



# Pension Schemes (Northern Ireland) Act 1993

## 1993 CHAPTER 49

### PART I

#### PRELIMINARY

#### 1 Categories of pension schemes.

In this Act—

“occupational pension scheme” means any scheme or arrangement which is comprised in one or more instruments or agreements and which has, or is capable of having, effect in relation to one or more descriptions or categories of employments so as to provide benefits, in the form of pensions or otherwise, payable on termination of service, or on death or retirement, to or in respect of earners with qualifying service in an employment of any such description or category;

“personal pension scheme” means any scheme or arrangement which is comprised in one or more instruments or agreements and which has, or is capable of having, effect so as to provide benefits, in the form of pensions or otherwise, payable on death or retirement to or in respect of employed earners who have made arrangements with the trustees or managers of the scheme for them to become members of it;

“public service pension scheme” means an occupational pension scheme established by or under an enactment or the Royal prerogative or a Royal charter, being a scheme—

- (a) all the particulars of which are set out in, or in a legislative instrument made under, an enactment, Royal warrant or charter, or
- (b) which cannot come into force, or be amended, without the scheme or amendment being approved by a Minister of the Crown or government department,

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and includes any occupational pension scheme established, with the concurrence of the Department of Finance and Personnel, by or with the approval of another government department and any occupational pension scheme prescribed by regulations made by the Department and the Department of Finance and Personnel jointly as being a scheme which ought in their opinion to be treated as a public service pension scheme for the purposes of this Act.

## PART II

### ADMINISTRATION

#### *Registration of schemes*

#### **2 Registration of occupational and personal pension schemes.**

- (1) Regulations may make provision with respect to the staff and other facilities that are to be available to the Registrar.
- (2) Regulations may require—
  - (a) any person who is or has been—
    - (i) a trustee or manager of an occupational or personal pension scheme or an administrator of a public service pension scheme, or
    - (ii) the employer in relation to employment of any description or category to which an occupational pension scheme relates, and
  - (b) such other persons as may be prescribed,
 to provide the Registrar with such information for the purposes of the register in such form and within such time as may be prescribed.
- (3) The Department may direct the Registrar to submit to it, in such form and at such intervals as may be specified in the direction, such statistical and other reports as the Department may require; and the Department may determine at its discretion whether or not to publish a report submitted to it under this subsection.

- (4) In this section—

“the register” means the register of occupational and personal pension schemes compiled and maintained under section 6 of the <sup>M1</sup>Pension Schemes Act 1993;

“the Registrar” means the Registrar of Occupational and Personal Pension Schemes appointed under that section.

#### **Marginal Citations**

**M1** 1993 c. 48.

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## PART III

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

#### Modifications etc. (not altering text)

- C1** Pt. 3: power to modify conferred (1.6.1996 for certain purposes otherwise 6.4.1997) by [S.I. 1995/3213 \(N.I. 22\)](#), [art. 146\(1\)](#); [S.R. 1996/91](#), [art. 2\(f\)](#); [S.R. 1997/192](#), [art. 2](#)
- Pt. 3: power to transfer functions conferred (1.4.1999) by [1999 c. 2](#), [s. 23\(1\)\(2\)\(6\)](#); [S.I. 1999/527](#), [art. 2\(b\)](#), [Sch. 2](#)

## CHAPTER I

### CERTIFICATION

#### *Preliminary*

### **3 Issue of contracting-out and appropriate scheme certificates.**

- (1) Regulations shall provide for the Board to issue certificates stating—
- (a) that the employment of an earner in employed earner’s employment is contracted-out employment by reference to an occupational pension scheme; or
  - (b) that a personal pension scheme is an appropriate scheme;
- and in this Act a certificate under paragraph (a) is referred to as “a contracting-out certificate” and a certificate under paragraph (b) as “an appropriate scheme certificate”.
- (2) The regulations shall provide for contracting-out certificates to be issued to employers and to specify—
- (a) the employments which are to be treated, either generally or in relation to any specified description of earners, as contracted-out employments; and
  - (b) the occupational pension schemes by reference to which those employments are to be so treated.
- (3) An occupational pension scheme is a contracted-out scheme in relation to an earner’s employment if it is for the time being specified in a contracting-out certificate in relation to that employment; and references in this Act to the contracting-out of a scheme are references to its inclusion in such a certificate.
- (4) A personal pension scheme is an appropriate scheme if there is in force an appropriate scheme certificate issued by the Board in accordance with this Chapter that it is such a scheme.
- (5) An appropriate scheme certificate for the time being in force in relation to a scheme shall be conclusive that the scheme is an appropriate scheme.
- (6) Regulations shall provide that any question whether a personal pension scheme is or at any time was an appropriate scheme shall be determined by the Board.

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- (7) Except in prescribed circumstances, no contracting-out certificate or appropriate scheme certificate shall have effect from a date earlier than that on which the certificate is issued.

**4 Meaning of “contracted-out employment”, “guaranteed minimum pension” and “minimum payment”.**

- (1) The employment of an earner in employed earner’s employment is “contracted-out employment” in relation to him during any period in which he is under pensionable age and—

(a) either—

- (i) his service in the employment is for the time being service which qualifies him for a guaranteed minimum pension provided by an occupational pension scheme, or
- (ii) his employer makes minimum payments in respect of his employment to an occupational pension scheme which is contracted-out by virtue of satisfying section 5(3) (in this Act referred to as “a money purchase contracted-out scheme”); and

(b) there is in force a contracting-out certificate issued by the Board in accordance with this Chapter stating that the employment is contracted-out employment by reference to the scheme.

(2) In this Act—

“guaranteed minimum pension” means any pension which is provided by an occupational pension scheme in accordance with the requirements of sections 9 and 13 to the extent to which its weekly rate is equal to the earner’s or, as the case may be, the earner’s widow’s or widower’s guaranteed minimum as determined for the purposes of those sections respectively; and

“minimum payment”, in relation to an earner’s employment in any tax week, means the rebate percentage of so much of the earnings paid to or for the benefit of the earner in that week as exceeds the current lower earnings limit but not the current upper earnings limit (or the prescribed equivalents if he is paid otherwise than weekly);

and for the purposes of this subsection “rebate percentage” means the sum of the percentages for the time being mentioned in paragraphs (a) and (b) of section 37(1).

(3) Regulations may make provision—

- (a) for the manner in which, and time at which or period within which, minimum payments are to be made;
- (b) for the recovery by employers of amounts in respect of the whole or part of minimum payments by deduction from earnings;
- (c) for calculating the amounts payable according to a scale prepared from time to time by the Department or otherwise adjusting them so as to avoid fractional amounts or otherwise facilitate computation;
- (d) for requiring that the liability in respect of a payment made in a tax week, in so far as the liability depends on any conditions as to a person’s age on retirement, shall be determined as at the beginning of the week or as at the end of it;
- (e) for securing that liability is not avoided or reduced by the payment of earnings being made in accordance with any practice which is abnormal for the employment in respect of which the earnings are paid;

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- (f) without prejudice to paragraph (e), for enabling the Department, where it is satisfied as to the existence of any practice in respect of the payment of earnings whereby the incidence of minimum payments is avoided or reduced by means of irregular or unequal payments of earnings, to give directions for securing that minimum payments are payable as if that practice were not followed;
  - (g) for the intervals at which, for the purposes of minimum payments, payments of earnings are to be treated as made; and
  - (h) for this section to have effect, in prescribed cases, as if for any reference to a tax week there were substituted a reference to a prescribed period.
- (4) Any contracting-out certificate for the time being in force in respect of an employed earner's employment shall be conclusive that the employment is contracted-out employment.
- (5) Regulations shall provide for the determination by the Board of any question whether an employment is to be treated as contracted-out employment or as to the persons in relation to whom, or the period for which, an employment is to be so treated.

#### *General requirements for certification*

### **5 Requirements for certification of schemes: general.**

- (1) Subject to subsection (4), an occupational pension scheme can be contracted-out in relation to an earner's employment only if it satisfies subsection (2) or (3).
- (2) An occupational pension scheme satisfies this subsection only if—
- (a) it complies in all respects with sections 9 to 20 or, in such cases or classes of case as may be prescribed, with those sections as modified by regulations; and
  - (b) the rules of the scheme applying to guaranteed minimum pensions are framed so as to comply with the relevant requirements.
- (3) An occupational pension scheme satisfies this subsection only if—
- (a) the requirements imposed by or by virtue of sections 18 and 22 to 28 and such other requirements as may be prescribed are satisfied in its case; and
  - (b) the rules of the scheme applying to protected rights are framed so as to comply with the relevant requirements.
- (4) Where there are two or more occupational pension schemes in force in relation to an earner's employment, none of which can by itself be a contracted-out scheme, the Board may, if they think fit, treat them for contracting-out purposes as a single scheme.
- (5) A personal pension scheme can be an appropriate scheme only if—
- (a) the requirements imposed by or by virtue of sections 22 to 28 and such other requirements as may be prescribed are satisfied in its case; and
  - (b) the rules of the scheme applying to protected rights are framed so as to comply with the relevant requirements.
- (6) In this section "relevant requirements" means—
- (a) the requirements of any regulations prescribing the form and content of rules of contracted-out or, as the case may be, appropriate schemes; and
  - (b) such other requirements as to form and content (not inconsistent with regulations) as may be imposed by the Board as a condition of contracting-

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out or, as the case may be, of being an appropriate scheme, either generally or in relation to a particular scheme.

## 6 Protected rights and money purchase benefits.

- (1) Subject to subsections (2) and (3), the protected rights of a member of a pension scheme are his rights to money purchase benefits under the scheme.
- (2) If the rules of an occupational pension scheme so provide, a member’s protected rights are—
  - (a) his rights under the scheme which derive from the payment of minimum payments together with any payments by the Department to the scheme under Article 9 of the <sup>M2</sup>Social Security (Northern Ireland) Order 1986 in respect of the member;
  - (b) any rights of the member to money purchase benefits which derive from protected rights under another occupational pension scheme or under a personal pension scheme which have been the subject of a transfer payment; and
  - (c) such other rights as may be prescribed.
- (3) If the rules of a personal pension scheme so provide, a member’s protected rights are—
  - (a) his rights under the scheme which derive from any payment of minimum contributions to the scheme; and
  - (b) any rights of his to money purchase benefits which derive from protected rights under another personal pension scheme or protected rights under an occupational pension scheme which have been the subject of a transfer payment; and
  - (c) such other rights as may be prescribed.

### Marginal Citations

M2 [S.I. 1986/1888 \(N.I. 18\)](#).

## 7 Elections as to employments covered by contracting-out certificates.

- (1) Subject to the provisions of this Part, an employment otherwise satisfying the conditions for inclusion in a contracting-out certificate shall be so included if and so long as the employer so elects and not otherwise.
- (2) Subject to subsections (3) and (4), an election may be so made, and an employment so included, either generally or in relation only to a particular description of earners.
- (3) Except in such cases as may be prescribed, an employer shall not, in making or abstaining from making any election under this section, discriminate between different earners on any grounds other than the nature of their employment.
- (4) If the Board consider that an employer is contravening subsection (3) in relation to any scheme, they may—
  - (a) refuse to give effect to any election made by him in relation to that scheme; or
  - (b) cancel any contracting-out certificate held by him in respect of it.
- (5) Regulations may make provision—

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- (a) for regulating the manner in which an employer is to make an election with a view to the issue, variation or surrender of a contracting-out certificate;
- (b) for requiring an employer to give a notice of his intentions in respect of making or abstaining from making any such election in relation to any existing or proposed scheme—
  - (i) to employees in any employment to which the scheme applies or to which it is proposed that it should apply;
  - (ii) to any independent trade union recognised to any extent for the purpose of collective bargaining in relation to those employees;
  - (iii) to the trustees and managers of the scheme; and
  - (iv) to such other persons as may be prescribed;
- (c) for requiring an employer, in connection with any such notice, to furnish such information as may be prescribed and to undertake such consultations as may be prescribed with any such trade union as is mentioned in paragraph (b)(ii);
- (d) for empowering the Board to refuse to give effect to an election made by an employer unless they are satisfied that he has complied with the requirements of the regulations;
- (e) for referring to an industrial tribunal any question—
  - (i) whether an organisation is such a trade union as is mentioned in paragraph (b)(ii), or
  - (ii) whether the requirements of the regulations as to consultation have been complied with.

## 8 Determination of basis on which scheme is contracted-out.

- (1) A contracting-out certificate shall state whether the scheme is contracted-out by virtue of subsection (2) or (3) of section 5.
- (2) Where a scheme satisfies both of those subsections the employers, in their application for a certificate, shall specify one of those subsections as the subsection by virtue of which they wish the scheme to be contracted-out.
- (3) A scheme which has been contracted-out by virtue of one of those subsections may not become contracted-out by reason of the other except in prescribed circumstances.

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### Modifications etc. (not altering text)

- C2** S. 8 excluded (1.6.1996 for certain purposes otherwise 6.4.1997) by [S.I. 1995/3213, art. 146\(1\)](#); [S.R. 1996/91, art. 2\(f\)](#); [S.R. 1997/192, art. 2\(b\)](#)

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VALID FROM 06/04/1996

*[<sup>F1</sup> Requirements for certification of occupational pension schemes applying from the principal appointed day]*

**Textual Amendments**

**F1** Ss. 8A-8D and cross-heading inserted (6.4.1996 for certain purposes otherwise 6.4.1997) by S.I. 1995/3213 (N.I. 22), [art. 133\(5\)](#); S.R. 1996/91, arts. 2(d)(h), [Sch. Pt. IV](#)

**[<sup>F2</sup>8A The statutory standard.**

- (1) Subject to the provisions of this Part, the scheme must, in relation to the provision of pensions for earners in employed earner’s employment, and for their widows or widowers, satisfy the statutory standard.
- (2) Subject to regulations made by virtue of section 5(2B)(c)(ii), in applying this section regard must only be had to—
  - (a) earners in employed earner’s employment, or
  - (b) their widows or widowers,
 collectively, and the pensions to be provided for persons falling within paragraph (a) or (b) must be considered as a whole.
- (3) For the purposes of this section, a scheme satisfies the statutory standard if the pensions to be provided for such persons are broadly equivalent to, or better than, the pensions which would be provided for such persons under a reference scheme.
- (4) Regulations may provided for the manner of, and criteria for, determining whether the pensions to be provided for such persons under a scheme are broadly equivalent to, or better than, the pensions which would be provided for such persons under a reference scheme.
- (5) Regulations made by virtue of subsection (4) may provide for the determination to be made in accordance with guidance prepared by a prescribed body and approved by the Department.
- (6) The pensions to be provided for such persons under a scheme are to be treated as broadly equivalent to or better than the pensions which would be provided for such persons under a reference scheme if and only if an actuary (who, except in prescribed circumstances, must be the actuary appointed for the scheme in pursuance of Article 47 of the Pensions (Northern Ireland) Order 1995) so certifies.]

**Textual Amendments**

**F2** Ss. 8A-8D inserted (6.4.1996 for certain purposes otherwise 6.4.1997) by S.I. 1995/3213 (N.I. 22), [art. 133\(5\)](#); S.R. 1996/91, arts. 2(d)(h), [Sch. Pt. IV](#)

**[<sup>F3</sup>8B Reference scheme.**

- (1) This section applies for the purposes of section 8A.



