

STATUTORY INSTRUMENTS

1996 No. 1172

PENSIONS

Occupational Pension Schemes (Contracting-out) Regulations 1996

<i>Made</i>	- - - -	<i>25th April 1996</i>
<i>Laid before Parliament</i>		<i>29th April 1996</i>
<i>Coming into force</i>	- -	<i>6th April 1997</i>

The Secretary of State for Social Security in exercise of the powers set out in Schedule 1 and of all other powers enabling him in that behalf, after agreement with the Occupational Pensions Board that certain proposals within these Regulations need not be referred to it, by this instrument, which otherwise contains regulations made for the purpose of consolidating regulations revoked herein and regulations which are consequential upon enactments contained in Part III of the Pensions Act 1995^{F1} and are made before the end of the period of 6 months beginning with the coming into force of the enactments of that Part by virtue of which they are made^{F2}, hereby makes the following Regulations:

F1 1995 c.26 .

F2 See section 185 of the [Pension Schemes Act 1993 \(c.48\)](#) and section 173 of the [Social Security Administration Act 1992 \(c.5\)](#), under which the requirement to consult does not apply where regulations are made only for the purpose of consolidating other regulations revoked by them or which are consequential upon a specified enactment and made before the end of six months from the coming into force of that enactment or where the Occupational Pensions Board agrees that regulations need not be referred to it.

PART I

PRELIMINARY

Citation, commencement and interpretation.

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Contracting-out) Regulations 1996 and shall come into force on 6th April 1997.

^{F3}(1A)

(2) In these Regulations, unless the context otherwise requires—

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“the 1993 Act” means the Pension Schemes Act 1993 [^{F4}as it had effect immediately before the second abolition date (except where otherwise stated)]^{F5};

“the 1995 Act” means the Pensions Act 1995;

[^{F6}“the 2004 Act” means the Pensions Act 2004]

[^{F7}“the 2009 Regulations” means the Registered Pension Schemes (Authorised Payments) Regulations 2009;]

“the actuary” means the actuary appointed for the scheme in pursuance of section 47(1) of the 1995 Act or the actuary otherwise authorised by virtue of these Regulations to provide certification in accordance with section 12A(6) of the 1993 Act ^{F8};

“the Administration Act” means the Social Security Administration Act 1992 ^{F9};

“administrator”, in relation to an occupational pension scheme, means the person resident in the United Kingdom having responsibility for the management of the scheme or, in the case of an overseas scheme, means the person [^{F10}who is, or the persons who are, appointed in accordance with section 270 of the Finance Act 2004 (meaning of “scheme administrator”);]

“age-related payment” means a payment made by the Secretary of State in accordance with section 42A(3) of the 1993 Act ^{F11};

^{F12} ...

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992 ^{F13};

“earnings period” has the same meaning as in the Social Security (Contributions) Regulations [^{F14}2001];

“emoluments” means so much of a person’s remuneration or profit derived from employed earner’s employment as constitutes earnings for the purposes of [^{F15}Parts 1 to 5 of the Contributions and Benefits Act, including any amount retrospectively treated as earnings (“retrospective earnings”) by retrospective contributions regulations;]

“employer” includes a person who, by virtue of paragraphs (4) or (5) or regulations 12 to 14, is treated as an employer for the purposes of these Regulations;

“income tax month” means a period beginning on the 6th day of any calendar month and ending on the 5th day of the following calendar month;

“independent trade union” means an independent trade union recognised to any extent for the purpose of collective bargaining;

“insured scheme” means a scheme in which the benefits are secured by one or more policies of insurance or annuity contracts and which is managed by an insurance company which issued the policy or contract;

^{F16} ...

“the Occupational Pensions Board” means the Occupational Pensions Board established under section 66 of the Social Security Act 1973 ^{F17} and dissolved under section 150 of the 1995 Act;

[^{F18} “overseas scheme” means an occupational pension scheme which has its main administration outside the [^{F19}United Kingdom] but does not include a scheme which [^{F20}was contracted-out] in the Isle of Man by virtue of satisfying section 9(2) ^{F21} ... of the 1993 Act as it [^{F22}had effect] in the Isle of Man.]

[^{F23}“pension debit” means a debit under section 29(1)(a) of the Welfare Reform and Pensions Act 1999;]

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“principal appointed day” has the same meaning as in section 7(2B) of the 1993 Act ^{F24};

[^{F25}“relevant statutory scheme” has the same meaning as in paragraph 1(1)(c) of Schedule 36 to the Finance Act 2004 (deemed registration of existing schemes);]

[^{F26}“relevant transferee” means any person for whose benefit an order or provision is made by virtue of which section 29 of the Welfare Reform and Pensions Act 1999 (creation of pension debits and credits) applies, where the order or provision relates to the rights of another person who is a member of the scheme;]

[^{F27}“retrospective contributions regulations” means regulations made by virtue of section 4B(2) of the Contributions and Benefits Act and, in relation to an amount of retrospective earnings, “the relevant retrospective contributions regulations” means the regulations which treated that amount as earnings;]

^{F28} ...

“scheme” means an occupational pension scheme;

[^{F29}“section 9(2B) rights” are—

- (a) rights to the payment of pensions and accrued rights to pensions (other than rights attributable to voluntary contributions) under a scheme [^{F30}that was a salary-related contracted-out scheme], so far as attributable to an earner’s service in contracted-out employment on or after the principal appointed day; and
- (b) where a transfer payment has been made [^{F31}(other than a payment made in accordance with regulation 10 (transfers payments to occupational and personal pension schemes in respect of section 9(2B) rights) of the Contracting-out (Transfer and Transfer Payment) Regulations 1996] to such a scheme, [^{F32}whether before or after the second abolition date] any rights arising under the scheme as a consequence of that payment which are derived directly or indirectly from—
 - (i) such rights as are referred to in sub-paragraph (a) under another scheme [^{F33}that was a salary-related contracted-out scheme]; or
 - (ii) protected rights under another occupational pension scheme or under a personal pension scheme attributable to payments or contributions in respect of ^{F34} ... employment on or after the principal appointed day [^{F35}, where that transfer payment was made before the [^{F36}first] abolition date];]

^{F37} ...

“trustees”, in relation to a scheme which is not set up or established under a trust, means the managers or administrators of the scheme.

(3) In these Regulations, unless the context otherwise requires, a reference—

- (a) to a numbered Part is to the Part of these Regulations bearing that number;
- (b) to a numbered regulation or Schedule is to the regulation in, or Schedule to, these Regulations bearing that number;
- (c) in a regulation or Schedule to a numbered paragraph is to the paragraph in that regulation or Schedule bearing that number;
- (d) in a paragraph to a lettered or numbered sub-paragraph is to the sub-paragraph in that paragraph bearing that letter or number.

(4) For the purposes of these Regulations, any person, government department or public authority who, under Part I of the Contributions and Benefits Act or regulations made thereunder, is, or is to be treated as, the secondary Class 1 contributor shall be treated as the employer of the earner in respect of whom the Class 1 contributions are payable.

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(5) For the purposes of these Regulations and without prejudice to paragraph (4), there shall be treated as the employer of a self-employed earner to whom a scheme applies any person (other than that self-employed earner), government department or public authority who makes or is liable to make payments towards the resources of the scheme in respect of that self-employed earner (either under actual or contingent legal obligation or in the exercise of power conferred, or 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).

(6) For the purposes of these Regulations, a person is to be regarded as a member of a scheme during a period when his service in relevant employment is such that at the time when it is given it either—

- (a) qualifies him for benefits (in the form of pension or otherwise, payable on the termination of his service or on his retirement or his death) under the scheme which in the opinion of the Secretary of State are referable to that period, or
- (b) is certain so to qualify him subsequently if it continues for a sufficiently long time and the rules of the scheme and the terms of his contract of service remain unaltered during that time.

(7) Any document required or authorised under the provisions of these Regulations to be sent to any person shall be deemed to have been sent if it was sent by registered post or by recorded delivery service to that person's usual or last known address or (in the case only of a document required or authorised to be sent to an employer) to the address of the principal place at which any employment to which the document relates is last known to have been carried on.

- F3** Reg. 1(1A) omitted (E&W) (13.3.2014) by virtue of [The Marriage \(Same Sex Couples\) Act 2013 \(Consequential Provisions\) Order 2014 \(S.I. 2014/107\)](#) , art. 1(2) , **Sch. 1 para. 17(2)**
Reg. 1(1A) omitted (S) (16.12.2014) by virtue of [The Marriage and Civil Partnership \(Scotland\) Act 2014 and Civil Partnership Act 2004 \(Consequential Provisions and Modifications\) Order 2014 \(S.I. 2014/3229\)](#) , art. 1(2) , **Sch. 6 para. 12(2)**
- F4** Words in reg. 1(2) inserted (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#) , regs. 1(2)(b), **28(2)(a)**
- F5** 1993 c.48 .
- F6** Words in reg. 1(2) inserted (30.12.2005) by [The Occupational Pension Schemes \(Scheme Funding\) Regulations 2005 \(S.I. 2005/3377\)](#) , regs. 1 , 20(1) , **Sch. 3 paras. 1(2)(a)** (with Sch. 4 para. 17)
- F7** Words in reg. 1(2) inserted (1.12.2009) by [Occupational and Personal Pension Schemes \(Authorised Payments\) Amendment Regulations 2009 \(S.I. 2009/2930\)](#) , regs. 1 , **4(2)**
- F8** Section 12A(6) was inserted by section 136(5) of the Pensions Act 1995.
- F9** 1992 c.5 .
- F10** Words in reg. 1(2) substituted (6.4.2006) by [Taxation of Pension Schemes \(Consequential Amendments of Occupational and Personal Pension Schemes Legislation\) Order 2006 \(S.I. 2006/744\)](#) , arts. 1 , **8(2)(a)**
- F11** Section 42A was inserted by section 137(5) of the Pensions Act 1995.
- F12** Words in reg. 1(2) omitted (9.8.2012) by virtue of [The Occupational and Personal Pension Schemes \(Prescribed Bodies\) Regulations 2012 \(S.I. 2012/1817\)](#) , reg. 1 , **Sch. para. 2(a)**
- F13** 1992 c.4 .
- F14** Word in reg. 1(2) substituted (6.4.2007 with effect in accordance with reg. 1(2)) by [Social Security, Occupational Pension Schemes and Statutory Payments \(Consequential Provisions\) Regulations 2007 \(S.I. 2007/1154\)](#) , regs. 1(1) , **3(2)(a)**
- F15** Words in reg. 1(2) substituted (6.4.2007 with effect in accordance with reg. 1(2)) by [Social Security, Occupational Pension Schemes and Statutory Payments \(Consequential Provisions\) Regulations 2007 \(S.I. 2007/1154\)](#) , regs. 1(1) , **3(2)(b)**

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- F16** Words in reg. 1(2) omitted (30.12.2005) by virtue of The Occupational Pension Schemes (Scheme Funding) Regulations 2005 (S.I. 2005/3377), regs. 1, 20(1), **Sch. 3 paras. 1(2)(b)** (with Sch. 4 para. 17)
- F17** 1973 c.38.
- F18** Words in reg. 1(2) substituted (6.4.2007) by Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2007 (S.I. 2007/814), regs. 1, **4(2)**
- F19** Words in reg. 1(2) substituted (31.12.2020) by The Occupational and Personal Pension Schemes (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/192), regs. 1, **8(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F20** Words in reg. 1(2) substituted (6.4.2016) by The Occupational Pension Schemes (Schemes that were Contracted-out) (No.2) Regulations 2015 (S.I. 2015/1677), regs. 1(2)(b), **28(2)(b)(i)**
- F21** Words in reg. 1(2) omitted (6.4.2012) by virtue of The Pensions Act 2007 (Abolition of Contracting-out for Defined Contribution Pension Schemes) (Consequential Amendments) Regulations 2011 (S.I. 2011/1245), regs. 1(2), **4(2)**
- F22** Words in reg. 1(2) substituted (6.4.2016) by The Occupational Pension Schemes (Schemes that were Contracted-out) (No.2) Regulations 2015 (S.I. 2015/1677), regs. 1(2)(b), **28(2)(b)(ii)**
- F23** Words in reg. 1(2) inserted (1.12.2000) by The Pension Sharing (Contracting-out) (Consequential Amendments) Regulations 2000 (S.I. 2000/2975), regs. 1, **2(2)(a)**
- F24** Section 7(2B) was inserted by section 136(1) of the Pensions Act 1995.
- F25** Words in reg. 1(2) inserted (6.4.2006) by Taxation of Pension Schemes (Consequential Amendments of Occupational and Personal Pension Schemes Legislation) Order 2006 (S.I. 2006/744), arts. 1, **8(2)(c)**
- F26** Words in reg. 1(2) inserted (1.12.2000) by The Pension Sharing (Contracting-out) (Consequential Amendments) Regulations 2000 (S.I. 2000/2975), regs. 1, **2(2)(b)**
- F27** Words in reg. 1(2) added (6.4.2007 with effect in accordance with reg. 1(2)) by Social Security, Occupational Pension Schemes and Statutory Payments (Consequential Provisions) Regulations 2007 (S.I. 2007/1154), regs. 1(1), **3(2)(c)**
- F28** Words in reg. 1(2) omitted (6.4.2009) by virtue of Pensions Act 2008 (Abolition of Safeguarded Rights) (Consequential) Order 2009 (S.I. 2009/598), arts. 1, **3(2)**
- F29** Words in reg. 1(2) inserted (6.4.1997) by The Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1997 (S.I. 1997/786), reg. 1, **Sch. 1 para. 4(2)**
- F30** Words in reg. 1(2) substituted (6.4.2016) by The Pensions Act 2014 (Abolition of Contracting-out for Salary Related Pension Schemes) (Consequential Amendments and Savings) Order 2016 (S.I. 2016/200), arts. 1(2), **3(a)**
- F31** Words in reg. 1(2) inserted (6.4.2016) by The Pensions Act 2014 (Abolition of Contracting-out for Salary Related Pension Schemes) (Consequential Amendments and Savings) Order 2016 (S.I. 2016/200), arts. 1(2), **3(b)(i)**
- F32** Words in reg. 1(2) inserted (6.4.2016) by The Pensions Act 2014 (Abolition of Contracting-out for Salary Related Pension Schemes) (Consequential Amendments and Savings) Order 2016 (S.I. 2016/200), arts. 1(2), **3(b)(ii)**
- F33** Words in reg. 1(2) substituted (6.4.2016) by The Pensions Act 2014 (Abolition of Contracting-out for Salary Related Pension Schemes) (Consequential Amendments and Savings) Order 2016 (S.I. 2016/200), arts. 1(2), **3(c)**
- F34** Words in reg. 1(2) deleted (30.12.1999) by The Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1999 (S.I. 1999/3198), regs. 1(1), **3(2)(b)**
- F35** Words in reg. 1(2) inserted (6.4.2012) by The Pensions Act 2008 (Abolition of Protected Rights) (Consequential Amendments) Order 2011 (S.I. 2011/1246), arts. 1(2)(a), **8(2)**
- F36** Words in reg. 1(2) inserted (6.4.2016) by The Occupational Pension Schemes (Schemes that were Contracted-out) (No.2) Regulations 2015 (S.I. 2015/1677), regs. 1(2)(b), **28(2)(c)**
- F37** Words in reg. 1(2) omitted (6.4.2006) by virtue of Taxation of Pension Schemes (Consequential Amendments of Occupational and Personal Pension Schemes Legislation) Order 2006 (S.I. 2006/744), arts. 1, **8(2)(b)**

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PART II

CERTIFICATION OF EMPLOYMENTS

Modifications etc. (not altering text)

