



# Pension Schemes Act 1993

## 1993 CHAPTER 48

### PART III

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

### CHAPTER III

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

#### *Approval of arrangements for schemes ceasing to be certified*

#### **50 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- (a) have withdrawn their approval of previously approved arrangements relating to it; or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 18, 19, 26 to 33 and 43 to 45) 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 force.
  - (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.

## **51 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 16(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 section 21 of the Social Security Pensions Act 1975 or section 148 of the Social Security Administration Act 1992 to come into force 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 16(2).
- (5) In this section “relevant year” and “final relevant year” have the same meanings as in section 16.

### *Supervision of formerly certified schemes*

## **52 Supervision of schemes which have ceased to be certified**

- (1) Section 53 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 54 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 55(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 55(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 53 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 19 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 53 shall cease to subsist in relation to those pensions), and section 54 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 18(2A) of the Occupational Pension Schemes (Contracting-out) Regulations 1984 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 1987 shall not be treated as such a person as is mentioned in paragraph (b) of subsection (3).

### **53 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 23(1) and 24(1) or, as the case may be, under section 30(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 24(1)).
- (2) Where the scheme was contracted-out subject to such conditions as are referred to in section 25(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 50 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 9(2) and 13 to 25 or, as the case may be, sections 9(3) and 26 to 32, 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.

### **54 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 30(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 50 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 9(5) and 26 to 32, the Board may take such steps as they think expedient with a view to remedying or preventing the breach, and section 53(5) applies for that purpose as it applies for the purpose there mentioned.

### *State scheme premiums*

### **55 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 19 or 99;
- (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 Secretary of State 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 53 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 16(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”.

## **56 Provisions supplementary to s. 55**

- (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 55(1).
- (2) A premium under section 55 shall be paid by the prescribed person to the Secretary of State 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 50 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 55(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 55(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 55(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 2, an employment which is terminated by the death of the employer shall be treated for the purposes of section 55(2) and (4) as terminated immediately before the death.

## **57 Elections to pay contributions equivalent premiums**

- (1) An election under section 55(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.

## **58 Amount of premiums payable under s. 55**

- (1) Subject to section 63(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 63(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 63(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 59(2) and 64(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 16(2) and (3); and
  - (b) what would have been the cost of providing them if no such provisions had been included.

- (7) Section 56(4) applies for the purposes of subsection (4) as it applies for the purposes of section 55(2).

## **59      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 58 shall be calculated as follows—
- (a) any relevant earnings factor shall be taken to be that factor as increased by the last order under section 21 of the Social Security Pensions Act 1975 or section 148 of the Social Security Administration Act 1992 to come into force 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 58(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 16(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 58 shall be calculated as follows—
- (a) any relevant earnings factor shall be taken to be that factor as increased by the last order under section 21 of the Social Security Pensions Act 1975 or section 148 of the Social Security Administration Act 1992 to come into force 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 16, and references to the earner shall be construed as references to the earner in respect of whom the premium in question has become payable.



**60 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 47(2) and (5) and 48(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 55(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 55(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 Secretary of State 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 Secretary of State 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.

## **61 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.

## **62 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 61, 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 96(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.

### **63 Further provisions concerning calculations relating to premiums**

- (1) The following amounts shall be certified by the Secretary of State—
  - (a) the costs mentioned in subsections (1), (2) and (6) of section 58,
  - (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 60, and
  - (d) the amount mentioned in section 61(2).
- (2) The cash equivalents mentioned in section 58(3) and section 60(7)(a) shall be calculated and verified in the prescribed manner.
- (3) If the Secretary of State—
  - (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 58, 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 he may for that purpose—
  - (i) compute, in such manner as he thinks fit, an amount which shall be regarded as the amount of those earnings; or
  - (ii) take their amount to be such sum as he may specify in the particular case,
 and he may certify the costs referred to in section 58(1) and (2) accordingly.
- (4) Where the Secretary of State subsequently ascertains the amount of such earnings as are mentioned in paragraph (a) of subsection (3)—
  - (a) if it appears to him that the amount of the accrued rights premium or, as the case may be, the pensioner's rights premium would have been less if he had not made the calculation on the basis described in subsection (3), he shall refund the difference to the prescribed person, and
  - (b) if it appears to the Secretary of State that that premium would have been greater if he had not made the calculation on that basis, the prescribed person shall pay the difference to him.
- (5) For the purposes of subsection (1) the Secretary of State may make such adjustments as he thinks necessary for avoiding fractional amounts.

