



# Pension Schemes Act 1993

## 1993 CHAPTER 48

### PART IV

#### PROTECTION FOR EARLY LEAVERS

#### CHAPTER III

##### PROTECTION OF INCREASES IN GUARANTEED MINIMUM PENSIONS (“ANTI-FRANKING”)

#### **87 General protection principle**

- (1) This subsection applies where—
- (a) there is an interval between—
    - (i) the date on which an earner ceases to be in employment which is contracted-out by reference to an occupational pension scheme which is not a money purchase contracted-out scheme (“the cessation date”); and
    - (ii) the date on which his guaranteed minimum pension under that scheme commences (“the commencement of payment date”);
  - (b) the relevant sum exceeds his guaranteed minimum on the day after the cessation date; and
  - (c) on the commencement of payment date or at any time after it his guaranteed minimum pension under the scheme exceeds the amount of his guaranteed minimum under it on the day after the cessation date.
- (2) This subsection applies where—
- (a) there is an interval between the earner’s cessation date and whichever of the following is the earlier—
    - (i) the date of his death; or
    - (ii) his commencement of payment date;
  - (b) the relevant sum exceeds one half of the earner’s guaranteed minimum on the day after the cessation date; and

- (c) at any time when a pension under the occupational pension scheme is required to be paid to the earner’s widow or widower, the widow’s or, as the case may be, the widower’s guaranteed minimum pension under the scheme exceeds one half of the earner’s guaranteed minimum on the day after the cessation date.
- (3) Where subsection (1) or (2) applies, the weekly rate of the pension payable to the member at any time when that pension is required to be paid or, as the case may be, payable to the widow or widower at any such time as is mentioned in subsection (2) shall be an amount not less—
- (a) in a case where by virtue of section 73(2)(b) a pension is provided by way of complete substitute for short service benefit or, as the case may be, for widow’s or widower’s pension, than the weekly rate of that pension; and
  - (b) in any other case, than the relevant aggregate.
- (4) In subsection (3) “the relevant aggregate” means the aggregate of the following—
- (a) the relevant sum;
  - (b) the excess mentioned in subsection (1)(c) or, as the case may be, subsection (2)(c);
  - (c) any amount which is an appropriate addition at the time in question; and
  - (d) where the scheme provides that part of the earner’s or, as the case may be, the widow’s or widower’s pension shall accrue after the cessation date by reason of the earner’s employment after that date, the later earnings addition.
- (5) To the extent that amounts attributable to transfer credits have accrued by reason of any transfer before 1st January 1985, they are to be disregarded for the purposes of subsections (1)(c), (2)(c) and (4)(b).
- (6) Nothing in this section shall be construed as entitling an earner who has not reached normal pension age to any portion of a pension under a scheme to which he would not otherwise be entitled.
- (7) This section does not apply to a pension to which a person is entitled in respect of employment if—
- (a) the earner left the employment or left it for the last time before 1st January 1985; or
  - (b) the employment ceased, or ceased for the last time, to be contracted-out in relation to him before that date.

## **88 The relevant sum**

- (1) For the purposes of this Chapter “the relevant sum” means—
- (a) in a case where subsection (1) of section 87 applies—
    - (i) if the earner reaches normal pension age on or before the cessation date, an amount equal to the weekly rate of his pension on the day after the cessation date; and
    - (ii) if he reaches normal pension age after the cessation date, an amount equal to the weekly rate of any short service benefit which has accrued to him on the cessation date or, where no such benefit has then accrued, any other benefit to which this sub-paragraph applies and which has then accrued to him; and

- (b) in a case where subsection (2) of that section applies, an amount equal to the weekly rate at which, on the prescribed assumptions, a pension would have begun to be paid to the widow or widower if that person had satisfied the conditions for entitlement to a pension which are specified in the scheme.
- (2) Paragraph (a) of subsection (1) has effect subject to subsection (5) and to sections 87(5) and 91(1), and paragraph (b) of subsection (1) has effect subject to section 87(5).
- (3) The benefit other than short service benefit to which subsection (1)(a)(ii) applies is benefit—
  - (a) which would have been provided as either the whole or part of the earner’s short service benefit; or
  - (b) of which the earner’s short service benefit would have formed part,
 if section 71(1)(a) had effect with the substitution of a reference to the service which the earner had on the cessation date for the reference to 2 years’ qualifying service.
- (4) Any such benefit is only to be included in the relevant sum to the extent that it does not exceed the amount which the scheme would have had to provide as short service benefit if section 71(1) had effect as mentioned in subsection (3).
- (5) If the payment of any part of the earner’s pension is postponed beyond the cessation date, the relevant sum is an amount equal to what would have been the weekly rate of his pension on the day after the cessation date if there had been no such postponement.