- C1** Pt. II modified (S.) (1.4.2015) by [The National Health Service Pension Scheme \(Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/145\)](#), regs. 1(2), **4** (with reg. 3)
- C2** Pt. II modified (S.) (1.4.2015) by [The Firefightersâ€™ Pension Scheme \(Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/117\)](#), regs. 1(2), **4** (with reg. 3)
- C3** Pt. II modified (1.4.2015) by [The Public Service \(Civil Servants and Others\) Pensions \(Consequential and Amendment\) Regulations 2015 \(S.I. 2015/372\)](#), regs. 1(2), **4**
- C4** Pt. II modified (1.4.2015) by [The Firefightersâ€™ Pension Scheme \(England\) \(Consequential Provisions\) Regulations 2015 \(S.I. 2015/319\)](#), regs. 1(2), **4**
- C5** Pt. II modified (1.4.2015) by [The Armed Forces Pension \(Consequential Provisions\) Regulations 2015 \(S.I. 2015/390\)](#), regs. 1(2), **4**
- C6** Pt. II modified (S.) (1.4.2015) by [The Police Pensions \(Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/118\)](#), regs. 1(2), **4** (with reg. 3)
- C7** Pt. II applied (with modifications) (1.4.2015 coming into force in accordance with) by [The National Health Service Pension Scheme \(Consequential Provisions\) Regulations 2015 \(S.I. 2015/432\)](#), regs. 1(2), **4(1)** (with reg. 3)
- C8** Pt. II modified (1.4.2015) by [The Judicial Pensions Regulations 2015 \(S.I. 2015/182\)](#), reg. 1(4), **Sch. 3 para. 2** (with regs. 148, 160, Sch. 3 paras. 1)
- C9** Pt. II modified (S.) (1.4.2015) by [The Teachersâ€™ Pension Scheme \(Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/146\)](#), regs. 1(2), **4** (with reg. 3)
- C10** Pt. II modified (1.4.2015) by [The Teachersâ€™ Pension Scheme \(Consequential Provisions\) Regulations 2015 \(S.I. 2015/436\)](#), regs. 1(2), **4** (with reg. 3)

Making of elections for the issue of contracting-out certificates

2.—(1) Subject to the provisions of regulation 10, an election with a view to the issue of a contracting-out certificate—

- (a) may only be made—
 - (i) after notices to make such an election have been given by the employer in accordance with regulation 3; and
 - (ii) within the period after the expiry of those notices which is specified in regulation 5; and
- (b) shall be made in writing to the Secretary of State and shall include the particulars specified in regulation 6.

^{F38}(2) In making or abstaining from making an election as to the inclusion of an employment in a contracting-out certificate, an employer may discriminate between different earners (otherwise than on the ground of the nature of their employment) in any case where such discrimination would be lawful apart from section 11(3) of the 1993 Act.]

- F38** Reg. 2(2) substituted (6.4.1997) by [The Personal and Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 1997 \(S.I. 1997/786\)](#), reg. 1, **Sch. 1 para. 4(3)**

Modifications etc. (not altering text)

- C11** Reg. 2(1)(a) excluded (W.) (1.4.2015) by [The Firefightersâ€™ Pension Scheme \(Wales\) \(Consequential Provisions\) Regulations 2015 \(No. 848\)](#), regs. 1(2), **4(2)** (with reg. 3)

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C12 Reg. 2(1)(a) excluded (1.4.2015) by [The Police Pensions \(Consequential Provisions\) Regulations 2015 \(S.I. 2015/370\)](#), regs. 1(2), **4(2)**

Notices by employers of intended election.

3.—(1) A notice of intention to make an election with a view to the issue of a contracting-out certificate shall be given by the employer, in the manner specified in paragraph (3), to—

- (a) the earners in respect of whose employment the election is proposed to be made, and those (if any) in that employment in relation to whom the employer is not electing that the employment shall be treated as contracted-out;
- (b) the trustees and administrator of the scheme to which the election is to relate;
- (c) where there is a policy of insurance or annuity contract as a means of securing ^{F39} ... guaranteed minimum pensions or any benefits arising in respect of section 9(2B) rights to be payable under the scheme, the insurance company or Friendly Society concerned; and
- (d) all independent trade unions recognised in relation to the earners concerned.

(2) Notices given under this regulation shall be in writing and shall—

- (a) specify the scheme and the employments concerned and, if the election is not intended to be in relation to all earners in those employments, the categories or descriptions of the earners to be so affected;
- (b) specify the date [^{F40}(being a date before the second abolition date)] from which it is intended that the contracting-out certificate shall have effect;

^{F41} (c)

- (d) specify the date of expiry of the notice in accordance with paragraphs (4) and (5);
- (e) specify the name and business address of the person to whom representations may be made with respect to the matters included in the notice;
- (f) contain a statement that—
 - (i) such representations may also be made to the Secretary of State,
 - (ii) the Secretary of State may defer his determination to enable the election to be further considered in the light of representations made by or on behalf of the persons to whom the notice is given,
 - (iii) the Secretary of State has power to refuse to give effect to the election if he is not satisfied that the employer has undertaken consultations about the matters covered by the notice with all independent trade unions recognised in relation to the earners concerned; and

(g) explain (whether or not by reference to another document)—

- (i) ^{F42} ... how benefits would accrue to a member under the scheme if the employment were contracted-out [^{F43}and],
- (ii) how, if the employment were contracted-out, the additional pensions of State retirement pensions and widows' and widowers' benefits payable to or in respect of the earners in that employment under the Contributions and Benefits Act, and the rates at which contributions payable by those earners under Part I of that Act, would be affected,

^{F44} (iii)

(3) A notice under this regulation shall be given—

- (a) to any earner concerned by—

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[^{F45}(i) sending it to the earner in accordance with regulations 26 to 28 of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (giving information and documents),

(ia) delivering it to the earner, or]

(ii) exhibiting it conspicuously at the place of work or employment so that it may be read conveniently by him and by drawing his attention to it in writing;

[^{F46}(b) to any other person, by—

(i) sending it to that person in accordance with regulations 26 to 28 (giving information and documents) of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013, or

(ii) delivering it to that person.]

[^{F47}(4) Unless paragraph (5) applies, a notice under this regulation must specify a date of expiry which is not earlier than the date three months after the date on which the notice is given.

(5) Where—

(a) there is no independent trade union recognised in relation to the earners concerned, or

(b) before the notice has been given every such trade union has consented in writing to the notice specifying an earlier date than that which is required under paragraph (4),

the notice may specify an earlier date (but not earlier than the date one month after that on which the notice is given).]

F39 Words in reg. 3(1)(c) omitted (6.4.2012) by virtue of [The Pensions Act 2008 \(Abolition of Protected Rights\) \(Consequential Amendments\) Order 2011](#) (S.I. 2011/1246), arts. 1(2)(a), **8(3)**

F40 Words in reg. 3(2)(b) inserted (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015](#) (S.I. 2015/1677), regs. 1(2)(b), **28(3)**

F41 Reg. 3(2)(c) omitted (6.4.2002) by virtue of [The Occupational and Personal Pension Schemes \(Contracting-out\) \(Miscellaneous Amendments\) Regulations 2002](#) (S.I. 2002/681), regs. 1, **2(2)(a)**

F42 Words in reg. 3(2)(g)(i) omitted (6.4.2012) by virtue of [The Pensions Act 2007 \(Abolition of Contracting-out for Defined Contribution Pension Schemes\) \(Consequential Amendments\) Regulations 2011](#) (S.I. 2011/1245), regs. 1(2), **4(3)**

F43 Word in reg. 3(2)(g)(i) inserted (6.4.2002) by [The Occupational and Personal Pension Schemes \(Contracting-out\) \(Miscellaneous Amendments\) Regulations 2002](#) (S.I. 2002/681), regs. 1, **2(2)(b)(i)**

F44 Reg. 3(2)(g)(iii) omitted (6.4.2002) by virtue of [The Occupational and Personal Pension Schemes \(Contracting-out\) \(Miscellaneous Amendments\) Regulations 2002](#) (S.I. 2002/681), regs. 1, **2(2)(b)(ii)**

F45 Reg. 3(3)(a)(i)(ia) substituted for reg. 3(3)(a)(i) (6.4.2014) by [The Occupational and Personal Pension Schemes \(Disclosure of Information\) Regulations 2013](#) (S.I. 2013/2734), reg. 1(1), **Sch. 9 para. 2(a)**

F46 Reg. 3(3)(b) substituted (6.4.2014) by [The Occupational and Personal Pension Schemes \(Disclosure of Information\) Regulations 2013](#) (S.I. 2013/2734), reg. 1(1), **Sch. 9 para. 2(b)**

F47 Reg. 3(4)(5) substituted (6.4.1997) by [The Personal and Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 1997](#) (S.I. 1997/786), reg. 1, **Sch. 1 para. 4(4)**

Modifications etc. (not altering text)

C13 Regs. 3-5 excluded (1.4.2015) by [The Police Pensions \(Consequential Provisions\) Regulations 2015](#) (S.I. 2015/370), regs. 1(2), **4(2)**

C14 Regs. 3-5 excluded (W.) (1.4.2015) by [The Firefighters' Pension Scheme \(Wales\) \(Consequential Provisions\) Regulations 2015](#) (No. 848), regs. 1(2), **4(2)** (with reg. 3)

Consultation with trade unions.

4.—(1) An employer who has given a notice under regulation 3 shall undertake consultations, if he has not already done so, about the matters covered by the notice with all independent trade unions recognised in relation to the earners concerned.

(2) Any question whether an organisation is an independent trade union recognised in relation to earners may be referred by the employer of those earners, or by the organisation, to an industrial tribunal.

(3) Any question whether an employer has complied with the requirements as to consultations specified in paragraph (1) may be referred by the employer, or by an independent trade union recognised in relation to the earners concerned, to an industrial tribunal.

Modifications etc. (not altering text)

C13 Regs. 3-5 excluded (1.4.2015) by [The Police Pensions \(Consequential Provisions\) Regulations 2015 \(S.I. 2015/370\)](#), regs. 1(2), **4(2)**

C14 Regs. 3-5 excluded (W.) (1.4.2015) by [The Firefighters' Pension Scheme \(Wales\) \(Consequential Provisions\) Regulations 2015 \(No. 848\)](#), regs. 1(2), **4(2)** (with reg. 3)

Time for making an election.

5. An election may be made only after the date of expiry of the notice given under regulation 3 and within 3 months of that date (or such longer period as the Secretary of State may in his discretion allow), but nothing in this regulation shall prevent an election from being made after the giving of further notices which comply with the requirements of that regulation.

Modifications etc. (not altering text)

C13 Regs. 3-5 excluded (1.4.2015) by [The Police Pensions \(Consequential Provisions\) Regulations 2015 \(S.I. 2015/370\)](#), regs. 1(2), **4(2)**

C14 Regs. 3-5 excluded (W.) (1.4.2015) by [The Firefighters' Pension Scheme \(Wales\) \(Consequential Provisions\) Regulations 2015 \(No. 848\)](#), regs. 1(2), **4(2)** (with reg. 3)

Information to be included in an election.

6.—(1) An election shall include the following particulars—

- (a) the name and address of the employer;
- (b) the name by which the scheme to which the election relates is known;
- (c) a description of the employments to which the contracting-out certificate is intended to relate and, if the certificate is not intended to be in relation to all earners in those employments, the categories or descriptions of the earners intended to be included in the certificate;
- (d) the date from which it is desired that the certificate shall have effect [^{F48}(being a date before the second abolition date)];
- (e) the names and addresses of the trustees and administrator of the scheme to which the election relates; and
- (f) the persons to whom notices were given under regulation 3(1) (b), (c) and (d).

(2) The employer shall also confirm in writing—

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- (a) that he has, in accordance with regulation 3(1), given the earners mentioned in regulation 3(1)(a) notice of the intention to make the election; and
- (b) how that notice was given and its date of expiry;
- (c) that the scheme is not one which is excluded from contracting-out under these Regulations;
- (d) unless the scheme is one to which regulation 27 applies (modification applying to public service pension schemes), that the restrictions imposed under section 40 of the 1995 Act (restrictions on employer-related investments) apply to the scheme and the scheme complies with those restrictions;
- ^{F49}(e)
- ^{F49}(f)
- [^{F50}(g) in the case of a scheme to which Part 3 of the 2004 Act (scheme funding) applies, that the requirements of sections 224, 225, 226 (if applicable) and 227 of that Act and any regulations under those provisions are complied with.]
- (3) In the case of a scheme which is electing to contract out under section 9(2) of the 1993 Act ^{F51}(salary-related contracted-out scheme) the employer shall also provide—
- [^{F52}(a) unless the scheme is a public service pension scheme to which Part 3 of the 2004 Act does not apply, or a scheme in respect of which any Minister of the Crown has given a guarantee, or made any other arrangements for the purpose of securing that the assets of the scheme are sufficient to meet its liabilities, written confirmation or evidence that the actuary is satisfied that the resources of the scheme are sufficient to meet the requirement prescribed in regulation 18 (as it had effect immediately before the second abolition date) (requirement as to resources of the scheme); and]
- (b) a certificate signed by the actuary that the scheme satisfies the statutory standard in relation to any earner's service after the principal appointed day in accordance with section 12A of the 1993 Act ^{F53}.
- ^{F54}(4)

F48 Words in reg. 6(1)(d) inserted (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **28(4)(a)**

F49 Reg. 6(2)(e)(f) omitted (6.4.2002) by virtue of [The Occupational and Personal Pension Schemes \(Contracting-out\) \(Miscellaneous Amendments\) Regulations 2002 \(S.I. 2002/681\)](#), regs. 1, **2(3)**

F50 Reg. 6(2)(g) substituted (30.12.2005) by [The Occupational Pension Schemes \(Scheme Funding\) Regulations 2005 \(S.I. 2005/3377\)](#), regs. 1, 20(1), **Sch. 3 paras. 1(3)** (with Sch. 4 para. 17)

F51 Section 9(2) was substituted by section 136(3) of the Pensions Act 1995.

F52 Reg. 6(3)(a) substituted (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **28(4)(b)**

F53 Sections 12A to 12D were inserted by section 136(5) of the Pensions Act 1995.

F54 Reg. 6(4) omitted (6.4.2012) by virtue of [The Pensions Act 2007 \(Abolition of Contracting-out for Defined Contribution Pension Schemes\) \(Consequential Amendments\) Regulations 2011 \(S.I. 2011/1245\)](#), regs. 1(2), **4(4)**

Modifications etc. (not altering text)

C15 Reg. 6(1) modified (1.4.2015) by [The Police Pensions \(Consequential Provisions\) Regulations 2015 \(S.I. 2015/370\)](#), regs. 1(2), **4(3)(a)**

C16 Reg. 6(1) modified (W.) (1.4.2015) by [The Firefighters' Pension Scheme \(Wales\) \(Consequential Provisions\) Regulations 2015 \(No. 848\)](#), regs. 1(2), **4(3)(a)** (with reg. 3)

C17 Reg. 6(2) excluded (1.4.2015) by [The Police Pensions \(Consequential Provisions\) Regulations 2015 \(S.I. 2015/370\)](#), regs. 1(2), **4(3)(b)**

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- C18** Reg. 6(2)(3) excluded (W.) (1.4.2015) by [The Firefighters' Pension Scheme \(Wales\) \(Consequential Provisions\) Regulations 2015 \(No. 848\)](#), regs. 1(2), **4(3)(b)** (with reg. 3)
- C19** Reg. 6(3) excluded (1.4.2015) by [The Police Pensions \(Consequential Provisions\) Regulations 2015 \(S.I. 2015/370\)](#), regs. 1(2), **4(3)(b)**

Amendment of an election.