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- (2) A reference scheme is an occupational pension scheme which—
- (a) complies with each of subsections (3) and (4), and
  - (b) complies with any prescribed requirements.
- (3) In relation to earners employed in employed earner's employment, a reference scheme is one which provides—
- (a) for them to be entitled to a pension under the scheme commencing at a normal pension age of 65 and continuing for life, and
  - (b) for the annual rate of the pension at that age to be—
    - (i) 1/80th of average qualifying earning in the last three tax years preceding the end of service, multiplied by
    - (ii) the number of years service, not exceeding such number as would produce an annual rate equal to half the earnings on which it is calculated.
- (4) In relation to widows or widowers, a reference scheme is one which provides—
- (a) for the widows or widowers of earners employed in employed earner's employment (whether the earners die before or after attaining the age of 65) to be entitled, except in prescribed circumstances, to pensions under the scheme; and
  - (b) except in prescribed circumstances, for the annual rate of the pensions, at the time when the widows or widowers first become entitled to them, to be—
    - (i) in the case of widows or widowers of persons whose age when they died was, or was greater than, normal pension age, 50 per cent. of the annual rate which a reference scheme is required to provide for persons of that age, and
    - (ii) in the case of widows or widowers of other persons, 50 per cent. of the annual rate which a reference scheme would have been required to provide in respect of the persons' actual periods of service if those persons had attained that age.
- (5) For the purposes of this section, an earner's qualifying earnings in any tax year are 90 per cent. of the amount by which the earner's earnings—
- (a) exceed the qualifying earnings factor for that year; and
  - (b) do not exceed the upper earnings limit for that year multiplied by fifty-three.
- (6) Regulations may modify subsections (2) to (5).
- (7) In this section—
- “normal pension age”, in relation to a scheme, means the age specified in the scheme as the earliest age at which pension becomes payable under the scheme (apart from any special provision as to early retirement on grounds of ill-health or otherwise),
- “qualifying earnings factor”, in relation to a tax year, has the meaning given by section 121(1) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, and
- “upper earnings limit”, in relation to a tax year, means the amount specified for that year by regulations made by virtue of section 5(3) of that Act as the upper earnings limit for Class 1 contributions.]

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#### Textual Amendments

**F3** Ss. 8A-8D inserted (6.4.1996 for certain purposes otherwise *prosp.*) by S.I. 1995/3213 (N.I. 22), arts. 1(2), 133(5); S.R. 1996/91, arts. 2(d), **Sch. Pt. IV**

#### [<sup>F4</sup>8C **Transfer, commutation, etc.**

- (1) Regulations may prohibit or restrict—
- (a) the transfer of any liability—
    - (i) for the payment of pensions under a relevant scheme, or
    - (ii) in respect of accrued rights to such pensions,
  - (b) the discharge of any liability to provide pensions under a relevant scheme, or
  - (c) the payment of a lump sum instead of a pension payable under a relevant scheme,
- except in prescribed circumstances or on prescribed conditions.
- (2) In this section, “relevant scheme” means a scheme contracted out by virtue of section 5(2B) and references to pensions and accrued rights under the scheme are to such pensions and rights so far as attributable to an earner’s service on or after the principal appointed day.
- (3) Regulations under subsection (1) may provide that any provision of this Part shall have effect subject to such modifications as may be specified in the regulations.]

#### Textual Amendments

**F4** Ss. 8A-8D inserted (6.4.1996 for certain purposes otherwise 6.4.1997) by S.I. 1995/3213 (N.I. 22), art. 133(5); S.R. 1996/91, arts. 2(d)(h), **Sch. Pt. IV**

#### [<sup>F5</sup>8D **Entitlement to benefit.**

In the case of a scheme contracted out by virtue of section 5(2B), regulations may make provision as to the ages by reference to which benefits under the scheme are to be paid.]

#### Textual Amendments

**F5** Ss. 8A-8D inserted (6.4.1996 for certain purposes otherwise 6.4.1997) by S.I. 1995/3213 (NI 22), art. 133(5); S.R. 1996/91, arts. 2(d)(h), **Sch. Pt. IV**; S.R. 1997/192, at. 2(b)

*Requirements for certification of occupational pension schemes providing guaranteed minimum pensions*

## 9 **Minimum pensions for earners.**

- (1) Subject to the provisions of this Part, the scheme must—
- (a) provide for the earner to be entitled to a pension under the scheme if he attains pensionable age; and

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- (b) contain a rule to the effect that the weekly rate of the pension will be not less than his guaranteed minimum (if any) under sections 10 to 12.
- (2) In the case of an earner who is a married woman or widow who is liable to pay primary Class 1 contributions at a reduced rate by virtue of section 19(4) of the <sup>M3</sup>Social Security Contributions and Benefits (Northern Ireland) Act 1992, subject to the provisions of this Part, the scheme must—
  - (a) provide for her to be entitled to a pension under the scheme if she attains pensionable age and does not have a guaranteed minimum under sections 10 to 12; and
  - (b) satisfy such other conditions as may be prescribed.
- (3) Subject to subsection (4), the scheme must provide for the pension to commence on the date on which the earner attains pensionable age and to continue for his life.
- (4) Subject to subsection (5), the scheme may provide for the commencement of the earner's guaranteed minimum pension to be postponed for any period for which he continues in employment after attaining pensionable age.
- (5) The scheme must provide for the earner's consent to be required—
  - (a) for any such postponement by virtue of employment to which the scheme does not relate; and
  - (b) for any such postponement after the expiration of five years from the date on which he attains pensionable age.
- (6) Equivalent pension benefits for the purposes of the former legislation are not to be regarded as constituting any part of the earner's guaranteed minimum pension.
- (7) The benefits referred to in subsection (6) are any to which the earner may be immediately or prospectively entitled in respect of a period of employment which—
  - (a) was for him non-participating employment under that legislation; and
  - (b) was not on its termination the subject of any payment in lieu of contributions;
 but subsection (6) excludes only so much of those benefits as had to be provided in order that the employment should for that period be treated as non-participating.
- (8) In this section “the former legislation” means Part III of the <sup>M4</sup>National Insurance Act (Northern Ireland) 1966 and the previous corresponding enactments.

#### Marginal Citations

**M3** 1992 c. 7.

**M4** 1966 c. 6 (N.I.).

## 10 Earner's guaranteed minimum.

- (1) An earner has a guaranteed minimum in relation to the pension provided by a scheme if in any tax week in a relevant year, earnings in excess of the current lower earnings limit (or the prescribed equivalent if he is paid otherwise than weekly) have been paid to or for his benefit in respect of employment which is contracted-out by reference to the scheme.
- (2) Subject to section 11(1), the guaranteed minimum shall be the weekly equivalent of an amount equal to the appropriate percentage of the total of the earner's earnings

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factors for the relevant years, so far as derived from earnings such as are mentioned in subsection (1) upon which primary Class 1 contributions have been paid or treated as paid.

- (3) In determining the guaranteed minimum in a case where—
- (a) earnings such as are mentioned in subsection (1) have been paid to a married woman or widow who is liable to pay primary Class 1 contributions at a reduced rate by virtue of section 19(4) of the <sup>M5</sup>Social Security Contributions and Benefits (Northern Ireland) Act 1992, and
  - (b) the tax week in which those earnings are paid falls in the tax year 1991-92 or any subsequent tax year,

the married woman or widow shall be treated for the purposes of this section as having such earnings factors derived from those earnings as she would have had if primary Class 1 contributions had been payable, and paid, upon them otherwise than at a reduced rate.

- (4) Where the amount of a person’s earnings for any period is relevant for any purpose of subsection (1) or (2) and the Department is satisfied that records of those earnings have not been maintained or retained or are otherwise unobtainable, it may for that purpose—
- (a) compute, in such manner as it thinks fit, an amount which shall be regarded as the amount of those earnings; or
  - (b) take their amount to be such sum as it may specify in the particular case.

- (5) In subsection (2) the “appropriate percentage” means—
- (a) in respect of the earner’s earnings factors for any tax year not later than the tax year 1987-88—
    - (i) if the earner was not more than 20 years under pensionable age on 6th April 1978, 1.25 per cent.;
    - (ii) in any other case 25/N per cent.;
  - (b) in respect of the earner’s earnings factors for the tax year 1988-89 and for subsequent tax years—
    - (i) if the earner was not more than 20 years under pensionable age on 6th April 1978, 1 per cent.;
    - (ii) in any other case 20/N per cent.;

where N is the number of years in the earner’s working life (assuming he will attain pensionable age) which fall after 5th April 1978.

- (6) Regulations may prescribe rules as to the circumstances in which earnings factors are derived from earnings for the purposes of subsection (2).
- (7) For the purposes of subsection (2) the weekly equivalent of the amount there mentioned shall be calculated by dividing that amount by 52.
- (8) In this section “relevant year” means any tax year in the earner’s working life (not being earlier than the tax year 1978-79).

**Modifications etc. (not altering text)**

C3 S. 10 applied (1.11.1995) by S.R. 1995/389, arts. 4(1)(3)

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## Marginal Citations

M5 1992 c. 7.

## 11 Increase of guaranteed minimum where commencement of guaranteed minimum pension postponed.

- (1) Where in accordance with section 9(4) the commencement of an earner’s guaranteed minimum pension is postponed for any period and there are at least seven complete weeks in that period, his guaranteed minimum in relation to the scheme shall, for each complete week in that period, be increased by one-seventh per cent.—
  - (a) of the amount of that minimum apart from this subsection; or
  - (b) if for that week (or a period which includes that week) a pension is paid to him under the scheme at a weekly rate less than that minimum, of the difference between that pension and that minimum.
- (2) In subsection (1) “week” means any period of seven consecutive days.
- (3) Where an earner’s guaranteed minimum pension is increased under subsection (1), the increase of that part of it which is attributable to earnings factors for the tax year 1987-88 and earlier tax years shall be calculated separately from the increase of the rest.
- (4) Where one or more orders have come into operation under section 105 during the period for which the commencement of a guaranteed minimum pension is postponed, the amount of the guaranteed minimum pension for any week in that period shall be determined as if the order or orders had come into operation before the beginning of the period.

### Modifications etc. (not altering text)

- C4** S. 11 applied (1.11.1995) by S.R. 1995/389, **art. 4(1)(3)**
- C5** S. 11(1) modified (11.4.1994) by S.R. 1994/74, **arts. 1(d)**, 5(2)  
S. 11(1) modified (10.4.1995) by S.R. 1995/71, **arts. 1(d)**, 5(2)  
S. 11(1) modified (8.4.1996) by S.R. 1996/73, **arts. 1(d)**, 5(2)  
S. 11(1) modified (7.4.1997) by S.R. 1997/113, **arts. 1(d)**, 5(2) (which S.R. was revoked (15.4.1999) by S.R. 1999/50, **arts. 1(1)(g)**, 26(c))  
S. 11(1) modified (6.4.1998) by S.R. 1998/56, **arts. 1(1)(d)**, 5(2) (which S.R. was revoked (15.4.1999) by S.R. 1999/50, **arts. 1(1)(g)**, 26(d))  
S. 11(1) modified (12.4.1999) by S.R. 1999/50, **arts. 1(1)(d)**, 5(2) (which S.R. was revoked (13.4.2000) by S.R. 2000/38, **arts. 1(1)(g)**, 23(a)) S. 11(1) modified (10.4.2000) by S.R. 2000/38, **arts. 1(1)(e)**, 5(2)  
S. 11(1) modified (8.4.2002 with effect as mentioned in art. 6) by S.R. 2002/99, **arts. 5(2)**, 6

VALID FROM 01/12/1999

### [<sup>F6</sup>11A Reduction of guaranteed minimum in consequence of pension debit.

- (1) Where—
  - (a) an earner has a guaranteed minimum in relation to the pension provided by a scheme, and

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(b) his right to the pension becomes subject to a pension debit, his guaranteed minimum in relation to the scheme is, subject to subsection (2), reduced by the appropriate percentage.

(2) Where the earner is in pensionable service under the scheme on the day on which the order or provision on which the pension debit depends takes effect, his guaranteed minimum in relation to the scheme is reduced by an amount equal to the appropriate percentage of the corresponding qualifying benefit.

(3) For the purposes of subsection (2), the corresponding qualifying benefit is the guaranteed minimum taken for the purpose of calculating the cash equivalent by reference to which the amount of the pension debit is determined.

(4) For the purposes of this section, the appropriate percentage is—

(a) if the order or provision on which the pension debit depends specifies the percentage value to be transferred, that percentage;

(b) if the order or provision on which the pension debit depends specifies an amount to be transferred, the percentage which the appropriate amount for the purposes of paragraph (1) of Article 26 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (lesser of specified amount and cash equivalent of transferor’s benefits) represents of the amount mentioned in paragraph (3)(b) of that Article (cash equivalent of transferor’s benefits).]

#### Textual Amendments

**F6** S. 11A inserted (1.12.1999 for certain purposes and otherwise 1.12.2000) by [S.I. 1999/3147 \(N.I. 11\)](#), [arts. 1\(5\)\(a\), 29\(3\)](#); [S.R. 2000/133](#), [art. 2\(3\)](#), [Sch. Pt. IV](#)

## 12 Revaluation of earnings factors for purposes of s. 10: early leavers, etc.

(1) Subject to subsection (2), for the purpose of section 10(2) the earner’s earnings factor for any relevant year (so far as derived as mentioned in that section) shall be taken to be that factor as increased by the same percentage as that prescribed for the increase of that factor by the last order under Article 23 of the <sup>M6</sup>Social Security Pensions (Northern Ireland) Order 1975 or section 130 of the <sup>M7</sup>Social Security Administration (Northern Ireland) Act 1992 to come into operation before the end of the final relevant year.

(2) The scheme may provide that the earnings factors of an earner whose service in contracted-out employment by reference to the scheme is terminated before the final relevant year shall be determined for the purposes of section 10(2) by reference to the last such order to come into operation before the end of the tax year in which that service ends (“the last service tax year”).

(3) Where a scheme provides as mentioned in subsection (2) the scheme shall provide for the weekly equivalent mentioned in section 10(2) to be increased by at least—

(a) 5 per cent. compound for each relevant year after the last service tax year; or

(b) the amount by which an earnings factor for that year equal to that weekly equivalent would be increased by the last order under Article 23 of the <sup>M8</sup>Social Security Pensions (Northern Ireland) Order 1975 or section 130 of the <sup>M9</sup>Social Security Administration (Northern Ireland) Act 1992 to come into operation before the end of the final relevant year,

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whichever makes the lesser increase; and the provisions included by virtue of this subsection may also conform with such additional requirements as may be prescribed for the purposes of section 51(5).

(4) Except in such cases or classes of case as may be prescribed, the provision made by virtue of subsections (2) and (3) must be the same for all members of the scheme.

(5) In this section—

“relevant year” has the meaning given in section 10(8), and

“final relevant year” means the last tax year which is a relevant year in relation to the earner.

#### Modifications etc. (not altering text)

**C6** S. 12(1)(5) applied (1.11.1995) by S.R. 1995/389, arts. 4(1)(3)

#### Marginal Citations

**M6** S.I. 1975/1503 (N.I. 15).

**M7** 1992 c. 8.

**M8** S.I. 1975/1503 (N.I. 15).

**M9** 1992 c. 8.

### 13 Minimum pensions for widows and widowers.

(1) Subject to the provisions of this Part, the scheme must provide that if the earner dies leaving a widow or widower (whether before or after attaining pensionable age), the widow or widower will be entitled to a guaranteed minimum pension under the scheme.

