
STATUTORY INSTRUMENTS

2015 No. 1452

PENSIONS

**The Occupational Pension Schemes (Schemes
that were Contracted-out) Regulations 2015**

Made - - - - 14th July 2015
Laid before Parliament 16th July 2015
Coming into force in accordance with regulation 1(2)

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers set out in the Schedule.

The Secretary of State has consulted such persons as the Secretary of State considers appropriate, in accordance with section 185(1) of the Pension Schemes Act 1993(1).

PART 1

GENERAL

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Schemes that were Contracted-out) Regulations 2015.

(2) These Regulations come into force—

(a) for all purposes, other than that of regulation 34, on 6th April 2016;

(b) for the purposes of regulation 34, on 6th April 2019.

(3) These regulations, except for Part 8, extend to England and Wales and Scotland.

(4) Part 8, and this regulation and regulation 2 in so far as they relate to that Part, extend to Northern Ireland.

Interpretation

2.—(1) In these Regulations—

(1) 1993 c.48. Relevant amendments are made by paragraph 46 of Schedule 3 to, paragraph 80 of Schedule 5 to, and Part I of Schedule 7 to, the Pensions Act 1995 (c.26).

“the 1993 Act” means the Pension Schemes Act 1993;

“the 1995 Act” means the Pensions Act 1995(2);

“the 2004 Act” means the Pensions Act 2004(3);

“the 1996 Regulations” means the Occupational Pension Schemes (Contracting-out) Regulations 1996(4);

“administrator” means the person resident in the United Kingdom having responsibility for the management of an occupational pension scheme or, in the case of an overseas scheme (within the meaning of regulation 6), the person who is appointed in accordance with section 270 of the Finance Act(5);

“the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992(6);

“the Finance Act” means the Finance Act 2004;

“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 contracted-out by virtue of section 9(2B) of the 1993 Act(7), so far as attributable to an earner’s service in contracted-out employment on or after the principal appointed day(8); and
- (b) where a transfer payment has been made to such a scheme, 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 paragraph (a) under another scheme contracted-out by virtue of section 9(2B) of the 1993 Act; or
 - (ii) protected rights under another occupational pension scheme or under a personal pension scheme attributable to payments or contributions in respect of employment on or after the principal appointed day where that transfer payment was made before the first abolition date(9);

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

(2) For the purposes of these Regulations—

- (a) any person, government department or public authority who, under or by virtue of Part 1 of the Contributions and Benefits Act is, or is to be treated as, the secondary Class 1 contributor, is to be treated as the employer of the earner in respect of whom the Class 1 contributions are payable;
- (b) without prejudice to sub-paragraph (a), there is to be treated as the employer of a self-employed earner to whom a scheme that was a salary related contracted-out scheme(10) applies any person (other than the 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 the 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

(2) 1995 c.26.

(3) 2004 c.35.

(4) S.I. 1996/1172, as amended.

(5) 2004 c.12. Section 270 was amended by paragraphs 1 and 9 of Schedule 7 to the Finance Act 2014 (c.26).

(6) 1992 c.4.

(7) Section 9(2B) was inserted by section 136 of the Pensions Act 1995 (c.26).

(8) See section 181(1) of the 1993 Act, as amended by paragraph 43 of Schedule 13 to the Pensions Act 2014 (c.19) (“the 2014 Act”).

(9) See section 7A of the 1993 Act, inserted by paragraph 6 of Schedule 13 to the 2014 Act.

(10) See section 7B of the 1993 Act, inserted by paragraph 6 of Schedule 13 to the 2014 Act.

department or any other person, being a power or duty which extends to the disbursement or allocation of public money).

PART 2

GENERAL PROVISIONS RELATING TO SCHEMES THAT WERE SALARY RELATED CONTRACTED-OUT SCHEMES

Alteration of scheme rules

3. For the purposes of section 37(1) of the 1993 Act(**11**) (prohibition on alteration of rules of schemes that were contracted-out unless alteration is of a prescribed description), the alterations which are prescribed are any alterations which are allowed by regulations 17 and 20.

Determination that an earner was in contracted-out employment

4.—(1) This regulation applies where—

- (a) an earner (“E”) has been in employment, during a period in which employment of the same description as E’s employment was contracted-out(**12**), but E’s employment was not (apart from this regulation) contracted-out in relation to E; and
- (b) the Commissioners are satisfied—
 - (i) that the employment was not contracted-out in relation to E solely because E was not, during that period, a member of the relevant scheme(**13**); and
 - (ii) that E, during that period, was not a member of that scheme solely because of inadvertence.

(2) Where this regulation applies, the Commissioners may determine that E was in contracted-out employment by reference to that scheme during that period.

Provision of information

5.—(1) The Secretary of State or the Commissioners may give any information that they could give to the trustees of an occupational pension scheme, under section 156(1) of the 1993 Act(**14**) (information for purposes of contracting-out), to the following persons—

- (a) an earner, or widow, widower or surviving civil partner of an earner, to whom the information relates;
- (b) the employer in relation to the contracted-out employment of an earner to whom the information relates;
- (c) any independent trade union recognised in relation to earners who are members of a scheme that was a salary related contracted-out scheme; and
- (d) any person who is or who, in the opinion of the Commissioners, is likely to become, responsible for paying guaranteed minimum pensions, or pensions in respect of section 9(2B) rights, in accordance with the pension scheme.

(2) Paragraph (1)(c) is subject to the condition that the information to be given is either—

(11) Section 37(1) is substituted by paragraph 24 of Schedule 13 to the 2014 Act.

(12) See section 8 of the 1993 Act, as amended by paragraph 7 of Schedule 13 to the 2014 Act, for the definition of contracted-out employment.

(13) See section 37A(2) of the 1993 Act, inserted by paragraph 25 to the 2014 Act.

(14) Section 156 was substituted by section 56 of, and paragraph 9 of Schedule 5 to, the Child Support, Pensions and Social Security Act 2000 (c.19), and amended by S.I. 2011/1730.

- (a) as to—
- (i) the total amount of the guaranteed minimum pensions to which it appears to the Commissioners that all persons entitled under the scheme (whether immediately or prospectively) are so entitled; or
 - (ii) whether the scheme is liable in respect of any section 9(2B) rights; or
- (b) given with the consent of the earner, widow, widower or surviving civil partner to whom it relates, such consent being given in writing, or by means of an electronic communication in such form as the Commissioners may approve.
- (3) For the purposes of this regulation, “independent trade union” means an independent trade union which is recognised to any extent for the purpose of collective bargaining.

Overseas schemes

6.—(1) The rules of an overseas scheme are to provide—

- (a) that, if the scheme is wound up, the assets of the scheme are to be applied first towards satisfying the amounts of the liabilities mentioned in section 73(4) of the 1995 Act⁽¹⁵⁾ (preferential liabilities on winding up) and, if they are insufficient to satisfy those amounts in full, then—
 - (i) they are to be applied first towards satisfying the amounts of the liabilities mentioned in earlier paragraphs of that subsection before those mentioned in later paragraphs; and
 - (ii) where the amounts of the liabilities mentioned in one of those paragraphs cannot be satisfied in full, all such liabilities are to be satisfied in the same proportions;
- (b) that not more than 5 per cent of the current market value of the scheme’s resources are invested in a person who is an employer, or connected with an employer, in relation to the scheme if such investments are required to meet the liabilities specified in subparagraph (a) and the value of such investments is to be calculated and determined in a manner approved by the Commissioners; and
- (c) in respect of rights that have accrued as a result of contracted-out employment in the scheme in Great Britain, for revaluation of accrued rights in accordance with sections 83 to 86 of the 1993 Act⁽¹⁶⁾ and for indexation of pensions in accordance with sections 51 to 54 of the 1995 Act⁽¹⁷⁾.

(2) In this regulation “overseas scheme” means an occupational pension scheme that was a salary related contracted-out scheme and that has its main administration outside the EEA states, but does not include a scheme that was contracted-out in the Isle of Man by virtue of satisfying section 9(2) of the 1993 Act⁽¹⁸⁾ as it had effect in the Isle of Man before the second abolition date⁽¹⁹⁾.

⁽¹⁵⁾ Section 73 was partially substituted by section 270 of the Pensions Act 2004 (c.35) (“the 2004 Act”).

⁽¹⁶⁾ Sections 83 to 86 were amended by paragraphs 28, 31 and 32 of Schedule 12 to the Welfare Reform and Pensions Act 1999(c.30), S.I. 2005/2053, paragraph 62 of Schedule 5 to the 1995 Act, section 281 of the 2004 Act, section 19 of the Pensions Act 2011 (c. 19), paragraphs 18 and 25 of Schedule 4 to the Marriage (Same Sex Couples) Act 2013 (c.30), paragraphs 18 and 20 of Schedule 8 to the Public Service Pensions Act 2013 (c.25), and S.I. 2014/1953 and S.I. 2014/3229.

⁽¹⁷⁾ Section 51A was inserted by section 51 of the Child Support, Pensions and Social Security Act 2000. Section 51ZA was inserted by section 278 of the 2004 Act and amended by paragraph 8 of Schedule 2 to the Pensions Act 2008. Section 51ZB was inserted by section 21 of the Pensions Act 2011. Sections 51 to 54 were amended by paragraphs 43, 51 and 52 of Schedule 12 to the Welfare Reform and Pensions Act 1999, section 51 of the Child Support, Pensions and Social Security Act 2000, section 278 of, and Part 1 of Schedule 13 to, the 2004 Act, S.I. 2006/745, sections 19 and 21 of the Pensions Act 2011, S.I. 2011/1730 and paragraphs 58, 59 and 60 of Schedule 13 to the 2014 Act.

⁽¹⁸⁾ Section 9(2) was substituted by section 136 of the 1995 Act.

⁽¹⁹⁾ See section 7A of the 1993 Act inserted by paragraph 6 of Schedule 13 to the 2014 Act.

Restoration of state scheme rights

7.—(1) This regulation applies where paragraph 5(3B) of Schedule 2 to the 1993 Act(20) (state scheme premiums: schemes which were being wound up before the second abolition date) applies in relation to a member of a scheme that was a contracted-out scheme and that was being wound up before the second abolition date if, by virtue of that provision—

- (a) the member was treated as if sections 46 to 48 or 48A(1) of the 1993 Act(21) (effect of entitlement to guaranteed minimum pensions on payments of social security benefits) did not apply; or
- (b) in a case where the cash equivalent of the member's rights was less than the amount required for restoring their state scheme rights, the member was treated as if sections 46 to 48 or 48A(1) of the 1993 Act applied only in so far as they extinguish such part of the member's state scheme rights as, in the opinion of the Commissioners, corresponded to that shortfall.

(2) Where this regulation applies, the member is to continue to be treated as mentioned in paragraph (1)(a) or, as the case may be, (1)(b).

Contributions equivalent premiums: prescribed person

8.—(1) For the purposes of section 55(2) of the 1993 Act(22) (which requires the prescribed person to pay a contributions equivalent premium in the case mentioned in section 55(2B) of that Act(23) and enables them to elect to do so in certain other cases) the prescribed person is—

- (a) in a case where a transfer has been made in relation to a scheme under section 161 of the 2004 Act (effect of Board assuming responsibility for a scheme), the Board of the Pension Protection Fund (as defined in that Act(24)); and
- (b) in all other cases, the trustees of the scheme.

(2) Where, in accordance with paragraph (1)(a), the prescribed person is the Board of the Pension Protection Fund, regulations 9, 12 and 13 apply with the following modifications—

- (a) except in regulation 12(1), references to “the trustees of the scheme”, “the trustees” or “the trustees of a scheme” are to be read as references to “the Board of the Pension Protection Fund”; and
- (b) references to “the resources of the scheme” are to be read as references to “the Pension Protection Fund”, being the Pension Protection Fund specified in section 173(1) of the 2004 Act (Pension Protection Fund).

(20) Paragraph 5(3B) was inserted by section 141 of the 1995 Act, and amended by paragraph 62 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2).

(21) Sections 46 to 48 were amended by paragraph 56 of Schedule 1 to the Social Security (Incapacity for Work) Act 1994 (c.18), paragraph 44 of Schedule 5 to, and paragraph 22 of Schedule 4 to, the 1995 Act, section 32 of, paragraph 6 of Schedule 2 to, and paragraph 18 of Schedule 8 to, the Welfare Reform and Pensions Act 1999, S.I. 2001/3649, section 18 of the State Pension Credit Act 2002 (c.16), paragraph 22 of Schedule 11 to the Proceeds of Crime Act 2002 (c.29), section 165 of the 2004 Act, S.I. 2005/2050, section 14 of the Pension Act 2007 (c.22), paragraphs 18 and 24 of Schedule 4 to, the Marriage (Same Sex Couples) Act 2013, paragraph 71 of Schedule 12 to the 2014 Act. Section 48A was inserted by section 140 of the 1995 Act, and amended by section 38 of the Child Support, Pensions and Social Security Act 2000 (c.19), section 18 of the State Pension Credit Act 2002, paragraphs 35 and 39 of Schedule 1 to, the National Insurance Contributions Act 2002 (c.19), paragraph 23 of Schedule 4 to, the Pensions Act 2007 (c.22).