7. An employer may amend his election at any time before the issue of a contracting-out certificate if the amendment does not alter the categories or descriptions of the earners to which the election relates [^{F55} or the date from which it is intended that the certificate is to have effect].

- F55** Words in reg. 7 added (6.4.1997) by [The Personal and Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 1997 \(S.I. 1997/786\)](#), reg. 1, **Sch. 1 para. 4(6)**

Issue of contracting-out certificates.

8.—(1) Subject to the provisions of this regulation, when the Secretary of State has determined that an employment should be treated, either in relation to all earners in it or in relation to any specified category or description of earners, as contracted-out employment, he shall issue and send to the employer concerned a contracting-out certificate.

(2) The contracting-out certificate shall specify—

- (a) the name and address of the employer;
- (b) the name of the scheme by reference to which that employment is to be so treated;
- (c) the employments to which the certificate relates or, if the contracting-out certificate does not relate to all earners in those employments, the categories or descriptions of the earners to whom it relates; and
- (d) the date from which the certificate is to have effect, [^{F56} being a date before the second abolition date].

[^{F57}(3) The Commissioners of Inland Revenue are not to issue a contracting-out certificate unless they consider it appropriate to do so and the scheme satisfied any contracting-out conditions or requirements which applied to the scheme from the date on which the certificate is to have effect.]

- F56** Words in reg. 8(2)(d) substituted (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **28(5)(a)**
- F57** Reg. 8(3) inserted (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **28(5)(b)**

Making of elections by employers for the variation or surrender of contracting-out certificates.

9.—[^{F58}(1) Subject to the provisions of paragraphs (2), (3) and (7) and regulation 10, an election with a view to the variation or surrender of a contracting-out certificate—

- (a) may be made only after notices of intention have been given in accordance with paragraphs (4) and (5); and
- (b) shall be made in writing to the Inland Revenue.]

(2) Where a proposed variation is a change—

- (a) in the name of the employer;

- (b) in the address of the employer; or
- (c) in the name of the scheme,

an election with a view to the variation of a certificate shall be made in writing to the Secretary of State within 3 months of the event to which the election relates or such longer period as the Secretary of State may in his discretion allow and may be made without compliance with paragraphs (1) and (4) to (7).

(3) In addition to the cases described in paragraph (2), in such cases as the Secretary of State may approve, where a proposed variation would not alter—

- (a) the categories or descriptions of the earners affected by the certificate; or
- (b) ^{F59} ... the benefits provided by the scheme; or
- (c) the contributions (if any) payable by those earners to the scheme,

an election with a view to the variation of a certificate shall be made in writing to the Secretary of State within 3 months of the event to which the election relates or such longer period as the Secretary of State may in his discretion allow and may be made without compliance with paragraphs (1) and (4) to (7).

(4) Notices of intention to make an election with a view to the variation or surrender of a contracting-out certificate shall be given within 3 months of the event to which the election relates, or such longer period as the Secretary of State may in his discretion allow, to the persons referred to in regulation 3(1)(a) to (d) in the manner mentioned in regulation 3(3).

(5) Notices given under this regulation shall be given in writing and shall—

- (a) specify the scheme and the employments concerned and, if the election is not intended to be in relation to all earners in those employments, the categories or descriptions of the earners to be so affected;
- (b) specify the date [^{F60}(being a date before the second abolition date)] from which it is intended that the variation or surrender is to have effect;
- (c) specify the date of expiry of the notice in accordance with paragraphs (4) and (5) of regulation 3;
- (d) specify the name and business address of the person to whom representations may be made with respect to the matters included in the notice;
- (e) contain a statement that—
 - (i) such representations may also be made to the Secretary of State, [^{F61}and]
 - (ii) the Secretary of State may defer his determination to enable the election to be further considered in the light of representations made by or on behalf of persons to whom the notice is given, ^{F62} ...

- [^{F63}(ea)] [^{F64}where the notice is not about surrendering a contracting-out certificate due to the scheme winding up, contain a statement that] the Secretary of State has power to refuse to give effect to the election if he is not satisfied that the employer has undertaken consultations about the matters covered by the notice with all independent trade unions recognised in relation to the earners concerned;
- (f) explain (whether or not by reference to another document) how, if the proposed variation or surrender took place, the additional pensions of State retirement pensions and widows' benefits payable to or in respect of the earners concerned under the Contributions and Benefits Act, and the rates at which contributions payable by those earners under Part I of that Act, would be affected; and

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- (g) describe (whether or not by reference to another document) any changes which would be made to the benefits provided under, and the contributions (if any) payable by the earners concerned to, the scheme if the proposed variation or surrender took place.

(6) An employer who has given [^{F65}a notice under this regulation which is not about surrendering a contracting-out certificate due to the scheme winding up] shall undertake consultations, if he has not already done so, about the matters covered by the notice with all independent trade unions recognised in relation to the earners concerned and any question whether an employer has complied with this requirement may be referred to an industrial tribunal.

(7) An election under this regulation may only be made after the date of the expiry of the notice given in accordance with paragraphs (4) and (5) and within 3 months of that date (or such longer period as the Secretary of State may in his discretion allow), so however that nothing in this paragraph shall prevent an election from being made after the giving of further notices which comply with the requirements of this regulation.

(8) An employer may amend his election under this regulation at any time before the variation or surrender of the certificate if the amendment does not alter the categories or descriptions of the earners affected by the certificate [^{F66} or the date from which it is intended that the variation or surrender is to have effect].

- F58** Reg. 9(1) substituted (6.4.2002) by [The Occupational and Personal Pension Schemes \(Contracting-out\) \(Miscellaneous Amendments\) Regulations 2002](#) (S.I. 2002/681) , regs. 1 , **2(4)**
- F59** Words in reg. 9(3)(b) omitted (6.4.2012) by virtue of [The Pensions Act 2007 \(Abolition of Contracting-out for Defined Contribution Pension Schemes\) \(Consequential Amendments\) Regulations 2011](#) (S.I. 2011/1245) , regs. 1(2) , **4(5)**
- F60** Words in reg. 9(5)(b) inserted (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015](#) (S.I. 2015/1677), regs. 1(2)(b), **28(6)**
- F61** Word in reg. 9(5)(e)(i) inserted (6.4.2009) by [Occupational, Personal and Stakeholder Pensions \(Miscellaneous Amendments\) Regulations 2009](#) (S.I. 2009/615) , regs. 1(2) , **4(2)(a)**
- F62** Word in reg. 9(5)(e)(ii) omitted (6.4.2009) by virtue of [Occupational, Personal and Stakeholder Pensions \(Miscellaneous Amendments\) Regulations 2009](#) (S.I. 2009/615) , regs. 1(2) , **4(2)(b)**
- F63** Reg. 9(5)(e)(iii) renumbered as reg. 9(5)(ea) (6.4.2009) by [Occupational, Personal and Stakeholder Pensions \(Miscellaneous Amendments\) Regulations 2009](#) (S.I. 2009/615) , regs. 1(2) , **4(2)(c)**
- F64** Words in reg. 9(5)(ea) inserted (6.4.2009) by [Occupational, Personal and Stakeholder Pensions \(Miscellaneous Amendments\) Regulations 2009](#) (S.I. 2009/615) , regs. 1(2) , **4(2)(d)**
- F65** Words in reg. 9(6) substituted (6.4.2009) by [Occupational, Personal and Stakeholder Pensions \(Miscellaneous Amendments\) Regulations 2009](#) (S.I. 2009/615) , regs. 1(2) , **4(2)(e)**
- F66** Words in reg. 9(8) added (6.4.1997) by [The Personal and Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 1997](#) (S.I. 1997/786) , reg. 1 , **Sch. 1 para. 4(7)**

Special provision with regard to elections for the issue, variation or surrender of certificates where [^{F67}(before the second abolition date)] the employment remains contracted-out.

10.—(1) Subject to ^{F68}... the provisions of this regulation, where in the case of an election with a view to the issue, variation or as the case may be, surrender of a contracting-out certificate the Secretary of State is satisfied, that—

- (a) any earner in respect of whose employment the election relates will continue to qualify for pensions which satisfy section 9(2) of the 1993 Act, ^{F69}... under the scheme when the election takes effect;
- (b) the accrued rights to pensions which satisfy section 9(2) of the 1993 Act ^{F70}... of that earner under that scheme, will be unaffected; and

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- (c) the employment of the earner will continue to be contracted-out employment by reference to that same scheme, [^{F71}when the election takes effect]

then that election shall be made in writing to the Secretary of State and may be made without compliance with regulations 2(1), 4 and 5 and paragraphs (1) and (4) to (7) of regulation 9.

(2) Where, in accordance with paragraph (1), an election is made without compliance with the said provisions, the employer must give a notice in the manner mentioned in regulation 3(3) to—

- (a) the earners to whose employment the election relates; and
(b) the persons referred to in regulation 3(1)(b) to (d).

(3) Notices given under paragraph (2) shall specify—

- (a) the name of the scheme;
(b) the reason for the election;
(c) the date [^{F72}(being a date before the second abolition date)] from when the change is to have effect; and
(d) the reasons why the election is being made without compliance with regulations 2(1), 4 and 5 and paragraphs (1) and (4) to (7) of regulation 9.

- F67** Words in reg. 10 inserted (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **28(7)(a)**
- F68** Words in reg. 10(1) omitted (6.4.2016) by virtue of [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **28(7)(b)(i)**
- F69** Words in reg. 10(1)(a) omitted (6.4.2012) by virtue of [The Pensions Act 2007 \(Abolition of Contracting-out for Defined Contribution Pension Schemes\) \(Consequential Amendments\) Regulations 2011 \(S.I. 2011/1245\)](#), regs. 1(2), **4(6)**
- F70** Words in reg. 10(1)(b) omitted (6.4.2012) by virtue of [The Pensions Act 2008 \(Abolition of Protected Rights\) \(Consequential Amendments\) Order 2011 \(S.I. 2011/1246\)](#), arts. 1(2)(a), **8(4)**
- F71** Words in reg. 10(1)(c) inserted (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **28(7)(b)(ii)**
- F72** Words in reg. 10(3)(c) inserted (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **28(7)(c)**

Special circumstances in which the Secretary of State may determine earners to have been in contracted-out employment

^{F73}**11.**

- F73** Reg. 11 revoked (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **31(a)**

Special provision for holding companies and subsidiaries

^{F74}**12.**

- F74** Regs. 12-14 revoked (6.4.2019) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(c), **33(a)**

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Special provision for public service pension schemes.

^{F74}13.

F74 Regs. 12-14 revoked (6.4.2019) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(c), **33(a)**

Special provision for holders of pensionable judicial office.

^{F74}14.

F74 Regs. 12-14 revoked (6.4.2019) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(c), **33(a)**

Further information and change of circumstances.

15. An employer who makes an election with a view to the issue of a contracting-out certificate^{F75} ..., shall furnish to the Secretary of State such reports, accounts and other documents and information relating to the scheme as the Secretary of State requires, and, in particular, shall notify the Secretary of State of any such change of circumstances affecting the scheme as he may have required the employer to notify as soon as practicable after its occurrence.

F75 Words in reg. 15 omitted (6.4.2016) by virtue of [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **28(8)**

Requirement to confirm relevant requirements are satisfied.

^{F76}16.

F76 Regs. 16-21 revoked (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **31(b)**

PART III

SALARY-RELATED CONTRACTED-OUT SCHEMES

Further contracting-out conditions for salary-related contracted-out schemes

^{F76}17.

F76 Regs. 16-21 revoked (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **31(b)**

Requirement as to resources of the scheme.

^{F76}18.

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F76 Regs. 16-21 revoked (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **31(b)**

[^{F77} Lump sum benefits and salary-related contracted-out schemes.

^{F76} **19**].

F76 Regs. 16-21 revoked (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **31(b)**

F77 Reg. 19 substituted (6.4.2002) by [The Occupational and Personal Pension Schemes \(Contracting-out\) \(Miscellaneous Amendments\) Regulations 2002 \(S.I. 2002/681\)](#) , regs. 1 , **2(7)**

[^{F78} Payment of a lump sum instead of a pension payable under a relevant scheme

^{F76} **20**].

F76 Regs. 16-21 revoked (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **31(b)**

F78 Reg. 20 substituted (6.4.2006) by [Taxation of Pension Schemes \(Consequential Amendments of Occupational and Personal Pension Schemes Legislation\) Order 2006 \(S.I. 2006/744\)](#) , arts. 1 , **8(5)**

[^{F79} Suspension of section 9(2B) rights

^{F76} **20A**].

F76 Regs. 16-21 revoked (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **31(b)**

F79 Reg. 20A inserted (6.4.2002) by [The Occupational and Personal Pension Schemes \(Contracting-out\) \(Miscellaneous Amendments\) Regulations 2002 \(S.I. 2002/681\)](#) , regs. 1 , **2(9)**

Payable age in salary-related contracted-out schemes.

^{F76} **21**.

F76 Regs. 16-21 revoked (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **31(b)**

Each part of scheme to comply with section 12A of the 1993 Act.

22.—(1) Where a scheme makes provision in relation to earners in one category of employment which differs from provision made in the case of earners in another such category, the Secretary of State must be satisfied that the scheme satisfies section 12A of the 1993 Act in relation to each of the categories of employment which is to be contracted-out.

(2) Where a scheme makes provision in relation to one description of earners within a category of employment which differs from provision made in the case of another description of earners within that category, the Secretary of State must be satisfied that the scheme satisfies section 12A of the 1993 Act in relation to each such description of earners which is to be contracted-out.

Requirements for meeting the statutory standard.

23. For the purposes of section 12A(4) of the 1993 Act (regulations may provide for the manner of, and criteria for, determining whether pensions are broadly equivalent to those under a reference scheme) in determining whether the pensions provided under the scheme are broadly equivalent to or better than those which would be provided under a reference scheme, the actuary—

- ^{F80}(a) must comply with any standards adopted or prepared, and from time to time revised, by ^{F81}[the Financial Reporting Council Limited] which are relevant to the matters specified in section 12A(4) of the 1993 Act;
- (b) may not certify that the pensions to be provided by the scheme for earners in employed earner's employment and their ^{F82}[widows, widowers or surviving civil partners] collectively are broadly equivalent to or better than those which would be provided for such persons under a reference scheme if the pensions to be provided for more than 10 per cent. of such earners or their ^{F82}[widows, widowers or surviving civil partners] are not broadly equivalent to the pensions which would be provided for them under a reference scheme;
- (c) must have regard to the pensions to be provided under the scheme for the persons specified in section 12A(1) of the 1993 Act who are in the scheme at the date from which the certificate has effect;
- (d) must not have regard to any pensions to be provided under the scheme ^{F83}[in respect of—
 - (i) earners who are not in contracted-out employment, ^{F84} ...
 - ^{F84}(ii)]
- (e) must not have regard to any money purchase benefits; ^{F85} ...
- (f) may have regard to the payment of a lump sum ^{F86}[but may not have regard to any payment of a lump sum made as a result of the death of an earner]; ^{F87}and
- (g) must take no account of any provision made by the scheme for the suspension, in the circumstances specified in regulation 20A(2), ^{F88}[as it had effect immediately before the second abolition date] of benefits derived from section 9(2B) rights.]
- ^{F89}(h) must not have regard to any discretionary benefits; and
- (i) must comply with the further requirements set out in Schedule 3.]