(2) The scheme must contain a rule to the effect that—

- (a) if the earner is a man who has a guaranteed minimum under section 10, the weekly rate of the widow's pension will be not less than the widow's guaranteed minimum;
- (b) if the earner is a woman who has a guaranteed minimum under that section, the weekly rate of the widower's pension will be not less than the widower's guaranteed minimum.

(3) The widow's guaranteed minimum shall be half that of the earner.

(4) The widower's guaranteed minimum shall be one-half of that part of the earner's guaranteed minimum which is attributable to earnings factors for the tax year 1988-89 and subsequent tax years.

(5) The scheme must provide for the widow's pension to be payable to her for any period for which a Category B retirement pension, widowed mother's allowance or widow's pension is payable to her by virtue of the earner's contributions or for which a Category B retirement pension would be so payable but for section 43(1) of the <sup>M10</sup>Social Security Contributions and Benefits (Northern Ireland) Act 1992 (persons entitled to more than one retirement pension).

(6) The scheme must provide for the widower's pension to be payable to him in the prescribed circumstances and for the prescribed period.

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- (7) The trustees or managers of the scheme shall supply to the Department any such information as it may require relating to the payment of pensions under the scheme to widowers.

**Modifications etc. (not altering text)**

C7 S. 13(2)(3)(4) applied (1.11.1995) by S.R. 1995/389, art. 5(1)

**Marginal Citations**

M10 1992 c. 7.

#### 14 Treatment of insignificant amounts.

- (1) Where an amount is required to be calculated in accordance with the provisions of section 10(7), 11(1) or 13(2), (3) or (4) and, apart from this subsection, the amount so calculated is less than 0.5p, then, notwithstanding any other provision of this Act, that amount shall be taken to be zero, and other amounts so calculated shall be rounded to the nearest whole penny, taking 0.5p as nearest to the next whole penny above.
- (2) Where a guaranteed minimum pension is attributable in part to earnings factors for the period before the tax year 1988-89 and in part to earnings factors for that tax year or for that tax year and subsequent tax years, the pension shall be calculated by—
- (a) applying subsection (1) separately to the amount attributable to the period before the tax year 1988-89 and to the amount attributable to that and subsequent tax years, and
  - (b) aggregating the two amounts so calculated.

**Modifications etc. (not altering text)**

C8 S. 14 applied (1.11.1995) by S.R. 1995/389, art. 4(1)

#### 15 Discharge of liability where guaranteed minimum pensions secured by insurance policies or annuity contracts.

- (1) A transaction to which this section applies discharges the trustees or managers of an occupational pension scheme from their liability to provide for or in respect of any person guaranteed minimum pensions—
- (a) if it is carried out not earlier than the time when that person's pensionable service terminates; and
  - (b) if and to the extent that it results in guaranteed minimum pensions for or in respect of that person being appropriately secured; and
  - (c) if and to the extent that the requirements set out in paragraph (a), (b) or (c) of subsection (5) are satisfied.
- (2) This section applies to the following transactions—
- (a) the taking out of a policy of insurance or a number of such policies;
  - (b) the entry into an annuity contract or a number of such contracts;
  - (c) the transfer of the benefit of such a policy or policies or such a contract or contracts.



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- (3) In this section “appropriately secured” means secured by an appropriate policy of insurance or an appropriate annuity contract, or by more than one such policy or contract.
- (4) A policy of insurance or annuity contract is appropriate for the purposes of this section if—
- (a) the insurance company with which it is or was taken out or entered into—
    - (i) is, or was at the relevant time, carrying on ordinary long-term insurance business in the United Kingdom or any other member State; and
    - (ii) satisfies, or at the relevant time satisfied, prescribed requirements; and
  - (b) it may not be assigned or surrendered except on conditions which satisfy such requirements as may be prescribed; and
  - (c) it contains or is endorsed with terms whose effect is that the amount secured by it may not be commuted except on conditions which satisfy such requirements as may be prescribed; and
  - (d) it satisfies such other requirements as may be prescribed.
- (5) The requirements referred to in subsection (1) are—
- (a) that the arrangement for securing the amount by means of the policy or contract was made—
    - (i) at the written request of the earner or, if the earner has died, of the earner’s widow or widower; or
    - (ii) with the consent of the earner or the widow or widower given in writing in a prescribed form;
  - (b) that—
    - (i) the case is one such as is mentioned in section 92(2); and
    - (ii) the policy or contract only secures guaranteed minimum pensions;
  - (c) that—
    - (i) the case is not one such as is mentioned in section 92(2); and
    - (ii) such conditions as may be prescribed are satisfied.
- (6) In subsection (4)(a), “the relevant time” means the time when the policy of insurance was taken out or the annuity contract was entered into or, as the case may be, when the benefit of the policy or contract was transferred.
- (7) In this section “ordinary long-term insurance business” has the same meaning as in the <sup>M11</sup>Insurance Companies Act 1982.

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**Marginal Citations**

M11 1982 c. 50.

## 16 Transfer of accrued rights.

- (1) Regulations may prescribe circumstances in which and conditions subject to which—
- (a) a transfer of or a transfer payment in respect of—
    - (i) an earner’s accrued rights to guaranteed minimum pensions under a contracted-out scheme;

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- (ii) an earner’s accrued rights to pensions under an occupational pension scheme which is not contracted-out, to the extent that those rights derive from his accrued rights to guaranteed minimum pensions under a contracted-out scheme; or
  - (iii) the liability for the payment of guaranteed minimum pensions to or in respect of any person who has become entitled to them,
- may be made by an occupational pension scheme to another such scheme or to a personal pension scheme;
- (b) a transfer of or a transfer payment in respect of an earner’s accrued rights to guaranteed minimum pensions which are appropriately secured for the purposes of section 15 may be made to an occupational pension scheme or a personal pension scheme.
- (2) Any such regulations may be made so as to apply to earners who are not in employment at the time of the transfer.
  - (3) Regulations under subsection (1) may provide that any provision of this Part (other than sections 14, 15 and 39 to 41, and sections 22 to 29 so far as they apply to personal pension schemes) or of Chapter III of Part IV or Chapter II of Part V shall have effect, where there has been a transfer to which they apply, subject to such modifications as may be specified in the regulations.
  - (4) Regulations under subsection (1) shall have effect in relation to transfers whenever made unless they provide that they are only to have effect in relation to transfers which take place after they come into operation.
  - (5) The power conferred by subsection (1) is without prejudice to the generality of section 177(2) or section 17(5) of the <sup>M12</sup>Interpretation Act (Northern Ireland) 1954.
  - (6) In the provisions mentioned in subsection (3) “accrued rights”, in relation to an earner, means the rights conferring prospective entitlement under the scheme in question to the pensions to be provided for the earner and the earner’s widow or widower in accordance with sections 9 and 13, and references to an earner’s accrued rights to guaranteed minimum pensions shall be construed accordingly.

#### **Marginal Citations**

**M12** 1954 c. 33 (N.I.).

### **17 Commutation, surrender and forfeiture.**

- (1) Where the annual rate of a pension required to be provided by a scheme in accordance with section 9 or 13 would not exceed the prescribed amount and the circumstances are such as may be prescribed, the scheme may provide for the payment of a lump sum instead of that pension.
- (2) Neither section 9 nor section 13 shall preclude a scheme from providing for the earner’s or the earner’s widow’s or widower’s guaranteed minimum pension to be suspended or forfeited in such circumstances as may be prescribed.

### **18 Financing of benefits.**

The resources of the scheme must be derived in whole or in part from—

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- (a) payments made or to be made by one or more employers of earners to whom the scheme applies, being payments either—
  - (i) under an actual or contingent legal obligation; or
  - (ii) in the exercise of a power conferred, or the discharge of a duty imposed, on a Minister of the Crown, government department or any other person, being a power or duty which extends to the disbursement or allocation of public money; or
- (b) such other payments by the earner or his employer, or both, as may be prescribed for different categories of scheme.

## 19 Securing of benefits.

- (1) The Board must be satisfied that the scheme complies with—
  - (a) regulations prescribing the means by which guaranteed minimum pensions under contracted-out schemes are to be secured (whether irrevocable trust, policy of insurance, annuity contract or other means); and
  - (b) the conditions which are required by the regulations to be satisfied in relation to any means adopted;
 and generally as to the arrangements in force or to be in force from time to time for securing those pensions.
- (2) Subject to subsection (3), the scheme must contain a rule by which any liabilities of the scheme in respect of—
  - (a) guaranteed minimum pensions and accrued rights to guaranteed minimum pensions;
  - (b) any such benefits as are excluded by section 9(6) from earners' guaranteed minimum pensions;
  - (c) pensions and other benefits (whether or not within paragraph (a) or (b)) in respect of which entitlement to payment has already arisen; and
  - (d) state scheme premiums,
 are accorded priority on a winding up over other liabilities under the scheme in respect of benefits attributable to any period of service after the rule has taken effect.
- (3) The rule may also accord priority, on a winding up occurring after an earner has attained normal pension age, to liabilities of the scheme in respect of pensions and other benefits to which—
  - (a) he will be entitled on ceasing to be in employment, or
  - (b) the earner's widow or widower or any dependant of the earner's will be entitled on the earner's death.
- (4) Subsections (1) to (3) do not apply to public service pension schemes.
- (5) The duties imposed on the Board by subsection (1) shall cease to subsist in relation to guaranteed minimum pensions for a member and the member's widow or widower where a scheme has ceased by virtue of section 15 to be liable to provide those pensions.
- (6) Subsections (2) and (3) do not apply to schemes falling within any category or description prescribed as being exempt from the requirements of those subsections.
- (7) If the scheme provides for the payment out of any sum representing the surrender value of a policy of insurance taken out for the purposes of the scheme, it must make

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provision so that there may be no payment out in relation to guaranteed minimum pensions except in such circumstances as may be prescribed.

## 20 Sufficiency of resources.

- (1) The Board must be satisfied that the resources of the scheme are sufficient—
  - (a) for meeting from time to time all claims in respect of guaranteed minimum pensions so far as falling to be met out of those resources, having regard to the expected extent of the scheme’s resources and its other liabilities at any time when claims may be expected to arise; and
  - (b) for paying state scheme premiums in respect of all persons at any time entitled to, or having accrued rights to, guaranteed minimum pensions under the scheme; and
  - (c) for meeting in full in the event of an immediate winding up—
    - (i) the liabilities accorded priority in accordance with section 19(2) and (3), and
    - (ii) the expenses of administration so far as those expenses are payable out of the resources of the scheme.
- (2) Subsection (1) does not apply to public service schemes and the duties imposed on the Board by that subsection shall cease to subsist in relation to guaranteed minimum pensions for a member and the member’s widow or widower where a scheme has ceased by virtue of section 15 to be liable to provide those pensions.
- (3) Regulations may provide for subsection (1) to have effect in prescribed cases—
  - (a) with the omission of paragraphs (b) and (c), or
  - (b) with the omission of either of those paragraphs, or
  - (c) with the substitution for both or either of those paragraphs of provisions specified in the regulations.
- (4) In considering a scheme by reference to the considerations of subsection (1), the Board shall have regard to any investments held for the purposes of the scheme.

### *Discretionary requirements*

## 21 Power for Board to impose conditions as to investments and resources.

- (1) The Board may by reference to the considerations of section 20(1) make it a condition of the contracting-out or continued contracting-out of a scheme to which that section applies that—
  - (a) no part, or no more than a specified proportion, of the scheme’s resources shall be invested in investments of a specified class or description; or
  - (b) the whole or a specified proportion of investments of a specified class or description forming part of the scheme’s resources when the condition is imposed shall be realised before the end of a specified period.
- (2) Where contracting-out or continued contracting-out depends on the Board’s being satisfied as mentioned in section 20(1), the scheme may be contracted-out or continue to be contracted-out, as the case may be, in relation to any employment subject to such conditions as the Board think fit to impose for securing—

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- (a) that they are kept informed about any matters affecting the security of the minimum pensions guaranteed under the scheme;
  - (b) that the resources of the scheme are brought to and maintained at a level satisfactory to the Board.
- (3) Conditions imposed by the Board for the purpose mentioned in subsection (2)(b) may require steps to be taken, at the instance of the Board, to increase the scheme's resources at any time after contracting-out, including a time when the scheme has ceased to be contracted-out.

#### *Requirements for certification of occupational and personal money purchase schemes*

### **22 Persons who may establish scheme.**

The Department may prescribe descriptions of persons by whom or bodies by which the scheme may be established and, if the Department does so, the scheme may only be established by a person or body of a prescribed description.

### **23 Identification and valuation of protected rights.**

- (1) Where the rules of the scheme make such provision as is mentioned in section 6(2) or (3), they must also make provision for the identification of the protected rights.
- (2) The value of such protected rights as are mentioned in section 6(2) or (3) must be calculated in a manner no less favourable than that in which the value of any other rights of the member to money purchase benefits under the scheme are calculated.
- (3) Subject to subsection (2), the value of protected rights must be calculated and verified in such manner as may be prescribed.

### **24 Ways of giving effect to protected rights.**

- (1) The rules of the scheme must provide for effect to be given to the protected rights of a member—
  - (a) in any case where subsection (3) so requires, by the purchase of such an annuity as is mentioned in that subsection, and
  - (b) in any other case, in such of the ways permitted by the following subsections as the rules may specify,

and they must not provide for any part of a member's protected rights to be discharged otherwise than in accordance with those subsections.
- (2) Effect may be given to protected rights—
  - (a) by the provision by the scheme of a pension which—
    - (i) complies with the pension requirements (within the meaning of section 25(1)), and
    - (ii) satisfies such conditions as may be prescribed; or
  - (b) in such circumstances and subject to such conditions as may be prescribed, by the making of a transfer payment—
    - (i) in the case of an occupational pension scheme, to another occupational pension scheme or to a personal pension scheme, and

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- (ii) in the case of a personal pension scheme, to another personal pension scheme or to an occupational pension scheme,  
where the scheme to which the payment is made satisfies such requirements as may be prescribed.
- (3) Subject to subsections (5) and (7), if—
- (a) the rules of the scheme do not provide for a pension; or
  - (b) the member so elects,
- then, except to the extent that effect is given to protected rights in accordance with subsection (4), effect shall be given to them by the purchase by the scheme of an annuity which—
- (i) complies with the annuity requirements (within the meaning of section 25(3)), and
  - (ii) satisfies such conditions as may be prescribed.
- (4) Effect may be given to protected rights by the provision of a lump sum if—
- (a) the lump sum is payable on a date which is—
    - (i) in the case of an occupational pension scheme, a date not earlier than that on which the member attains the age of 60 nor later than that on which he attains the age of 65, or
    - (ii) in the case of a personal pension scheme, the date on which the member attains pensionable age, or
    - (iii) in either case, such later date as has been agreed by him;
  - (b) the annual rate of a pension under subsection (2) or an annuity under subsection (3) giving effect to the protected rights and commencing on the date on which the lump sum is payable would not exceed the prescribed amount;
  - (c) the circumstances are such as may be prescribed; and
  - (d) the amount of the lump sum is calculated in a manner satisfactory to the Board by reference to the amount of the pension or annuity.
- (5) If the member has died without effect being given to protected rights under subsection (2), (3) or (4), effect may be given to them in such manner as may be prescribed.
- (6) No transaction is to be taken to give effect to protected rights unless it falls within this section.
- (7) Effect need not be given to protected rights if they have been extinguished—
- (a) in the case of an occupational pension scheme, by the payment of a contracted-out protected rights premium under section 51; or
  - (b) in the case of a personal pension scheme, by the payment of a personal pension protected rights premium under that section.