## **89 The appropriate addition**

- (1) For the purposes of this Chapter “appropriate addition” means—
  - (a) where a scheme provides that part of an earner’s or, as the case may be, a widow’s or widower’s pension shall accrue after the cessation date by reason of the earner’s employment after that date, an amount equal to the part which has so accrued; and
  - (b) where a scheme provides that an earner’s or, as the case may be, a widow’s or widower’s pension which has accrued before that date shall be enhanced after that date if payment of the earner’s pension is postponed, the amount by which the unguaranteed element of the pension has been enhanced by reason of the postponement.
- (2) For the purposes of subsection (1)(b) the unguaranteed element of a pension is—
  - (a) in the case of an earner’s pension, the excess of the pension on the day after the cessation date over the earner’s guaranteed minimum on that day; and
  - (b) in the case of the widow’s or widower’s pension, the excess of that pension on that day over one half of the earner’s guaranteed minimum on that day.

## **90 The later earnings addition**

- (1) For the purposes of this Chapter “the later earnings addition” means the amount (if any) by which the assumed later unguaranteed element exceeds the unguaranteed element.
- (2) In subsection (1)—
  - (a) “the unguaranteed element” means the amount by which the relevant sum exceeds the earner’s guaranteed minimum on the day after his cessation date

or, in the case of a widow’s or widower’s pension, one half of that minimum;  
and

- (b) “the assumed later unguaranteed element” means the amount by which the relevant sum would exceed the earner’s guaranteed minimum (or, in the case of a widow’s or widower’s pension, one half of that minimum) on the assumptions mentioned in subsection (3).

(3) The assumptions mentioned in subsection (2) are—

- (a) that the relevant sum were calculated on the basis that the weekly rate of the pension or benefit which determines that sum had been calculated by reference to the level of earnings by reference to which that rate would have been calculated if the earner’s cessation date had fallen on the earlier of—
- (i) the earner’s commencement of payment date, or
  - (ii) the date on which the earner ceased to be in pensionable service under the scheme; and
- (b) that the earner’s guaranteed minimum were such sum as bears the same proportion to the assumed later unguaranteed element as the guaranteed minimum mentioned in subsection (2)(a) bears to the unguaranteed element.

## **91 Special provision where employment continues after it ceases to be contracted-out by reference to scheme**

(1) If—

- (a) an earner’s employment ceases to be contracted-out by reference to an occupational pension scheme but the scheme continues to apply to it; or
- (b) an earner transfers from employment which is contracted-out by reference to an occupational pension scheme to employment to which the scheme applies but which is not contracted-out by reference to it,

the amount of any short service or other benefit which has accrued to the earner shall be computed for the purposes of section 88(1)(a)(ii) as it would be computed if he had ceased on the cessation date to be in employment to which the scheme applies.

(2) If—

- (a) a benefit under a scheme is conditional on an earner attaining a particular age or having a particular length of service; and
- (b) one of the events mentioned in subsection (1) occurs before he has fulfilled the condition; but
- (c) he continues to be in employment to which the scheme applies until he has done so,

the earner shall be treated for the purposes of the previous provisions of this Chapter as if that benefit had accrued to him.

## **92 Supplementary provisions**

(1) In making any calculation for the purposes of this Chapter—

- (a) any commutation, forfeiture or surrender of,
- (b) any charge or lien on, and
- (c) any set-off against,

the whole or part of a pension shall be disregarded.

- (2) In calculating an earner’s guaranteed minimum for the purposes of this Chapter his earnings factor shall be taken to be that factor as increased, except as provided by subsection (3), by the last order under section 21 of the Social Security Pensions Act 1975 or section 148 of the Social Security Administration Act 1992 to come into force before the end of the tax year in which the cessation date falls.
- (3) If an earner’s cessation date falls in the tax year in which he attains pensionable age, subsection (2) shall have effect in relation to him as if for the words from “tax year” onwards there were substituted the words “final relevant year”.
- (4) In this section “final relevant year” has the same meaning as in section 16.
- (5) Any reference in this Chapter to the weekly rate of a pension is to be construed, in relation to a pension payable otherwise than weekly, as a reference to the weekly sum which would be payable in respect of a pension of that amount payable weekly.