(22) Section 55 is repealed by paragraph 37 of Schedule 13 to the 2014 Act, but saved for certain purposes, see S.I. 2015/1502. Section 55(2) was substituted by section 141 of the 1995 Act, and amended by paragraph 7 of Schedule 2 to the Welfare Reform and Pensions Act 1999, and paragraphs 1 and 26 of Schedule 4 to, and Part 6 of Schedule 7 to, the Pensions Act 2007.

(23) Section 55(2B) was inserted by paragraph 7(1)(c) of Schedule 2 to the Welfare Reform and Pensions Act 1999.

(24) See section 107.

Notification of requirement to pay a contributions equivalent premium

9.—(1) Where a contributions equivalent premium is required to be paid in respect of an earner by virtue of section 55(2) of the 1993 Act (payment of state scheme premiums on termination of certified status), the trustees of the scheme are to notify the Commissioners of that fact in such form as the Commissioners may reasonably require for the purpose of identifying the earner.

(2) Such notification is to be given—

- (a) where the scheme is being wound up, within the period of two years starting with the date the scheme started to wind up; and
- (b) where the earner ceased to serve in employment which was contracted-out employment for any other reason mentioned in section 55(2A) of the 1993 Act⁽²⁵⁾, within the period starting one month before and ending six months after the date on which the earner so ceased.

(3) The Commissioners may in any particular case or class of case extend the period within which notification is to be given if it appears to them that notification could not reasonably have been given within the period specified in paragraph (2).

Cases where payment of a contributions equivalent premium is not required

10.—(1) Section 55(2B) of the 1993 Act⁽²⁶⁾ (by virtue of which a contributions equivalent premium must be paid in any case where the earner has no accrued right to benefit under the scheme) does not apply if any of the following paragraphs of this regulation apply.

(2) This paragraph applies where—

- (a) the earner's service in the employment ceased on the earner's death; and
- (b) the earner left a surviving spouse or civil partner who is not entitled to any of the following benefits—
 - (i) a widowed mother's allowance under section 37 of the Contributions and Benefits Act⁽²⁷⁾;
 - (ii) a widow's pension under section 38 of that Act⁽²⁸⁾;
 - (iii) a widowed parent's allowance under section 39A of that Act⁽²⁹⁾;
 - (iv) a bereavement support payment under section 30 of the Pensions Act 2014⁽³⁰⁾.

(3) This paragraph applies where the earner is a woman who has made, or is treated as having made, an election under regulations made under section 19(4) of the Contributions and Benefits Act (general power to regulate liability for contributions)⁽³¹⁾, which has not been revoked, that her liability in respect of primary Class 1 contributions is to be at a reduced rate.

⁽²⁵⁾ Subsection (2A) was inserted by section 141 of the 1995 Act, and amended by paragraph 7 of Schedule 2 to the Welfare Reform and Pensions Act 1999, and by [S.I. 2005/2050](#).

⁽²⁶⁾ Subsection (2B) was inserted by paragraph 7 of Schedule 2 to the Welfare Reform and Pensions Act 1999.

⁽²⁷⁾ Section 37 was amended by paragraph 18 of Schedule 24 to the Civil Partnership Act 2004 ([c.33](#)), paragraphs 1 and 2 of Schedule 1 to the Child Benefit Act 2005 ([c.6](#)), section 50 of, and Schedule 8 to, the Welfare Reform Act 2007 ([c.5](#)), [S.I. 2014/560](#) and [S.I. 2014/3229](#).

⁽²⁸⁾ Section 38 was amended by paragraph 19 of Schedule 24 to the Civil Partnership Act 2004, paragraph 40 of Schedule 1 to the Pensions Act 2007, [S.I. 2014/560](#) and [S.I. 2014/3229](#).

⁽²⁹⁾ Section 39A was inserted by section 55(2) of the Welfare Reform and Pensions Act 1999, and amended by paragraph 20 of Schedule 24 to the Civil Partnership Act 2004, paragraphs 1 and 3 of Schedule 1 to the Child Benefit Act 2005, section 51 of the Welfare Reform Act 2007, paragraphs 2 and 12 of Schedule 16 to the 2014 Act, [S.I. 2014/560](#) and [S.I. 2014/3229](#).

⁽³⁰⁾ [2014 c.19](#).

⁽³¹⁾ Section 19(4) was amended by paragraphs 1 and 5 of Schedule 1 to the National Insurance Contributions Act 2002.

(4) This paragraph applies where, on termination of an earner's pensionable service, the earner elects to acquire a right to a cash transfer sum in accordance with section 101AB(1)(a) of the 1993 Act⁽³²⁾ (right to cash transfer sum and contribution refund).

Elections to pay contributions equivalent premiums

11.—(1) Subject to paragraph (2), the obligation under section 57(2) of the 1993 Act⁽³³⁾ (not to discriminate between different earners when making or abstaining from making elections to pay contributions equivalent premiums) does not apply to cases where—

- (a) an earner's rights are transferred in accordance with regulations made under section 37A of the 1993 Act⁽³⁴⁾ (transfer of liabilities etc.: schemes contracted-out on or after 6th April 1997);
- (b) the earner is a woman who has made, or is treated as having made, an election under regulations made under section 19(4) of the Contributions and Benefits Act, which has not been revoked, that her liability in respect of primary Class 1 contributions is to be at a reduced rate;
- (c) on the death of an earner, there arose an entitlement to a widow's, widower's or surviving civil partner's pension which comprises amounts of pension which accrued by reference both to the earner's service in employment which was not contracted-out and to service in employment which was contracted-out;
- (d) the earner—
 - (i) has completed less than two years qualifying service for the purposes of Chapter 1 of Part IV of the 1993 Act (preservation); and
 - (ii) has made an election under the rules of the scheme to preserve the earner's accrued rights; or
- (e) any liability to provide pensions to an earner has been discharged in accordance with regulations made under section 12C (transfer, commutation etc.) or 37A of the 1993 Act⁽³⁵⁾ (as it had effect before the second abolition date).

(2) An employer is not to discriminate between different earners falling within the same class of case mentioned in paragraph (1).

(3) An election under section 55(2) of the 1993 Act is to be notified to the Commissioners in such form as they may reasonably require for the purpose of identifying the earner to whom the election relates.

(4) Such notification is to be given—

- (a) where the scheme is being wound up, within the period of two years starting with the date the scheme started to wind up;
- (b) where the earner ceased to serve in employment which was contracted-out employment for any other reason mentioned in section 55(2A) of the 1993 Act, within the period starting one month before and ending six months after the date on which the earner so ceased.

(5) The Commissioners may in any particular case or class of case extend the period within which notification of an election is to be given if it appears to them that notification could not reasonably have been given within the period specified in paragraph (4).

⁽³²⁾ Section 101AB was inserted by section 264 of the 2004 Act.

⁽³³⁾ Section 57 is repealed by paragraph 37 of Schedule 13 to the 2014 Act, but saved for certain purposes *see* [S.I. 2015/1502](#). Section 57 was amended by paragraph 55 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999.

⁽³⁴⁾ Section 37A is inserted by paragraph 25 of Schedule 13 to the 2014 Act.

⁽³⁵⁾ Section 12C is repealed by paragraph 11 of Schedule 13 to the 2014 Act, but saved for certain purposes *see* [S.I. 2015/1502](#).

Payment of a contributions equivalent premium

12.—(1) A contributions equivalent premium which the trustees are required or have elected to pay is to be paid on or before—

- (a) the day six months after the date of termination of contracted-out employment in respect of which the premium is payable; or
- (b) the day one month after the day on which the Commissioners send to the trustees a notice certifying the amount of the premium payable,

whichever is the later.

(2) In a case to which regulation 8(1)(a) applies, the Board of the Pension Protection Fund (as defined in that regulation) (“the Board”) is to pay the contributions equivalent premium on or before—

- (a) the day six months after the date the assessment period (construed in accordance with section 132 of the 2004 Act) ended; or
- (b) the day one month after the day on which the Commissioners send to the Board a notice certifying the amount of the premium payable,

whichever is the later.

(3) On an application made to them for that purpose, the Commissioners may in any particular case or class of case extend the period within which a premium is to be paid under paragraph (1) or (2)—

- (a) if they are satisfied that the circumstances are such that payment of the premium could not reasonably be required to be made within the period specified in that paragraph, by a period not exceeding six months; and
- (b) if they are satisfied that to require earlier payment would be prejudicial to the interests of the earner in respect of whom the premium is payable or of the generality of the members of the scheme, by such further period as they consider reasonable.

(4) Where the amount of any contributions equivalent premium which is payable does not exceed £17, the trustees are not liable to pay it and, accordingly, if it is not paid, it is to be treated as paid for the purposes of section 48A(2) (additional pension and other benefits) and section 60(36) (effect of payment of premiums on rights) of the 1993 Act.

(5) Any liability for a contributions equivalent premium is a liability to make payment out of the resources of the scheme.

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

13.—(1) For the purposes of section 61(10) of the 1993 Act(37) (payments in lieu of benefit) a payment in lieu of benefit is to include a payment made or to be made out of the resources of the scheme towards the provision of deferred benefits for the earner.

(2) The following provisions of this regulation apply, for the purpose of enabling any right of recovery conferred by section 61 of the 1993 Act to be exercised, where an employed earner (or, by virtue of a connection with the earner, any other person) is entitled to a refund of any payments made under a scheme that was contracted-out in respect of the earner towards the provision of benefits under the scheme (“the refund”).

(36) Section 60 is repealed by paragraph 37 of Schedule 13 to the 2014 Act, but saved for certain purposes, *see* S.I. 2015/1502. Section 60 was amended by paragraph 54 of Schedule 5 to the 1995 Act, and S.I. 2005/2050.

(37) Section 61 is repealed by paragraph 37 of Schedule 13 to the 2014 Act, but saved for certain purposes, *see* S.I. 2015/1502. Section 61 was amended by paragraph 55 of Schedule 5 to the 1995 Act, paragraph 5 of Schedule 5 to the Child Support, Pensions and Social Security Act 2000, and paragraphs 9 and 12 of Schedule 12 to the 2004 Act.

(3) Subject to paragraph (4), where a contributions equivalent premium falls to be paid in respect of the earner under the 1993 Act and the person liable for the refund has been given a notice of delay in accordance with paragraph (5), that person is not to make the refund in whole or in part until after the end of the period of four weeks starting with—

- (a) the date of payment of the contributions equivalent premium; or
- (b) the last day of the prescribed period for payment of that premium,

whichever occurs first.

(4) Paragraph (3) does not apply to so much, if any, of the refund as exceeds the amount certified by the Commissioners under section 63(1)(d) of the 1993 Act⁽³⁸⁾ (certification of amount attributable to reductions of contributions).

(5) A notice of delay is a notice in writing given by the trustees of the scheme concerned, relating either to a particular case or to a class of case and containing the following particulars—

- (a) the name of the earner or such particulars as will sufficiently identify the class of case concerned;
- (b) such particulars as will sufficiently identify the refund or refunds concerned; and
- (c) a memorandum in a form approved by the Commissioners giving brief particulars of the effect of paragraphs (3) and (4).

(6) Where the trustees of a scheme have given a notice of delay, they are to inform the person to whom the notice was given of the end date of the period during which they may not make a refund to which the notice applies.

Refund of a contributions equivalent premium

14.—(1) The Commissioners are to refund a contributions equivalent premium if—

- (a) it was paid in error;
- (b) they are satisfied that a transfer of the earner’s accrued rights will be made in accordance with regulations made under section 20⁽³⁹⁾ (transfer of accrued rights) or section 37A of the 1993 Act; or
- (c) the scheme is one under which a member may qualify for benefits by virtue of service either in employed earner’s employment or as a self-employed earner (within the meaning of section 2 of the Contributions and Benefits Act⁽⁴⁰⁾) or both and the Commissioners are satisfied that the earner in respect of whom the premium was paid has completed a period of membership of the scheme as a self-employed earner which, when aggregated with service in employed earner’s employment, amounts to not less than two years.