- F80** Reg. 23(a) substituted (1.10.2011) by [The Occupational Pension Schemes \(Contracting-out\) Amendment Regulations 2011 \(S.I. 2011/1294\)](#), regs. 1(2), **2(2)(a)**
- F81** Words in reg. 23(a) substituted (9.8.2012) by [The Occupational and Personal Pension Schemes \(Prescribed Bodies\) Regulations 2012 \(S.I. 2012/1817\)](#), reg. 1, **Sch. para. 2(b)**
- F82** Words in reg. 23(b) substituted (5.12.2005) by [Civil Partnership \(Contracted-out Occupational and Appropriate Personal Pension Schemes\) \(Surviving Civil Partners\) Order 2005 \(S.I. 2005/2050\)](#), art. 1(3), **Sch. 2 para. 10**
- F83** Words in reg. 23(d) substituted (1.12.2000) by [The Pension Sharing \(Contracting-out\) \(Consequential Amendments\) Regulations 2000 \(S.I. 2000/2975\)](#), regs. 1, **2(4)**
- F84** Reg. 23(d)(ii) and preceding word omitted (6.4.2009) by virtue of [Pensions Act 2008 \(Abolition of Safeguarded Rights\) \(Consequential\) Order 2009 \(S.I. 2009/598\)](#), arts. 1, **3(3)**
- F85** Word in reg. 23(e) omitted (6.4.2002) by virtue of [The Occupational and Personal Pension Schemes \(Contracting-out\) \(Miscellaneous Amendments\) Regulations 2002 \(S.I. 2002/681\)](#), regs. 1, **2(10)(a)**
- F86** Words in reg. 23(f) inserted (1.10.2011) by [The Occupational Pension Schemes \(Contracting-out\) Amendment Regulations 2011 \(S.I. 2011/1294\)](#), regs. 1(2), **2(2)(b)**
- F87** Reg. 23(g) inserted (6.4.2002) by [The Occupational and Personal Pension Schemes \(Contracting-out\) \(Miscellaneous Amendments\) Regulations 2002 \(S.I. 2002/681\)](#), regs. 1, **2(10)(b)**

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- F88** Words in reg. 23(g) inserted (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **28(9)**
- F89** Reg. 23(h)(i) added (1.10.2011) by [The Occupational Pension Schemes \(Contracting-out\) Amendment Regulations 2011 \(S.I. 2011/1294\)](#), regs. 1(2), **2(2)(c)**

Circumstances when actuary other than actuary appointed under section 47 of the 1995 Act may certify broad equivalence.

24. For the purposes of section 12A(6) of the 1993 Act (scheme actuary appointed under section 47 of the 1995 Act to certify whether pensions are broadly equivalent to or better than those in a reference scheme except in prescribed circumstances) the prescribed circumstances are where a scheme is not required to appoint an actuary for the scheme under section 47 of the 1995 Act.

Requirements for a reference scheme.

25. A reference scheme is a scheme which, in addition to complying with the requirements of section 12B(3) and (4) of the 1993 Act, complies with the requirements of Chapter II of Part IV of the 1993 Act (revaluation of benefits in the case of scheme members who leave pensionable service before attaining normal pension age) and section 51 of the 1995 Act (indexation of pensions).

[^{F90}Reference scheme: circumstances in which widows', widowers' or surviving civil partners' pensions need not be payable

26.—(1) For the purposes of section 12B(4)(a) of the 1993 Act (reference scheme to provide widows', widowers' and surviving civil partners' pensions except in prescribed circumstances), and subject to paragraph (2), the prescribed circumstances are where—

- (a) the scheme member marries or forms a civil partnership after having received benefits under the scheme;
- (b) the widow, widower or surviving civil partner of the scheme member—
 - (i) remarries or, as the case may be, marries;
 - (ii) forms a civil partnership or, as the case may be, forms a subsequent civil partnership [^{F91}or;]
 - (iii) [^{F92}lives together [^{F93}with another person as if they were a married couple or civil partners,]]
 after having received benefits under the scheme;
- (c) the widow, widower or surviving civil partner of the scheme member is at the time of the member's death [^{F94}living together [^{F95}with another person, whom he or she is not married to or in a civil partnership with, as if they were a married couple or civil partners.]]

(2) [^{F96}The following provisions do not apply where the scheme member died before 5th December 2005—

- (a) paragraph (1)(b)(i) so far as it relates to a marriage or remarriage involving two people of the same sex;
- (b) paragraph (1)(b)(ii); and
- (c) paragraph (1)(b)(iii) and (1)(c) so far as they relate to the living together of two people of the same sex.]]

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- F90** Reg. 26 substituted (5.12.2005) by [Civil Partnership \(Contracted-out Occupational and Appropriate Personal Pension Schemes\) \(Surviving Civil Partners\) Order 2005 \(S.I. 2005/2050\)](#), art. 1(3), **Sch. 2 para. 11**
- F91** Word in reg. 26(1)(b)(ii) inserted (13.3.2014) (EW) by [The Marriage \(Same Sex Couples\) Act 2013 \(Consequential Provisions\) Order 2014 \(S.I. 2014/107\)](#), art. 1(2), **Sch. 1 para. 17(3)(a)**, and word in reg. 26(1)(b)(ii) inserted (16.12.2014) (S) by [The Marriage and Civil Partnership \(Scotland\) Act 2014 and Civil Partnership Act 2004 \(Consequential Provisions and Modifications\) Order 2014 \(S.I. 2014/3229\)](#), art. 1(2), **Sch. 6 para. 12(3)(a)**
- F92** Reg. 26(1)(b)(iii) substituted for 26(1)(iii)(iv) (13.3.2014) (EW) by [The Marriage \(Same Sex Couples\) Act 2013 \(Consequential Provisions\) Order 2014 \(S.I. 2014/107\)](#), art. 1(2), **Sch. 1 para. 17(3)(a)**, and reg. 26(1)(b)(iii) substituted for reg. 26(1)(iii)(iv) (16.12.2014) (S) by [The Marriage and Civil Partnership \(Scotland\) Act 2014 and Civil Partnership Act 2004 \(Consequential Provisions and Modifications\) Order 2014 \(S.I. 2014/3229\)](#), art. 1(2), **Sch. 6 para. 12(3)(a)**
- F93** Words in reg. 26(1)(b)(iii) substituted (2.12.2019) by [The Civil Partnership \(Opposite-sex Couples\) Regulations 2019 \(S.I. 2019/1458\)](#), reg. 1(2), **Sch. 3 para. 48(a)**
- F94** Words in reg. 26(1)(c) substituted for reg. 26(1)(c)(i)(ii) (13.3.2014) (EW) by [The Marriage \(Same Sex Couples\) Act 2013 \(Consequential Provisions\) Order 2014 \(S.I. 2014/107\)](#), art. 1(2), **Sch. 1 para. 17(3)(b)**, and words in reg. 26(1)(c) substituted for reg. 26(1)(c)(i)(ii) (16.12.2014) (S) by [The Marriage and Civil Partnership \(Scotland\) Act 2014 and Civil Partnership Act 2004 \(Consequential Provisions and Modifications\) Order 2014 \(S.I. 2014/3229\)](#), art. 1(2), **Sch. 6 para. 12(3)(b)**
- F95** Words in reg. 26(1)(c) substituted (2.12.2019) by [The Civil Partnership \(Opposite-sex Couples\) Regulations 2019 \(S.I. 2019/1458\)](#), reg. 1(2), **Sch. 3 para. 48(b)**
- F96** Reg. 26(2) substituted (13.3.2014) (EW) by [The Marriage \(Same Sex Couples\) Act 2013 \(Consequential Provisions\) Order 2014 \(S.I. 2014/107\)](#), art. 1(2), **Sch. 1 para. 17(3)(c)**, and reg. 26(2) substituted (16.12.2014) (S) by [The Marriage and Civil Partnership \(Scotland\) Act 2014 and Civil Partnership Act 2004 \(Consequential Provisions and Modifications\) Order 2014 \(S.I. 2014/3229\)](#), art. 1(2), **Sch. 6 para. 12(3)(c)**

Modification applying to public service pension schemes.

27. In the case of schemes which are public service pension schemes, section 9(2B) of the 1993 Act (requirements for salary-related contracted out schemes in relation to service on or after the principal appointed day) is modified by omitting paragraph (b) (a requirement that the restrictions on employer-related investments apply to the scheme and the scheme complies with those restrictions).

Service in a salary-related contracted-out scheme that does not qualify for further benefits

28.—(1) This regulation applies in cases in which any description of benefit under a salary-related contracted-out scheme is subject to a limit (however imposed) operating so as to prevent service beyond a particular length from qualifying for further benefits.

(2) Subject to the following provisions of this regulation, in cases to which this regulation applies the employment of an earner in employed earner's employment shall be treated as contracted-out employment in relation to him, notwithstanding that his further service in the employment does not qualify him for further benefits under the scheme, where the following conditions are satisfied, namely that—

- (a) the earner's service in employed earner's employment has qualified him for benefit up to a limit imposed by the scheme; and
- (b) the annual rate of the benefit by way of pension for which that service has qualified him is not less than half the pensionable earnings on which it is calculated; and
- (c) the total benefits payable under the scheme (other than benefits attributable to voluntary contributions within the meaning of section 111 of the 1993 Act) are the same as or

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more favourable than the guaranteed minimum pension and any benefits arising in respect of section 9(2B) rights to which the earner would be entitled in respect of service in that employment and any linked qualifying service during which the earner was in contracted-out employment and any periods of service in that employment which would be contracted-out employment by virtue of this regulation.

(3) For the purposes of paragraph (2)(c) "total benefits" includes benefits which have accrued to the earner in respect of service in employment whether or not contracted-out employment and whether with the same or another employer, except any part of such benefits which consists of equivalent pension benefits for the purposes of Part III of the National Insurance Act 1965 ^{F97}.

F97 1965 c.51 . The relevant provisions were repealed by the [Social Security Act 1973 \(c.38\)](#) but continued in force by [S.I. 1974/2057](#) .

Schemes which cannot be certified under section 9(2B) of the 1993 Act.

29. For the purposes of section 9(2B)(d) of the 1993 Act (prescribed class or description of schemes which may not be salary-related contracted-out schemes) the prescribed schemes are—

- [^{F98}(a) a scheme which is not registered under section 153 of the Finance Act 2004, unless it is, or was formerly, a relevant statutory scheme.]
- (b) a money purchase scheme.

F98 Reg. 29(a) substituted (6.4.2006) by [The Taxation of Pension Schemes \(Consequential Amendments of Occupational and Personal Pension Schemes Legislation\) Order 2006 \(S.I. 2006/744\)](#) , arts. 1 , **8(7)**

PART IV

MONEY PURCHASE CONTRACTED-OUT SCHEMES

Further contracting-out requirements for money purchase contracted-out schemes

30. ^{F99}

F99 Reg. 30 omitted (6.4.2012) by virtue of [The Pensions Act 2007 \(Abolition of Contracting-out for Defined Contribution Pension Schemes\) \(Consequential Amendments\) Regulations 2011 \(S.I. 2011/1245\)](#) , regs. 1(2) , **4(8)**

Deduction of minimum payments from earnings.

^{F100}**31.**

F100 Reg. 31 omitted (E.W.S.) (6.4.2015) by virtue of [The Pensions Act 2007 \(Abolition of Contracting-out for Defined Contribution Pension Schemes\) \(Consequential Amendments\) Regulations 2011 \(S.I. 2011/1245\)](#) , regs. 1(2) , **18**

Minimum payments to be made by employers to trustees.

^{F101}**32.**

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F101 Reg. 32 omitted (E.W.S.) (6.4.2015) by virtue of [The Pensions Act 2007 \(Abolition of Contracting-out for Defined Contribution Pension Schemes\) \(Consequential Amendments\) Regulations 2011 \(S.I. 2011/1245\)](#), regs. 1(2), **18**

Calculation of minimum payments.

F102 **33.**

F102 Reg. 33 omitted (E.W.S.) (6.4.2015) by virtue of [The Pensions Act 2007 \(Abolition of Contracting-out for Defined Contribution Pension Schemes\) \(Consequential Amendments\) Regulations 2011 \(S.I. 2011/1245\)](#), regs. 1(2), **18**

Manner of calculation or estimation of earnings.

34. Where the Secretary of State cannot readily ascertain the amount of earnings in any tax week or is satisfied that records of earnings in any tax week have not been maintained or retained or are otherwise unobtainable, he may—

- (a) compute, in such manner as he thinks fit, an amount which shall be regarded as the amount of earnings; or
- (b) take their amount to be such as he may specify in the particular case.

Manner of payment of the age-related payment.

35. The Secretary of State shall make the age-related payment—

- (a) by automated credit transfer into a bank or building society account relating to the relevant scheme and which accepts payments made by automated credit transfer; or
- (b) in such other manner as the Secretary of State may in his discretion approve.

Verification of age.

36.—(1) For the purposes of determining the appropriate age-related percentage in respect of an earner for the purposes of section 42A of the 1993 Act ^{F103}, the Secretary of State may require that earner to send documentary evidence of his date of birth.

(2) For the purposes of section 45B of the 1993 Act ^{F104} (information held as to the age to be disclosed by the Secretary of State to trustees or managers of a money purchase scheme and such other persons as may be prescribed) the prescribed person shall be the person who is responsible for administering the scheme.

F103 Section 42A was inserted by section 137(5) of the Pensions Act 1995.

F104 Section 45B was inserted by section 139 of the Pensions Act 1995.

Circumstances in which the age-related payments are not to be paid.

37.—(1) An age-related payment shall not be paid in respect of an earner for the tax year or part of the tax year in which that earner—

- (a) reaches pensionable age; or
- (b) dies and in which he would have reached pensionable age.

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[^{F105}(1A) Subject to paragraph (2), where the earner is no longer a member of the scheme which before the abolition date was a money purchase contracted-out scheme, an age-related payment shall be paid—

- (a) to the trustees or managers of the scheme, if the earner has become a member of another scheme, and the scheme is able to transfer the payment to that other scheme,
- (b) to the trustees or managers of another scheme of which the earner is a member, if known to HMRC , or
- (c) in all other circumstances, to the earner.]

(2) Where effect has been given to protected rights under section 28 of the 1993 Act ^{F106} (ways of giving effect to protected rights) [^{F107} as it had effect prior to the abolition date,] age-related payments shall not, except as provided for by paragraphs (3) to (6), be paid in respect of an earner for any tax year or part of a tax year before effect had been given to that earner's protected rights.

(3) Where effect has been given to the earner's protected rights by the purchase of an annuity or by the provision by the scheme of a pension and the amount of the age-related payment in question is at least 10 times as great as the weekly lower earnings limit for the tax year in which the Secretary of State first becomes aware that the age-related payment is payable or would have been payable but for paragraph (2), the age-related payments shall be paid (in the case of an annuity) to the insurance company from which the annuity had been purchased, or (in the case of a pension) to the trustees or managers of the scheme.

(4) Where effect has been given to the earner's protected rights but the circumstances described in paragraph (3) do not exist the age-related payments shall be payable to the earner or the earner's [^{F108}widow, widower or surviving civil partner], or if the earner [^{F109}was not married or a civil partner at the time of his or her death], they may at the Secretary of State's discretion be paid to any person.

(5) Where effect has been given to the earner's protected rights by the provision of a lump sum, the age-related payment shall be payable to the earner or the earner's [^{F108}widow, widower or surviving civil partner] or, if the earner [^{F109}was not married or a civil partner at the time of his or her death], they may at the Secretary of State's discretion be paid to any person.

(6) Where effect has been given to the earner's protected rights by virtue of a transfer payment to another money purchase contracted-out scheme or a salary-related scheme and either the whole or part of a contributions equivalent premium has not been paid or no election to pay the whole or part of the contributions equivalent premium has been received by the Secretary of State, or to an appropriate personal pension scheme or an overseas scheme, the age-related payments shall be payable up to the date on which the transfer payment was made to the trustees or managers of that other scheme.