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VALID FROM 14/03/1996

#### **[<sup>F7</sup>24A Requirements for interim arrangements.**

- (1) An interim arrangement must provide for payments to be made to the member, and, where subsection (2) applies, to the member's widow or widower, throughout the interim period, at intervals not exceeding twelve months.
- (2) This subsection applies where the member dies during the interim period and is survived by a widow or widower who at the date of the member's death has not yet attained the age of 75 years.
- (3) The aggregate amount of payments made to a person under an interim arrangement in each successive period of twelve months must not be—
  - (a) greater than the annual amount of the annuity which would have been purchasable by him on the relevant reference date, or
  - (b) less than the prescribed percentage of that amount
- (4) The percentage prescribed under subsection (3)(b) may be zero.
- (5) For the purposes of this section—
  - (a) the annual amount of the annuity which would have been purchasable by a person on any date shall be calculated in the prescribed manner by reference to—
    - (i) the value on that date, determined by or on behalf of the trustees or managers of the scheme, of the person's protected rights, and
    - (ii) the current published tables of rates of annuities prepared by the Government Actuary for the purposes of section 28A of the Pension Schemes Act 1993, and
  - (b) the relevant reference date is—
    - (i) in relation to payments made to the member during the three years beginning with (and including) the member's starting date, that date, and in relation to such payments made during each succeeding period of three years, the first day of the period of three years in question, or
    - (ii) where subsection (2) applies, in relation to payments made to the member's widow or widower during the three years beginning with (and including) the date of the member's death, that date, and in relation to such payments made during each succeeding period of three years, the first day of the period of three years in question.]

#### **Textual Amendments**

**F7** Ss. 24A, 24B inserted (14.3.1996 for certain purposes otherwise 6.4.1996) by [S.I. 1995/3213 \(N.I. 22\)](#), [art. 140](#); [S.R. 1996/91](#), art. (b), Sch. Pt. II

#### **Modifications etc. (not altering text)**

**C9** S. 24A(1)(3)(4)(5) modified (1.12.2000) by [S.R. 2000/147](#), [reg. 6\(2\)\(a\)](#)

**Status:** Point in time view as at 13/04/1995. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** *Pension Schemes (Northern Ireland) Act 1993 is up to date with all changes known to be in force on or before 27 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

VALID FROM 14/03/1996

**[<sup>F8</sup>24B Information about interim arrangements.**

- (1) The trustees or managers of a personal pension scheme must, if required to do so by the Department, produce any document relevant to—
  - (a) the level of payments made under any interim arrangement, or
  - (b) the value of protected rights to which such an arrangement gives effect, or otherwise connected with the making of payments under such an arrangement.
- (2) In this section, “document” includes information recorded in any form, and the reference to the production of a document, in relation to information recorded otherwise than in legible form, is a reference to producing a copy of the information in legible form.]

**Textual Amendments**

- F8** Ss. 24A, 24B inserted (14.3.1996 for certain purposes otherwise 6.4.1996) by S.I. 1995/3213 (N.I. 22), art. 140; S.R. 1996/91, art. 2(b), Sch. Pt. II

**25 The pension and annuity requirements.**

- (1) For the purposes of section 24 a pension complies with the pension requirements if—
  - (a) it commences—
    - (i) in the case of an occupational pension scheme, on a date not earlier than that on which the member attains the age of 60 nor later than that on which he attains the age of 65, or
    - (ii) in the case of a personal pension scheme, on the date on which the member attains pensionable age, or
    - (iii) in either case, on such later date as has been agreed by him, and continues until the date of his death; and
  - (b) in a case where the member dies while it is payable to him and is survived by a widow or widower—
    - (i) it is payable to the widow or widower in prescribed circumstances and for the prescribed period at an annual rate which at any given time is one-half of the rate at which it would have been payable to the member if the member had been living at that time; or
    - (ii) where that annual rate would not exceed a prescribed amount and the circumstances are such as may be prescribed, a lump sum calculated in a manner satisfactory to the Board is provided in lieu of it.
- (2) As respects the period of 5 years beginning with the commencement of the pension referred to in subsection (1), that subsection shall have effect in relation to that pension as if the words “at least” were inserted immediately before the words “one-half” in paragraph (b)(i).
- (3) For the purposes of section 24 an annuity complies with the annuity requirements if—
  - (a) it satisfies the requirements mentioned in subsections (1) and (2) (taking the references in those subsections to pensions as references to annuities); and



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- (b) it is provided by an insurance company which—
  - (i) satisfies prescribed conditions;
  - (ii) complies with such conditions as may be prescribed as to the calculation of annuities provided by it and as to the description of persons by or for whom they may be purchased; and
  - (iii) subject to subsection (4), has been chosen by the member.
- (4) A member is only to be taken to have chosen an insurance company if he gives notice of his choice to the trustees or managers of the scheme within the prescribed period and in such manner and form as may be prescribed, and with any such supporting evidence as may be prescribed; and, if he does not do so, the trustees or managers may themselves choose the insurance company instead.

## 26 Securing of liability for protected rights.

- (1) The Board must be satisfied that the scheme complies with any such requirements as may be prescribed for meeting the whole or a prescribed part of any liability in respect of protected rights under the scheme which the scheme is unable to meet from its own resources—
  - (a) by reason of the commission by any person of a criminal offence;
  - (b) in such other circumstances as may be prescribed.
- (2) Subsection (1) does not apply to a public service pension scheme.

## 27 Investment and resources of schemes.

- (1) The scheme must comply with such requirements as may be prescribed as regards the investment of its resources and with any direction of the Board—
  - (a) that no part, or no more than a specified proportion, of the scheme's resources shall be invested in investments of a specified class or description;
  - (b) that the whole or a specified proportion of investments of a specified class or description forming part of the scheme's resources when the direction is given shall be realised before the end of a specified period.
- (2) The scheme must comply with such requirements as may be prescribed as regards the part—
  - (a) of any payment that is made to the scheme by or on behalf of a member of the scheme;
  - (b) of any income or capital gain arising from the investment of such a payment; or
  - (c) of the value of rights under the scheme,
 that may be used—
  - (i) to defray the administrative expenses of the scheme;
  - (ii) to pay commission; or
  - (iii) in any other way which does not result in the provision of benefits for or in respect of members.
- (3) Subject to subsection (4)—
  - (a) in the case of an occupational pension scheme, all minimum payments and any payments made by the Department under Article 9 of the <sup>M13</sup>Social Security (Northern Ireland) Order 1986, and

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- (b) in the case of a personal pension scheme, all minimum contributions, which are paid to a scheme in respect of one of its members must be applied so as to provide money purchase benefits for or in respect of that member, except so far as they are used—
- (i) to defray the administrative expenses of the scheme; or
- (ii) to pay commission.
- (4) If regulations are made under subsection (2), the payments mentioned in paragraph (a) of subsection (3) and the contributions mentioned in paragraph (b) of that subsection may be used in any way which the regulations permit, but not in any way not so permitted except to provide money purchase benefits for or in respect of the member.

#### Marginal Citations

M13 S.I. 1986/1888 (N.I. 18).

## 28 Suspension or forfeiture.

Except in such circumstances as may be prescribed, the rules of the scheme must not permit the suspension or forfeiture of a member's protected rights or of payments giving effect to them.

VALID FROM 14/03/1996

### [<sup>F9</sup>28A Discharge of protected rights on winding up: insurance policies.

- (1) Where an occupational pension scheme is being wound up and such conditions as may be prescribed are satisfied, effect may be given to the protected rights of a member of the scheme (in spite of section 24) by—
- (a) taking out an appropriate policy of insurance, or a number of such policies, under which the member is the beneficiary, or
- (b) assuring the benefits of a policy of insurance, or a number of such policies, to the member, where the policy assured is an appropriate policy.
- (2) A policy of insurance is appropriate for the purposes of this section if—
- (a) the insurance company with which it is or was taken out or entered into—
- (i) is, or was at the time when the policy was taken out or (as the case may be) the benefit of it was assured, carrying on ordinary long-term insurance business (within the meaning of the Insurance Companies Act 1982) in the United Kingdom or any other member State, and
- (ii) satisfies, or at that time satisfied, prescribed requirements, and
- (b) it may not be assigned or surrendered except on conditions which satisfy such requirements as may be prescribed,
- (c) it contains or is endorsed with terms whose effect is that the amount secured by it may not be commuted except on conditions which satisfy such requirements as may be prescribed, and
- (d) it satisfies such other requirements as may be prescribed.]

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#### Textual Amendments

- F9** S. 28A inserted (14.3.1996 for certain purposes otherwise 6.4.1996) by [S.I. 1995/3213 \(N.I. 22\)](#) art. 143(1); [S.R. 1996/91](#), art. 2(b)(i)(ii), [Sch. Pt. II](#)

### 29 Tax requirements to prevail over certification requirements.

Nothing in sections 22 to 28 shall be taken to prejudice any requirements with which a scheme must comply if it is to qualify for tax-exemption or tax-approval.

VALID FROM 06/04/1997

#### [<sup>F10</sup>29A Appropriate schemes: “Blowing the whistle”.

- (1) If any person acting as an auditor or actuary of an appropriate scheme has reasonable cause to believe that—
- any requirement which, in the case of the scheme, is required by section 5(5) (a) to be satisfied is not satisfied, and
  - the failure to satisfy the requirement is likely to be of material significance in the exercise by the Department of any of its functions relating to appropriate schemes,
- that person must immediately give a written report of the matter to the Department.
- (2) No duty to which a person acting as auditor or actuary of an appropriate scheme is subject shall be regarded as contravened merely because of any information or opinion contained in a written report under this section.]

#### Textual Amendments

- F10** S. 29A inserted (6.4.1997) by [S.I. 1995/3213 \(N.I. 22\)](#), art. 144; [S.R. 1997/192](#), art. 2(b)

#### *Cancellation, variation, surrender and refusal of certificates*

### 30 Cancellation, variation, surrender and refusal of certificates.

- (1) Regulations shall provide for the cancellation, variation or surrender of any contracting-out certificate or appropriate scheme certificate, or the issue of an amended certificate—
- in the case of a contracting-out certificate, on any change of circumstances affecting the treatment of an employment as contracted-out employment; and
  - in the case of an appropriate scheme certificate, on any relevant change of circumstances.
- (2) Regulations may enable the Board to cancel or vary a contracting-out certificate where—
- they have reason to suppose that any employment to which it relates ought not to be treated as contracted-out employment in accordance with the certificate; and

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- (b) the employer does not show that it ought to be so treated.
- (3) Where—
- (a) by or by virtue of any provision of this Part the contracting-out of a scheme in relation to an employment depends on the satisfaction of a particular condition, or
  - (b) by or by virtue of any provision of sections 22 to 28 a scheme’s being an appropriate scheme depends on the satisfaction of a particular condition,
- the continued contracting-out of the scheme or, as the case may be, the scheme’s continuing to be an appropriate scheme shall be dependent on continued satisfaction of the condition; and if the condition ceases to be satisfied, that shall be a ground (without prejudice to any other) for the cancellation or variation of the contracting-out or appropriate scheme certificate.
- (4) A contracting-out certificate in respect of any employment may be withheld or cancelled by the Board if they consider that there are circumstances which make it inexpedient that the employment should be or, as the case may be, continue to be, contracted-out employment by reference to the scheme, notwithstanding that the relevant scheme is one that they would otherwise treat as proper to be contracted-out in relation to all earners in that employment.
- (5) An appropriate scheme certificate may be withheld or cancelled by the Board if they consider that there are circumstances which make it inexpedient that the scheme should be or continue to be an appropriate scheme, notwithstanding that they would otherwise issue such a certificate or not cancel such a certificate.
- (6) Without prejudice to their powers apart from this subsection, the Board may withhold or cancel a contracting-out certificate in respect of a scheme if they consider that the rules of the scheme are such that persons over particular ages may be prevented from participating in the scheme.
- (7) Without prejudice to the previous provisions of this section—
- (a) non-compliance with any such condition as is mentioned in subsection (1) of section 21 shall be a ground on which the Board may withhold or cancel a contracting-out certificate in respect of any employment within the application of the scheme; and
  - (b) non-compliance with any such condition as is mentioned in subsection (2) of that section shall be a ground on which the Board may cancel a contracting-out certificate issued in respect of any such employment.
- (8) Except in prescribed circumstances, no cancellation, variation or surrender of a contracting-out certificate or appropriate scheme certificate shall have effect from a date earlier than that on which the cancellation, variation or surrender is made.

### **31 Surrender and cancellation of contracting-out certificates: issue of further certificates.**

- (1) This section applies in any case where—
- (a) a contracting-out certificate (“the first certificate”) has been surrendered by an employer or cancelled by the Board; and
  - (b) at any time before the end of the period of 12 months beginning with the date of the surrender or cancellation, that or any connected employer makes an election under section 7 in respect of any employment which was specified

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by virtue of section 3(2)(a) in the first certificate, with a view to the issue of a further contracting-out certificate.

- (2) This section applies whether or not the scheme specified in the first certificate in relation to the employment concerned is the same as the scheme which would be specified in the further certificate if it were issued.
- (3) The Board shall not give effect to the election referred to in subsection (1) by issuing a further certificate unless they consider that, in all the circumstances of the case, it would be reasonable to do so.
- (4) Regulations may make such supplemental provision in relation to cases falling within this section as the Department considers necessary or expedient.
- (5) For the purposes of subsection (1)—
  - (a) an employment (“the second employment”) in respect of which an election of the kind referred to in subsection (1)(b) has been made; and
  - (b) an employment (“the first employment”) which was specified by virtue of section 3(2)(a) in the first certificate,
 shall be treated as one employment if, in the opinion of the Board—
  - (i) they are substantially the same, however described; or
  - (ii) the first employment falls wholly or partly within the description of the second employment or the second employment falls wholly or partly within the description of the first employment.
- (6) Regulations shall prescribe the cases in which employers are to be treated as connected for the purposes of this section.

### **32 Surrender and cancellation of contracting-out certificates: cancellation of further certificates.**

- (1) This section applies in any case where—
  - (a) a contracting-out certificate (“the first certificate”) has been surrendered by an employer or cancelled by the Board;
  - (b) a further contracting-out certificate (“the further certificate”) has been issued, after the surrender or cancellation of the first certificate but before the end of the period of 12 months beginning with the date of the surrender or cancellation, in respect of any employment which was specified by virtue of section 3(2)(a) in the first certificate; and
  - (c) the Board have formed the opinion that had they been aware of all the circumstances of the case at the time when the further certificate was issued they would have been prevented by section 31(3) from issuing it.
- (2) This section applies whether or not the scheme specified in the first certificate in relation to the employment concerned is the same as the scheme specified in the further certificate.
- (3) The Board may, before the end of the period of 12 months beginning with the date on which the further certificate was issued, cancel that certificate.
- (4) Where a contracting-out certificate is cancelled under subsection (3) the provisions of this Act and of any regulations and orders made under it shall have effect as if the certificate had never been issued.