(2) Where a contributions equivalent premium is refunded under paragraph (1), the earner’s accrued rights under the scheme, which were extinguished by payment of the premium, are to be restored.

(3) A refund under this regulation is only to be made if an application is made in writing in such form as the Commissioners may reasonably require for that purpose, or by means of an electronic communication in such form as the Commissioners may approve.

⁽³⁸⁾ Section 63 is repealed by paragraph 37 of Schedule 13 to the 2014 Act, but saved for certain purposes, *see* S.I. 2015/1502. Section 63 was amended by paragraph 56 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999, paragraph 57 of Schedule 5 to the 1995 Act, and paragraph 5 of Schedule 5 to the Child Support, Pensions and Social Security Act 2000.

⁽³⁹⁾ Section 20 was amended by section 56 of, and paragraph 2 of Schedule 5 to, the Child Support, Pensions and Social Security Act 2000, S.I. 2005/2050 S.I. 2011/1730, and is amended by paragraph 18 of Schedule 13 to the 2014 Act.

⁽⁴⁰⁾ Section 2 was amended by paragraph 2 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999, paragraphs 1 and 2 of Schedule 11 to the Welfare Reform and Pensions Act 1999, paragraphs 169 and 171 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c.1), section 15 of the National Insurance Contributions Act 2014 (c.7), and section 6 of the National Insurance Contributions Act 2015 (c.5).

- (4) In paragraph (1)(a), “error” means an error which—
- (a) was made at the time of payment; and
 - (b) relates to some present or past matter.
- (5) Where—
- (a) an earner has been employed concurrently in two or more contracted-out employments, on the termination of one or more of which a contributions equivalent premium has been paid; and
 - (b) the aggregate amount of any such payments has the effect that the National Insurance Fund has gained, by reference to any employment in respect of which such a payment has been made, a greater amount than it would have gained from Class 1 contributions under the Contributions and Benefits Act if those employments had not been contracted-out,

there is to be paid out of the National Insurance Fund to the earner (or to the earner’s estate) an amount which bears the same proportion to the amount of the excess as the reduction under section 41(1A) of the 1993 Act⁽⁴¹⁾ (as it had effect immediately before the second abolition date) (reduced rates of Class 1 contributions) in the normal percentage of primary Class 1 contributions bears to the total reduction under subsections (1A) and (1B)⁽⁴²⁾ of that section in the total normal percentage of Class 1 contributions.

- (6) The Commissioners are also to refund a contributions equivalent premium if they are satisfied that—
- (a) where it was paid in the circumstances mentioned in section 55(2A)(a), (b), (d) or (e) of the 1993 Act, the person in respect of whom it was paid has died, without leaving a widow, widower or surviving civil partner, on or before the later of the days mentioned in subparagraphs (a) and (b) respectively of regulation 12(1); or
 - (b) where it was paid in the circumstances mentioned in section 55(2A)(c) of the 1993 Act, there are no accrued rights to guaranteed minimum pensions or section 9(2B) rights under the scheme in question in respect of the widow, widower or surviving civil partner in question.

Continuation of transitional arrangements for schemes that began winding up before 6th April 1997

15. Where a scheme that was a salary related contracted-out scheme began winding up before the principal appointed day—
- (a) regulation 40 (priorities on the winding-up of a scheme) of the Occupational Pension Schemes (Contracting-out) Regulations 1984⁽⁴³⁾ continues to have effect in relation to that scheme; and
 - (b) the resources of the scheme must be sufficient to meet the liabilities specified in section 24(1)(c) of the 1993 Act⁽⁴⁴⁾ (as it had effect on the day the scheme began winding up), such resources being calculated, determined and verified in a manner approved by the Commissioners.

(41) Section 41 is repealed by paragraph 29 of Schedule 13 to the 2014 Act, but saved for certain purposes, see S.I. 2015/1502. Subsection (1A) was inserted by section 137 of the 1995 Act, and substituted by paragraph 6 of Schedule 9 to the Welfare Reform and Pensions Act 1999, and amended by paragraphs 35 and 36 of Schedule 1 to the National Insurance Contributions Act 2002, and S.I. 2011/1036.

(42) Subsection (1B) was inserted by section 137 of the 1995 Act, and substituted by paragraph 6 of Schedule 9 to the Welfare Reform and Pensions Act 1999, and S.I. 2011/1036.

(43) S.I. 1984/380. See S.I. 1996/1172, regulation 73, for previous transitional arrangements.

(44) Section 24 was repealed by paragraphs 18 and 32 of Schedule 5 to the 1995 Act.

Continuation of savings in respect of state scheme premiums

16. The following continue to have effect in relation to any state scheme premium (payment required to be made under section 55(1) of the 1993 Act) which was paid before the principal appointed day—

- (a) regulations 18 to 26, 34, 44, 45, 47, 48 and 49 of the Occupational Pension Schemes (Contracting-out) Regulations 1984;
- (b) the Occupational Pension Schemes (Contracted-out Protected Rights Premiums) Regulations 1987⁽⁴⁵⁾.

PART 3

ADDITIONAL REQUIREMENTS IN RELATION TO RIGHTS ATTRIBUTABLE TO CONTRACTED-OUT EMPLOYMENT ON AND AFTER 6TH APRIL 1997

Alteration of scheme rules

17.—(1) The rules of a scheme may be altered in relation to section 9(2B) rights only if—

- (a) following the alteration, the scheme provides benefits for the earner and for the earner's widow, widower or surviving civil partner, in respect of the period of pensionable service to which the alteration relates, that are at least equal to the benefits that would have been provided by a reference scheme (within the meaning of section 12B(2) of the 1993 Act⁽⁴⁶⁾ (reference scheme) as it had effect immediately before the second abolition date);
- (b) the alteration is one to which the subsisting rights provisions (within the meaning of section 67(4) of the 1995 Act) do not apply, by virtue of section 67 of that Act;
- (c) the alteration is one that is not a protected modification or a detrimental modification (within the meaning of section 67A of the 1995 Act⁽⁴⁷⁾) and the requirement in paragraph (2) is met; or
- (d) the alteration is a detrimental modification (within the meaning of section 67A(4) of the 1995 Act) and—
 - (i) the actuarial equivalence requirements provided for in sections 67C and 67D of that Act⁽⁴⁸⁾ are met in relation to the proposed modification of those rights; and
 - (ii) the requirement in paragraph (2) is met.

(2) Subject to paragraph (3), the requirement is the altered scheme is to provide for a pension to be paid to the earner's widow, widower or surviving civil partner (referred to in this regulation as the "relevant survivor's section 9(2B) pension") that is at least as generous, either as regards the amount of the pension or as regards the circumstances in which it will be paid, as it would have been before the alteration.

(3) In relation to an earner who is in pensionable service under the scheme immediately before the alteration takes effect, the requirement in paragraph (2) is to be deemed to be satisfied if the relevant survivor's section 9(2B) pension that the scheme would provide in respect of the earner if the earner left pensionable service immediately after the alteration is at least as generous as the

⁽⁴⁵⁾ S.I. 1987/1103. See S.I. 1996/1172, regulation 77, for previous savings.

⁽⁴⁶⁾ Section 12B is repealed by paragraph 11 of Schedule 13 to the 2014 Act, but saved for certain purposes, see S.I. 2015/1502. Section 12B was inserted by section 136 of the 1995 Act. There are amendments not relevant to these regulations.

⁽⁴⁷⁾ Section 67A was inserted by section 262 of the 2004 Act, and amended by section 60(2) of, and paragraphs 28 and 29 of Schedule 4 to, the Pension Schemes Act 2015 (c.8).

⁽⁴⁸⁾ Sections 67C and 67D were inserted by section 262 of the 2004 Act, and section 67D was amended by paragraph 7 of Schedule 5 to the Pensions Act 2007.

relevant survivor's section 9(2B) pension that the scheme would have provided in respect of the earner had the earner left service immediately before the alteration.

Payment of a lump sum instead of a pension

18.—(1) A relevant scheme⁽⁴⁹⁾ may not provide for the payment of a lump sum instead of a pension that is attributable to section 9(2B) rights, unless the payment to be made is authorised under section 164 of the Finance Act⁽⁵⁰⁾ (authorised member payments) and the payment is—

- (a) permitted by the lump sum rule in section 166 of the Finance Act⁽⁵¹⁾ and qualifies as—
 - (i) a pension commencement lump sum for the purposes of paragraph 1 of Schedule 29⁽⁵²⁾ to that Act;
 - (ii) a serious ill-health lump sum for the purposes of paragraph 4 of that Schedule⁽⁵³⁾;
 - (iii) an uncrystallised funds pension lump sum for the purposes of paragraph 4A of that Schedule⁽⁵⁴⁾;
 - (iv) a trivial commutation lump sum for the purposes of paragraph 7 of that Schedule⁽⁵⁵⁾;
 - or
 - (v) a winding-up lump sum for the purposes of paragraph 10 of that Schedule⁽⁵⁶⁾;
- (b) permitted by the lump sum death benefit rule in section 168 of the Finance Act⁽⁵⁷⁾ and qualifies as a trivial commutation lump sum death benefit for the purposes of paragraph 20 of Schedule 29⁽⁵⁸⁾ to that Act; or
- (c) made by a registered pension scheme (within the meaning of section 150(2) of the Finance Act), is a payment that is described in Part 2 of the Registered Pension Schemes (Authorised Payments) Regulations 2009⁽⁵⁹⁾ (commutation payments), and is made to or in respect of a member.

(2) Where, under the scheme—

- (a) an earner qualifies for a lump sum payment on the ground of serious ill-health; and
- (b) the earner's widow, widower or surviving civil partner qualifies for a pension ("a survivor's pension"),

the scheme is to continue to provide for a survivor's pension notwithstanding the payment of a lump sum to the earner.

⁽⁴⁹⁾ See section 37A(2) of the 1993 Act, inserted by the 2014 Act.

⁽⁵⁰⁾ Section 164 was amended by paragraphs 1 and 6 of Schedule 23 to the Finance Act 2006 (c.25), paragraph 1 of Schedule 29 to the Finance Act 2008 (c.1), section 75(2)(b) of the Finance Act 2009 (c.10), paragraphs 62 and 63 of Schedule 16 to the Finance Act 2011 (c.11), and paragraph 85 of Schedule 1 to the Taxation of Pensions Act 2014 (c.30).

⁽⁵¹⁾ Section 166 was amended by S.I. 2006/572, paragraphs 2 and 5 of Schedule 5 to the Finance Act 2014 (c.26), and paragraphs 53, 54 and 55 of Schedule 1 to the Taxation of Pensions Act 2014.

⁽⁵²⁾ Paragraph 1 is amended by paragraphs 1 and 34 of Schedule 10 to the Finance Act 2005 (c.7), S.I. 2006/572 and S.I. 2009/1172, paragraphs 1 and 11 of Schedule 20 to the Finance Act 2007 (c.11), paragraphs 23, 24, 62 and 79 of Schedule 16 to the Finance Act 2011 and section 51 of the Finance Act 2013 (c.29).

⁽⁵³⁾ Paragraph 4 was amended by paragraphs 23 and 28 of Schedule 16 to the Finance Act 2011.

⁽⁵⁴⁾ Paragraph 4A was inserted by paragraph 57 of Schedule 1 to the Taxation of Pensions Act 2014.

⁽⁵⁵⁾ Paragraph 7 was amended by S.I. 2006/572, paragraphs 23 and 29 of Schedule 16 to, and paragraphs 1, 3 and 4 of Schedule 18 to, the Finance Act 2011, paragraph 71 of Schedule 1 to the Taxation of Pensions Act 2014, and section 42(1) of the Finance Act 2014.

⁽⁵⁶⁾ Paragraph 10 was amended by paragraphs 1 and 12 of Schedule 20 to the Finance Act 2007, and paragraphs 23 and 30 of Schedule 16 to, and paragraphs 1, 3 and 5 of Schedule 18 to, the Finance Act 2011.

⁽⁵⁷⁾ Section 168 was amended by paragraphs 1 and 5 of Schedule 19 to the Finance Act 2007, paragraphs 62 and 65 of Schedule 16 to the Finance Act 2011, and paragraphs 5 and 7 of Schedule 1 to the Taxation of Pensions Act 2014.

⁽⁵⁸⁾ Paragraph 20 was amended by paragraphs 1, 3 and 6 of Schedule 18 to the Finance Act 2011, and paragraph 74 of Schedule 1 to the Taxation of Pensions Act 2014.

⁽⁵⁹⁾ S.I. 2009/1171; relevant amendments are made by S.I. 2011/1751 and 2012/522.