### **64 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 58 and the cost of providing the appropriate percentage of the guaranteed minimum pension for the purposes of section 60 the Secretary of State 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 Secretary of State 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 58(6), the time when the earner’s service in contracted-out employment is terminated.

- (3) The tables—

- (a) shall embody whatever appears to the Secretary of State to be the best practical estimate of the average cost, expressed in actuarial terms and relative to a given period, of providing guaranteed minimum pensions for the purposes of the calculations required by section 58(1), (2), (5) or (6) or section 60(7), as the case may be; and
- (b) shall assume for any period an average yield on investments which is not less than the average increase during that period in the general level of earnings obtaining in Great Britain,

but the regulations may provide for them to be adjusted according to whatever is from time to time the actual yield on prescribed investments or the average yield, as shown in prescribed published indices, on prescribed classes of investments.

- (4) The tables to be used in calculating the costs referred to in section 58(6) shall be so framed as to embody the assumption that the increase of weekly equivalent required by section 16(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.

- (5) Regulations prescribing tables for the purposes of this section—

- (a) shall be made only after consultation with the Government Actuary or the Deputy Government Actuary; and
- (b) shall not be made unless a draft of them has been laid before Parliament and approved by a resolution of each House.

- (6) The Secretary of State may from time to time, and shall when required by subsection (7), lay before each House of Parliament—

- (a) a report by the Government Actuary or the Deputy Government Actuary on any changes since the preparation of the last such report in the factors affecting any of the actuarial tables prescribed for the purposes of any of the provisions to which this section applies (including changes affecting adjustments under the regulations); and
- (b) a report by the Secretary of State stating whether he considers that the regulations ought to be altered in view of the report by the Government Actuary or Deputy Government Actuary and, if so, what alterations he proposes.

- (7) The Secretary of State shall lay reports under this section at intervals of not more than five years.

- (8) If in a report under this section the Secretary of State proposes alterations in the regulations, he shall prepare and lay before each House of Parliament with the report draft regulations which give effect to the alterations and are to be in force—

- (a) from the beginning of such tax year as may be specified in the regulations (not being earlier than the second tax year after that in which the regulations are made); or

- (b) where it appears to him to be expedient for reasons of urgency, an earlier date (not being earlier than the date on which the regulations are made).
- (9) 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.

## **65 Inclusion of former and future earners for some purposes of this Chapter**

Any reference to earners in sections 50(1)(a) and (7), 58(1) and (2), 59(1) and (6) and 60(1) and (2) and in section 55(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.

## **66 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 50(1)(a)(ii);
- (b) section 52(2); and
- (c) section 55(1)(b);

and the references to a widow in section 58(1) and (2) shall be construed as including references to a widower and the reference in section 142(5) to guaranteed minimum pensions as including a reference to the guaranteed minimum pension of a widower only in those cases.

## **67 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 Secretary of State 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 or, in Scotland, the complaint on which the person appeared before the court which convicted him.

**68 Unpaid premiums: supplementary**

- (1) Where in England and Wales a person charged with an offence to which section 67(2) applies is convicted of that offence in his absence under section 12(2) of the Magistrates' Courts Act 1980, then if—
  - (a) it is proved to the satisfaction of the court, on oath or in the manner prescribed by rules under section 144 of that Act, that notice under section 67(4) has been duly served specifying the other premiums in respect of which the prosecutor intends to give evidence; and
  - (b) the clerk of the court 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 67(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) In England and Wales where—
  - (a) a person is convicted of an offence to which section 67(2) applies; and
  - (b) an order is made under Part I of the Powers of Criminal Courts Act 1973 placing the offender on probation or discharging him absolutely or conditionally,subsection (1) and section 67(2) to (4) shall apply as if it were a conviction for all purposes.
- (3) In Scotland where—
  - (a) a person is convicted on indictment of, or is charged before a court of summary jurisdiction with, any such offence; and
  - (b) an order is made under the Criminal Procedure (Scotland) Act 1975 discharging the offender absolutely or placing him on probation,section 67(2) to (4) shall apply as if—
  - (i) the conviction on indictment were a conviction for all purposes; or
  - (ii) (as the case may be) the making of the order by the court of summary jurisdiction were a conviction.
- (4) In England or Wales any sum which a person is liable to pay under subsection (1) or section 67(2) to (4) shall be recoverable from him as a penalty.
- (5) State scheme premiums recovered by the Secretary of State under those provisions shall be treated for all purposes as premiums paid to the Secretary of State in respect of the person in respect of whom they were originally payable.