(7) Where effect has been given to the earner's protected rights by means of an appropriate policy of insurance by virtue of section 32A of the 1993 Act ^{F110} (discharge of protected rights on winding up: insurance policies) [^{F111}as it had effect prior to the abolition date], the age-related payments in respect of the tax year or part of the tax year before the tax year in which either the earner reaches pensionable age, or dies and in which he would have reached pensionable age, shall be payable to the insurance company with which that policy of insurance is or was taken out or entered into.

F105 Reg. 37(1A) inserted (6.4.2012) by [The Pensions Act 2008 \(Abolition of Protected Rights\) \(Consequential Amendments\) Order 2011 \(S.I. 2011/1246\)](#) , arts. 1(2)(a) , **8(6)(a)**

F106 Section 28 was amended by sections 142 and 146(2) of the Pensions Act 1995.

F107 Words in reg. 37(2) inserted (6.4.2012) by [The Pensions Act 2008 \(Abolition of Protected Rights\) \(Consequential Amendments\) Order 2011 \(S.I. 2011/1246\)](#) , arts. 1(2)(a) , **8(6)(b)**

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- F108** Words in reg. 37(4)(5) substituted (5.12.2005) by [Civil Partnership \(Contracted-out Occupational and Appropriate Personal Pension Schemes\) \(Surviving Civil Partners\) Order 2005 \(S.I. 2005/2050\)](#) , art. 1(3) , **Sch. 2 para. 12(a)**
- F109** Words in reg. 37(4)(5) substituted (5.12.2005) by [Civil Partnership \(Contracted-out Occupational and Appropriate Personal Pension Schemes\) \(Surviving Civil Partners\) Order 2005 \(S.I. 2005/2050\)](#) , art. 1(3) , **Sch. 2 para. 12(b)**
- F110** Section 32A was inserted by section 146(1) of the Pensions Act 1995.
- F111** Words in reg. 37(7) inserted (6.4.2012) by [The Pensions Act 2008 \(Abolition of Protected Rights\) \(Consequential Amendments\) Order 2011 \(S.I. 2011/1246\)](#) , arts. 1(2)(a) , **8(6)(c)**

Adjustment of the amount of the age-related payment.

38. Where the amount of the age-related payment payable in respect of an earner would otherwise not be a whole number of pence, it shall be adjusted to the nearest whole number of pence, and any amount of half a penny or less shall be disregarded.

Circumstances in which schemes may change mode of contracting-out.

F112 39.

- F112** Reg. 39 omitted (6.4.2012) by virtue of [The Pensions Act 2007 \(Abolition of Contracting-out for Defined Contribution Pension Schemes\) \(Consequential Amendments\) Regulations 2011 \(S.I. 2011/1245\)](#) , regs. 1(2) , **4(11)**

Schemes which may not be contracted-out under section 9(3) of the 1993 Act.

F113 40.

- F113** Reg. 40 omitted (6.4.2012) by virtue of [The Pensions Act 2007 \(Abolition of Contracting-out for Defined Contribution Pension Schemes\) \(Consequential Amendments\) Regulations 2011 \(S.I. 2011/1245\)](#) , regs. 1(2) , **4(11)**

PART V

FURTHER REQUIREMENTS (ALL SCHEMES) AND OVERSEAS SCHEMES

Provision of information as to resources.

F114 41.

- F114** Regs. 41-43 revoked (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#) , regs. 1(2)(b), **31(c)**

Alteration of rules of contracted-out schemes.

F114^{F115} **42].**

- F114** Regs. 41-43 revoked (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#) , regs. 1(2)(b), **31(c)**

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F115 Reg. 42(1) - (2B) substituted for reg. 42(1)(2) (6.4.1997) by [The Personal and Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 1997 \(S.I. 1997/786\)](#), reg. 1, [Sch. 1 para. 4\(8\)](#)

Termination of periods of contracted-out employment.

F114 43.

F114 Regs. 41-43 revoked (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), [31\(c\)](#)

Notifications to the Secretary of State.

44.—(1) Whenever an earner's service in contracted-out employment is treated as terminated [^{F116}before the second abolition date] under the provisions of regulation 43, [^{F117}(as it had effect immediately before that date)] the employer of that earner in that service shall, except where the termination is due to the death of the earner or occurs on a date later than the end of the tax year preceding that in which he attains pensionable age, or where the amount of a contributions equivalent premium in respect of that service would not exceed £17, notify the Secretary of State of that termination.

(2) [^{F118}If a notification required to be given under paragraph (1) was not given before the expected date of termination it] shall be given within 6 months from the date on which the service terminated or, if the Secretary of State is satisfied that the notification could not reasonably have been given within that period, such longer period as he may approve in a particular case or class of case.

(3) A notification required to be given under paragraph (1) shall be given in writing in such form as the Secretary of State may direct and shall contain such information as the Secretary of State may reasonably require for calculating guaranteed minimum pensions (including those to which persons are treated as entitled under section 48(2) of the 1993 Act), any entitlements arising in respect of section 9(2B) rights and contributions equivalent premiums and for related purposes.

(4) In any case where [^{F119}, before the second abolition date,] a person transfers his responsibility for, or makes a transfer payment in respect of, a guaranteed minimum pension or any section 9(2B) rights to another person, the first person shall, within 5 weeks from the date of the transfer or transfer payment, notify the Secretary of State of its occurrence, giving such particulars as the Secretary of State may reasonably require to enable him to identify the second person.

F120 (5)

F121 (6)

(7) An employer [^{F122}to whom a contracting-out certificate was issued] or the trustees of the scheme to which the certificate [^{F123}related] shall, if required to do so by the Secretary of State, in such manner and at such times as the Secretary of State may reasonably require, furnish to the Secretary of State such information relating to members of that scheme to which the contracting-out certificate [^{F123}related] as he may reasonably require for the purpose of calculating guaranteed minimum pensions (including those to which persons are treated as entitled under section 48(2) of the 1993 Act) [^{F124}and any entitlement arising in respect of section 9(2B) rights.]

F116 Words in reg. 44(1) inserted (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), [29\(2\)\(a\)\(i\)](#)

F117 Words in reg. 44(1) inserted (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), [29\(2\)\(a\)\(ii\)](#)

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- F118** Words in reg. 44(2) substituted (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **29(2)(b)**
- F119** Words in reg. 44(4) inserted (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **29(2)(c)**
- F120** Reg. 44(5) omitted (6.4.13) by [S.I. 2011/1246](#), **art. 25**, art. 1
- F121** Reg. 44(6) omitted (6.4.13) by [S.I. 2011/1246](#), **art. 25**, art. 1
- F122** Words in reg. 44(7) substituted (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **29(2)(d)(i)**
- F123** Word in reg. 44(7) substituted (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **29(2)(d)(ii)**
- F124** Words in reg. 44(7) substituted (6.4.2012) by [The Pensions Act 2008 \(Abolition of Protected Rights\) \(Consequential Amendments\) Order 2011 \(S.I. 2011/1246\)](#), arts. 1(2)(a), **8(8)**

Approval of arrangements for schemes ceasing to be contracted-out.

45.—(1) ^{F125}...For the purposes of section 50(1B) of the 1993 Act ^{F126} (prescribed conditions to be met in order for arrangements to be approved on the cessation of contracting-out) arrangements [^{F127}for cessation of contracting-out before the second abolition date] shall not be approved by the Secretary of State unless the conditions specified in paragraphs (2) or (3) are satisfied.

(2) To the extent that the arrangements concern the transfer of rights or the discharge of liabilities they must meet the requirements of (as the case may be) [^{F128}section 37A of the (transfer of liabilities: schemes contracted-out on or after 6th April 1997)], section 19 of that Act (discharge of liability for guaranteed minimum pensions secured by insurance policies or annuity contracts), section 20 of that Act (transfer of guaranteed minimum pensions) ^{F129} ... ^{F130} ... and any regulations made under those provisions and the Secretary of State must be satisfied that such arrangements will be completed within two years of the date of cessation or such later date as the Secretary of State may specify in relation to a particular case or class of case.

(3) To the extent that the arrangements concern the preservation of rights within the scheme, the scheme must comply with the requirements of [^{F131}paragraph (a)]—

- (a) in the case of a scheme where employment was contracted-out under section 9(2) of the 1993 Act (salary-related contracted-out scheme) the scheme must [^{F132}, until the second abolition date,] continue to satisfy the requirements of that section and any regulations which would apply to the scheme by reason of it being a scheme to which section 9(2) of that Act relates, other than section 9(2B)(a) of that Act (requirement to comply with section 12A of that Act) and any regulations which relate to compliance with that section, and the scheme must contain [^{F133}a protection rule;]

^{F134}(b)

[^{F135}(3A) For the purpose of paragraph (3)(a) a protection rule is a rule which provides that the total amount of the benefits under the scheme for each member at normal pension age and the member's [^{F136}widow, widower or surviving civil partner] at the day following the date of death of the member will not be less than the aggregate of—

- (a) any such benefits arising in respect of section 9(2B) rights and guaranteed minimum pensions;
- (b) any other such benefits due in respect of rights which have accrued to the member in relation to service in employment which was contracted-out before the principal appointed day under section 9(2) of the 1993 Act; and
- (c) any such benefits due in respect of rights which have accrued to the member in relation to service in employment which was not contracted-out.

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(3B) The amount of the benefits mentioned in paragraph (3A)(a) and (b) and, so far as they relate to service on or before the date on which the scheme ceased to be contracted-out, those mentioned in paragraph (3A)(c) shall be calculated on an early leaver basis in accordance with Chapter I of Part IV of the 1993 Act and any regulations made under that Chapter, as if the member had ceased to be in pensionable service under the scheme on that date.]

^{F137}(4)

- F125** Words in reg. 45(1) omitted (6.4.2016) by virtue of [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015](#) (S.I. 2015/1677), regs. 1(2)(b), **29(3)(a)(i)**
- F126** Section 50(1B) was inserted by paragraph 45 of Schedule 5 to the Pensions Act 1995.
- F127** Words in reg. 45(1) inserted (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015](#) (S.I. 2015/1677), regs. 1(2)(b), **29(3)(a)(ii)**
- F128** Words in reg. 45(2) substituted (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015](#) (S.I. 2015/1677), regs. 1(2)(b), **29(3)(b)**
- F129** Words in reg. 45(2) omitted (6.4.2012) by virtue of [The Pensions Act 2007 \(Abolition of Contracting-out for Defined Contribution Pension Schemes\) \(Consequential Amendments\) Regulations 2011](#) (S.I. 2011/1245), regs. 1(2), **4(14)**
- F130** Words in reg. 45(2) omitted (6.4.2012) by virtue of [The Pensions Act 2008 \(Abolition of Protected Rights\) \(Consequential Amendments\) Order 2011](#) (S.I. 2011/1246), arts. 1(2)(a), **8(9)(a)**
- F131** Words in reg. 45(3) substituted (6.4.2012) by [The Pensions Act 2008 \(Abolition of Protected Rights\) \(Consequential Amendments\) Order 2011](#) (S.I. 2011/1246), arts. 1(2)(a), **8(9)(b)**
- F132** Words in reg. 45(3)(a) inserted (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015](#) (S.I. 2015/1677), regs. 1(2)(b), **29(3)(c)**
- F133** Words in reg. 45(3)(a) substituted (6.4.1997) by [The Occupational Pension Schemes \(Reference Scheme and Miscellaneous Amendments\) Regulations 1997](#) (S.I. 1997/819), regs. 1(1), **3(b)(i)**
- F134** Reg. 45(3)(b) omitted (6.4.2012) by virtue of [The Pensions Act 2008 \(Abolition of Protected Rights\) \(Consequential Amendments\) Order 2011](#) (S.I. 2011/1246), arts. 1(2)(a), **8(9)(b)**
- F135** Reg. 45(3A) - Reg. 45(3B) inserted (6.4.1997) by [The Occupational Pension Schemes \(Reference Scheme and Miscellaneous Amendments\) Regulations 1997](#) (S.I. 1997/819), regs. 1(1), **3(b)(ii)**
- F136** Words in reg. 45(3A) substituted (5.12.2005) by [Civil Partnership \(Contracted-out Occupational and Appropriate Personal Pension Schemes\) \(Surviving Civil Partners\) Order 2005](#) (S.I. 2005/2050), art. 1(3), **Sch. 2 para. 13**
- F137** Reg. 45(4) omitted (6.4.2012) by virtue of [The Pensions Act 2008 \(Abolition of Protected Rights\) \(Consequential Amendments\) Order 2011](#) (S.I. 2011/1246), arts. 1(2)(a), **8(9)(c)**

Supervision of schemes that have ceased to contract out [^{F138}**before the second abolition date**].

46.—(1) Subject to such directions as the Secretary of State may give under section 53(1) of the 1993 Act (supervision of formerly contracted-out schemes) for the purposes of section 53(3) of the 1993 Act (requirement to discharge liabilities following issue of certificate of non-approval), [^{F139}liabilities in respect of such entitlement or rights as are referred] to in section 52(2A)(a) ^{F140}... of the 1993 Act ^{F141} must, subject to [^{F142}paragraphs (2) and (4)], be transferred or discharged in the manner permitted by paragraph (2) of regulation 45 within 6 months of the date a certificate of non-approval under sub-section (2) of section 50 is issued, unless the certificate has been cancelled.

(2) In the case of a scheme where employment was contracted-out under section 9(2) of the 1993 Act (salary-related contracted-out scheme), the discharge may be arranged in accordance with the requirements of [^{F143}regulation 3 and, in the case of a pension or accrued benefit under a relevant scheme, 11 of the Occupational Pension Schemes (Discharge of Liability) Regulations 1997], notwithstanding that a member's pensionable service has not terminated and the scheme is not winding up.

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^{F144}(3)

(4) Every active and deferred member with any entitlement to ^{F145} ..., guaranteed minimum pensions or section 9(2B) rights under the scheme must be notified of the issue of the certificate of non-approval and the reasons for it and allowed a period of 3 months from the date of such notification in which he may elect to transfer any such rights before they are discharged.

- F138** Words in reg. 46 inserted (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **29(4)**
- F139** Words in reg. 46(1) substituted (6.4.1997) by [The Occupational Pension Schemes \(Reference Scheme and Miscellaneous Amendments\) Regulations 1997 \(S.I. 1997/819\)](#), regs. 1(1), **3(c)(i)**
- F140** Words in reg. 46(1) omitted (6.4.2012) by virtue of [The Pensions Act 2008 \(Abolition of Protected Rights\) \(Consequential Amendments\) Order 2011 \(S.I. 2011/1246\)](#), arts. 1(2)(a), **8(10)(a)**
- F141** Section 52(2A) was inserted by paragraph 47 of Schedule 5 to the Pensions Act 1995.
- F142** Words in reg. 46(1) substituted (6.4.2012) by [The Pensions Act 2008 \(Abolition of Protected Rights\) \(Consequential Amendments\) Order 2011 \(S.I. 2011/1246\)](#), arts. 1(2)(a), **8(10)(a)**
- F143** Words in reg. 46(2) substituted (6.4.1997) by [The Occupational Pension Schemes \(Reference Scheme and Miscellaneous Amendments\) Regulations 1997 \(S.I. 1997/819\)](#), regs. 1(1), **3(c)(ii)**
- F144** Reg. 46(3) omitted (6.4.2012) by virtue of [The Pensions Act 2008 \(Abolition of Protected Rights\) \(Consequential Amendments\) Order 2011 \(S.I. 2011/1246\)](#), arts. 1(2)(a), **8(10)(b)**
- F145** Words in reg. 46(4) omitted (6.4.2012) by virtue of [The Pensions Act 2008 \(Abolition of Protected Rights\) \(Consequential Amendments\) Order 2011 \(S.I. 2011/1246\)](#), arts. 1(2)(a), **8(10)(c)**

Circumstances in which the Secretary of State may vary or cancel a contracting-out certificate.