Forfeiture of accrued rights

19. Section 92(1) of the 1995 Act(**60**) (no forfeiture of entitlement under an occupational pension scheme) does not prevent forfeiture of section 9(2B) rights under a relevant scheme if—

- (a) the person entitled to payments giving effect to those rights (“the pensioner”) is, in the opinion of the trustees of the scheme, unable to act by reason of mental disorder; and
- (b) there is provision in the scheme that requires that, in those circumstances, sums equivalent to those payments—
 - (i) must be paid or applied for the maintenance of the pensioner, except in so far as they are not, in the opinion of the trustees, required for that purpose;
 - (ii) may, in so far as they are not in the opinion of the trustees required for the maintenance of the pensioner, be paid or applied for the maintenance of any dependants of the pensioner; and
 - (iii) must, in so far as they are not in the opinion of the trustees required for the maintenance of the pensioner or any dependant of the pensioner, be held by the trustees for the pensioner until the pensioner is again able to act, or if the pensioner dies before that happens, for the pensioner’s estate.

PART 4

ADDITIONAL REQUIREMENTS IN RELATION TO GUARANTEED MINIMUM PENSIONS

Alteration of scheme rules

20. The rules of a scheme may be altered in relation to a guaranteed minimum under section 14(**61**) (earner’s guaranteed minimum) or 17(**62**) (minimum pensions for widows and widowers) of the 1993 Act only if the alteration would not—

- (a) affect any of the matters dealt with in Part III of the 1993 Act (schemes that were contracted-out etc. and effects on members’ state scheme rights), or any regulations made under that Part, that relate to guaranteed minimum pensions, in a manner that would or might adversely affect any entitlement or accrued rights of any member of the scheme acquired before the alteration takes effect;
- (b) affect any of the matters dealt with in sections 87 to 92 of the 1993 Act(**63**) (protection of increases in guaranteed minimum pensions) or sections 109 and 110 of that Act(**64**) (annual increases of guaranteed minimum pensions) or any matters dealt with in regulations made under any of those provisions.

(60) Section 92(1) was amended by paragraphs 43 and 58 of Schedule 12 to the Welfare Reform and Pensions Act 1999.

(61) Section 14 is amended by paragraph 15 of Schedule 13 to the 2014 Act, and was amended by paragraph 27 of Schedule 5 to the 1995 Act, paragraph 38 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 and paragraphs 1, 22(1) and (3) of Schedule 11 to the Proceeds of Crime Act 2002 (c.29).

(62) Section 17 is amended by paragraph 17 of Schedule 13 to the 2014 Act, and was amended by paragraph 39 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999, paragraph 1 of Schedule 5 to the Child Support, Pensions and Social Security Act 2000, section 284(2) of the 2004 Act, S.I. 2005/2050, section 14(2) of the Pensions Act 2007, paragraphs 18 and 20 of Schedule 4 to the Marriage (Same Sex Couples) Act 2013 and S.I. 2014/560.

(63) Section 87 was amended by paragraph 28 of Schedule 4 to the Pensions Act 2007 and is amended by paragraph 38 of Schedule 13 to the 2014 Act. Other amendments to sections 87 to 92 are made by S.I. 2005/2050.

(64) Section 109(3A) is amended by paragraph 40 of Schedule 13 to the 2014 Act. Subsection (3A) was inserted by section 55(b) of the 1995 Act. Sections 109 and 110 were also amended by sections 53(4), 55 and 56 of the 1995 Act and by S.I. 2005/2050.

Circumstances for the purposes of section 17(6) of the 1993 Act in which widower's, widow's or surviving civil partner's guaranteed minimum pension is payable

21.—(1) In addition to providing for a widower's, widow's or surviving civil partner's pension to be payable in the circumstances specified in section 17(4A) of the 1993 Act⁽⁶⁵⁾, a scheme that was a salary related contracted-out scheme is to make provision for such a pension to be payable if—

- (a) the widower, widow or surviving civil partner and the earner were both over pensionable age when the earner died;
- (b) the widower, widow or surviving civil partner is either residing with a child, or is entitled to child benefit in respect of a child, who is—
 - (i) a child of the widower, widow or surviving civil partner and the earner;
 - (ii) a child in respect of whom the earner was, immediately before the earner's death, entitled to child benefit, or would have been so entitled, if the child had not been absent from Great Britain; or
 - (iii) if the widower, widow or surviving civil partner and the earner were residing together immediately before the earner's death, a child in respect of whom the widower, widow or surviving civil partner was, at that time, entitled to child benefit, or would have been so entitled, if the child had not been absent from Great Britain; or
- (c) the widower, widow or surviving civil partner attained the age of 45—
 - (i) before the earner died; or
 - (ii) during a period when the circumstances mentioned in sub-paragraph (b) existed.

(2) For the purposes of this regulation "child benefit" has the same meaning as in the Contributions and Benefits Act⁽⁶⁶⁾.

Period for the purposes of section 17(6) of the 1993 Act for which widower's, widow's or surviving civil partner's guaranteed minimum pension is payable

22.—(1) Where a pension is payable by virtue of regulation 21(1)(a), the scheme is to make provision for the pension to be payable for the remainder of the widower's, widow's or surviving civil partner's life.

(2) Subject to paragraph (4), where a pension is payable by virtue of regulation 21(1)(b) but not by virtue of regulation 21(1)(a) or (c), the scheme is to make provision for the pension to be payable for the period during which the circumstances described in regulation 21(1)(b) continue to exist.

(3) Subject to paragraph (4), where a pension is payable by virtue of regulation 21(1)(c), but not by virtue of regulation 21(1)(a), the scheme is to make provision for the pension to be payable for the remainder of the widower's, widow's or surviving civil partner's life.

(4) Subject to paragraph (5), there is excluded from the periods prescribed by paragraphs (2) and (3) any period—

- (a) after the widower or widow has remarried whilst under pensionable age, or the surviving civil partner has married whilst under that age;
- (b) after the formation of a civil partnership by the widower or widow whilst under pensionable age, or the formation of a subsequent civil partnership by the surviving civil partner whilst under that age;
- (c) during which the widower, widow or surviving civil partner is under pensionable age and he or she and another person are living together as a married couple;

⁽⁶⁵⁾ Paragraph (4A) of section 17 was inserted by paragraph 1(1) of Schedule 5 to the Child Support, Pensions and Social Security Act 2000 and amended by S.I. 2005/2050, S.I. 2014/560 and S.I. 2014/3229.

⁽⁶⁶⁾ See section 141.

- (d) after the widower, widow or surviving civil partner has attained pensionable age if, immediately before he or she attained that age, he or she and another person were living together as a married couple.
- (5) The following provisions do not apply where a man became a widower before 5th December 2005—
 - (a) paragraph (4)(a) so far as it relates to a marriage or remarriage involving two people of the same sex;
 - (b) paragraph (4)(b); and
 - (c) paragraphs (4)(c) and (4)(d) so far as they relate to the living together of two people of the same sex.

Fixed rate revaluation of guaranteed minimum pensions secured by insurance policies or annuity contracts

23. A scheme may make provision by virtue of section 16(2) of the 1993 Act⁽⁶⁷⁾ (revaluation of earnings factors for the purposes of section 14: early leavers etc.) for those of its members whose guaranteed minimum pensions are, or are to be, appropriately secured (within the meaning of section 19(3) of the 1993 Act), even though the same provision is not made for other members of the scheme.

Fixed rate revaluation of guaranteed minimum pensions for early leavers

24.—(1) This regulation applies where a scheme provides, in accordance with section 16(2) of the 1993 Act (as substituted by paragraph 16 of Schedule 13 to the Pensions Act 2014), for a person's earnings factors to be determined for the purposes of section 14(2) of the 1993 Act by reference to the last order to come into force under section 148 of the Social Security Administration Act 1992⁽⁶⁸⁾ before the end of the last service tax year.

(2) Subject to paragraph (3), in a case to which this regulation applies, the scheme is to provide for the weekly equivalent mentioned in section 14(2) of the 1993⁽⁶⁹⁾ Act to be increased by at least 4.75 per cent compound in relation to the period of service in respect of which accrued rights to a guaranteed minimum pension have been acquired under, or transferred to, the scheme, where the period of pensionable service under the scheme terminates on or after 6th April 2016.

(3) The scheme may make provision which is different to that made by virtue of paragraph (2) with respect to—

- (a) members whose rights to guaranteed minimum pensions under the scheme arise in respect of a transfer or transfer payment made in accordance with section 20(1) of the 1993 Act⁽⁷⁰⁾ or regulations made under that provision;
- (b) members whose guaranteed minimum pensions are, or are to be, appropriately secured within the meaning of section 19(3) of the 1993 Act.

⁽⁶⁷⁾ Section 16(2) is substituted by paragraph 16 of Schedule 13 to the 2014 Act. Section 16(2) is saved for certain purposes by S.I. 2015/1502.

⁽⁶⁸⁾ 1992 c.5. Section 148 was amended by paragraph 27 of Schedule 8 to the 1993 Act, and section 37 of the Child Support, Pensions and Social Security Act 2000.

⁽⁶⁹⁾ Section 14(2) is amended by paragraph 15 of Schedule 13 to the 2014 Act.

⁽⁷⁰⁾ Section 20(1) is amended by paragraph 18 of Schedule 13 to the 2014 Act, and was amended by paragraph 2 of Schedule 5 to the Child Support, Pensions and Social Security Act 2000.

Payment of a lump sum instead of a pension

25.—(1) The scheme may provide for the payment of a lump sum instead of a pension that the scheme is required to provide in accordance with section 13(71) or 17 of the 1993 Act if—

- (a) a guaranteed minimum pension has become payable (but see also paragraph (3)); and
- (b) the payment of a lump sum is authorised under section 164 of the Finance Act and the payment fulfils the conditions in paragraph (2).

(2) The conditions are that the payment is—

- (a) permitted by the lump sum rule in section 166 of the Finance Act and qualifies as—
 - (i) a trivial commutation lump sum for the purposes of paragraph 7 of Schedule 29 to that Act; or
 - (ii) a winding-up lump sum for the purposes of paragraph 10 of that Schedule;
- (b) permitted by the lump sum death benefit rule in section 168 of the Finance Act and qualifies as a trivial commutation lump sum death benefit for the purposes of paragraph 20 of Schedule 29 to that Act; or
- (c) made by a registered pension scheme (within the meaning of section 150(2) of the Finance Act), is a payment that is described in Part 2 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 and is made to or in respect of a member.

(3) The condition in paragraph (1)(a) does not apply in cases where—

- (a) the scheme is being wound up or an earner retires before pensionable age;
- (b) a premium under section 55(2) of the 1993 Act (contributions equivalent premium) has been paid or treated as paid or the scheme has made the provision mentioned in section 16(2) and (3)(72) of the 1993 Act; and
- (c) the conditions in paragraph (4) are met.

(4) The conditions are—

- (a) the aggregate amount of the benefits that have accrued to the earner at the date of winding-up or, as the case may be, of the earner's retirement, increased—
 - (i) in accordance with section 16(2) and (3) of the 1993 Act; or
 - (ii) in a case where section 16(2) and (3) applies, to the amount that would have been payable at pensionable age,

is to be treated as the amount of benefits currently payable to the earner under the scheme;
- (b) in the case of an earner who retires before normal pension age, commutation is not permitted before the date on which benefits become payable to the earner under the scheme's early retirement provisions;
- (c) in cases where the earner is a member of more than one scheme relating to the same employment, all those schemes are being wound up or, as the case may be, the earner is treated by all those schemes as having retired and, in each case, all those schemes have paid a contributions equivalent premium or have made the provisions mentioned in section 16(2) and (3) of the 1993 Act.

(5) Subject to paragraph (6), the scheme may provide for the payment of a lump sum instead of a pension that the scheme is required to provide in accordance with section 13 or 17 of the 1993 Act if the payment—

- (a) is authorised under section 164 of the Finance Act;

(71) Section 13 is amended by paragraph 14 of Schedule 13 to the 2014 Act, and was amended by section 14 of the Pensions Act 2007.

(72) Section 16(3) was amended by paragraph 28(a) of Schedule 5 to the 1995 Act.

- (b) is permitted by the lump sum rule in section 166 of that Act; and
 - (c) qualifies as a serious ill-health lump sum for the purposes of paragraph 4 of Schedule 29 to that Act.
- (6) Where—
- (a) under the scheme, an earner qualifies for a lump sum payment on the ground of serious ill-health; and
 - (b) the scheme also provides for the payment of a guaranteed minimum pension to the widow, widower or surviving civil partner of the earner (“a survivor’s pension”),
- the scheme is to continue to include provision for a survivor’s pension notwithstanding the payment of a lump sum to the earner.