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- (5) Regulations may make such supplemental provision in relation to cases falling within this section as the Department considers necessary or expedient.
- (6) Without prejudice to subsection (5), regulations may make provision, in relation to any case in which the Board have cancelled a contracting-out certificate under subsection (3), preventing the recovery by the employer concerned (whether by deduction from emoluments or otherwise) of such arrears which he is required to pay to the Department in respect of an earner’s liability under section 6(3) of the <sup>M14</sup>Social Security Contributions and Benefits (Northern Ireland) Act 1992 as may be prescribed.
- (7) For the purposes of subsection (1)—
- (a) an employment (“the second employment”) in respect of which a further contracting-out certificate of the kind referred to in subsection (1)(b) has been issued; and
  - (b) an employment (“the first employment”) which was specified by virtue of section 3(2)(a) in the first certificate,
- shall be treated as one employment if, in the opinion of the Board—
- (i) they are substantially the same, however described; or
  - (ii) the first employment falls wholly or partly within the description of the second employment or the second employment falls wholly or partly within the description of the first employment.

#### Marginal Citations

M14 1992 c. 7.

### *Alteration of scheme rules after certification*

#### **33 Alteration of rules of contracted-out schemes.**

- (1) Subject to subsection (2), where a contracting-out certificate has been issued, no alteration of the rules of the relevant scheme shall be made so as to affect any of the matters dealt with in this Part (other than sections 14, 15 and 39 to 41, and sections 22 to 29 so far as they apply to personal pension schemes) or Chapter III of Part IV or Chapter II of Part V without the consent of the Board.
- (2) Subsection (1) does not apply—
- (a) to an alteration consequential on a provision of the <sup>M15</sup>Health and Social Security (Northern <sup>M16</sup>Ireland) Order 1984, the Social Security (Northern Ireland) Order 1985 or the <sup>M17</sup>Social Security (Northern Ireland) Order 1986 (or any provision of this Act derived from any such provision); or
  - (b) to an alteration of a prescribed description.
- (3) Subject to subsection (4), any alteration to which subsection (1) applies shall be void if it is made without the consent of the Board.
- (4) A consent given by the Board for the purposes of this section shall, if and to the extent that the Board so direct, operate so as to validate with retrospective effect any alteration of the rules which would otherwise be void under this section.

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- (5) This section shall continue in force in relation to a scheme after it has ceased to be contracted-out so long as—
- (a) any person is entitled to receive, or has accrued rights to, a guaranteed minimum pension under the scheme, or
  - (b) any person has protected rights under it or is entitled to any benefit giving effect to protected rights under it.
- (6) The reference in subsection (5) to a person entitled to receive a guaranteed minimum pension includes a reference to a person so entitled by virtue of being the widower of an earner only in such cases as may be prescribed.

**Modifications etc. (not altering text)**

**C10** S. 33(2) modified (20.7.1998) by S.R. 1998/227, reg. 2

**Marginal Citations**

**M15** S.I. 1984/1158 (N.I. 8).

**M16** S.I. 1985/1209 (N.I. 16).

**M17** S.I. 1986/1888 (N.I. 18).

**34 Alteration of rules of appropriate schemes.**

- (1) Where an appropriate scheme certificate has been issued, no alteration of the rules of the relevant scheme shall be made so as—
- (a) to affect any of the matters dealt with in sections 22 to 29; or
  - (b) to cause the scheme to take a different permitted form from that previously taken,
- unless—
- (i) the Board have given their consent to the alteration; and
  - (ii) notice of intention to apply for their consent was given in accordance with the requirements mentioned in subsection (7) or was so given except in so far as the Board dispenses with the necessity for such a notice.
- (2) Subsection (1) does not apply to an alteration of a prescribed description.
- (3) Subject to subsection (4), any alteration to which subsection (1) applies shall be void if it is made without the conditions mentioned in subsection (1) being satisfied.
- (4) A consent given by the Board for the purposes of this section shall, if and to the extent that the Board so direct, operate so as to validate with retrospective effect any alteration of the rules which would otherwise be void under this section.
- (5) This section shall continue in force in relation to a scheme after it has ceased to be an appropriate scheme so long as any person has protected rights under the scheme.
- (6) The reference in subsection (1)(b) to a permitted form is to one of the following forms, namely—
- (a) an arrangement for the issue of insurance policies or annuity contracts;
  - (b) a unit trust scheme of a kind mentioned in Part I of Schedule 1 to the <sup>M18</sup>Personal Pension Schemes (Appropriate Schemes) Regulations (Northern

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- Ireland) 1988 which has been authorised under section 78(1) of or by virtue of paragraph 9 of Schedule 15 to the <sup>M19</sup>Financial Services Act 1986;
- (c) an arrangement for the investment of contributions in an interest-bearing account (including shares in or deposits with a building society (within the meaning of the <sup>M20</sup>Building Societies Act 1986)).
- (7) The requirements referred to in subsection (1)(ii) are—
- (a) that the notice is given in writing—
- (i) to any member of the scheme who has protected rights under it; and
- (ii) to any earner who has given a notice under section 40(1) jointly with the managers or trustees of the scheme, being a notice which has not been cancelled,
- by sending it to his last known address; and
- (b) that the notice specifies—
- (i) the name of the scheme,
- (ii) the nature of the proposed alteration and its effect on the persons to whom the notice is given, and
- (iii) the date on which it is proposed that the alteration should take effect (which must not be less than 3 months after that on which the notice is given).

#### **Marginal Citations**

**M18** S.R. (N.I.) 1988 No. 34.

**M19** 1986 c. 60.

**M20** 1986 c. 53.

### *General regulations as to administration of Part III*

#### **35 General power to make regulations.**

Schedule 1 shall have effect for enabling regulations to be made in relation to the operation and administration of this Part, and Part I of that Schedule has effect as respects occupational pension schemes, and Part II of that Schedule as respects personal pension schemes.

## **CHAPTER II**

### REDUCTION IN STATE SCHEME CONTRIBUTIONS AND SOCIAL SECURITY BENEFITS FOR MEMBERS OF CERTIFIED SCHEMES

#### *Preliminary*

#### **36 Scope of Chapter II.**

This Chapter has effect for the purpose—



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- (a) of reducing the rates at which certain national insurance contributions are payable by or in respect of earners whose employment is contracted-out by reference to contracted-out occupational pension schemes;
- (b) of providing for contributions to be paid by the Department in respect of earners who are members of appropriate personal pension schemes; and
- (c) of making provision concerning the payment of certain social security benefits payable in respect of members and former members of such schemes.

### *Reduced rates of state scheme Class 1 contributions*

## **37 Reduced rates of Class 1 contributions for earners in contracted-out employment.**

- (1) Where the earnings paid to or for the benefit of an earner in any tax week are in respect of an employment which is contracted-out employment at the time of the payment, the amount of a Class 1 contribution in respect of so much of the earnings paid in that week as exceeds the current lower earnings limit but not the current upper earnings limit for that week (or the prescribed equivalents if he is paid otherwise than weekly) shall be reduced—
  - (a) in the case of a primary Class 1 contribution, by an amount equal to 1.8 per cent. of that part of those earnings; and
  - (b) in the case of a secondary Class 1 contribution, by an amount equal to 3 per cent. of that part of those earnings.
- (2) Where—
  - (a) an earner has ceased to be employed in an employment; and
  - (b) earnings are paid to him or for his benefit within the period of 6 weeks, or such other period as may be prescribed, from the day on which he so ceased,
 that employment shall be treated for the purposes of subsection (1) as contracted-out employment at the time when the earnings are paid if it was contracted-out employment in relation to the earner when he was last employed in it.
- (3) This section shall not affect the amount of any primary Class 1 contribution which is payable at a reduced rate by virtue of regulations under section 19(4) of the <sup>M21</sup>Social Security Contributions and Benefits (Northern Ireland) Act 1992 (reduced rates for married women and widows).

### **Marginal Citations**

**M21** 1992 c. 7.

## **38 Alteration of rates of contributions under s. 37.**

- (1) Whenever the Secretary of State makes an order under section 42 of the <sup>M22</sup>Pension Schemes Act 1993 altering, with effect from any date, either or both of the contracted-out percentages for the time being applying under section 41 of that Act, the Department may make a corresponding order for Northern Ireland altering, with effect from the same date, either or both of the contracted-out percentages applying under section 37.

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- (2) An order under subsection (1) may contain consequential provisions altering any percentage for the time being specified in paragraph 2(3) of Schedule 3 as that percentage applies in relation to earnings paid or payable on or after the day as from which the order is to have effect.

#### Marginal Citations

M22 1993 c. 48.

VALID FROM 14/03/1996

*[<sup>F11</sup> Reduced rates of contributions, and rebates, for members of money purchase contracted-out schemes]*

#### Textual Amendments

**F11** S. 38A and the cross-heading inserted (14.3.1996 for certain purposes and 6.4.1996 for other specified purposes otherwise 6.4.1997) by S.I. 1995/3213 (N.I. 22), art. 134(4); S.R. 1996/91, art. 2(a)(d), Sch. Pts. I IV; S.R. 1997/192, art. 2(b)

#### **[<sup>F12</sup>38A Reduced rates of Class 1 contributions and rebates.**

- (1) Subsections (2) and (3) apply where—
- (a) the earnings paid to or for the benefit of an earner in any tax week are in respect of an employment which is contracted-out employment at the time of the payment, and
  - (b) the earner’s service in the employment is service which qualifies him for a pension provided by a money purchase contracted-out scheme.
- (2) The amount of a Class 1 contribution in respect of so much of the earnings paid in that week in respect of that employment as exceeds the current lower earnings limit but not the current upper earnings limit for that week (or the prescribed equivalents if he is paid otherwise than weekly) shall be reduced by an amount equal to the appropriate flat-rate percentage of that part of those earnings.
- (3) The Department shall, except in prescribed circumstances or in respect of prescribed periods, pay in respect of that earner and that tax week to the trustees or managers of the scheme or, in prescribed circumstances, to a prescribed person, the amount by which—
- (a) the appropriate age-related percentage of that part of those earnings, exceeds
  - (b) the appropriate flat-rate percentage of that part of those earnings.
- (4) Regulations may make provisions—
- (a) as to the manner in which and time at which or period within which payments under subsection (3) are to be made,
  - (b) for the adjustment of the amount which would otherwise be payable under that subsection so as to avoid the payment of trivial or fractional amounts,

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**Changes to legislation:** Pension Schemes (Northern Ireland) Act 1993 is up to date with all changes known to be in force on or before 27 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (c) for earnings to be calculated or estimated in such manner and on such basis as may be prescribed for the purpose of determining whether any, and if so what, payments under subsection (3) are to be made.
- (5) If the Department pays an amount under subsection (3) which it is not required to pay or is not required to pay to the person to whom, or in respect of whom, the Department pays it, the Department may recover it from any person to whom, or in respect of whom, the Department paid it.
- (6) Where—
- (a) an earner has ceased to be employed in an employment, and
  - (b) earnings are paid to him or for his benefit within the period of six weeks, or such other period as may be prescribed, from the day on which he so ceased, that employment shall be treated for the purposes of this section as contracted-out employment at the time when the earnings are paid if it was contracted-out employment in relation to the earner when he was last employed in it
- (7) Subsection (3) of section 37 applies for the purposes of this section as it applies for the purposes of that.]

#### Textual Amendments

**F12** S. 38A inserted (14.3.1996 for certain purposes and 6.4.1996 for other purposes otherwise 6.4.1997) by S.I. 1995/3213 (N.I. 22), **art. 134(4)**; S.R. 1996/91, **art. 2(a)(d)**, **Sch. Pts. I IV**; S.R. 1997/192, **art. 2(b)**

#### [<sup>F13</sup>38B Determination and alteration of rates of contributions, and rebates, applicable under section 38A.

Whenever the Secretary of State makes an order under section 42B of the Pension Schemes Act 1993, (determination and alteration of reduced rates of primary and secondary Class 1 contributions for members of money purchase contracted-out schemes), the Department may make a corresponding order for Northern Ireland.]

#### Textual Amendments

**F13** S. 38B inserted (14.3.1996 for certain purposes otherwise 6.4.1997) by S.I. 1995/3213, **arts. 1(2)**, **134(4)**; S.R. 1996/91, **art. 2(a)(d)**, **Sch. Pts. I IV**; S.R. 1997/192, **art. 2(b)**

*Minimum contributions: members of appropriate personal pension schemes*

### 39 Payment of minimum contributions to personal pension schemes.

- (1) Subject to the following provisions of this Part, the Department shall, except in such circumstances as may be prescribed, pay minimum contributions in respect of an employed earner for any period during which the earner—
- (a) is over the age of 16 but has not attained pensionable age;

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- (b) is not a married woman or widow who has made an election which is still operative that her liability in respect of primary Class 1 contributions shall be a liability to contribute at a reduced rate; and
  - (c) is a member of an appropriate personal pension scheme which is for the time being the earner’s chosen scheme.
- (2) Subject to subsection (3), minimum contributions in respect of an earner shall be paid to the trustees or managers of the earner’s chosen scheme.
- (3) In such circumstances as may be prescribed minimum contributions shall be paid to a prescribed person.
- (4) Where the condition mentioned in subsection (1)(a) or (c) ceases to be satisfied in the case of an earner in respect of whom the Department is required to pay minimum contributions, the duty of the Department to pay them shall cease as from a date determined in accordance with regulations.
- (5) If the Department pays an amount by way of minimum contributions which it is not required to pay, the Department may recover it—
- (a) from the person to whom the Department paid it, or
  - (b) from any person in respect of whom the Department paid it.
- (6) If the Department pays in respect of an earner an amount by way of minimum contributions which the Department is required to pay, but does not pay it to the trustees or managers of the earner’s chosen scheme, the Department may recover it from the person to whom the Department paid it or from the earner.

#### **40 Earner’s chosen scheme.**

- (1) Where an earner and the trustees or managers of an appropriate personal pension scheme have jointly given notice to the Department, in such manner and form and with such supporting evidence as may be prescribed—
- (a) that the earner is, or intends to become, a member of the scheme and wishes minimum contributions in respect of him to be paid to the scheme under section 39;
  - (b) that the trustees or managers have agreed to accept him as a member of the scheme and to receive such minimum contributions in respect of him,
- that scheme is the earner’s chosen scheme for the purposes of section 39 as from a date determined in accordance with regulations and specified in the notice, unless at that date some other appropriate scheme is the earner’s chosen scheme for those purposes.
- (2) Either an earner or the trustees or managers of the scheme may cancel a notice under subsection (1) by giving notice to that effect to the Department at such time and in such manner and form as may be prescribed.
- (3) When a notice under subsection (2) is given, the scheme ceases to be the earner’s chosen scheme as from a date determined in accordance with regulations and specified in the notice.

#### **41 Amount of minimum contributions.**

- (1) Subject to subsection (2), in relation to any tax week falling within a period for which the Department is required to pay minimum contributions in respect of an earner, the amount of those contributions shall be an amount equal to the aggregate amount of the

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reductions in Class 1 contributions which would fall to be made under section 37(1) if any employment of his which is not contracted-out were contracted-out employment.

(2) Where—

- (a) subsection (1) applies;
- (b) the tax year in which the tax week falls ends before such date as may be prescribed; and
- (c) the earner was over the age of 30 on the 6th April with which the tax year began,

there shall be added to the amount payable under that subsection an amount equal to 1 per cent. of so much of those earnings as respects which those reductions would fall to be made.