47.—(1) Where the Secretary of State has reason to suppose that any employment to which a contracting-out certificate [^{F146}applied] should not continue to be contracted-out employment and the employer has not shown to the satisfaction of the Secretary of State that it should so continue, the Secretary of State may determine that the employment should not continue to be treated as contracted-out employment and where he so determines, he shall cancel or vary the certificate with effect, subject to paragraph (2), from such date [^{F147}(being a date before the second abolition date)] as he may specify and he shall notify the employer in writing of his determination, the reasons for it and of his powers to review that determination.

(2) The date from which the cancellation or variation is to have effect may not be earlier than the date of the cancellation or variation, as the case may be, except—

- (a) in a case of a [^{F148}scheme that was a] salary-related contracted-out scheme where the Secretary of State considers that the resources of the scheme have not been maintained at a sufficient level for maintaining all claims in respect of guaranteed minimum pensions and section 9(2B) rights so far as falling to be met out of those resources, the date may be the latest date on which in the opinion of the Secretary of State those resources were maintained at such a sufficient level; or
- (b) in a case of a [^{F149}scheme that was a] salary-related contracted-out scheme where the earners in employments to which the contracting-out certificate applies have ceased to qualify for guaranteed minimum pensions or benefits arising from section 9(2B) rights under the scheme, the date may be a date not earlier than the date on which, in the opinion of the Secretary of State, the said cessation occurred; or
- (c) in a case where the Secretary of State discovers that the scheme did not satisfy the requirements for being a contracted-out scheme at the date the contracting-out certificate was issued, the date may be the date from which the certificate had effect or any later date; or

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- (d) in a case where the Secretary of State considers that the scheme has ceased to satisfy the requirements for being a contracted-out scheme, the date may be any date not earlier than when, in the Secretary of State's opinion, the scheme ceased to satisfy those requirements.
- (3) In any case where the Secretary of State has cancelled or varied a certificate under the provisions of paragraph (1) above he may require the employer to give notice of the cancellation or variation, in the manner specified in regulation 3(3), to—
- (a) the earners in relation to whom the employment was contracted-out by virtue of the certificate immediately before its cancellation or variation;
 - (b) the trustees (if any) and administrator of the scheme by reference to which the employment was contracted-out immediately before the cancellation or variation of the certificate; and
 - (c) the persons specified in regulation 3(1)(c) and (d),
- and he may require any such notice to include such particulars (including particulars of the consequences of the cancellation or variation) as he considers appropriate.

- F146** Word in reg. 47(1) substituted (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **29(5)(a)(i)**
- F147** Words in reg. 47(1) inserted (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **29(5)(a)(ii)**
- F148** Words in reg. 47(2)(a) inserted (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **29(5)(b)**
- F149** Words in reg. 47(2)(b) inserted (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **29(5)(b)**

Special provision for overseas schemes.

- 48.**—^{F150}(1)
- ^{F150}(2)
- ^{F150}(3)
- ^{F150}(4)
- ^{F151}(5)
- ^{F151}(5A)
- ^{F151}(6)
- ^{F151}(7)

- F150** Reg. 48(1)–(4) revoked (6.4.2019) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(c), **33(b)**
- F151** Reg. 48(5)–(7) revoked (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **31(d)**

PART VI

RESTORATION OF STATE SCHEME RIGHTS

Insolvent schemes.

^{F152}**49.**

F152 Regs. 49-61 revoked (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **31(e)**

Member to be informed of the option to restore state scheme rights.

^{F152}**50.**

F152 Regs. 49-61 revoked (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **31(e)**

Persons to be regarded as members

^{F152}**50A.**

F152 Regs. 49-61 revoked (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **31(e)**

Contributions equivalent premiums

^{F152}**51.**

F152 Regs. 49-61 revoked (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **31(e)**

Payment of a contributions equivalent premium.

^{F152}**52.**

F152 Regs. 49-61 revoked (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **31(e)**

Payment in lieu of benefit and delay in refund for the purposes of employer's right of recovery.

^{F152}**53.**

F152 Regs. 49-61 revoked (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **31(e)**

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Refund of a contributions equivalent premium.

^{F152}**54.**

F152 Regs. 49-61 revoked (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **31(e)**

PART VII

GUARANTEED MINIMUM PENSIONS

Scheme rules about guaranteed minimum pensions

^{F152}**55.**

F152 Regs. 49-61 revoked (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **31(e)**

Special provision for revaluation of guaranteed minimum pensions secured by insurance policies or annuity contracts.

^{F152}**56.**

F152 Regs. 49-61 revoked (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **31(e)**

Circumstances [^{F153}for the purposes of section 17(6) of the 1993 Act] in which widower's^{F154}, widow's^{F155} or surviving civil partner's] guaranteed minimum pension is to be payable.

^{F152}**57.**

F152 Regs. 49-61 revoked (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **31(e)**

F153 Words in reg. 57 heading inserted (13.3.2014) (EW) by virtue of [The Marriage \(Same Sex Couples\) Act 2013 \(Consequential Provisions\) Order 2014 \(S.I. 2014/107\)](#), art. 1(2), **Sch. 1 para. 17(4)(a)(i)**, and words in reg. 57 inserted (16.12.2014) (S) by [The Marriage and Civil Partnership \(Scotland\) Act 2014 and Civil Partnership Act 2004 \(Consequential Provisions and Modifications\) Order 2014 \(S.I. 2014/3229\)](#), art. 1(2), **Sch. 6 para. 12(4)(a)(i)**

F154 Words in reg. 57 heading inserted (13.3.2014) (EW) by virtue of [The Marriage \(Same Sex Couples\) Act 2013 \(Consequential Provisions\) Order 2014 \(S.I. 2014/107\)](#), art. 1(2), **Sch. 1 para. 17(4)(a)(ii)**, and word in reg. 57 heading inserted (16.12.2014) (S) by [The Marriage and Civil Partnership \(Scotland\) Act 2014 and Civil Partnership Act 2004 \(Consequential Provisions and Modifications\) Order 2014 \(S.I. 2014/3229\)](#), art. 1(2), **Sch. 6 para. 12(4)(a)(ii)**

F155 Words in reg. 57 heading inserted (5.12.2005) by [Civil Partnership \(Contracted-out Occupational and Appropriate Personal Pension Schemes\) \(Surviving Civil Partners\) Order 2005 \(S.I. 2005/2050\)](#), art. 1(3), **Sch. 2 para. 18(a)**

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Period [^{F156}for the purposes of section 17(6) of the 1993 Act] for which widower's^{F157},
widow's^{F158} or surviving civil partner's] guaranteed minimum pension is to be payable.

^{F152}**58.**

- F152** Regs. 49-61 revoked (6.4.2016) by The Occupational Pension Schemes (Schemes that were Contracted-out) (No.2) Regulations 2015 (S.I. 2015/1677), regs. 1(2)(b), **31(e)**
- F156** Words in reg. 58 heading inserted (13.3.2014) (EW) by The Marriage (Same Sex Couples) Act 2013 (Consequential Provisions) Order 2014 (S.I. 2014/107) , art. 1(2) , **Sch. 1 para. 17(5)(a)(i)**, words in reg. 58 inserted (16.12.2014) (S) by The Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014 (S.I. 2014/3229) , art. 1(2) , **Sch. 6 para. 12(5)(a)(i)**
- F157** Word in reg. 58 inserted (13.3.2014) (EW) by The Marriage (Same Sex Couples) Act 2013 (Consequential Provisions) Order 2014 (S.I. 2014/107) , art. 1(2) , **Sch. 1 para. 17(5)(a)(ii)**, Word in reg. 58 inserted (16.12.2014) (S) by The Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014 (S.I. 2014/3229) , art. 1(2) , **Sch. 6 para. 12(5)(a)(ii)**
- F158** Words in reg. 58 heading inserted (5.12.2005) by virtue of Civil Partnership (Contracted-out Occupational and Appropriate Personal Pension Schemes) (Surviving Civil Partners) Order 2005 (S.I. 2005/2050) , art. 1(3) , **Sch. 2 para. 19(a)**

Statutory references to persons entitled to guaranteed minimum pensions application to
[^{F159}widowers, widows of female earners][^{F160}and surviving civil partners]

^{F152}**59.**

- F152** Regs. 49-61 revoked (6.4.2016) by The Occupational Pension Schemes (Schemes that were Contracted-out) (No.2) Regulations 2015 (S.I. 2015/1677), regs. 1(2)(b), **31(e)**
- F159** Words in reg. 59 heading substituted (13.3.2014) (EW) by The Marriage (Same Sex Couples) Act 2013 (Consequential Provisions) Order 2014 (S.I. 2014/107) , art. 1(2) , **Sch. 1 para. 17(6)(a)**, and words in reg. 59 substituted (16.12.2014) (S) by The Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014 (S.I. 2014/3229), art. 1(2), **Sch. 6 para. 12(6)(a)**
- F160** Words in reg. 59 heading added (5.12.2005) by virtue of Civil Partnership (Contracted-out Occupational and Appropriate Personal Pension Schemes) (Surviving Civil Partners) Order 2005 (S.I. 2005/2050) , art. 1(3) , **Sch. 2 para. 20(a)**

[^{F161} Payment of a guaranteed minimum pension as a lump sum

^{F152}**60**].

- F152** Regs. 49-61 revoked (6.4.2016) by The Occupational Pension Schemes (Schemes that were Contracted-out) (No.2) Regulations 2015 (S.I. 2015/1677), regs. 1(2)(b), **31(e)**
- F161** Reg. 60 substituted (6.4.2006) by The Taxation of Pension Schemes (Consequential Amendments of Occupational and Personal Pension Schemes Legislation) Order 2006 (S.I. 2006/744) , arts. 1 , **8(10)**

Suspension and forfeiture of guaranteed minimum pensions.

^{F152}**61.**

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F152 Regs. 49-61 revoked (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **31(e)**

Fixed rate revaluation of guaranteed minimum pensions for early leavers.

[^{F162}62.—(1) This regulation applies to a case where a scheme provides, under section 16(2) of the 1993 Act, for the earnings factors of an earner whose service in contracted-out employment by reference to the scheme is terminated before he attains pensionable age to be determined by reference to the last order that comes into force under section 148 of the Administration Act before the end of the tax year in which his service is terminated.

(2) Subject to paragraph (3), in a case to which this regulation applies, the prescribed percentage for the purpose of section 16(3) of the 1993 Act (revaluation of earnings factors) is, in relation to each period of service in respect of which accrued rights to guaranteed minimum pension have been acquired under, or transferred to, the scheme—

- (a) where the period of service terminated before 6th April 1988, 8.5 per cent. compound;
- (b) where that period of service terminated on or after 6th April 1988 but before 6th April 1993, 7.5 per cent. compound;
- (c) where that period of service terminated on or after 6th April 1993 but before 6th April 1997, 7 per cent. compound;
- (d) where that period of service terminates on or after 6th April 1997 [^{F163}but before 6th April 2002, 6.25 per cent. compound;]
- [^{F164}(e)** where that period of service terminates on or after [^{F165}6th April 2002 but before 6th April 2007, 4.5 per cent.] compound.]
- [^{F166}(f)** where that period of service terminates on or after [^{F167}6th April 2007 but before 6th April 2012, 4 per cent.] compound.]
- [^{F168}(g)** where that period of service terminates on or after 6th April 2012, 4.75 per cent. compound.]

(3) Paragraph (2) only applies so as to permit the same provision to be made for all members of the scheme, so however that separate provision may be made for members as regards their rights to guaranteed minimum pensions under the scheme arising in respect of a transfer or transfer payment made in accordance with section 20(1) (transfer of accrued rights) ^{F169} ... of the 1993 Act or regulations made under [^{F170}that provision] or for members whose guaranteed minimum pensions are, or are to be, appropriately secured within the meaning of section 19(3) of the 1993 Act.]

F162 Reg. 62 revoked (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **31(f)** (with reg. 32)

F163 Words in reg. 62(2)(d) substituted (6.4.2002) by [The Occupational and Personal Pension Schemes \(Contracting-out\) \(Miscellaneous Amendments\) Regulations 2002 \(S.I. 2002/681\)](#) , regs. 1 , **2(16)(a)**

F164 Reg. 62(2)(e) inserted (6.4.2002) by [The Occupational and Personal Pension Schemes \(Contracting-out\) \(Miscellaneous Amendments\) Regulations 2002 \(S.I. 2002/681\)](#) , regs. 1 , **2(16)(b)**

F165 Words in reg. 62(2)(e) substituted (6.4.2007) by [Occupational and Personal Pension Schemes \(Miscellaneous Amendments\) Regulations 2007 \(S.I. 2007/814\)](#) , regs. 1 , **4(3)(a)**

F166 Reg. 62(2)(f) added (6.4.2007) by [Occupational and Personal Pension Schemes \(Miscellaneous Amendments\) Regulations 2007 \(S.I. 2007/814\)](#) , regs. 1 , **4(3)(b)**

F167 Words in reg. 62(2)(f) substituted (6.4.2012) by [The Occupational Pension Schemes \(Contracting-out and Modification of Schemes\) \(Amendment\) Regulations 2012 \(S.I. 2012/542\)](#) , regs. 1(2) , **2(2)(a)**

F168 Reg. 62(2)(g) added (6.4.2012) by [The Occupational Pension Schemes \(Contracting-out and Modification of Schemes\) \(Amendment\) Regulations 2012 \(S.I. 2012/542\)](#) , regs. 1(2) , **2(2)(b)**

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F169 Words in reg. 62(3) omitted (6.4.2012) by virtue of [The Pensions Act 2007 \(Abolition of Contracting-out for Defined Contribution Pension Schemes\) \(Consequential Amendments\) Regulations 2011 \(S.I. 2011/1245\)](#) , regs. 1(2) , [4\(17\)\(a\)](#)

F170 Words in reg. 62(3) substituted (6.4.2012) by [The Pensions Act 2007 \(Abolition of Contracting-out for Defined Contribution Pension Schemes\) \(Consequential Amendments\) Regulations 2011 \(S.I. 2011/1245\)](#) , regs. 1(2) , [4\(17\)\(b\)](#)

Provision of information about guaranteed minimum pensions.

F171 **63.**

F171 Reg. 63 revoked (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), [31\(g\)](#)

Meaning of expression “connected employer”.

64.—(1) The cases in which employers are to be treated as connected for the purposes of section 35 of the 1993 Act (surrender and cancellation: issue of further certificates) are those specified in paragraph (2).

(2) The cases referred to in paragraph (1) are those where any two employers are or were, at the relevant time—

- (a) a holding company and a subsidiary within the meaning of regulation 12(2);
- (b) subsidiaries of the same holding company within the meaning of that regulation; or
- (c) partnerships each having the same persons as at least half of its partners.

(3) In this regulation an employer is to be regarded as an employer at the relevant time where, as the case may require, he is the employer at the time of the surrender or cancellation of the first certificate or the employer at the time of the making of an election with a view to the issue of a further contracting-out certificate.

Modification of section 16 of the 1993 Act.

