme's ceasing to be contracted-out ; and
- (b) his period of service is not one in respect of which the scheme conforms to the appropriate extent with the preservation requirements of Part II of the Social Security Act 1973,

his employer may elect to pay a contributions equivalent premium with a view to extinguishing the earner's accrued rights to guaranteed minimum pensions under the scheme.

(3) If the earner's service is terminated by his death and he dies leaving a widow, his employer may elect to pay a contributions equivalent premium with a view to extinguishing any such accrued rights in respect of the widow.

43 Premium under section 42: additional provisions

- (1) The amount of a contributions equivalent premium shall be the equivalent, as certified by the Secretary of State, of the amount by which the Class 1 contributions payable in respect of the earner's employment in contracted-out employment by reference to the scheme have fallen short of what would have been payable if the employment had not been contracted-out; and in certifying any amount under this section the Secretary of State may make such adjustments as he thinks necessary for avoiding fractional amounts.
- (2) Where under the rules of the scheme transfer credits have been allowed in respect of the earner's accrued rights under another scheme, the references in section 42(1), and in subsection (1) above, to contracted-out employment 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.
- (3) For the purposes of section 42(2), a scheme conforms to the appropriate extent with the preservation requirements of Part II of the Social Security Act 1973 if—
 - (a) it entitles the earner to short service benefit within the meaning of those requirements ; 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).
- (4) Except in such cases as may be prescribed, an employer shall not, in making or abstaining from making elections under section 42(2) or (3), discriminate between different earners on any grounds other than their respective lengths of relevant service; and if the Occupational Pensions Board consider that an employer is contravening this subsection, they may cancel any contracting-out certificate held by him in respect of the scheme in question.
- (5) In subsection (4) above " 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.
- (6) An election by an employer under section 42(2) or (3) must be made within the prescribed period in the prescribed manner; and where an employer elects to pay a premium in respect of an earner, he shall pay it to the Secretary of State within the prescribed period.
- (7) Payment of a premium under section 42(2) shall operate to extinguish the earner's accrued rights to guaranteed minimum pensions under the scheme; and payment of a premium under section 42(3) shall operate to extinguish any right to guaranteed minimum pension in respect of the widow.
- (8) Subject to regulations made under paragraph 1 of Schedule 2 to this Act, an employment which is terminated by the death of the employer shall be treated for the purposes of section 42 as terminated immediately before the death.

44 Premium on termination of contracted-out scheme

- (1) In the case of an occupational pension scheme which is contracted-out, the Occupational Pensions Board may, for the event of its ceasing to be contracted-out,

- approve any arrangements made or to be made in relation to the scheme, or for its purposes, for the preservation or transfer—
- (a) of earners' accrued rights to guaranteed minimum pensions under the scheme ;
 - (b) of the liability for the payment of guaranteed minimum pensions thereunder in respect of persons who have then become entitled to receive them.
- (2) If the scheme ceases to be a contracted-out scheme (whether by being wound up or otherwise) then—
- (a) in respect of each earner whose accrued rights to guaranteed minimum pensions under the scheme are not subject to approved arrangements ; and
 - (b) 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 so subject,
- a state scheme premium shall be payable by the prescribed person.
- (3) A premium under subsection (2)(a) above may be referred to as an " accrued rights premium " ; and a premium under subsection (2)(b) may be referred to as a " pensioner's rights premium " ; and in each case the premium shall be paid within the prescribed period to the Secretary of State.
- (4) For the purposes of subsection (2) above, an earner's accrued rights or, as the case may be, a person's guaranteed minimum pension rights are subject to approved arrangements if (either before or after the scheme ceased to be contracted-out) the Occupational Pensions Board have approved arrangements under subsection (1) above which operate as respects him and the rights in question, and have not since withdrawn their approval.
- (5) The amount—
- (a) of an accrued rights premium shall be the cost (as certified by the Secretary of State) of providing guaranteed minimum pensions for the earner and his widow in accordance with his accrued rights under the scheme; and
 - (b) of a pensioner's rights premium shall be the cost (as so certified) of providing or continuing to provide any guaranteed minimum pension thereunder, whether for the earner (or former earner) or for his widow.
- (6) The costs referred to in subsection (5)(a) and (b) above shall, unless the person liable for the premium otherwise elects in the prescribed manner, be calculated on the basis that (disregarding any orders made under section 21 of this Act) the relevant earnings factors have been increased by 12 per cent, per annum in each of the five complete tax years before that in which the scheme ceases to be contracted-out.
- (7) In calculating those costs, the Secretary of State shall apply whichever of the prescribed actuarial tables (as in force at the time when the scheme ceases to be contracted-out) is applicable in accordance with the regulations prescribing the tables.
- (8) In certifying any amount under subsection (5) above, the Secretary of State may make such adjustments as he thinks necessary for avoiding fractional amounts.
- (9) Payment of an accrued rights premium shall extinguish the earner's accrued rights to guaranteed minimum pensions under the scheme and payment of a pensioner's rights premium shall extinguish any right to receive guaranteed minimum pensions thereunder, whether for the earner (or former earner) or for his widow.