(3) Regulations may make provision—

- (a) for earnings to be calculated or estimated in such manner and on such basis as may be prescribed for the purpose of determining whether any, and if so what, minimum contributions are payable in respect of them;
- (b) for the adjustment of the amount which would otherwise be payable by way of minimum contributions so as to avoid the payment of trivial or fractional amounts;
- (c) for the intervals at which, for the purposes of minimum contributions, payments of earnings are to be treated as made;
- (d) for the manner in which an earner's age is to be verified for the purposes of subsection (2);
- (e) for this section to have effect in prescribed cases as if for any reference to a tax week there were substituted a reference to a prescribed period, and for the references to a tax week in section 37(1) to have effect accordingly so far as they apply for the purposes of this section;
- (f) as to the manner in which and time at which or period within which minimum contributions are to be made.

VALID FROM 14/03/1996

**[<sup>F14</sup>41A Alteration of rates of minimum contributions under section 41.**

Whenever the Secretary of State makes an order under section 45A of the Pension Schemes Act 1993 (determination and alteration of rates of contributions to personal pension schemes) the Department may make a corresponding order for Northern Ireland.]

**Textual Amendments**

**F14** S. 41A inserted (14.3.1996 for certain purposes otherwise 6.4.1997) by S.I. 1995/3213 (N.I. 22), **art. 135(5)**; S.R. 1996/91, **art. 2(a)**, **Sch. Pt. I**; S.R. 1997/192, **art. 2(b)**

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VALID FROM 06/04/1996

**[<sup>F15</sup>41B Money purchase and personal pension schemes: verification of ages**

- (1) Regulations may make provision for the manner in which an earner’s age is to be verified in determining the appropriate age-related percentages for the purposes of section 38A and 41(1).
- (2) Information held by the Department as to the age of any individual may, whether or not it was obtained in pursuance of regulations under subsection (1), be disclosed by the Department—
  - (a) to the trustees or managers of a money purchase contracted-out scheme or an appropriate personal pension scheme, and
  - (b) to such other persons as may be prescribed,
 in connection with the making of payments under section 38A(3) or the payment of minimum contributions.]

**Textual Amendments**

**F15** S. 41B inserted (6.4.1996 for certain purposes otherwise 6.4.1997) by S.I. 1995/3213 (N.I. 22), art. 136; S.R. 1996/91, art. 2(d), Sch. Pt. IV; S.R. 1997/192, art. 2(b)

*Effect of entitlement to guaranteed minimum pensions on payment of social security benefits*

**42 Effect of entitlement to guaranteed minimum pensions on payment of social security benefits.**

- (1) Where for any period a person is entitled both—
  - (a) to a Category A or Category B retirement pension, a widowed mother’s allowance, [<sup>F16</sup>or a widow’s pension] under the <sup>M23</sup>Social Security Contributions and Benefits (Northern Ireland) Act 1992; and
  - (b) to one or more guaranteed minimum pensions,
 the weekly rate of the benefit mentioned in paragraph (a) shall for that period be reduced by an amount equal—
  - (i) to its additional pension, or
  - (ii) to the weekly rate of the pension mentioned in paragraph (b) (or, if there is more than one such pension, their aggregate weekly rates),
 whichever is the less.

<sup>F17</sup>(2) .....

[<sup>F18</sup>(3) Where for any period—

- (a) a person is entitled to one or more guaranteed minimum pensions; and
- (b) he is also entitled to long-term incapacity benefit under section 30A of the Social Security Contributions and Benefits (Northern Ireland) Act 1992,

for that period an amount equal to the weekly rate or aggregate weekly rates of the guaranteed minimum pension or pensions shall be deducted from any increase payable under regulations under section 30B(7) of that Act and he shall be entitled to such an

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increase only if there is a balance after the deduction and, if there is such a balance, at a weekly rate equal to it.]

(4) Where for any period—

- (a) a person is entitled to one or more guaranteed minimum pensions;
- (b) he is also entitled to a Category A retirement pension under section 44 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992; and
- (c) the weekly rate of his pension includes an additional pension such as is mentioned in section 44(3)(b) of that Act,

for that period section 47 of that Act shall have effect as if the following subsection were substituted for subsection (3)—

“(3) In subsection (2) above “the relevant amount” means an amount equal to the aggregate of—

- (a) the additional pension; and
- (b) the weekly rate or aggregate weekly rates of the guaranteed minimum pension or pensions,

reduced by the amount of any reduction in the weekly rate of the Category A retirement pension made by virtue of section 42(1) of the Pension Schemes (Northern Ireland) Act 1993.”.

(5) Where for any period—

- (a) a person is entitled to one or more guaranteed minimum pensions;
- (b) he is also entitled to a Category A retirement pension under section 44 of the <sup>M24</sup>Social Security Contributions and Benefits (Northern Ireland) Act 1992; and
- (c) the weekly rate of his Category A retirement pension does not include an additional pension such as is mentioned in subsection (3)(b) of that section,

for that period the relevant amount shall be deducted from the amount that would otherwise be the increase under section 47(1) of that Act and the pensioner shall be entitled to an increase under that section only if there is a balance remaining after that deduction and, if there is such a balance, of an amount equal to it.

(6) Where for any period—

- (a) a person is entitled to one or more guaranteed minimum pensions;
- (b) he is also entitled—
  - <sup>F19</sup>(i) .....
  - (ii) to a Category A retirement pension under section 44 of that Act; or
  - (iii) to a Category B retirement pension under section 49 of that Act; and
- (c) the weekly rate of the pension includes an additional pension such as is mentioned in section 44(3)(b) of that Act,

for that period paragraph 3 of Schedule 7 to that Act shall have effect as if the following sub-paragraph were substituted for sub-paragraph (3)—

“(3) In this paragraph “the relevant amount” means an amount equal to the aggregate of—

- (a) the additional pension; and
- (b) the weekly rate or aggregate weekly rates of the guaranteed minimum pension or pensions,

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reduced by the amount of any reduction in the weekly rate of the pension made by virtue of section 42(1) of the Pension Schemes (Northern Ireland) Act 1993.”.

(7) Where for any period—

- (a) a person is entitled to one or more guaranteed minimum pensions;
- (b) he is also entitled to any of the pensions under the Social Security Contributions and Benefits (Northern Ireland) Act 1992 mentioned in subsection (6)(b); and
- (c) the weekly rate of the pension does not include an additional pension such as is mentioned in section 44(3)(b) of that Act,

for that period the relevant amount shall be deducted from the amount that would otherwise be the increase under paragraph 3 of Schedule 7 to that Act and the beneficiary shall be entitled to an increase only if there is a balance after that deduction and, if there is such a balance, only to an amount equal to it.

(8) In this section “the relevant amount” means an amount equal to the weekly rate or aggregate weekly rates of the guaranteed minimum pension or pensions—

- <sup>F20</sup>(a) .....
- (b) in the case of subsection (5), reduced by the amount of any reduction in the weekly rate of the Category A retirement pension made by virtue of subsection (1);

and references in this section to the weekly rate of a guaranteed minimum pension are references to that rate without any increase under section 11(1).

<sup>F21</sup>(9) .....

#### Textual Amendments

- F16** Words in s. 42(1)(a) substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. II para. 54(2)**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**
- F17** S. 42(2) repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), Sch. 1 Pt. II para. 54(3), **Sch. 2**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**
- F18** S. 42(3) substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. II para. 54(4)**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**
- F19** S. 42(6)(b)(i) repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), Sch. 1 Pt. II para. 54(5), **Sch. 2**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**
- F20** S. 42(8)(a) and the word “and” immediately following it repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), Sch. 1 Pt. II para. 54(6), **Sch. 2**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**
- F21** S. 42(9) repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), Sch. 1 Pt. II para. 54(7), **Sch. 2**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**

#### Marginal Citations

- M23** 1992 c. 7.  
**M24** 1992 c. 7.



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### **43 Further provisions concerning entitlement to guaranteed minimum pensions for the purposes of s. 42.**

- (1) The reference in section 42(1) to a person entitled to a guaranteed minimum pension shall be construed as including a reference to a person so entitled by virtue of being the widower of an earner<sup>F22</sup> . . . only if—
  - (a) at the time of the earner's death she and her husband had both attained pensionable age; or
  - (b) he is also entitled to a Category A retirement pension by virtue of section 41(7) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.
- (2) For the purposes of section 42 a person shall be treated as entitled to any guaranteed minimum pension to which he would have been entitled—
  - (a) if its commencement had not been postponed, as mentioned in section 9(4); or
  - (b) if there had not been made a transfer payment or transfer under regulations made by virtue of section 16 as a result of which—
    - (i) he is no longer entitled to guaranteed minimum pensions under the scheme by which the transfer payment or transfer was made, and
    - (ii) he has not become entitled to guaranteed minimum pensions under the scheme to which the transfer payment or transfer was made.
- (3) Where—
  - (a) guaranteed minimum pensions provided for a member or the member's widow or widower under a contracted-out scheme have been wholly or partly secured as mentioned in subsection (3) of section 15; and
  - (b) either—
    - (i) the transaction wholly or partly securing them was carried out before 1st January 1986 and discharged the trustees or managers of the scheme as mentioned in subsection (1) of that section; or
    - (ii) it was carried out on or after that date without any of the requirements specified in subsection (5)(a) to (c) of that section being satisfied in relation to it and the scheme has been wound up; and
  - (c) any company with which any relevant policy of insurance or annuity contract was taken out or entered into is unable to meet the liabilities under policies issued or securities given by it; and
  - (d) the combined proceeds of—
    - (i) any relevant policies and annuity contracts, and
    - (ii) any cash sums paid or alternative arrangements made under the<sup>M25</sup> Policyholders Protection Act 1975,
 are inadequate to provide the whole of the amount secured,
 

the member and the member's widow or widower shall be treated for the purposes of section 42 as only entitled to such part (if any) of the member's or, as the case may be, the member's widow's or widower's guaranteed minimum pension as is provided by the proceeds mentioned in paragraph (d).
- (4) A policy or annuity is relevant for the purposes of subsection (3) if taking it out or entering into it constituted the transaction to which section 15 applies.
- (5) For the purposes of section 42 a person shall be treated as entitled to any guaranteed minimum pension to which he would have been entitled—

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- (a) if a lump sum had not been paid instead of that pension under provisions included in a scheme by virtue of section 17(1); or
- (b) if that pension had not been forfeited under provisions included in a scheme by virtue of section 17(2).

#### **Textual Amendments**

**F22** Words in s. 43(1) repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), Sch. 1 Pt. II para. 55, Sch. 2; S.R. 1994/450, art. 2(d), Sch. Pt. IV

#### **Modifications etc. (not altering text)**

**C11** S. 43(2) modified (6.4.1997) by S.R. 1996/509, reg. 6(3)

#### **Marginal Citations**

**M25** 1975 c. 75.

#### **44 Reduced benefits where minimum payments or minimum contributions paid.**

- (1) Subject to subsection (3), this subsection applies where for any period—
  - (a) minimum payments have been made in respect of an earner to an occupational pension scheme which is a money purchase contracted-out scheme in relation to the earner’s employment, or
  - (b) minimum contributions have been paid in respect of an earner under section 39.
- (2) Where subsection (1) applies then, for the purposes of section 42—
  - (a) the earner shall be treated, as from the date on which he reaches pensionable age, as entitled to a guaranteed minimum pension at a prescribed weekly rate arising from that period in that employment;
  - (b) in prescribed circumstances if the earner dies after reaching pensionable age any widow or widower of the earner shall be treated as entitled to a guaranteed minimum pension at a rate equal to one-half of the rate prescribed under paragraph (a); and
  - (c) in prescribed circumstances if the earner dies before reaching pensionable age any widow or widower of the earner shall be treated as entitled to a guaranteed minimum pension at a prescribed weekly rate arising from that period;

and where subsection (1)(b) applies, paragraphs (a) to (c) of this subsection apply also for the purposes of <sup>F23</sup>section 47(2) of the <sup>M26</sup>Social Security Contributions and Benefits (Northern Ireland) Act 1992 and paragraph 3(2) of Schedule 7 to that Act, but with the omission from paragraph (a) of the words “in that employment”.
- (3) Where the earner is a married woman or widow, subsection (1) shall not have effect by virtue of paragraph (a) of that subsection in relation to any period during which there is operative an election that her liability in respect of primary Class 1 contributions shall be a liability to contribute at a reduced rate.
- (4) The power to prescribe a rate conferred by subsection (2)(a) includes power to prescribe a nil rate.

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### Textual Amendments

**F23** Words in s. 44(2) substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. II para. 56**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**

### Marginal Citations

**M26** 1992 c. 7.

VALID FROM 06/04/1996

*[<sup>F24</sup> Effect of reduced contributions and rebates on social security benefits]*

### Textual Amendments

**F24** S. 44A and cross-heading inserted (6.4.1996 for certain purposes otherwise 6.4.1997) by S.I. 1995/3213 (N.I. 22), **art. 137(1)**; S.R. 1996/91, art. 2(d), **Sch. Pt. IV**; S.R. 1997/192, **art. 2(b)**

### <sup>F25</sup>44A Additional pension and other benefits.

- (1) In relation to any tax week there—
  - (a) the amount of a Class 1 contribution in respect of the earnings paid to or for the benefit of an earner in that week is reduced under section 37 or 38A, or
  - (b) an amount is paid under section 41(1) in respect of the earnings paid to or for the benefit of an earner,

section 44(6) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (earnings factors for additional pension) shall have effect, except in prescribed circumstances, as if no primary Class 1 contributions had been paid or treated as paid upon those earnings for that week and section 45A of that Act did not apply (where it would, apart from this subsection, apply).
- (2) Where the whole or part of a contributions equivalent premium has been paid or treated as paid in respect of the earner, the Department may make a determination reducing or eliminating the application of subsection (1).
- (3) Subsection (1) is subject to regulations under paragraph 5(3A) to (3E) of Schedule 1.
- (4) Regulations may, so far as is required for the purpose of providing entitlement to additional pension (such as is mentioned in section 44(3)(b) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992) but to the extent only that amount of additional pension is attributable to provision made by regulations under section 45(5) of that Act, disapply subsection (1).
- (5) In relation to earners where, by virtue of subsection (1), section 44(6) of Social Security Contributions and Benefits (Northern Ireland) Act 1992 has effect, in any tax year, as mentioned in that subsection in relation to some but not all of their earnings, regulations may modify the application of section 44(5) of that Act.]

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### Textual Amendments

**F25** S. 44A inserted (6.4.1996 for certain purposes otherwise 6.4.1997) by S.I. 1995/3213 (N.I. 22), **art. 137(1)**; S.R. 1996/91, **art. 2(d)**, **Sch. Pt. IV**; S.R. 1997/192, **art. 2(b)**

### *Married women and widows*

#### **45 Married women and widows.**

The Department may make regulations modifying sections 37, 38, 42(1), 43(2) and (5) and 44 in such manner as it thinks proper, in their application to women who are or have been married.

## CHAPTER III

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

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

#### **46 Powers of Board to approve arrangements for scheme ceasing to be certified.**

- (1) In the case of an occupational pension scheme or a personal pension scheme which is or has been certified as a contracted-out or, as the case may be, an appropriate scheme, the Board may, for the event of, or in connection with, its ceasing to be such a scheme, approve any arrangements made or to be made in relation to the scheme, or for its purposes, for the preservation or transfer—
  - (a) in the case of an occupational pension scheme other than a money purchase contracted-out scheme—
    - (i) of earners’ accrued rights to guaranteed minimum pensions under the scheme;
    - (ii) of the liability for the payment of guaranteed minimum pensions under the scheme in respect of persons who have then become entitled to receive them;
  - (b) in the case of a money purchase contracted-out scheme or a personal pension scheme, of protected rights under the scheme.
- (2) If the scheme ceases to be a contracted-out scheme or an appropriate scheme (whether by being wound up or otherwise) and the Board either—
  - (a) have withdrawn their approval of previously approved arrangements relating to it; or
  - (b) have declined to approve arrangements relating to it,
 the Board may issue a certificate to that effect.
- (3) A certificate issued under subsection (2)(a) or (b) shall be cancelled by the Board if they subsequently approve the arrangements.