65. [^{F172}In such a case as is specified in regulation 66—

- (a) section 16(1) of the 1993 Act shall be modified so as to have effect as if there were added at the end thereof the words “or, in respect of the earner’s earnings factor or the weekly equivalent mentioned in section 14(2) for any relevant year in a period of linked qualifying service, shall be taken to be that factor or weekly equivalent as increased in accordance with the provisions of the scheme under regulations made under section 16(3)”, and
- (b) where earnings factors of an earner whose accrued rights to guaranteed minimum pensions, including such rights derived from linked qualifying service, have been transferred under section 20(1) of the 1993 Act or regulations made thereunder to another contracted-out scheme, section 16(2) and (3) of that Act shall be modified so as to have effect as if it permitted that scheme to provide for those earnings factors to be determined for the purpose of section 14(2) of that Act without reference to any order coming into force under section 148 of the Administration Act—
 - (i) after the relevant year in which his service in the contracted-out employment, by reference to the scheme from which those rights were transferred, was terminated where such earnings factors have previously fallen to be determined by reference to orders under section 148 of the Administration Act, or
 - (ii) in and after the relevant year in which that service was terminated in any other case,

and as if section 16(3) of the 1993 Act had effect accordingly, save, in a case to which sub-paragraph (ii) applies, for treating the reference to the amount of the increase in section 16(3) as a reference to the amount by which the earnings factors relevant to the weekly equivalent would be increased.]

F172 Reg. 65 revoked (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **31(h)** (with reg. 32)

Circumstances in which the modifications to the 1993 Act set out in regulation 65 apply.

66. [^{F173}The case referred to in regulation 65 is where, following the termination of an earner's service in contracted-out employment by reference to a scheme, the following conditions are satisfied, namely—

- (a) a transfer under section 20(1) of the 1993 Act, or regulations made thereunder, of the earner's accrued rights to guaranteed minimum pensions under that scheme (in this regulation called the "transferring scheme") to another contracted-out scheme (in this regulation called the "receiving scheme") is made, or if already begun is completed, on or after 5th April 1983;
- (b) the earner commences or has commenced employment which is contracted-out by reference to the receiving scheme;
- (c) by virtue of section 14(1) of that Act as modified by regulations made under section 20 of the 1993 Act, the calculation, under the provisions of the receiving scheme, of the earner's guaranteed minimum pension for the purposes of section 14(2) falls to include earnings factors, or the weekly equivalent derived therefrom, arising out of contracted-out employment in any period of linked qualifying service which was contracted-out employment by reference to the transferring scheme; and
- (d) either—
 - (i) the receiving scheme provides for the earnings factors or weekly equivalent derived therefrom to be increased at the rate by which they, or it, fell to be increased under the provisions of the transferring scheme or would have fallen to be increased under the provisions of that scheme relating to an earner whose service in contracted-out employment by reference to the scheme is terminated before he attains pensionable age, or
 - (ii) if the provisions of the transferring scheme provided for those earnings factors to be increased by reference to orders under section 148 of the Administration Act, the receiving scheme provides for those earnings factors or the weekly equivalent derived therefrom to be increased in accordance with the provisions of section 16(2) and (3) of the 1993 Act, or regulations made under section 16(3) of that Act, or
 - (iii) if the transferring scheme provided for those earnings factors or the weekly equivalent derived therefrom to be increased in accordance with the provisions of either section 16(2) and (3) of the 1993 Act or of regulations made under section 16(3) of that Act, the receiving scheme includes provision for those earnings factors to be increased by reference to orders under section 148 of the Administration Act from the date of termination of the earner's service in the period of contracted-out employment from which those earnings factors arose, or
 - (iv) if a transfer of the earner's accrued rights to the receiving scheme is not one to which sub-paragraph (d)(iii) applies and those rights were previously being increased at a rate calculated by reference to orders under section 148 of the Administration Act, the receiving scheme includes provision for those earnings factors or the weekly

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equivalent derived therefrom to be increased at a rate calculated otherwise than by reference to orders under section 148 of the Administration Act.]

F173 Reg. 66 revoked (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **31(h)** (with reg. 32)

Modification of section 51(1) of the 1993 Act in relation to revaluation and schemes which have ceased to be contracted-out.

^{F174}**67.**

F174 Regs. 67-69A revoked (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **31(i)**

Additional modifications relating to transfers and increases of earnings factors by 12 per cent..

^{F174}**68.**

F174 Regs. 67-69A revoked (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **31(i)**

Miscellaneous provisions affecting section 51 of the 1993 Act.

^{F174}**69.**

F174 Regs. 67-69A revoked (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **31(i)**

[^{F175}Conversion of guaranteed minimum pensions into other benefits: actuarial equivalence

^{F174}**69A.**

F174 Regs. 67-69A revoked (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **31(i)**

F175 Reg. 69A - Reg. 69B inserted (6.4.2009) by [Occupational Pension Schemes \(Contracting-out\) \(Amendment\) Regulations 2009 \(S.I. 2009/846\)](#) , regs. 1 , **2(2)**

Conversion of guaranteed minimum pensions into other benefits: survivors' benefits

69B.—[^{F176}(1) For the purposes of Condition 4 of section 24B of the 1993 Act, the circumstances in which, and periods during which, the converted scheme must provide survivors' benefits are prescribed in this regulation.

(2) The circumstances are that—

- (a) an earner's pre-conversion benefits include a guaranteed minimum pension, and
- (b) the scheme before conversion provided that—

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- (i) if such an earner dies leaving a widow, widower or surviving civil partner (whether before or after attaining pensionable age), the widow, widower or surviving civil partner will be entitled to a guaranteed minimum pension, and
 - (ii) ^{F177}in a case where section 17(6) of the 1993 Act applies, such a widower's, widow's or surviving civil partner's guaranteed minimum pension will be payable in the circumstances set out in regulation 57(a) to (c).
- (3) The periods are—
- (a) for widows, widowers and surviving civil partners, any period mentioned in section 17(4A)(a) and (b) of the 1993 Act (minimum pensions for widows and widowers),
 - (b) for widows, widowers and surviving civil partners whose entitlement by virtue of the earner's contributions to a widowed parent's allowance or bereavement allowance has come to an end at a time after the widow, widower or surviving civil partner attained the age of 45, so much of the period beginning with the time when that entitlement came to an end as neither—
 - (i) comprises a period during which the widow, widower or surviving civil partner and nor
 - (ii) falls after the time of any—
 - (aa) marriage, or
 - (bb) formation of a civil partnership,
 by the widow, widower or surviving civil partner which takes place after the earner's death,
 - (c) for ^{F179}widows whose spouse was a man, any period for which a widowed mother's allowance or widow's pension is payable to the widow by virtue of the earner's contributions, and
 - (d) for ^{F180}widowers, widows whose spouse was a woman and surviving civil partners, any period which is, by virtue of regulation 58, a prescribed period for the purposes of section 17(6) of the 1993 Act.
- ^{F181}(4) The following provisions do not apply where the earner died before 5th December 2005—
- (a) paragraph (3)(b)(i) so far as it relates to the living together of two people of the same sex;
 - (b) paragraph (3)(b)(ii)(aa) so far as it relates to a marriage involving two people of the same sex; and
 - (c) paragraph (3)(b)(ii)(bb).]]]

F175 Reg. 69A - Reg. 69B inserted (6.4.2009) by [Occupational Pension Schemes \(Contracting-out\) \(Amendment\) Regulations 2009 \(S.I. 2009/846\)](#) , regs. 1 , **2(2)**

F176 Reg. 69B revoked (6.4.2016) by [The State Pension and Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 2016 \(S.I. 2016/199\)](#) , regs. 1(3), **6(1)**

F177 Words in reg. 69B(2)(b)(ii) substituted (13.3.2014) (EW) by [The Marriage \(Same Sex Couples\) Act 2013 \(Consequential Provisions\) Order 2014 \(S.I. 2014/107\)](#) , art. 1(2) , **Sch. 1 para. 17(7)(a)**, and words in reg. 69B(2)(b)(ii) substituted (16.12.2014) (S) by [The Marriage and Civil Partnership \(Scotland\) Act 2014 and Civil Partnership Act 2004 \(Consequential Provisions and Modifications\) Order 2014 \(S.I. 2014/3229\)](#) , art. 1(2), **Sch. 6 para. 12(7)(a)**

F178 Words in reg. 69B(3)(b)(i) substituted (13.3.2014) (EW) by [The Marriage \(Same Sex Couples\) Act 2013 \(Consequential Provisions\) Order 2014 \(S.I. 2014/107\)](#) , art. 1(2) , **Sch. 1 para. 17(7)(b)**, and words in reg. 69B(3)(b)(i) substituted for reg. 69B(3)(b)(i)(aa)(bb) (16.12.2014) (S) by [The Marriage and Civil Partnership \(Scotland\) Act 2014 and Civil Partnership Act 2004 \(Consequential Provisions and Modifications\) Order 2014 \(S.I. 2014/3229\)](#) , art. 1(2), **Sch. 6 para. 12(7)(b)**

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- F179** Words in reg. 69B(3)(c) substituted (16.12.2014) by [The Marriage and Civil Partnership \(Scotland\) Act 2014 and Civil Partnership Act 2004 \(Consequential Provisions and Modifications\) Order 2014 \(S.I. 2014/3229\)](#) , art. 1(2) , **Sch. 3 para. 3(3)(a)**
- F180** Words in reg. 69B(3)(d) substituted (16.12.2014) by [The Marriage and Civil Partnership \(Scotland\) Act 2014 and Civil Partnership Act 2004 \(Consequential Provisions and Modifications\) Order 2014 \(S.I. 2014/3229\)](#) , art. 1(2) , **Sch. 3 para. 3(3)(b)**
- F181** Reg. 69B(4) substituted (13.3.2014) (EW) by [The Marriage \(Same Sex Couples\) Act 2013 \(Consequential Provisions\) Order 2014 \(S.I. 2014/107\)](#) , art. 1(2) , **Sch. 1 para. 17(7)(c)**, and reg. 69B(4) substituted (16.12.2014) (S) by [The Marriage and Civil Partnership \(Scotland\) Act 2014 and Civil Partnership Act 2004 \(Consequential Provisions and Modifications\) Order 2014 \(S.I. 2014/3229\)](#), art. 1(2), **Sch. 6 para. 12(7)(c)**

PART VIII

TRANSITIONAL ARRANGEMENTS AND SAVINGS

Transitional arrangements for certification of schemes.

F18270.

- F182** Regs. 70-74 revoked (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **31(j)**

Elections for replacement certificates by salary-related schemes during transitional period.

F18271.

- F182** Regs. 70-74 revoked (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **31(j)**

Transitional requirements as to sufficiency of resources of salary-related schemes.

F18272.

- F182** Regs. 70-74 revoked (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **31(j)**

Transitional arrangements and savings for salary-related schemes which have begun winding up before the principal appointed day.

F18273.

- F182** Regs. 70-74 revoked (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **31(j)**

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Transitional arrangements in relation to the powers of the Secretary of State to approve arrangements for schemes ceasing to contract out before the principal appointed day.

^{F182}**74.**

F182 Regs. 70-74 revoked (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **31(j)**

Transitional modifications to sections 35 and 36 of the 1993 Act.

^{F183}**75.**

F183 [Reg. 75](#) revoked (6.4.2019) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(c), **33(c)**

Prevention of recovery by employers of Class 1 contributions where certificate cancelled under section 36(3) of the 1993 Act.

76.—(1) This regulation shall apply in any case where the Occupational Pensions Board or the Secretary of State has cancelled a contracting-out certificate under section 36(3) of the 1993 Act [^{F184}before the second abolition date].

(2) An employer shall not be entitled to recover (whether by deduction from emoluments or otherwise) any arrears which he is required to pay to the Secretary of State in respect of an earner's liability under section 6(3) of the Contributions and Benefits Act in so far as those arrears comprise the difference between the amount of the primary Class 1 contributions payable at the normal rate in respect of the emoluments from the employed earner's employment and the amount of the primary Class 1 contributions that were paid while the employment was regarded as contracted-out to the cancellation of the further contracting-out certificate.

(3) This regulation shall apply notwithstanding the terms of any contract to the contrary.

F184 Words in reg. 76(1) inserted (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **29(6)**

[^{F185}Transitional arrangements for schemes contracted-out under section 9(2) of the 1993 Act to become contracted-out under section 9(3) of that Act

^{F186}**76A]**.

F185 [Reg. 76A](#) inserted (12.7.1996) by [The Occupational Pension Schemes \(Contracting-out\) Amendment Regulations 1996 \(S.I. 1996/1577\)](#) , regs. 1 , **2**

F186 [Reg. 76A](#) revoked (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **31(k)**

[^{F187}Former requirements for consent for alterations of rules

^{F188}**76B]**.

F187 [Reg. 76B](#) inserted (6.4.1997) by [The Personal and Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 1997 \(S.I. 1997/786\)](#) , reg. 1 , **Sch. 1 para. 4(15)**

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F188 Reg. 76B revoked (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **31(k)**

Savings in respect of State Scheme Premiums.

F189 77.

F189 Reg. 77 revoked (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **31(l)**

PART IX

REVOCATIONS

Revocations.

78. Subject to the savings provided for in regulations [^{F190}15 and 16 of the Occupational Pension Schemes (Schemes that were Contracted-out) (No.2) Regulations 2015], the regulations listed in column 2 of Schedule 2 to these Regulations (some of which are spent) are revoked to the extent specified in column 3 of that Schedule.

F190 Words in reg. 78 substituted (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\)](#), regs. 1(2)(b), **29(7)**

Signed by authority of the Secretary of State for Social Security.

Oliver Heald
Parliamentary Under-Secretary of State,
Department of Social Security

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SCHEDULE 1

PROVISIONS CONFERRING POWERS EXERCISED IN MAKING THESE REGULATIONS

Column (1)	Column (2)
Pension Schemes Act F191	section 7
	section 8(3)
	section 9
	section 11(5)
	section 12(3)
	section 12A(4), (5) and (6)
	section 12B(2) and (4)
	section 12C(1) and (3)
	section 12D
	section 16(3) and (4)
	section 17(6)
	section 21(1) and (2)
	section 25(2)
	section 34
	section 35(6)
	section 36(6)
	section 37
	section 42A
	section 45B
	section 50(1B) and (4)
	section 51 (2) and (4)
	section 53(3)
	section 55(2)
	section 56(2)
	section 57(1) and (2)
	section 61(7) and (11)
	section 113(1)
	section 155
	section 156
	section 178
	section 179

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	section 181(1)
	section 182(2) and (3)
	section 183(1)
	Schedule 2, Part I
Pensions Act 1995	section 174(3) and (4)
F192	
	section 180(4)

F191 1993 c.48 as amended by Part III and Schedule 5 to the Pensions Act 1995. Section 181(1) is cited for the meaning given to “prescribe” and “regulations”.

F192 1995 c.26 .