45 Premium where guaranteed minimum pension excluded from full revaluation

- (1) Where an earner's service in contracted-out employment by reference to an occupational pension, scheme is terminated before he attains the scheme's normal pension age and 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 35(7) above, then, unless either—
- (a) a state scheme premium is payable in respect of him under section 42 or 44 above, or
 - (b) those provisions conform with such additional requirements as may be prescribed,
- the earner's employer shall in respect of the earner pay a state scheme premium (which may be referred to as a "limited revaluation premium").
- (2) Such a premium shall be paid to the Secretary of State within the prescribed period; and its amount shall be the difference, as certified by the Secretary of State, between the cost of providing the guaranteed minimum pensions in accordance with the provisions included in the scheme by virtue of the said section 35(7) and what would have been the cost of providing them if no such provision had been included.
- (3) Where a state scheme premium is payable in respect of an earner under this section, 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 (2) above shall, unless the employer otherwise elects in the prescribed manner, be calculated on the basis that (disregarding any orders made under section 21 of this Act) the relevant earnings factors have been increased by 12 per cent, per annum in each of the five complete tax years before that in which the scheme ceases to be contracted-out.
- (4) In calculating the costs referred to in subsection (2) above the Secretary of State shall apply whichever of the prescribed actuarial tables (as in force at the time when the earner's service in contracted-out employment is terminated) is applicable in accordance with the regulations prescribing the tables ; and—
- (a) the tables shall be so framed as to embody the assumption that the increase of weekly equivalent required by section 35(7) is 5 per cent, compound for each relevant year after that in which the earner's service is terminated; and
 - (b) that assumption shall prevail over any different provision made by the scheme.
- (5) In certifying any amount under subsection (2) above the Secretary of State may make such adjustments as he thinks necessary for avoiding fractional amounts.
- (6) References in this section to the termination of an earner's employment do not include references to its termination by his death; and, subject to regulations made under paragraph 1 of Schedule 2 to this Act, an employment which is terminated by the death of the employer shall be treated for the purposes of this section as terminated immediately before the death.

46 Provisions as to actuarial tables

- (1) Regulations prescribing actuarial tables for the purposes of sections 44(7) and 45(4) above—
- (a) shall be made only after consultation with the Government Actuary; and