Suspension and forfeiture of guaranteed minimum pension

26.—(1) The scheme may provide for an earner’s or an earner’s widow’s, widower’s or surviving civil partner’s guaranteed minimum pension to be suspended if—

- (a) the person entitled to payments giving effect to those rights (“the pensioner”) is, in the opinion of the trustees of the scheme, unable to act by reason of mental disorder, and there is provision in the scheme that requires that, in those circumstances, sums equivalent to the guaranteed minimum pension—
 - (i) must be paid or applied for the maintenance of the pensioner, except in so far as they are not, in the opinion of the trustees, required for that purpose;
 - (ii) may, in so far as they are not in the opinion of the trustees required for the maintenance of the pensioner, be paid or applied for the maintenance of any dependants of the pensioner;
 - (iii) must, in so far as such sums are not in the opinion of the trustees required for the maintenance of the pensioner or of any dependant of the pensioner, be held by the trustees for the pensioner until the pensioner is again able to act, or if the pensioner dies before that happens, for the pensioner’s estate;
- (b) the pensioner is in prison or detained in legal custody and there is provision in the scheme for sums equivalent to the guaranteed minimum pension to be paid or applied during such circumstances for the maintenance of such one or more of the pensioner’s dependants as the trustees of the scheme may in their discretion determine;
- (c) the earner is re-employed by the employer by whom the earner was previously employed in contracted-out employment in respect of which the guaranteed minimum pension became payable and there is provision in the scheme for the guaranteed minimum pension that becomes payable when the suspension is lifted to be increased in accordance with section 15(1) of the 1993 Act.

(2) The scheme may provide for an earner’s or an earner’s widow’s, widower’s or surviving civil partner’s guaranteed minimum pension (whether current or prospective) to be forfeited if—

- (a) the person entitled to that pension has been convicted of—
 - (i) an offence of treason; or
 - (ii) one or more offences under the Official Secrets Acts 1911 to 1989⁽⁷³⁾ for which the person has been sentenced on the same occasion to a term of imprisonment of, or to two or more consecutive terms amounting in aggregate to, at least ten years;
- (b) in the case of a widow’s, widower’s or surviving civil partner’s guaranteed minimum pension, the earner by reference to whose contracted-out employment that pension is

⁽⁷³⁾ 1911 c.28; 1920 c.75; 1939 c.121; 1989 c.6.

payable has been convicted of an offence of treason, or has been convicted of an offence or offences and has been sentenced to a term or terms of imprisonment as set out in subparagraph (a)(ii);

- (c) in the case of a guaranteed minimum pension payable under a scheme for members of Her Majesty's forces, being a scheme for which the Secretary of State is responsible, the person entitled to that pension or, as the case may be, the member of the forces whose widow, widower or surviving civil partner is currently or prospectively entitled to that pension has, in the opinion of the Secretary of State, committed an act which is gravely prejudicial to the defence, security or other interests of the State;
- (d) in the case of any payment of guaranteed minimum pension for which a claim has not been made, a period of at least eight years has elapsed from the date on which that payment became due;
- (e) in the case of a widow's, widower's or surviving civil partner's guaranteed minimum pension, that person is convicted of the offence of murder or manslaughter of the earner by reference to whose contracted-out employment that pension is payable, or any other offence of which unlawful killing of that member is an element.

(3) For the purposes of paragraph (2)(e), "unlawful killing" includes unlawfully aiding, abetting, counselling or procuring the death of a person.

Conversion into other benefits: actuarial equivalence

27.—(1) For the purposes of Condition 1 of section 24B of the 1993 Act⁽⁷⁴⁾ (the conversion conditions), actuarial equivalence is to be determined in accordance with this regulation.

- (2) The trustees are responsible for determining actuarial equivalence.
- (3) In determining actuarial equivalence, the trustees must—
 - (a) obtain advice from the actuary appointed for the scheme in accordance with section 47(1)(b) of the 1995 Act ("the actuary") about what assumptions are appropriate at the conversion date;
 - (b) consider that advice;
 - (c) decide what assumptions are appropriate at the conversion date and, if the trustees later think it is necessary, change that decision; and
 - (d) arrange for the actuary to calculate the actuarial values of the post-conversion benefits and the pre-conversion benefits in accordance with paragraph (4).
- (4) In calculating the actuarial values mentioned in paragraph (3)(d), the actuary must—
 - (a) use the assumptions chosen by the trustees under paragraph (3)(c); and
 - (b) ignore the value of any—
 - (i) benefits that have been commuted;
 - (ii) amounts that have been paid in respect of any benefits;
 - (iii) amounts in respect of any benefits that, before the conversion date, became due to be paid; and
 - (iv) discretionary benefits that might be awarded in the future.

(5) When the actuarial values mentioned in paragraph (3)(d) have been calculated, the actuary must send the trustees a certificate if the post-conversion benefits are actuarially at least equivalent to the pre-conversion benefits.

- (6) The certificate is to—

⁽⁷⁴⁾ Section 24B was inserted by section 14 of the Pensions Act 2007.

- (a) state that—
 - (i) the calculations have been completed; and
 - (ii) the post-conversion benefits are actuarially at least equivalent to the pre-conversion benefits; and
- (b) be sent to the trustees no later than three months after the calculations have been completed.

Conversion into other benefits: survivors' benefits

28.—(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 the circumstances set out in paragraph (2) and the periods set out in paragraph (3).

- (2) The circumstances are—
 - (a) an earner's pre-conversion benefits include a guaranteed minimum pension; and
 - (b) the scheme before conversion provided that—
 - (i) if the earner died (whether before or after attaining pensionable age) leaving a widow, widower or surviving civil partner, the widow, widower or surviving civil partner would be entitled to a guaranteed minimum pension; and
 - (ii) in a case where section 17(6) of the 1993 Act applies, a widower's, widow's or surviving civil partner's guaranteed minimum pension would be payable in the circumstances set out in regulation 21(1).
- (3) The periods are—
 - (a) for widows, widowers and surviving civil partners, any period mentioned in section 17(4A)(a), (aa), (ab) or (b) of the 1993 Act;
 - (b) subject to paragraph (4), 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 another person are living together as a married couple; 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 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 widowers, widows whose spouse was a woman and surviving civil partners, any period for which a scheme must make provision for the payment of a widow's, widower's or surviving civil partner's pension, by virtue of section 17(6) of the 1993 Act and regulation 22.
- (4) For the purposes of paragraph (3)(b), 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).

PART 5

AMENDMENT OF THE OCCUPATIONAL PENSION SCHEMES (CONTRACTING-OUT) REGULATIONS 1996

Amendments relating to certification of employments for a period before the second abolition date

- 29.**—(1) The 1996 Regulations are amended as follows.
- (2) In regulation 1(2) (interpretation)—
- (a) in the definition of “the 1993 Act”, at the end insert “as it had effect immediately before the second abolition date⁽⁷⁵⁾ (except where otherwise stated)”;
 - (b) in the definition of “overseas scheme”⁽⁷⁶⁾—
 - (i) for “is contracted-out” substitute “was contracted-out”; and
 - (ii) for “has effect” substitute “had effect”; and
 - (c) in paragraph (b)(ii) of the definition of “section 9(2B) rights”⁽⁷⁷⁾, before “abolition date” insert “first”.
- (3) In regulation 3 (notices by employers of intended election), in paragraph (2)(b) after “specify the date” insert “(being a date before the second abolition date)”.
- (4) In regulation 6 (information to be included in an election)—
- (a) in paragraph (1)(d), after “shall have effect” insert “(being a date before the second abolition date)”; and
 - (b) in paragraph (3), for sub-paragraph (a) substitute—

“(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”.
- (5) In regulation 8⁽⁷⁸⁾ (issue of contracting-out certificates)—
- (a) in paragraph (2)(d) for the words after “is to have effect,” substitute “being a date before the second abolition date”; and
 - (b) after paragraph (2) insert—

“(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.”.

⁽⁷⁵⁾ See section 7A of the 1993 Act, inserted by paragraph 6 of Schedule 13 to the 2014 Act.

⁽⁷⁶⁾ This definition was substituted by S.I. 2007/814 and amended by S.I. 2007/3014 and 2011/1245.

⁽⁷⁷⁾ This definition was substituted by S.I. 1997/786 and amended by S.I. 1999/3198 and 2011/1246.

⁽⁷⁸⁾ Regulation 8 was amended by section 1 of, and Schedule 2 to, the Social Security Contributions (Transfer of Functions, etc.) Act 1999.

(6) In regulation 9(5)(b) (notice of date from which variation or surrender of a contracting-out certificate is to have effect), after “specify the date” insert “(being a date before the second abolition date)”.

(7) In regulation 10 (special provision with regard to elections for the issue, variation or surrender of certificates where the employment remains contracted out)—

- (a) in the heading after “where” insert “(before the second abolition date)”;
- (b) in paragraph (1)(79)—
 - (i) omit “regulation 71 (elections for replacement certificates by salary-related schemes during transitional period) and to”; and
 - (ii) in sub-paragraph (c) at the end insert “when the election takes effect”; and
- (c) in paragraph (3)(c), after “the date” insert “(being a date before the second abolition date)”.

(8) In regulation 15(80) (further information and change of circumstances), omit “or an employer to whom such a certificate has been issued”.

(9) In regulation 23(g)(81) (requirements for meeting the statutory standard), after “regulation 20A(2)” insert “(as it had effect immediately before the second abolition date)”.

Amendments relating to cessation of contracting-out before the second abolition date

30.—(1) The 1996 Regulations are amended as follows.

(2) In regulation 44(82) (notifications to the Commissioners of Inland Revenue)—

- (a) in paragraph (1)—
 - (i) after “treated as terminated” insert “before the second abolition date”; and
 - (ii) after “regulation 43” insert “(as it had effect immediately before that date)”;
- (b) in paragraph (2) for “A notification required to be given under paragraph (1) may be given at any time within the period of one month before the expected date of termination but if not so given” substitute “If a notification required to be given under paragraph (1) was not given before the expected date of termination it”;
- (c) in paragraph (4) after “any case where” insert “, before the second abolition date,”; and
- (d) in paragraph (7)—
 - (i) for “to whom a contracting-out certificate has been issued” substitute “to whom a contracting-out certificate was issued”; and
 - (ii) for “relates” in both places where it occurs, substitute “related”.

(3) In regulation 45(83) (approval of arrangements for schemes ceasing to be contracted-out)—

- (a) in paragraph (1)—
 - (i) omit the words from the beginning to “principal appointed day,”; and
 - (ii) after “arrangements” in the final place where it occurs, insert “for cessation of contracting-out before the second abolition date”;

(79) Paragraph (1) was amended by section 1 of, and Schedule 2 to, the Social Security Contributions (Transfer of Functions, etc.) Act 1999, S.I. 2011/1245 and 2011/1246.

(80) Regulation 15 was amended by section 1 of, and Schedule 2 to, the Social Security Contributions (Transfer of Functions, etc.) Act 1999.

(81) Paragraph (g) was amended by S.I. 2002/681.

(82) Regulation 44 was amended by section 1 of, and Schedule 2 to, the Social Security Contributions (Transfer of Functions, etc.) Act 1999 and S.I. 2011/1246.

(83) Regulation 45 was amended by S.I. 1997/819, section 1 of, and Schedule 2 to, the Social Security Contributions (Transfer of Functions, etc.) Act 1999, and S.I.s 2005/2050, 2011/1245 and 2011/1246.

- (b) in paragraph (2) for “sections 12C of the 1993 Act (transfer or discharge of section 9(2B) rights)” substitute “section 37A of the 1993 Act (transfer of liabilities etc.: schemes contracted-out on or after 6 April 1997)”; and
 - (c) in paragraph (3)(a), after “the scheme must” in the first place in which those words appear insert “, until the second abolition date,”.
- (4) In regulation 46(**84**) (supervision of schemes that have ceased to contract out), in the heading at the end insert “before the second abolition date”.
- (5) In regulation 47(**85**) (circumstances in which the Commissioners of Inland Revenue may vary or cancel a contracting-out certificate)—
- (a) in paragraph (1)—
 - (i) for “applies” substitute “applied”; and
 - (ii) after “from such date” insert “(being a date before the second abolition date)”; and
 - (b) in paragraph (2)(a) and (b), before “salary-related contracted-out scheme” insert “scheme that was a”.
- (6) In regulation 76(1) (prevention of recovery by employers of Class 1 contributions where certificate cancelled under section 36(3) of the 1993 Act) at the end insert “before the second abolition date”.
- (7) In regulation 78 (revocations), for “73 and 77” substitute “15 and 16 of the Occupational Pension Schemes (Schemes that were Contracted-out) Regulations 2015”.