SCHEDULE 2

Regulation 78

REVOCATIONS

Column 1 Statutory Instrument Number	Column 2 Statutory Instrument	Column 3 Provision Revoked
S.I. 1982/1033	The Contracting-out (Recovery of Class 1 Contributions) Regulations 1982	Regulation 2
S.I. 1984/380	The Occupational Pension Schemes (Contracting-out) Regulations 1984	The whole of the Regulations
S.I. 1985/1323	The Contracting-out (Transfer) Regulations 1985	Regulation 4(3) and (4)
S.I. 1985/1928	The Contracting-out (Transfer Premiums) Regulations 1985	The whole of the Regulations
S.I. 1985/1930	The Occupational Pension Schemes (Revaluation) Regulations 1985	Regulation 9
S.I. 1986/317	The Occupational Pension Schemes (Contracting-out) Amendment Regulations 1986	Regulation 2
S.I. 1986/1716	The Contracting-out (Requisite Benefits-Consequential Provisions) Regulations 1986	Regulation 3
S.I. 1987/1100	The Contracting-out (Widowers’ Guaranteed Minimum Pensions) Regulations 1987	The whole of the Regulations

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S.I. 1987/1101	The Money Purchase Contracted-out Schemes Regulations 1987	The whole of the Regulations
S.I. 1987/1103	The Occupational Pension Schemes (Contracted-out Protected Rights Premiums) Regulations 1987	Regulations 3, 4, 5, 6 and 7
S.I. 1987/1104	The Occupational Pension Schemes (Contracting-out) Amendment Regulations 1987	The whole of the Regulations
S.I. 1987/1106	The Occupational Pension Schemes (Qualifying Service Consequential and Other Provisions) Regulations 1987	Regulation 2
S.I. 1987/1114	The Personal and Occupational Pension Schemes (Consequential Provisions) Regulations 1987	Regulation 4
S.I. 1987/1117	The Personal and Occupational Pension Schemes (Protected Rights) Regulations 1987	Regulation 14
S.I. 1988/474	The Personal and Occupational Pension Schemes (Tax Approval and Miscellaneous Provisions) Regulations 1988	Regulation 4
S.I. 1988/475	The Contracting-out (Miscellaneous Amendments) Regulations 1988	Regulation 2
S.I. 1989/500	The Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1989	Regulation 2
S.I. 1990/1141	The Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1990	Regulation 6
S.I. 1990/1142	The Personal and Occupational Pension Schemes (Miscellaneous Amendments) (No.2) Regulations 1990	Regulation 2
S.I. 1991/2273	The Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1991	Regulation 2
S.I. 1992/1531	The Occupational and Personal Pension Schemes	Regulation 2

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	(Miscellaneous Amendments) Regulations 1992	
S.I. 1993/519	The Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 1993	Regulation 2
S.I. 1994/1062	The Occupational and Personal Pension Schemes (Consequential Amendments) Regulations 1994	Schedule 2, paragraphs 4 and 10 and regulation 2 as far as it relates to those paragraphs
S.I. 1995/35	The Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 1995	Regulations 2 and 4
S.I. 1996/776	The Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1996	Regulation 2

[^{F193} SCHEDULE 3

Regulation 23(i)

Further requirements for meeting the statutory standard

F193 Sch. 3 added (1.10.2011) by [The Occupational Pension Schemes \(Contracting-out\) Amendment Regulations 2011 \(S.I. 2011/1294\)](#), regs. 1(2), 2(3), **Schs.**

1. The actuary must complete a reference scheme test certificate.
2. The reference scheme test certificate must—
 - (a) certify whether in the actuary’s opinion, the scheme satisfies the statutory standard in relation to the provision of pensions for—
 - (i) earners, and
 - (ii) the widows, widowers or surviving civil partners of earners, and
 - (b) specify the date of the information used by the actuary for the purposes of completing the certificate (referred to in this Schedule as the “effective date”).
3. The actuary must—
 - (a) send the completed reference scheme test certificate to Her Majesty’s Revenue and Customs and send a signed copy of that certificate to the employer, or
 - (b) send the completed reference scheme test certificate to the employer and inform the employer that that certificate should be sent to Her Majesty’s Revenue and Customs.
4. Where the actuary is sending the first reference scheme test certificate for a scheme, the actuary must also inform—
 - (a) the [^{F194}trustees or managers of the scheme] and the employer that Her Majesty’s Revenue and Customs provide guidance on contracting-out, including guidance on what changes need to be notified to Her Majesty’s Revenue and Customs,

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- (b) the employer that it should provide a copy of the completed certificate to the [^{F194}trustees or managers of the scheme], and
- (c) the employer that it should keep a record of any subsidiary or associated employers.

F194 Words in Sch. 3 para. 4(a)(b) substituted (6.4.2012) by [The Occupational Pension Schemes \(Contracting-out and Modification of Schemes\) \(Amendment\) Regulations 2012 \(S.I. 2012/542\)](#), regs. 1(2), 2(3)

5.—(1) Where the employer asks the actuary to advise whether the statutory standard is satisfied, the actuary must inform the trustees or managers of the scheme that the employer has asked for that advice.

(2) Sub-paragraph (1) does not apply if the actuary has previously informed the trustees or managers of the scheme that the actuary provides advice to the employer.

6. Where the scheme calculates pensions by different methods for different members, the actuary—

- (a) must decide whether the pensions provided under each method are broadly equivalent to, or better than, the pensions which would be provided under a reference scheme, and
- (b) must not complete a reference scheme test certificate for any members whose pensions are calculated by a method which does not provide pensions that are broadly equivalent to, or better than, the pensions which would be provided under a reference scheme.

7. The actuary must not complete a reference scheme test certificate if the average value of pension provided under the scheme is less than the average value of pension which would be provided under a reference scheme.

8. Where an employer asks for a separate reference scheme test certificate which only includes its employees, the actuary must—

- (a) provide that employer with a separate reference scheme test certificate, and
- (b) consider only the employees of that employer for that certificate.

9. Where—

- (a) an employer has two or more schemes, and
- (b) none of those schemes can be contracted-out by itself under section 9(1) of the 1993 Act (requirements for certification of schemes: general),

the actuary may take into account the pensions provided under all those schemes.

10. The actuary must use any information about the earner's remuneration which—

- (a) the actuary considers is relevant for the reference scheme test certificate,
- (b) is the latest available information, and
- (c) subject to paragraph 11, refers to the period of one year.

11. Where—

- (a) the actuary is satisfied that the information about the earner's remuneration which refers to a period of one year is significantly abnormal, and
- (b) the employer writes to the actuary stating that it is also so satisfied,

the actuary may use such information for the purposes of paragraph 10(c) which refers to the period of three years ending on the effective date.

12.—(1) This paragraph applies where, on the effective date, the scheme has not been established but is in the process of being established.

(2) For the purposes of carrying out the comparison under regulation 23, the actuary must use estimated membership information.

(3) In this paragraph, “estimated membership information” means any information about the earners who the actuary expects to join the scheme when it is established which—

- (a) the actuary considers is necessary for the purposes of the comparison under regulation 23, and
- (b) may include information on the age, gender and earnings of those earners.

13.—(1) The pensions provided under the scheme for the purposes of carrying out the comparison under regulation 23 are the pensions referred to in sub-paragraph (2).

(2) The pensions are those which the actuary expects will accrue in the three years after the effective date.

(3) For the purposes of sub-paragraph (2), the actuary must—

- (a) assume that the earner leaves pensionable service—
 - (i) at the end of the three-year period mentioned in sub-paragraph (2), or
 - (ii) if the earner attains normal pension age before the end of that three-year period, on the date on which the earner attains normal pension age,
- (b) assume that pensions are payable from the date on which the earner attains normal pension age,
- (c) where the earner has accrued their maximum pension under the scheme during any part of the three-year period mentioned in sub-paragraph (2), assume that that maximum pension accrues at the same rate for each year of the pensionable service which the earner is likely to complete up to a maximum of 40 years, and
- (d) take into account the person whom the actuary expects will be entitled to receive the pensions referred to in sub-paragraph (2).

14.—(1) For the purposes of carrying out the comparison under regulation 23, the actuary must use—

- (a) where a statement of funding principles has been prepared or revised for the scheme under section 223 of the 2004 Act (statement of funding principles), the actuarial assumptions in the most recent such statement, and
 - (b) any other actuarial assumptions which the actuary considers necessary.
- (2) The actuarial assumptions referred to in sub-paragraph (1) must be used for valuing—
- (a) the pensions provided under the scheme, and
 - (b) the pensions which would be provided under a reference scheme.

15.—(1) For the purposes of carrying out the comparison under regulation 23, the pensions provided under the scheme for widows, widowers and surviving civil partners are subject to the following requirements of this paragraph.

(2) The actuary must carry out a separate comparison for pensions the actuary expects to accrue during the three-year period referred to in paragraph 13(2) in respect of—

- (a) death in service (see sub-paragraphs (3), (9) and (10) of this paragraph),
- (b) death in deferment (see sub-paragraph (4)), and
- (c) death in retirement (see sub-paragraphs (5) and (11)).

(3) A death in service pension must be valued as if the earner died—

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- (a) three years after the effective date, or
 - (b) if the earner attains normal pension age before that date, on the day before the date on which the earner attains normal pension age.
- (4) A death in deferment pension must be valued as if the earner died more than three years after the effective date.
- (5) A death in retirement pension must be valued as if the earner died after the date on which the earner attains normal pension age.
- (6) The actuary may not complete the reference scheme test certificate unless each of the pensions referred to in sub-paragraph (2) are broadly equivalent to, or better than, those which would be provided under a reference scheme.
- (7) Sub-paragraph (8) applies where—
- (a) a pension which is in payment for a widow, widower or surviving civil partner has been reduced under the scheme because they were at least 10 years younger than the earner, or
 - (b) a pension which may become payable in the future for a widow, widower or surviving civil partner would be reduced under the scheme if they were at least 10 years younger than the earner.
- (8) Where this sub-paragraph applies, the actuary—
- (a) must estimate, where sub-paragraph (7)(b) applies, the number and amount of future pension reductions which the actuary thinks are likely to occur, and
 - (b) may ignore any part of the reductions referred to in sub-paragraph (7) which are or are likely to be—
 - (i) made in respect of each complete year during which the age difference referred to in sub-paragraph (7) was at least 10, and
 - (ii) 2.5% or less for each such year.
- (9) Sub-paragraph (10) applies where any death in service pensions—
- (a) have an accrual rate of less than 1/160ths of any qualifying earnings within the meaning of section 12B(5) of the 1993 Act (reference scheme) and are calculated by reference to—
 - (i) the number of years of pensionable service which the earner has completed in the scheme, and
 - (ii) any amount which is additional to the number of years of pensionable service referred to in sub-paragraph (i), or
 - (b) are not calculated by reference to the number of years of pensionable service.
- (10) Where this sub-paragraph applies, the actuary must compare under sub-paragraph (2)(a) the death in service pension with a reference scheme—
- (a) based on the earner's pensionable service up to the date which applies under sub-paragraph (3), and
 - (b) excluding any of the earner's pensionable service which took place before—
 - (i) the date on which a contracting-out certificate was first issued to the scheme, or
 - (ii) in the case of female earners or surviving civil partners, 6th April 1988 where that date is later than the date referred to in sub-paragraph (i).
- (11) Where a death in retirement pension can be reduced under the scheme if the earner takes part of their pension as a lump sum on retirement, the actuary must reduce the death in retirement pension by an amount broadly consistent with the average such reductions made by the scheme in relation to other earners.

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16.—(1) Subject to sub-paragraph (2), this paragraph applies in each of the following circumstances—

- (a) where the actuary has been informed of any changes to—
 - (i) the scheme rules, or
 - (ii) the membership of the scheme (including changes to the remuneration of scheme members),which the actuary thinks might affect the scheme’s ability to satisfy the statutory standard;
- (b) where, after estimated membership information has been used in accordance with paragraph 12, actual information becomes available about the members who have joined the scheme;
- (c) unless paragraph (a) or (b) applies, three years after the effective date;
- (d) three years after the date on which this paragraph (that is, paragraph 16 of this Schedule) last applied.

(2) This paragraph does not apply where the scheme is no longer required to satisfy the statutory standard.

(3) The actuary must consider whether there have been any changes which would prevent a reference scheme test certificate from being issued.

(4) If—

- (a) there have been any changes referred to in sub-paragraph (3), and
- (b) no further changes have been made which the actuary considers would enable a reference scheme test certificate to be issued,

the actuary must inform in writing the trustees or managers of the scheme, Her Majesty’s Revenue and Customs and the employer.

17. In this Schedule—

“accrual rate” means the rate at which, under the scheme rules, rights to the pension accrue over time by reference to periods of service in any description of employment to which the scheme applies;

“death in deferment pension” means a pension payable in respect of an earner who dies—

- (a) otherwise than in pensionable service under the scheme, and
- (b) before their own entitlements to pensions under the scheme have commenced;

“death in retirement pension” means a pension payable in respect of an earner who dies after their own entitlements to pensions under the scheme have commenced;

“death in service pension” means a pension payable in respect of an earner who dies in pensionable service under the scheme;

“earner” means an earner in employed earner’s employment;

“effective date” has the meaning given in paragraph 2(b);

“normal pension age” means the earliest age at which an earner may be entitled to payment of an unreduced pension;

“unreduced pension” means a pension which—

- (a) has not been actuarially reduced as a result of early payment of the pension, and
- (b) does not include any discretionary benefits.]

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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations replace the Occupational Pension Schemes (Contracting-out) Regulations 1984 and other related regulations which are now revoked. The Regulations supplement the changes introduced by the Pensions Act 1995 to Part III of the Pension Schemes Act 1993. They also consolidate and amend those provisions of the 1984 Regulations which remain relevant. The regulations made by virtue of Part III of the Pensions Act 1995 are made within six months of those provisions coming into force and as a consequence there is no requirement to consult. As regards other regulations, the Occupational Pensions Board has agreed that proposals to make regulations need not be referred to it.

Part II of these Regulations provides for the procedure for employers to make elections to contract out employments, for notice and consultation requirements and the issue of contracting-out certificates by the Secretary of State.

Part III concerns the new requirements applying to salary-related contracted-out schemes from 6th April 1997. Provision is made as to the level of resources required (regulation 18), payment of lump sums and commutation of benefits (regulations 19 and 20), the age at which benefits can be paid (regulation 21) and meeting the statutory standard in accordance with section 9(2B)(a) of the Pension Schemes Act 1993 (regulations 22 to 27).

Part IV concerns money purchase contracted-out schemes. Provision is made for further requirements applying to such schemes (regulation 30); the deduction, payment and calculation of minimum payments (regulations 31, 32 and 33); the manner of calculating or estimating earnings (regulation 34); the manner and adjustment of age-related payments and the circumstances in which such payments are not to be made (regulations 35, 37 and 38); verification of age (regulation 36); the circumstances in which a money purchase scheme can change mode of contracting-out (regulation 39) and schemes which may not be contracted-out (regulation 40).

Part V provides for additional requirements applying to all schemes and special requirements applying to overseas schemes. Provision is made for requirements concerning information about resources (regulation 41); alteration of scheme rules (regulation 42); termination of contracted-out employment (regulation 43); notifications to the Secretary of State (regulation 44); approval and supervision of schemes which cease contracting-out (regulations 45 and 46); variation and cancellation of certificates (regulation 47); and overseas schemes (regulation 48).

Part VI concerns the restoration of rights in the State scheme. It provides for cases where a scheme is insolvent (regulations 49 and 50) and carries forward some provisions relating to contributions equivalent premiums (regulations 51 to 54).

Part VII provides for requirements applying to guaranteed minimum pensions which have accrued up until 6th April 1997. It carries forward the requirements applying to guaranteed minimum pensions which were previously contained in the Occupational Pension Schemes (Contracting-out) Regulations 1984.

Part VIII concerns transitional arrangements and savings. Provision is made in relation to the transitional arrangements for certification of schemes (regulation 70); the renewal of certificates by salary-related schemes during a transitional period (regulation 71); transitional requirements as to resources for salary-related schemes (regulation 72); transitional arrangements and savings for salary-related schemes which have commenced winding up before 6th April 1997 (regulation 73); transitional arrangements concerning approval of schemes ceasing to be contracted-out before 6th April 1997 (regulation 74); transitional modifications relating to issue and cancellation of further certificates (regulation 75); the prevention of recovery of Class 1 contributions in certain circumstances (regulation 76). Savings are made in respect of transitional arrangements for state scheme premiums (regulation 77).

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Revocations are made in regulation 78 and Schedule 2.

An assessment of the compliance cost for employers of the measures arising from the Pensions Act 1995, including these Regulations, has been placed in the libraries of both Houses of Parliament. Copies can be obtained by post from the Department of Social Security, Private Pensions Directorate, 11th floor, The Adelphi, 1-11 John Adam Street, London WC2N 6HT.

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