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- (4) Regulations may provide that where the Board have approved arrangements under subsection (1) in respect of an occupational pension scheme (other than a money purchase scheme) any provision of this Part (other than sections 14, 15, 22 to 29 and 39 to 41) or Chapter III of Part IV or Chapter II of Part V shall have effect subject to such modifications as may be specified in the regulations.
- (5) Any such regulations shall have effect in relation to arrangements whenever approved, unless they provide that they are only to have effect in relation to arrangements approved after they come into operation.
- (6) It is hereby declared that an approval of arrangements relating to an occupational pension scheme which is not a money purchase contracted-out scheme may be withdrawn at any time, notwithstanding that the scheme has been wound up.
- (7) For the purposes of this Chapter an earner's accrued rights or, as the case may be, a person's guaranteed minimum pension rights or protected rights are subject to approved arrangements if—
  - (a) the Board have approved arrangements under subsection (1) (either before or after the scheme ceased to be certified as contracted-out or, as the case may be, as an appropriate scheme) which operate as respects him and the rights in question, and
  - (b) they have not since withdrawn their approval of those arrangements.

#### **47 Calculation of guaranteed minimum pensions preserved under approved arrangements.**

- (1) This section applies where—
  - (a) an earner's guaranteed minimum pension rights or accrued rights to guaranteed minimum pensions under a scheme are subject to approved arrangements, and
  - (b) one or more of the five tax years ending with the tax year in which the scheme ceases to be contracted-out is a relevant year in relation to the earner.
- (2) Where this section applies then, except in such circumstances as may be prescribed, section 12(1) shall have effect, subject to the following provisions, that is to say—
  - (a) any earnings factor shall be taken to be that factor as increased by the last order under Article 23 of the <sup>M27</sup>Social Security Pensions (Northern Ireland) Order 1975 or section 130 of the <sup>M28</sup>Social Security Administration (Northern Ireland) Act 1992 to come into operation before those five tax years; and
  - (b) any relevant earnings factors derived from contributions or earnings in respect of any year ("the relevant contributions year") shall be treated as increased by 12 per cent. compound for each of those five tax years, other than any of those years which—
    - (i) constitutes or begins before the relevant contributions year, or
    - (ii) begins after the final relevant year in relation to the earner.
- (3) Subsection (2) shall not apply in any case where its application would result in the amount of the guaranteed minimum being greater than it would have been apart from that subsection.
- (4) Regulations may provide that subsections (1) to (3) shall have effect with prescribed modifications in relation to a scheme which, immediately before it ceased to be contracted-out, contained provisions authorised by section 12(2).

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- (5) In this section “relevant year” and “final relevant year” have the same meanings as in section 12.

#### **Marginal Citations**

**M27** [S.I. 1975/1503 \(N.I. 15\)](#).

**M28** [1992 c. 8](#).

### *Supervision of formerly certified schemes*

#### **48 Supervision of schemes which have ceased to be certified.**

- (1) Section 49 shall apply for the purpose of making provision for securing the continued supervision of occupational pension schemes as respects which subsection (2) applies and section 50 shall apply for the purpose of making corresponding provision in relation to personal pension schemes as respects which subsection (3) applies.
- (2) This subsection applies as respects any occupational pension scheme, other than a public service pension scheme, where—
- (a) the scheme has ceased to be a contracted-out scheme otherwise than by being wound up; and
  - (b) there has not been a payment of a premium under section 51(1) in respect—
    - (i) of each person entitled to receive, or having accrued rights to, guaranteed minimum pensions under the scheme; or
    - (ii) of each person who has protected rights under it or is entitled to any benefit giving effect to protected rights under it.
- (3) This subsection applies as respects any personal pension scheme where—
- (a) the scheme has ceased to be an appropriate scheme otherwise than by being wound up; and
  - (b) there has not been a payment of a premium under section 51(1) in respect of each person who has protected rights under it or is entitled to any benefit giving effect to protected rights under it.
- (4) Section 49 shall continue to apply so long as there is any such person as is mentioned in paragraph (b)(i) or (ii) of subsection (2) (but, where by virtue of section 15 a scheme has ceased to be liable to provide guaranteed minimum pensions for a member and the member’s widow or widower, the duties imposed on the Board by section 49 shall cease to subsist in relation to those pensions), and section 50 shall continue to apply so long as there is any such person as is mentioned in paragraph (b) of subsection (3).
- (5) For the purposes of subsections (2) and (4) a person in respect of whom a premium is not payable by virtue of regulation 17(2A) of the <sup>M29</sup>Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1985 shall not be treated as such a person as is mentioned in paragraph (b)(ii) of subsection (2).
- (6) For the purposes of subsections (3) and (4) a person in respect of whom a premium is not payable by virtue of regulation 3 of the <sup>M30</sup>Personal Pension Schemes (Personal Pension Protected Rights Premiums) Regulations (Northern Ireland) 1987 shall not be treated as such a person as is mentioned in paragraph (b) of subsection (3).

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#### Marginal Citations

**M29** S.R. (N.I.) 1985 No. 259.

**M30** S.R. (N.I.) 1987 No. 289.

### 49 Supervision: former contracted-out schemes.

- (1) The Board shall be under a duty to satisfy themselves as to—
  - (a) the matters in respect of which they are required to be satisfied for contracting-out purposes under sections 19(1) and 20(1) or, as the case may be, under section 26(1); and
  - (b) the soundness and adequacy of any investments held for the purposes of the scheme (so far as relevant to the considerations of section 20(1)).
- (2) Where the scheme was contracted-out subject to such conditions as are referred to in section 21(1) and (2) those conditions shall continue to be binding, notwithstanding that there is no contracting-out certificate in force.
- (3) Subsection (1) does not apply in the case of any scheme as to which the Board have issued a certificate under subsection (2) of section 46 which has not been cancelled under subsection (3) of that section.
- (4) If it appears to the Board that there has been, or is likely to be, a breach of any rule of the scheme relating to the matters dealt with in sections 5(2) and 9 to 21 or, as the case may be, sections 5(3) and 22 to 28, the Board may take such steps as they think expedient with a view to remedying or preventing the breach.
- (5) For that purpose they may themselves take any proceedings for enforcement of the rules which would be open to a person—
  - (a) as an actual or prospective beneficiary under the scheme, or
  - (b) as one of its trustees or managers, or
  - (c) as being otherwise concerned with the scheme or its benefits,and may assume the conduct of proceedings for enforcement brought by any such person.

### 50 Supervision: former appropriate personal pension schemes.

- (1) The Board shall be under a duty to satisfy themselves as to the matters in respect of which they are required to be satisfied under section 26(1) for the purposes of determining whether a personal pension scheme should be or continue to be an appropriate scheme.
- (2) Subsection (1) does not apply in the case of any scheme as to which the Board have issued a certificate under subsection (2) of section 46 which has not been cancelled under subsection (3) of that section.
- (3) If it appears to the Board that there has been, or is likely to be, a breach of any rule of the scheme relating to the matters dealt with in sections 5(5) and 22 to 28, the Board may take such steps as they think expedient with a view to remedying or preventing the breach, and section 49(5) applies for that purpose as it applies for the purpose there mentioned.

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### *State scheme premiums*

#### **51 Payment of state scheme premiums on termination of certified status.**

- (1) If a scheme ceases to be a contracted-out scheme or an appropriate scheme (whether by being wound up or otherwise) a state scheme premium shall be payable—
- (a) in respect of each earner whose accrued rights to guaranteed minimum pensions or protected rights under the scheme are not subject to approved arrangements and have not been disposed of so as to discharge the trustees or managers of the scheme under section 15 or 95;
  - (b) in the case of an occupational pension scheme other than a money purchase contracted-out scheme, in respect of each person who has then become entitled to receive a guaranteed minimum pension under the scheme and whose guaranteed minimum pension rights are not subject to approved arrangements; and
  - (c) in the case of a money purchase contracted-out scheme or a personal pension scheme, in respect of each person who has become entitled to receive a pension under the scheme giving effect to protected rights which are not subject to approved arrangements.
- (2) Where—
- (a) an earner’s service in employment which is contracted-out by reference to an occupational pension scheme, which is not a money purchase contracted-out scheme, is terminated before he attains the scheme’s normal pension age or (if earlier) the end of the tax year preceding that in which he attains pensionable age; and
  - (b) he has served for less than two years in employment which is contracted-out by reference to the scheme,
- then if—
- (i) the earner’s service is terminated otherwise than by his death or by the scheme’s ceasing to be contracted-out and his period of service is not one in respect of which the scheme conforms to the appropriate extent with the preservation requirements; or
  - (ii) the earner’s service is terminated by his death and he dies leaving a widow,
- the prescribed person may elect to pay a premium under this subsection.
- (3) The Department may by regulations provide that, in such cases and subject to such conditions as may be prescribed, if—
- (a) an earner in employment to which an occupational pension scheme which is not a money purchase contracted-out scheme applies has ceased (whether before or after the commencement of this subsection) to be in that employment before attaining normal pension age;
  - (b) there has been a transfer from that scheme to another scheme of his accrued rights other than his accrued rights to guaranteed minimum pensions;
  - (c) the scheme to which his accrued rights are transferred is neither a contracted-out scheme nor one which was formerly contracted-out and in respect of which the Board have duties under section 49 at the time of the transfer;
  - (d) no premium under subsection (1)(a) is payable in respect of the earner; and
  - (e) the circumstances in which by virtue of paragraphs (a) and (b) of subsection (2) a premium is payable under that subsection do not exist,



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a state scheme premium may be paid under this subsection.

(4) Subject to subsection (5), where—

- (a) an earner's service in contracted-out employment by reference to an occupational pension scheme which is not a money purchase contracted-out scheme is terminated before he attains pensionable age (otherwise than by his death);
- (b) no premium is payable in respect of the earner under subsection (1) or (2); and
- (c) the weekly rate of the guaranteed minimum pensions to which he has accrued rights under the scheme will fall to be determined in accordance with provisions included in the scheme by virtue of section 12(2) and (3),

a state scheme premium shall be payable in respect of the earner under this subsection.

(5) Subsection (4) does not apply if the provisions mentioned in paragraph (c) of that subsection conform with such additional requirements as may be prescribed.

(6) In this Act—

- (a) a premium payable under paragraph (a) of subsection (1) in the case of an occupational pension scheme other than a money purchase contracted-out scheme is referred to as an “accrued rights premium”;
- (b) a premium payable under paragraph (b) of that subsection in such a case is referred to as a “pensioner's rights premium”;
- (c) a premium payable under paragraph (a) or (c) of that subsection in the case of a money purchase contracted-out scheme is referred to as a “contracted-out protected rights premium”;
- (d) a premium payable under paragraph (a) or (c) of that subsection in the case of a personal pension scheme is referred to as a “personal pension protected rights premium”;
- (e) a premium under subsection (2) is referred to as a “contributions equivalent premium”;
- (f) a premium under subsection (3) is referred to as a “transfer premium”; and
- (g) a premium under subsection (4) is referred to as a “limited revaluation premium”.

## 52 Provisions supplementary to s. 51.

(1) Regulations may prescribe circumstances in which a contracted-out protected rights premium or a personal pension protected rights premium shall not be payable under section 51(1).

(2) A premium under section 51 shall be paid by the prescribed person to the Department within the prescribed period or, in the case of a transfer premium, within a prescribed period after the prescribed event.

(3) It is hereby declared that on the withdrawal of an approval of arrangements under section 46 of an occupational pension scheme other than a money purchase contracted-out scheme after the winding up of the scheme a premium becomes payable in pursuance of section 51(1).

(4) Where under the rules of the scheme transfer credits have been allowed in respect of the earner's accrued rights under another scheme, the reference in section 51(2) to employment which is contracted-out by reference to the scheme shall include

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references to employment in any period of linked qualifying service which was contracted-out employment by reference to the other scheme.

- (5) For the purposes of section 51(2), a scheme conforms to the appropriate extent with the preservation requirements if—
- (a) it entitles the earner to short service benefit; or
  - (b) it makes any provision which under those requirements is permitted as an alternative to short service benefit (other than provision for return of contributions or for benefit in the form of a lump sum).
- (6) Subject to regulations made under paragraph 1 of Schedule 1, an employment which is terminated by the death of the employer shall be treated for the purposes of section 51(2) and (4) as terminated immediately before the death.

**Modifications etc. (not altering text)**

**C12** S. 52 modified (28.3.1997) by S.R. 1997/192, art. 4(2) (with art. 9)

**53 Elections to pay contributions equivalent premiums.**

- (1) An election under section 51(2) must be made within the prescribed period and in the prescribed manner.
- (2) Except in such cases as may be prescribed, the prescribed person shall not, in making or abstaining from making elections under that section, discriminate between different earners on any grounds other than their respective lengths of relevant service.
- (3) In subsection (2) “relevant service” means service in contracted-out employment by reference to the scheme, together with any service in contracted-out employment which in relation to service in that employment is linked qualifying service.
- (4) If the Board consider that the prescribed person is contravening subsection (2), they may cancel any contracting-out certificate held by the earner’s employer in respect of the scheme in question.

**Modifications etc. (not altering text)**

**C13** S. 53 modified (28.3.1997) by S.R. 1997/192, art. 4(2) (with art. 9)

**54 Amount of premiums payable under s. 51.**

- (1) Subject to section 59(3), the amount of an accrued rights premium shall be the cost of providing guaranteed minimum pensions for the earner and his widow in accordance with his accrued rights under the scheme.
- (2) Subject to section 59(3), the amount of a pensioner’s rights premium shall be the cost of providing or continuing to provide any guaranteed minimum pension under the scheme, whether for the earner (or former earner) or for his widow.
- (3) Subject to section 59(3), the amount of a contracted-out protected rights premium or a personal pension protected rights premium payable in respect of any person shall be the cash equivalent of the protected rights in question.

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- (4) The amount of a contributions equivalent premium shall be the difference between—
- (a) the amount of the Class 1 contributions payable in respect of the earner's employment in employment which was contracted-out by reference to the scheme, and
  - (b) the amount of those contributions which would have been payable if the employment had not been contracted-out.
- (5) The amount of a transfer premium shall be determined in the manner in which the amount of an accrued rights premium under subsection (1) falls to be determined under subsection (1) (but subject to the provisions of sections 55(2) and 60(1)).
- (6) The amount of a limited revaluation premium shall be the difference between—
- (a) the cost of providing the guaranteed minimum pensions in accordance with the provisions included in the scheme by virtue of section 12(2) and (3); and
  - (b) what would have been the cost of providing them if no such provisions had been included.
- (7) Section 52(4) applies for the purposes of subsection (4) as it applies for the purposes of section 51(2).