PART 6

AMENDMENT OF THE CONTRACTING-OUT (TRANSFER AND TRANSFER PAYMENT) REGULATIONS 1996

Revaluation after transfer from another scheme

31.—(1) The Contracting-out (Transfer and Transfer Payment) Regulations 1996(**86**) are amended as follows.

- (2) In regulation 1(2) (interpretation), insert in the appropriate place—

““Administration Act” means the Social Security Administration Act 1992(**87**);”.
- (3) After regulation 13A (modification of section 12C of the 1993 Act), insert the following—

“Modification of section 16: revaluation after transfer from another scheme

13B.—(1) This regulation applies where the following conditions are satisfied—

- (a) on or after 5th April 1983, a transfer of the earner’s accrued rights to guaranteed minimum pensions under a scheme (“scheme A”) was made (under or by virtue of section 20(1) of the 1993 Act) to another scheme (“scheme B”) that was at the time a contracted-out scheme;

(**84**) Regulation 46 was amended by [S.I. 1997/819](#), section 1 of, and Schedule 2 to, the Social Security Contributions (Transfer of Functions, etc.) Act 1999, and [S.I.s 1999/527](#) and [2011/1246](#).

(**85**) Regulation 47 was amended by section 1 of, and Schedule 2 to, the Social Security Contributions (Transfer of Functions, etc.) Act 1999.

(**86**) [S.I. 1996/1462](#). Regulation 13A was inserted by [S.I. 1997/786](#).

(**87**) [1992 c.5](#).

- (b) the earner commenced employment that was contracted-out by reference to scheme B;
- (c) by virtue of section 14(1) of the 1993 Act, as modified by regulation 12(a), the calculation, under the provisions of scheme B, of the earner's guaranteed minimum pension for the purposes of section 14(2) falls to include earnings factors arising out of contracted-out employment in any period of linked qualifying service⁽⁸⁸⁾ that was contracted-out employment by reference to scheme A; and
- (d) either—
 - (i) scheme B provides for the earnings factors to be increased at the rate by which they fell to be increased under the provisions of scheme A, or would have fallen to be increased under the provisions of that scheme relating to an earner whose pensionable service under the scheme terminated before the earner attained pensionable age;
 - (ii) if scheme A provided for those earning factors to be increased by reference to orders under section 148 of the Administration Act, scheme B provides for them to be increased in accordance with the provisions of section 16(2) and (3) of the 1993 Act;
 - (iii) if scheme A provided for those earnings factors to be increased in accordance with the provisions of section 16(2) and (3) of the 1993 Act, scheme B includes provision for them to be increased by reference to orders under section 148 of the Administration Act from the date of termination of the earner's pensionable service under the scheme; or
 - (iv) if a transfer of the earner's accrued rights to scheme B is not one to which paragraph (iii) applies and those rights were previously being increased at a rate calculated by reference to orders under section 148 of the Administration Act, scheme B includes provision for those earnings factors to be increased at a rate calculated otherwise than by reference to orders under that section.

(2) In paragraph (1), references to earnings factors include the weekly equivalent mentioned in section 14(2) of the 1993 Act.

(3) Where this regulation applies section 16(1) of the 1993 Act applies as if there were added at the end "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 subsection (3)".

(4) Where this regulation applies, the modifications of section 16(2) and (3) contained in paragraph (5) apply 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 or by virtue of section 20(1) of the 1993 Act to another scheme that was contracted-out.

(5) The modifications referred to in paragraph (4) are that section 16(2) and (3) of the 1993 Act applies as if it permitted that scheme to provide for those earnings factors to be determined for the purpose of section 14(2) of the 1993 Act without reference to any order coming into force under section 148 of the Administration Act—

- (a) where such earnings factors had previously fallen to be determined by reference to orders under section 148 of the Administration Act, after the relevant year in which the earner's pensionable service under the scheme, from which those rights were transferred, was terminated; or

⁽⁸⁸⁾ See section 179 of the 1993 Act.

(b) in any other case, in and after the relevant year in which that service was terminated, and as if section 16(3) of the 1993 Act had effect accordingly, save, in a case to which paragraph (b) 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.”.

PART 7

REVOCATION AND SAVINGS OF THE OCCUPATIONAL PENSION SCHEMES (CONTRACTING-OUT) REGULATIONS 1996

Revocations taking effect on the second abolition date

32. The following provisions of the 1996 Regulations are revoked—

- (a) regulation 11;
- (b) regulations 16 to 21;
- (c) regulations 41 to 43;
- (d) regulation 48(5) to (7);
- (e) regulations 49 to 61;
- (f) regulation 62 (but see regulation 33);
- (g) regulation 63;
- (h) regulations 65 and 66 (but see regulation 33);
- (i) regulations 67 to 74;
- (j) regulations 76A and 76B;
- (k) regulation 77.

Saving of provisions relating to the revaluation of Guaranteed Minimum Pensions

33. Regulations 62 (fixed rate revaluation of guaranteed minimum pensions for early leavers)⁽⁸⁹⁾, 65 (modification of section 16 of the 1993 Act) and 66 (circumstances in which the modifications in regulation 65 apply) of the 1996 Regulations are saved for the purposes of an earner whose service in contracted-out employment ended before the second abolition date.

Revocations taking effect on 6th April 2019

34. The following provisions of the 1996 Regulations are revoked –

- (a) regulations 12 to 14;
- (b) regulation 48(1) to (4);
- (c) regulation 75.

⁽⁸⁹⁾ Regulation 62 was amended by S.Is. [2002/681](#), [2007/814](#), [2011/1245](#) and [2012/542](#).

PART 8

PROVISION FOR NORTHERN IRELAND

Interpretation of Part 8

35. In this Part—

“the 1993 (NI) Act” means the Pension Schemes (Northern Ireland) Act 1993⁽⁹⁰⁾;

“the 2005 Order” means the Pensions (Northern Ireland) Order 2005⁽⁹¹⁾;

“the Contributions and Benefits (NI) Act” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992⁽⁹²⁾;

“section 5(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 contracted-out by virtue of section 5(2B) of the 1993 (NI) Act⁽⁹³⁾, so far as attributable to an earner’s service in contracted-out employment on or after the principal appointed day⁽⁹⁴⁾; and
- (b) where a transfer payment has been made to such a scheme, 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 paragraph (a) under another scheme contracted-out by virtue of section 5(2B) of the 1993 (NI) Act; or
 - (ii) protected rights under another occupational pension scheme or under a personal pension scheme attributable to payments or contributions in respect of employment on or after the principal appointed day where that transfer payment was made before the first abolition date⁽⁹⁵⁾.

Restoration of state scheme rights: Northern Ireland

36.—(1) This regulation applies where paragraph 5(3B) of Schedule 1 to the 1993 (NI) Act⁽⁹⁶⁾(state scheme premiums: schemes which were being wound up before the second abolition date) applies in relation to a member of a scheme that was a contracted-out scheme and that was being wound up before the second abolition date if, by virtue of that provision—

- (a) the member was treated as if sections 42 to 44 or 44A(1)⁽⁹⁷⁾ of the 1993 (NI) Act (effect of entitlement to guaranteed minimum pensions on payments of social security benefits) did not apply; or
- (b) in a case where the cash equivalent of the member’s rights was less than the amount required for restoring their state scheme rights, the member was treated as if sections 42 to 44 or 44A(1) of the 1993 (NI) Act applied only in so far as they extinguish such part of the member’s state scheme rights as, in the opinion of the Commissioners, corresponded to that shortfall.

⁽⁹⁰⁾ 1993 c.49.

⁽⁹¹⁾ S.I. 2005/255 (N.I. 1).

⁽⁹²⁾ 1992 c.7.

⁽⁹³⁾ Section 5(2B) was inserted by Article 133(3) of S.I. 1995/3213 (N.I. 22) and amended by paragraph 38(2) of Schedule 1 to S.I. 1999/671.

⁽⁹⁴⁾ See section 176(1) of the 1993 (NI) Act, as amended by paragraph 42 of Schedule 13 to the Pensions Act (Northern Ireland) 2015 (c.5) (“the 2015 (NI) Act”).

⁽⁹⁵⁾ See section 3A of the 1993 (NI) Act, inserted by paragraph 6 of Schedule 13 to the 2015 (NI) Act.

⁽⁹⁶⁾ Paragraph 5(3B) was inserted by Article 138(2)(b) of S.I. 1995/3213 (N.I.22) and amended by paragraph 77(5)(c) of Schedule 1 to S.I. 1999/671.

⁽⁹⁷⁾ Section 44A was inserted by S.I. 1995/3213 and has been amended by S.R. 1996/91 and S.R. 1997/192.

(2) Where this regulation applies, the member is to continue to be treated as mentioned in paragraph (1)(a) or, as the case may be, (1)(b).

Contributions equivalent premiums: prescribed person in Northern Ireland

37.—(1) For the purposes of section 51(2) of the 1993 (NI) Act⁽⁹⁸⁾ (which requires the prescribed person to pay a contributions equivalent premium in the case mentioned in section 51(2B) of that Act and enables them to elect to do so in certain other cases) the prescribed person is—

- (a) in a case where a transfer has been made in relation to a scheme under Article 145 of the 2005 Order (effect of the Board assuming responsibility for a scheme), the Board of the Pension Protection Fund (as defined in that Order⁽⁹⁹⁾); and
- (b) in all other cases, the trustees of the scheme.

(2) Where, in accordance with paragraph (1)(a), the prescribed person is the Board of the Pension Protection Fund, regulations 38 to 43 apply with the following modifications—

- (a) except in regulation 41(1), references to “the trustees of the scheme”, “the trustees” or “the trustees of a scheme” are to be read as references to “the Board of the Pension Protection Fund”; and
- (b) references to “the resources of the scheme” are to be read as references to “the Pension Protection Fund”, being the Pension Protection Fund specified in section 173(1) of the 2004 Act.

Notification of requirement to pay a contributions equivalent premium: Northern Ireland

38.—(1) Where a contributions equivalent premium is required to be paid in respect of an earner by virtue of section 51(2) of the 1993 (NI) Act (payment of state scheme premiums on termination of certified status), the trustees of the scheme are to notify the Commissioners of that fact in such form as the Commissioners may reasonably require for the purpose of identifying the earner.

(2) Such notification is to be given—

- (a) where the scheme is being wound up, within the period of two years starting with the date the scheme started to wind up; and
- (b) where the earner ceased to serve in employment which was contracted-out employment for any other reason mentioned in section 51(2A) of the 1993 (NI) Act⁽¹⁰⁰⁾, within the period starting one month before and ending six months after the date on which the earner so ceased.

(3) The Commissioners may in any particular case or class of case extend the period within which notification is to be given if it appears to them that notification could not reasonably have been given within the period specified in paragraph (2).

Cases where payment of a contributions equivalent premium is not required: Northern Ireland

39.—(1) Section 51(2B) of the 1993 (NI) Act⁽¹⁰¹⁾ (by virtue of which a contributions equivalent premium must be paid in any case where the earner has no accrued right to benefit under the scheme) does not apply if any of the following paragraphs of this regulation apply.

(2) This paragraph applies where—

⁽⁹⁸⁾ Section 51 is repealed by paragraph 37 of Schedule 13 to the 2015 (NI) Act, but is saved for certain purposes.

⁽⁹⁹⁾ See Article 2(2).

⁽¹⁰⁰⁾ Subsection (2A) was inserted by Article 138(1) of the S.I. 1995/3213, and amended by paragraph 7(2) of Schedule 2 to the Welfare Reform and Pensions Act 1999, and by paragraph 3 of Schedule 1 to S.I. 2005/3029.

⁽¹⁰¹⁾ Subsection (2B) was inserted by paragraph 7(2) of Schedule 2 to the Welfare Reform and Pensions Act 1999.

- (a) the earner's service in the employment ceased on the earner's death; and
- (b) the earner left a surviving spouse or civil partner who is not entitled to any of the following benefits—
 - (i) a widowed mother's allowance under section 37 of the Contributions and Benefits (NI) Act;
 - (ii) a widow's pension under section 38 of that Act;
 - (iii) a widowed parent's allowance under section 39A of that Act(102);
 - (iv) a bereavement support payment under section 29 of the Pensions Act (Northern Ireland) 2015(103).

(3) This paragraph applies where the earner is a woman who has made, or is treated as having made, an election under regulations made under section 19(4) of the Contributions and Benefits (NI) Act, which has not been revoked, that her liability in respect of primary Class 1 contributions is to be at a reduced rate.