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- (b) shall not be made unless a draft of them has been laid before Parliament and approved by a resolution of each House.
- (2) The prescribed actuarial tables shall comprise a standard table—
 - (a) embodying whatever appears to the Secretary of State to be the best practicable estimate of the average cost, expressed in actuarial terms and relative to a given period, of making such provision for pensions as is mentioned in section 44(5)(a) or (b), or section 45(2), as the case may be ; but
 - (b) assuming an average yield on investments which is not less than the average increase in the general level of earnings obtaining in Great Britain,and also alternative tables to be applied, as directed by the regulations, according to whatever is from time to time the yield on such investments or classes of investments as the Secretary of State thinks fit to prescribe.
- (3) With any reports laid before Parliament under section 28 of this Act, the Secretary of State shall lay—
 - (a) a report by the Government Actuary on any changes in the factors affecting the actuarial tables prescribed for the purposes of section 44(7) and 45(4); and
 - (b) a report by the Secretary of State stating whether he considers that, in view of the Government Actuary's report, there should be any alterations in the tables and if so, what alterations are in his opinion required.
- (4) The changes referred to in subsection (3)(a) above are, in the case of the first report under that paragraph, changes since the passing of this Act and, in the case of a subsequent report, changes since the preparation of the last report.
- (5) If in a report under subsection (3)(b) above the Secretary of State states that he considers that there should be alterations in the actuarial tables, he shall prepare and lay before each House of Parliament with the report the draft of regulations prescribing tables to be in force with those alterations from the beginning of such tax year as may be specified in the regulations not earlier than the second tax year after that in which the regulations are made.
- (6) If the draft regulations are approved by resolution of each House the Secretary of State shall make the regulations in the form of the draft.

47 Deduction of premium from refund of contributions

- (1) Where an earner's service in contracted-out employment is terminated and—
 - (a) 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 for the purposes of the relevant scheme towards the provision of benefits under the scheme; and
 - (b) a state scheme premium falls to be paid by any person in respect of him under this Part of this Act,then, subject to the provisions of this section, the person by whom the premium falls to be paid shall be entitled on paying it to recover the certified amount (and on paying any part of it to recover a proportionate part of the certified amount) from the person liable for the refund.
- (2) For the purposes of this section the certified amount in relation to a premium paid in respect of any person who is or was an earner or whose husband was an earner shall be such amount as may be certified by the Secretary of State as the amount by which the primary Class 1 contributions payable in respect of the earner's employment in—

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- (a) contracted-out employment by reference to the relevant scheme; and
- (b) employment in any period of linked qualifying service which was contracted-out employment by reference to another scheme,

have fallen short of what would have been payable if the employment or employments had not been contracted-out; and in certifying any amount under this subsection the Secretary of State may make such adjustments as he thinks necessary for avoiding fractional amounts.

- (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 certified amount 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) The amount which may be recovered under this section in respect of any premium shall be increased by such amount as may be prescribed where the refund—
 - (a) is made in respect of more than one period of service, and one or more of those periods are periods 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.
- (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 any 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, and any provision so made shall have effect notwithstanding anything in any enactment relating to the making of the refund.
- (8) Where an earner's service in contracted-out employment is terminated and—
 - (a) 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 relevant scheme in relation to any previous contracted-out employment of his, being payments towards the provision of benefits under that scheme ; and
 - (b) a state scheme premium falls to be paid in respect of him and the period taken into account in arriving at the certified amount includes the period of the previous contracted-out employment,

then in respect of that premium the person liable for it 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 the foregoing provisions of this section where a state scheme premium and a refund fall to be made on the termination of service in the employment in respect of which the refund is made; and subsection (7) above shall apply accordingly.
- (9) Notwithstanding any contract to the contrary, a person shall not be entitled to recover any part of a state scheme premium from any earner in respect of whom it is payable or, except in accordance with this section, 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.

- (10) The foregoing provisions of this section shall apply in relation to such a refund as is referred to in subsection (1)(a) above which becomes payable after the termination of an earner's service in contracted-out employment as they apply to such a refund becoming payable on the termination of an earner's service in such employment; and where he (or, by virtue of a connection with him, any other person) becomes entitled to any payment in lieu of benefit, those provisions shall apply in relation to the payment as if it were such a refund as is referred to in subsection (1)(a) above.
- (11) For the purposes of subsection (10) above, 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 subsection (10) above.
- (12) In this section, " the relevant scheme " in relation to any employment means the contracted-out scheme by reference to which that employment is or was contracted-out employment in relation to the earner concerned.