(4) This paragraph applies where, on termination of an earner's pensionable service, the earner elects to acquire a right to a cash transfer sum in accordance with section 97AB(1)(a)(104) of the 1993 (NI) Act (right to cash transfer sum and contribution refund).

Elections to pay contributions equivalent premiums: Northern Ireland

40.—(1) Subject to paragraph (2), the obligation under section 53(2) of the 1993 (NI) Act(105) (not to discriminate between different earners when making or abstaining from making elections to pay contributions equivalent premiums) does not apply to cases where—

- (a) an earner's rights are transferred in accordance with regulations made under section 33A of the 1993 (NI) Act(106) (transfer of liabilities etc.: schemes contracted-out on or after 6th April 1997);
- (b) the earner is a woman who has made, or is treated as having made, an election under regulations made under section 19(4) of the Contributions and Benefits (NI) Act, which has not been revoked, that her liability in respect of primary Class 1 contributions is to be at a reduced rate;
- (c) on the death of an earner, there arose an entitlement to a widow's, widower's or surviving civil partner's pension which comprises amounts of pension which accrued by reference both to the earner's service in employment which was not contracted-out and to service in employment which was contracted-out;
- (d) the earner—
 - (i) has completed less than two years qualifying service for the purposes of Chapter 1 of Part IV of the 1993 (NI) Act (preservation); and
 - (ii) has made an election under the rules of the scheme to preserve the earner's accrued rights; or
- (e) any liability to provide pensions to an earner has been discharged in accordance with regulations made under section 8C (transfer, commutation etc.)(107) or 33A of the 1993 (NI) Act (as it had effect before the second abolition date).

(102) Section 39A was inserted by Article 52(2) of S.I. 1999/3147 (N.I. 11) and amended by paragraph 74 of Schedule 24 to, and Schedule 30 to, the Civil Partnership Act 2004, paragraph 29 of Schedule 1 to the Child Benefits Act 2005 and section 47 of the Welfare Reform Act (Northern Ireland) 2007 (c.7 (N.I.)).

(103) 2015 c.5 (N.I.).

(104) Section 97AB was inserted by Article 241 of the 2005 Order.

(105) Section 53 is repealed by paragraph 37 of Schedule 13 to the 2015 (NI) Act, but is saved for certain purposes.

(106) Section 33A was inserted by paragraph 25 of Schedule 13 to the 2015 (NI) Act.

(107) Section 8C is repealed by paragraph 11 of Schedule 13 to the 2015 (NI) Act.

(2) An employer is not to discriminate between different earners falling within the same class of case mentioned in paragraph (1).

(3) An election under section 51(2) of the 1993 (NI) Act is to be notified to the Commissioners in such form as they may reasonably require for the purpose of identifying the earner to whom the election relates.

(4) Such notification is to be given—

- (a) where the scheme is being wound up, within the period of two years starting with the date the scheme started to wind up;
- (b) where the earner ceased to serve in employment which was contracted-out for any other reason mentioned in section 51(2A) of the 1993 (NI) Act, within the period beginning one month before and ending six months after the date on which the earner so ceased.

(5) The Commissioners may, in any particular case or class of case extend the period within which notification of an election is to be given if it appears to them that notification could not reasonably have been given within the period specified in paragraph (4).

Payment of a contributions equivalent premium: Northern Ireland

41.—(1) A contributions equivalent premium which the trustees are required or have elected to pay is to be paid on or before—

- (a) the day six months after the date of termination of contracted-out employment in respect of which the premium is payable; or
- (b) the day one month after the day on which the Commissioners send to the trustees a notice certifying the amount of the premium payable,

whichever is later.

(2) In a case to which regulation 37(1)(a) applies, the Board of the Pension Protection Fund (as defined in that regulation) (“the Board”) is to pay the contributions equivalent premium on or before—

- (a) the day six months after the date the assessment period (construed in accordance with Article 116 of the 2005 Order) ended; or
- (b) the day one month after the day on which the Commissioners send to the Board a notice certifying the amount of the premium payable,

whichever is the later.

(3) On an application made to them for that purpose, the Commissioners may in any particular case or class of case extend the period within which a premium is to be paid under paragraph (1) or (2)—

- (a) if they are satisfied that the circumstances are such that payment of the premium could not reasonably be required to be made within the period specified in that paragraph, by a period not exceeding six months; and
- (b) if they are satisfied that to require earlier payment would be prejudicial to the interests of the earner in respect of whom the premium is payable or of the generality of the members of the scheme, by such further period as they consider reasonable.

(4) Where the amount of any contributions equivalent premium which is payable does not exceed £17, the trustees are not liable to pay it and, accordingly, if it is not paid, it is to be treated as paid for the purposes of section 44A(2)(**108**) (additional pension and other benefits) and section 56(**109**) (effect of payment of premiums on rights) of the 1993 (NI) Act.

(**108**) Section 44A was inserted by Article 137(1) of S.I. 1995/3213.

(**109**) Section 56 is repealed by paragraph 37 of Schedule 13 to the 2015 (NI) Act, but saved for certain purposes.

(5) Any liability for a contributions equivalent premium is a liability to make payment out of the resources of the scheme.

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

42.—(1) For the purposes of section 57(10) of the 1993 (NI) Act(**110**) (payments in lieu of benefit) a payment in lieu of benefit is to include a payment made or to be made out of the resources of the scheme towards the provision of deferred benefits for the earner.

(2) The following provisions of this regulation apply, for the purpose of enabling any right of recovery conferred by section 57 of the 1993 (NI) Act to be exercised, where an employed earner (or, by virtue of a connection with the earner, any other person) is entitled to a refund of any payments made under a scheme that was contracted-out in respect of the earner towards the provision of benefits under the scheme (“the refund”).

(3) Subject to paragraph (4), where a contributions equivalent premium falls to be paid in respect of the earner under the 1993 (NI) Act and the person liable for the refund has been given a notice of delay in accordance with paragraph (5), that person is not to make the refund in whole or in part until after the end of the period of four weeks starting with—

- (a) the date of payment of the contributions equivalent premium; or
- (b) the last day of the prescribed period for payment of that premium,

whichever occurs first.

(4) Paragraph (3) does not apply to so much, if any, of the refund as exceeds the amount certified by the Commissioners under section 59(1)(d) of the 1993 (NI) Act(**111**) (certification of amount attributable to reductions of contributions).

(5) A notice of delay is a notice in writing given by the trustees of the scheme concerned, relating either to a particular case or to a class of case and containing the following particulars—

- (a) the name of the earner or such particulars as will sufficiently identify the class of case concerned;
- (b) such particulars as will sufficiently identify the refund or refunds concerned; and
- (c) a memorandum in a form approved by the Commissioners giving brief particulars of the effect of paragraphs (3) and (4).

(6) Where the trustees of a scheme have given a notice of delay, they are to inform the person to whom the notice was given of the end date of the period during which they may not make a refund to which the notice applies.

Refund of a contributions equivalent premium: Northern Ireland

43.—(1) The Commissioners are to refund a contributions equivalent premium if—

- (a) it was paid in error;
- (b) they are satisfied that a transfer of the earner's accrued rights will be made in accordance with regulations made under section 16(**112**) (transfer of accrued rights) or section 33A of the 1993 (NI) Act; or
- (c) the scheme is one under which a member may qualify for benefits by virtue of service either in employed earner's employment or as a self-employed earner (within the meaning of section 2 of the Contributions and Benefits (NI) Act) or both and the Commissioners

(110) Section 57 is repealed by paragraph 37 of Schedule 13 to the 2015 (NI) Act but saved for certain purposes.

(111) Section 59 is repealed by paragraph 37 of Schedule 13 to the 2015 (NI) Act, but saved for certain purposes.

(112) Section 16 is amended by paragraph 18 of Schedule 13 to the 2015 (NI) Act.

are satisfied that the earner in respect of whom the premium was paid has completed a period of membership of the scheme as a self-employed earner which, when aggregated with service in employed earner's employment, amounts to not less than two years.

(2) Where a contributions equivalent premium is refunded under paragraph (1), the earner's accrued rights under the scheme, which were extinguished by payment of the premium, are to be restored.

(3) A refund under this regulation is only to be made if an application is made in writing in such form as the Commissioners may reasonably require for that purpose, or by means of an electronic communication in such form as the Commissioners may approve.

(4) In paragraph (1)(a), "error" means an error which—

- (a) was made at the time of payment; and
- (b) relates to some present or past matter.

(5) Where—

- (a) an earner has been employed concurrently in two or more contracted-out employments, on the termination of one or more of which a contributions equivalent premium has been paid; and
- (b) the aggregate amount of any such payments has the effect that the National Insurance Fund has gained, by reference to any employment in respect of which such a payment has been made, a greater amount than it would have gained from Class 1 contributions under the Contributions and Benefits (NI) Act if those employments had not been contracted-out,

there is to be paid out of the National Insurance Fund to the earner (or to the earner's estate) an amount which bears the same proportion to the amount of the excess as the reduction under section 37(1A) of the 1993 (NI) Act⁽¹¹³⁾ (as it had effect immediately before the second abolition date) (reduced rates of Class 1 contributions) in the normal percentage of primary Class 1 contributions bears to the total reduction under subsections (1A) and (1B)⁽¹¹⁴⁾ in the total normal percentage of Class 1 contributions.

(6) The Commissioners are also to refund a contributions equivalent premium if they are satisfied that—

- (a) where it was paid in the circumstances mentioned in section 51(2A)(a), (b), (d) or (e) of the 1993 (NI) Act, the person in respect of whom it was paid has died, without leaving a widow, widower or surviving civil partner, on or before the later of the days mentioned in sub-paragraphs (a) and (b) respectively of regulation 41(1); or
- (b) where it was paid in the circumstances mentioned in section 51(2A)(c) of the 1993 (NI) Act, there are no accrued rights to guaranteed minimum pensions or section 5(2B) rights under the scheme in question in respect of the widow, widower or surviving civil partner in question.

Continuation of savings in respect of state scheme premiums: Northern Ireland

44. The following continue to have effect in relation to any state scheme premium (payment required to be made under section 51(1) of the 1993 (NI) Act) which was paid before the principal appointed day—

⁽¹¹³⁾ Section 37 is repealed by paragraph 29 of Schedule 13 to the 2015 (NI) Act. Subsection (1A) was inserted by Article 134(2) of S.I. 1995/3213, and was substituted by paragraph 6(3) of Schedule 10 to the Welfare Reform and Pensions Act 1999, and amended by paragraph 41 of Schedule 1 to the National Insurance Contributions Act 2002, and S.I. 2011/1036.

⁽¹¹⁴⁾ Subsection (1B) was inserted by paragraph 95 of Schedule 6 to S.I. 1998/1506 (N.I.10), and substituted by paragraph 6(3) of Schedule 10 to the Welfare Reform and Pensions Act 1999, and amended by S.I. 2011/1036.

- (a) regulations 17 to 25, 31, 41, 42 and 44 to 46 of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1985(**115**);
- (b) the Occupational Pension Schemes (Contracted-out Protected Rights Premiums) Regulations (Northern Ireland) 1987(**116**).

Revocations of the Occupational Pension Schemes (Contracting-Out) Regulations (Northern Ireland) 1996 taking effect on the second abolition date

45. Regulations 49 to 54 of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996(**117**) are revoked.

Signed by authority of the Secretary of State for Work and Pensions

14th July 2015

Altmann
Minister of State,
Department for Work and Pensions

(**115**) S.R. 1985 No.259. Relevant amending instruments are S.R. 1985 No. 355, 1986 Nos.57 and 342, 1987 Nos. 281, 284 and 292, 1988 No. 108, 1989 No.105, 1990 No. 203, 1992 No. 304, 1993 No. 126 and 1994 No. 300. See S.R. 1996 No. 493 regulation 78 for previous savings.

(**116**) S.R. 1987 No. 281, amended by S.R. 1994 No. 300.

(**117**) S.R. 1996 No. 493.

SCHEDULE

Preamble

PROVISIONS CONFERRING POWERS EXERCISED IN MAKING THESE REGULATIONS

The following provisions of the 1993 Act—

- section 7(**118**)
- section 9(**119**)
- section 11(5)(**120**)
- section 12A(4)(**121**)
- section 12D(**122**)
- section 16(3) and (4)
- section 17(6)
- section 20(1) and (3)(**123**)
- section 21(1) and (2)(**124**)
- section 24B(5)(**125**)
- section 24C(**126**)
- section 25(2)(**127**)
- section 34(**128**)
- section 36(6)(**129**)
- section 37(1)
- section 37A(1)(c)
- section 50(1B)(**130**)
- section 51(2) and (4)

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- (**118**) Section 7 was amended by section 136 of the 1995 Act, and sections 15(3)(a) and 27(2) of, and paragraphs 1 and 2 of Schedule 4 to, and Part 6 of Schedule 7 to, the Pensions Act 2007. Section 7 is repealed by paragraph 5 of Schedule 13 to the 2014 Act, but saved for certain purposes *see* [S.I. 2015/1502](#).
- (**119**) Section 9 was amended by section 136 of, and paragraph 21 of Schedule 5 to, the 1995 Act, paragraph 35 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999, section 283 of the 2004 Act, [S.I. 2006/745](#) and sections 15(3)(a) and 27(2) of, and paragraphs 1 and 4 of Schedule 4 to, and Part 6 of Schedule 7 to, the Pensions Act 2007. Section 9 is repealed by paragraph 9 of Schedule 13 to the 2014 Act, but saved for certain purposes *see* [S.I. 2015/1502](#).
- (**120**) Section 11(5) was amended by paragraph 37 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999, and section 1(2)(a) of the Employment Rights (Dispute Resolution) Act 1998 (c.8). Section 11 is repealed by paragraph 9 of Schedule 13 to the 2014 Act, but saved for certain purposes *see* [S.I. 2015/1502](#).
- (**121**) Section 12A was inserted by section 136 of the 1995 Act, and amended by [S.I. 2005/2050](#), and paragraph 5 of Schedule 5, and Part 8 of Schedule 7 to the Pensions Act 2007. It is repealed by paragraph 11 of Schedule 13 to the 2014 Act, but saved for certain purposes *see* [S.I. 2015/1502](#).
- (**122**) Section 12D was inserted by section 136 of the 1995 Act. It is repealed by paragraph 11 of Schedule 13 to the 2014 Act, but saved for certain purposes *see* [S.I. 2015/1502](#).
- (**123**) Section 20(1) was amended by paragraph 2 of Schedule 5 to the Child Support, Pensions and Social Security Act 2000. Section 20(3) was amended by sections 15(3)(a) and 27(2) of, and paragraphs 46 and 48 of Schedule 4 to, and Part 7 of Schedule 7 to, the Pensions Act 2007, and [S.I. 2011/1730](#).
- (**124**) Section 21 was amended by section 284(1) of the 2004 Act and [S.I. 2005/2050](#).
- (**125**) Section 24B was inserted by section 14(3) of the Pensions Act 2007.
- (**126**) Section 24C was inserted by section 14(3) of the Pensions Act 2007.
- (**127**) Section 25(2) was substituted by paragraph 33(b) of Schedule 5 to the 1995 Act, and amended by paragraph 40 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999.
- (**128**) Section 34 is repealed by paragraph 22 of Schedule 13 to the Pensions Act 2014, but saved for certain purposes *see* [S.I. 2015/1502](#). It was amended by section 151 of the 1995 Act, paragraph 45 of Schedule 1 to the Social Security Contributions (Transfer of Functions etc.) Act 1999, sections 15(3)(a) and 27(2) of, and paragraphs 1 and 15 of Schedule 4 to, and Part 6 of Schedule 7 to, the Pensions Act 2007.
- (**129**) Section 36 is repealed by paragraph 22 of Schedule 13 to the Pensions Act 2014, but saved for certain purposes *see* [S.I. 2015/1502](#). Section 36(6) was amended by [S.I. 1996/1172](#).
- (**130**) Section 50 is repealed by paragraph 33 of Schedule 13 to the 2014 Act, but saved for certain purposes *see* [S.I. 2015/1502](#). Section 50(1B) was inserted by paragraph 45(b) of Schedule 5 to the 1995 Act.

section 53(3)(**131**)
section 55(2), (2B) and (2C)
section 56(2)(**132**)
section 57(1) and (2)
section 61(7) and (11)
section 155(**133**)
section 156(2)(**134**)
section 181(1) and (2)(**135**)
section 182(2) and (3)
section 183(1)(**136**)
Schedule 2, Part I(**137**).

The following provisions of the Pension Schemes (Northern Ireland) Act 1993 and now vested in the Secretary of State(**138**)—

section 51(2), (2B) and (2C)(**139**)
section 52(2)(**140**)
section 53(1) and (2)
section 57(7) and (11)
section 176(1)
section 177(2) to (4)
section 178(1)(**141**)
Schedule 1, paragraphs 1, 2 and 5(**142**).

The following provisions of the 1995 Act—

section 92(6)
section 174(3).

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- (**131**) Section 53(3) is repealed by paragraph 36 of Schedule 13 to the 2014 Act, but saved for certain purposes *see* [S.I. 2015/1502](#). It was amended by paragraph 48(c) of Schedule 5 to the 1995 Act, paragraph 52 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999, and [S.I. 2011/1730](#).
- (**132**) Section 56 is repealed by paragraph 37 of Schedule 13 to the 2014 Act, but saved for certain purposes *see* [S.I. 2015/1502](#). Section 56(2) was amended by paragraph 51(a) of Schedule 5 to the 1995 Act, and paragraph 54 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999.
- (**133**) Section 155 was amended by paragraph 65 of Schedule 5 to the 1995 Act, paragraph 59 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999, and [S.I. 2011/1730](#).
- (**134**) Section 156 was substituted by paragraph 9 of Schedule 5 to the Child Support, Pensions and Social Security Act 2000, and amended by [S.I. 2011/1730](#).
- (**135**) Section 181(2) was amended by paragraph 44(b) of Schedule 3 to the 1995 Act.
- (**136**) Section 183(1) was amended by paragraph 79 of Schedule 5, paragraph 15(a) of Schedule 6, and Parts 3 and 4 of Schedule 7, to the 1995 Act.
- (**137**) Paragraphs 1 to 4 and 6 to 8 of Part I of Schedule 2 are repealed by, and paragraph 5 of that Part is amended by, paragraph 46 of Schedule 13 to the 2014 Act, but saved for certain purposes *see* [S.I. 2015/1502](#). Part I of Schedule 2 was amended by section 141 of, and paragraph 84 of Schedule 5, and Part 3 of Schedule 7 to, the 1995 Act, paragraph 62 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999, and paragraphs 46 and 59 of Schedule 4 to the Pensions Act 2007.
- (**138**) *See* paragraphs 66 and 77 of Schedule 1 to [S.I. 1999/671](#).
- (**139**) Section 51(2) was substituted by Article 138(1) of [S.I. 1995/3213 \(N.I. 22\)](#) and amended by paragraph 7(2)(a) of Schedule 2 to the Welfare Reform and Pensions Act 1999 and paragraph 26 of Schedule 4 to the Pensions Act (Northern Ireland) 2008 (c.1 (N.I.)). Subsections (2B) and (2C) were inserted by paragraph 7(2)(c) of Schedule 2 to the Welfare Reform and Pensions Act 1999.
- (**140**) Section 52(2) was amended by Schedule 5 to [S.I. 1995/3213](#), and paragraph 64(2) of Schedule 1 to [S.I. 1999/671](#).
- (**141**) Section 178(1) was amended by Schedule 5 to [S.I. 1995/3213](#).
- (**142**) Paragraphs 2 and 5 were amended by paragraph 77 of Schedule 1 to [S.I. 1999/671](#). Paragraph 5 was also amended by Article 138(2) and Schedule 5 to [S.I. 1995/3213](#), and paragraph 58 of Schedule 4 to the Pensions Act (Northern Ireland) 2008.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and replace most of the Occupational Pension Schemes (Contracting-out) Regulations 1996 (S.I. 1996/1172) (“the 1996 Regulations”) in consequence of provision made by the Pensions Act 2014 (c.19) (“the 2014 Act”).

The 2014 Act creates a new state pension for people reaching pensionable age after implementation on 6th April 2016. This date is referred to in the Pension Schemes Act 1993 (c.48) (“the 1993 Act”) (as amended by the 2014 Act) as “the second abolition date”. The new pension will be paid at a single weekly rate, replacing the current state pension which has two components: a basic state pension and an additional state pension. The 2014 Act therefore also makes amendments to existing primary legislation to abolish contracting-out of the state additional pension for salary related pension schemes. Much of the provision made by the 1996 Regulations is revoked with effect from the second abolition date by regulation 32.

Some provisions of the 1993 Act and the 1996 Regulations will remain in force until 6th April 2019, in accordance with savings provisions contained in S.I. 2015/1502. In particular, provisions relating to the issue, variation and surrender of contracting-out certificates remain in force to enable the Commissioners for Her Majesty’s Revenue and Customs (“the Commissioners”) to issue certificates relating to a period before the second abolition date, and to deal with any variation or surrender of such a certificate which is to take effect from a date preceding that date. Provisions relating to schemes which have ceased to contract-out before the second abolition date also remain in force, to ensure that the Commissioners are notified of the termination of contracted-out employment in these circumstances and that earner’s pension rights are protected.

Provisions of the 1996 Regulations which are to continue to have effect after the second abolition date are, where necessary, amended by regulations 29 and 30 to reflect the abolition of contracting-out.

Provisions of the 1996 Regulations which are to continue to apply indefinitely to pension schemes which were contracted-out prior to the second abolition date are re-enacted, with modifications reflecting the abolition of contracting-out, in these Regulations. Part 2 contains provisions relating to all pension schemes which were salary related contracted-out schemes, Part 3 carries forward additional requirements relating to section 9(2B) rights and Part 4 continues additional requirements in relation to guaranteed minimum pensions. “Section 9(2B) rights” are rights attributable to employment which was contracted-out on and after 6th April 1997 under section 9(2B) of the 1993 Act. Guaranteed minimum pensions relate to contracted-out employment before that date where, under scheme rules, the weekly rate of the pension is to be not less than the guaranteed minimum under sections 14 to 16 of the 1993 Act.

In Part 2, regulation 3 imposes limitations on the alteration of scheme rules, regulation 4 deals with correction of errors as to whether an earner was in contracted-out employment, regulation 5 provides for the disclosure of certain information by the Secretary of State and the Commissioners and regulation 6 continues requirements as to the rules of overseas schemes. Regulation 7 provides for restoration of rights in the State scheme where a scheme is insolvent and regulations 8 to 14 carry forward provisions relating to contributions equivalent premiums. Under the savings provisions contained within S.I. 2015/1502, these provisions apply only in relation to schemes which ceased to be contracted-out before the second abolition date and, after 6th April 2019, only in relation to such schemes which are winding up. Regulations 15 and 16 carry forward certain transitional provisions and savings from the 1996 Regulations.

In Part 3, regulation 17 sets out the circumstances in which scheme rules may be altered in relation to section 9(2B) rights and regulation 18 carries forward requirements for the payment of lump sums and commutation of benefits. Regulation 19 governs the circumstances in which section 9(2B) rights may be forfeited.

In Part 4, regulation 20 continues limitations on the alteration of scheme rules in relation to guaranteed minimum pensions and regulations 21 and 22 carry forward requirements as to the payment of pensions to surviving spouses and civil partners. Regulations 23 and 24 deal with revaluation of guaranteed minimum pensions (GMPs) and regulation 25 describes the circumstances in which a lump sum may be paid instead of a pension. Provision as to suspension and forfeiture of guaranteed minimum pensions is carried forward by regulation 26; regulations 27 and 28 deal with conversion of guaranteed minimum pensions into other benefits.

Part 6 carries forward modifications of section 16 in relation to revaluation after transfer from another scheme previously located in the 1996 Regulations, by inserting those provisions into the Contracting-out (Transfer and Transfer Payment) Regulations 1996 (S.I. 1996/1462).

Part 7 provides for revocations and savings of the 1996 Regulations. Regulations 62, 66 and 66 of the 1996 Regulations are saved for the purposes of maintaining the current provisions for fixed rate revaluation of GMPs where an earner ceased contracted-out employment before the second abolition date.

Part 8 of these Regulations replicates provisions of Part 2 relating to contributions equivalent premiums for Northern Ireland. Contributions equivalent premiums and rights to return to the state pension scheme are excepted matters under the Northern Ireland Act 1998 (c.47). Regulation 45 reflects for the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996 (S.R.1996 No.493) revocations of provisions relating to contributions equivalent premiums in the 1996 Regulations by regulation 32.

An analysis of the impact of this legislation has been made as part of the analysis of the Pensions Act 2014. A copy is available in the libraries of both Houses of Parliament. A copy is annexed to the Explanatory Memorandum which is available alongside this instrument on www.legislation.gov.uk. Copies may also be obtained from the Better Regulation Unit of the Department for Work and Pensions, 2D, Caxton House, Tothill Street, London SW1H 9NA.