**Modifications etc. (not altering text)**

**C14** S. 54 modified (28.3.1997) by S.R. 1997/192, art. 4(2) (with art. 9)

**55 Alternative basis for revaluation of earnings factors for calculation of certain premiums.**

- (1) In determining the amount of any accrued rights premium or pensioner's rights premium payable where one or more of the five tax years ending with the tax year in which the relevant scheme ceases to be contracted-out is a relevant year in relation to the earner, the costs referred to in subsections (1) and (2) of section 54 shall be calculated as follows—
- (a) any relevant earnings factor shall be taken to be that factor as increased by the last order under Article 23 of the <sup>M31</sup>Social Security Pensions (Northern Ireland) Order 1975 or section 130 of the <sup>M32</sup>Social Security Administration (Northern Ireland) Act 1992 to come into operation before those five tax years; and
  - (b) any relevant earnings factor derived from contributions in respect of any year ("the relevant contributions year") shall be treated as increased by 12 per cent. compound for each of those five tax years, other than any of those years which—
    - (i) constitutes or begins before the relevant contributions year, or
    - (ii) begins after the final relevant year in relation to the earner.
- (2) Subsection (1) shall not apply if the person liable for the premium elects in the prescribed manner that it should not and, notwithstanding section 54(5), it shall not apply in the determination of the amount of a transfer premium.
- (3) Regulations may provide that subsections (1) and (2) shall have effect with prescribed modifications in relation to a scheme which has ceased to be contracted-out and,

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immediately before it so ceased, contained provisions authorised by section 12(2) and (3).

- (4) Subject to subsection (5), where a limited revaluation premium is payable in respect of an earner, and the case is one in which his service in contracted-out employment is terminated in consequence of the relevant scheme ceasing to be contracted-out, the costs referred to in subsection (6) of section 54 shall be calculated as follows—
- (a) any relevant earnings factor shall be taken to be that factor as increased by the last order under Article 23 of the <sup>M33</sup>Social Security Pensions (Northern Ireland) Order 1975 or section 130 of the <sup>M34</sup>Social Security Administration (Northern Ireland) Act 1992 to come into operation before the five tax years ending with the tax year in which the scheme ceases to be contracted-out; and
  - (b) any relevant earnings factor derived from earnings upon which primary Class 1 contributions have been paid or treated as paid in respect of any year (“the relevant contributions year”) shall be treated as increased by 12 per cent. compound for each of those five tax years, other than any of those years which constitutes or begins before the relevant contributions year.
- (5) Subsection (4) shall not apply in any case where its application would result in the amount of the premium being greater than it would have been apart from that subsection.
- (6) In subsection (1) “relevant year” and “final relevant year” have the same meanings as in section 12, and references to the earner shall be construed as references to the earner in respect of whom the premium in question has become payable.

**Modifications etc. (not altering text)**

C15 S. 55 modified (28.3.1997) by S.R. 1997/192, art. 4(2) (with art. 9)

**Marginal Citations**

M31 S.I. 1975/1503 (N.I. 15).

M32 1992 c. 8.

M33 S.I. 1975/1503 (N.I. 15).

M34 1992 c. 8.

**56 Effect of payment of premiums on rights.**

- (1) Payment of an accrued rights premium shall extinguish the earner’s rights to guaranteed minimum pensions under the scheme.
- (2) Payment of a pensioner’s rights premium shall extinguish any right to receive guaranteed minimum pensions under the scheme, whether for the earner (or former earner) or for the earner’s (or former earner’s) widow or widower.
- (3) Where a contracted-out protected rights premium or a personal pension protected rights premium is paid in respect of a person—
  - (a) the rights whose cash equivalent is included in the premium shall be extinguished; and
  - (b) sections 43(2) and (5) and 44(2) shall have effect in relation to that person and a widow or widower of that person as if any guaranteed minimum pension to which that person or any such widow or widower is treated as entitled under those provisions, and which derives from the minimum payments, minimum

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contributions or transfer payment or payments from which those rights derive were reduced by the appropriate percentage.

- (4) Payment of a contributions equivalent premium in the circumstances mentioned in section 51(2)(i) shall extinguish the earner’s accrued rights to guaranteed minimum pensions under the relevant scheme.
- (5) Payment of a contributions equivalent premium in the circumstances mentioned in section 51(2)(ii) shall extinguish any such accrued rights in respect of the earner’s widow.
- (6) Payment of a transfer premium shall extinguish the earner’s accrued rights to guaranteed minimum pensions under the scheme from which his other accrued rights have been transferred.
- (7) In subsection (3) “the appropriate percentage” means, subject to the following provisions of this section—

$$\frac{Xx100}{Y}$$

where—

X is the amount of the contracted-out protected rights premium or, as the case may be, the personal pension protected rights premium together, if the person in respect of whom it falls to be paid gives notice to the prescribed person within the prescribed period—

- (a) with the cash equivalent, paid to the Department within the prescribed period, of any other rights which he has under the scheme and specifies in the notice; and
- (b) with the amount of any voluntary contribution paid to the Department within the prescribed period by, or in respect of, the person concerned; and

Y is the cost of providing any guaranteed minimum pension such as is mentioned in subsection (3).

- (8) If the appropriate percentage, as calculated under subsection (7), would fall between two whole numbers, it is to be taken to be the lower number.
- (9) If it would be over 100, it is to be taken to be 100.
- (10) The remainder after the reduction for which subsection (3) provides—
  - (a) if it would contain a fraction of 1p, is to be treated as the nearest lower whole number of pence; and
  - (b) if it would be less than a prescribed amount, is to be treated as nil.

**Modifications etc. (not altering text)**

C16 S. 56 modified (28.3.1997) by S.R. 1997/192, art. 4(2) (with art. 9)

**57 Deduction of contributions equivalent premium from refund of scheme contributions.**

- (1) This section applies where—

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- (a) an earner’s service in contracted-out employment is terminated; and
  - (b) he (or, by virtue of a connection with him, any other person) is entitled to a refund of any payments made by or in respect of him towards the provision of benefits under the scheme by reference to which that employment was contracted-out; and
  - (c) a contributions equivalent premium falls to be paid by any person in respect of him.
- (2) Where this section applies, then, subject to the following provisions of this section, the person by whom the premium falls to be paid shall be entitled on paying it to recover an amount equal to so much of the premium as is attributable to primary Class 1 contributions (and on paying any part of it to recover a proportionate part of that amount) from the person liable for the refund.
- (3) The amount recoverable under this section shall not exceed the amount of the refund or so much of it as has not been made.
- (4) Where the period taken into account in arriving at the amount mentioned in subsection (2) does not coincide with that in respect of which the refund is to be made, the sum recoverable under this section shall be determined by reference to so much of that amount and of the refund as are referable to the same period.
- (5) Where the refund—
- (a) is made in respect of more than one period of service, and one or more of those periods is a period of previous linked qualifying service; and
  - (b) includes any amount paid under a contracted-out scheme in relation to that service on or in connection with a transfer of accrued rights to another scheme,
- the amount which may be recovered under this section shall be increased by such amount as may be prescribed.
- (6) Where the person liable for the premium is himself liable for the refund, he shall be entitled to retain out of the refund the amount which he could recover under this section from another person liable for the refund.
- (7) The amount of the refund shall be reduced by the amount recovered or retained under this section; and provision shall be made by regulations for requiring the making of refunds to be delayed for the purpose of enabling any right of recovery or retainer conferred by this section to be exercised, notwithstanding anything in any enactment relating to the making of the refund.
- (8) Where—
- (a) an earner’s service in contracted-out employment is terminated;
  - (b) he (or, by virtue of a connection with him, any other person) is entitled to a refund of any payments made by or in respect of him under the scheme by reference to which that employment was contracted-out in relation to any previous contracted-out employment of his, being payments towards the provision of benefits under that scheme;
  - (c) a contributions equivalent premium falls to be paid in respect of him; and
  - (d) the period taken into account in arriving at the amount mentioned in subsection (2) includes the period of the previous contracted-out employment,
- then the person liable for that premium shall have the like right of recovery from that refund (so far as the premium is not recoverable or retainable out of a refund in respect of a later employment) as a person has under this section where the refund relates to

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service in the employment on the termination of which the premium falls to be paid (and subsection (7) shall apply accordingly).

- (9) This section shall apply in relation to such a refund as is referred to in subsection (1)(b) which becomes payable after the termination of an earner's service in contracted-out employment as it applies to such a refund becoming payable on the termination of an earner's service in such employment.
- (10) Where the earner (or, by virtue of a connection with him, any other person) becomes entitled to any payment in lieu of benefit, this section shall apply in relation to the payment as if it were such a refund as is referred to in subsection (1)(b).
- (11) For the purposes of subsection (10), a payment in lieu of benefit is any payment falling to be made to or for the benefit of, or in respect of, a person by virtue of his being or having been a member of an occupational pension scheme, being a payment which either—
- (a) is made or to be made otherwise than out of the resources of the scheme; or
  - (b) is made or to be made out of those resources but by way of distribution on a winding up; or
  - (c) falls within such other description of payments as may be prescribed for the purposes of that subsection.

**Modifications etc. (not altering text)**

C17 S. 57 modified (28.3.1997) by S.R. 1997/192, art. 4(2) (with art. 9)

**58 No recovery of state scheme premiums from earners, etc.**

- (1) Notwithstanding any contract to the contrary, a person shall not be entitled—
- (a) to recover any part of a state scheme premium from any earner in respect of whom it is payable; or
  - (b) except in accordance with section 57, to recover or retain any part of such a premium out of any money payable to or for the benefit of the earner or any other person.
- (2) Nothing in subsection (1) affects the right of the trustees or managers of a scheme—
- (a) in a case where an accrued rights premium or a pensioner's rights premium has been paid, to reduce the pension of the person in respect of whom the premium has been paid by the amount of his guaranteed minimum pension;
  - (b) in a case where a limited revaluation premium has been paid, to recoup it—
    - (i) out of the resources of the scheme, in so far as they derive from contributions; or
    - (ii) in prescribed cases, out of payments made to them in respect of an earner's transfer to their scheme from some other scheme;
  - (c) in a case where a state scheme premium has been paid, to make the deduction for which section 92(3) provides when they calculate the cash equivalent to which the earner in respect of whom the premium has been paid has a right under Chapter IV of Part IV.

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**Modifications etc. (not altering text)**

**C18** S. 58 modified (28.3.1997) by S.R. 1997/192, art. 4(2) (with art. 9)

**59 Further provisions concerning calculations relating to premiums.**

- (1) The following amounts shall be certified by the Department—
  - (a) the costs mentioned in subsections (1), (2) and (6) of section 54,
  - (b) the amount of the difference mentioned in subsection (4) of that section,
  - (c) the cost of providing the appropriate percentage of the guaranteed minimum pension for the purposes of section 56, and
  - (d) the amount mentioned in section 57(2).
- (2) The cash equivalents mentioned in section 54(3) and section 56(7)(a) shall be calculated and verified in the prescribed manner.
- (3) If the Department—
  - (a) cannot readily ascertain the amount of any earnings in any tax week relevant for determining the costs referred to in subsection (1) or (2) of section 54, or
  - (b) is satisfied that records of earnings relevant for determining the amount mentioned in subsection (4) of that section have not been maintained or retained or are otherwise unobtainable,
 then the Department may for that purpose—
  - (i) compute, in such manner as it thinks fit, an amount which shall be regarded as the amount of those earnings; or
  - (ii) take their amount to be such sum as it may specify in the particular case,
 and it may certify the costs referred to in section 54(1) and (2) accordingly.
- (4) Where the Department subsequently ascertains the amount of such earnings as are mentioned in paragraph (a) of subsection (3)—
  - (a) if it appears to the Department that the amount of the accrued rights premium or, as the case may be, the pensioner’s rights premium would have been less if the Department had not made the calculation on the basis described in subsection (3), it shall refund the difference to the prescribed person, and
  - (b) if it appears to the Department that that premium would have been greater if the Department had not made the calculation on that basis, the prescribed person shall pay the difference to the Department.
- (5) For the purposes of subsection (1) the Department may make such adjustments as it thinks necessary for avoiding fractional amounts.

**Modifications etc. (not altering text)**

**C19** S. 59 modified (28.3.1997) by S.R. 1997/192, art. 4(2) (with art. 9)

**60 Actuarial tables for purposes of calculations relating to premiums.**

- (1) In calculating and certifying the costs mentioned in subsections (1), (2) and (6) of section 54 and the cost of providing the appropriate percentage of the guaranteed



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minimum pension for the purposes of section 56 the Department shall apply whichever of the prescribed actuarial tables (as in force at the appropriate time) is applicable in accordance with the regulations prescribing the tables, but for the purpose of calculating the amount of a transfer premium the Department shall apply the actuarial table prescribed for the purpose of calculating the amount of an accrued rights premium in such manner as may be prescribed.

- (2) In subsection (1) “the appropriate time” means the time when the scheme ceases to be contracted-out or, as the case may be, to be appropriate or, in the case of costs mentioned in section 54(6), the time when the earner’s service in contracted-out employment is terminated.
- (3) The tables to be used in calculating the costs referred to in section 54(6) shall be so framed as to embody the assumption that the increase of weekly equivalent required by section 12(3) is 5 per cent. compound for each relevant year after that in which the earner’s service is terminated; and that assumption shall prevail over any different provision made by the scheme.

**Modifications etc. (not altering text)**

**C20** S. 60 modified (28.3.1997) by S.R. 1997/192, **art. 4(2)** (with **art. 9**)

**61 Inclusion of former and future earners for some purposes of this Chapter.**

Any reference to earners in sections 46(1)(a) and (7), 54(1) and (2), 55(1) and (6) and 56(1) and (2) and in section 51(1)(a), as it applies in relation to an occupational pension scheme which is not a money purchase contracted-out scheme, includes, in relation to any particular time, not only a reference to earners who are in employment at that time but also a reference to earners who are not in employment at that time but who have been in employment before it or will be in employment after it.

**Modifications etc. (not altering text)**

**C21** S. 61 modified (28.3.1997) by S.R. 1997/192, **art. 4(2)** (with **art. 9**)

**62 Power to apply certain provisions to widowers.**

The following provisions shall be construed as if the references to a person entitled to receive a guaranteed minimum pension included references to a person so entitled by virtue of being the widower of an earner only in such cases as may be prescribed—

- (a) section 46(1)(a)(ii);
- (b) section 48(2); and
- (c) section 51(1)(b);

and the references to a widow in section 54(1) and (2) shall be construed as including references to a widower and the reference in section 138(5) to guaranteed minimum pensions as including a reference to the guaranteed minimum pension of a widower only in those cases.

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**Modifications etc. (not altering text)**

**C22** S. 62 modified (28.3.1997) by S.R. 1997/192, **art. 4(2)** (with **art. 9**)

**63 Non-payment of state scheme premiums.**

- (1) If a person fails to pay any state scheme premium which is payable by him at or within the time prescribed for the purpose, he shall be liable on summary conviction to a fine of not more than level 3 on the standard scale.
- (2) Where—
  - (a) a person is convicted of the offence under subsection (1) of failing to pay a premium, and
  - (b) the premium remains unpaid at the date of the conviction,
 he shall be liable to pay to the Department a sum equal to the amount which he failed to pay.
- (3) Subject to subsection (4), where a person is convicted of an offence mentioned in subsection (2), evidence may be given of any previous failure by him to pay state scheme premiums within the time prescribed for the purpose; and in that subsection “the conviction” and “the offence” mean respectively the conviction referred to in this subsection and the offence of which the person is convicted.
- (4) Such evidence may be given only if notice of intention to give it is served with the summons or warrant on which the person appeared before the court which convicted him.

**Modifications etc. (not altering text)**

**C23** S. 63 modified (28.3.1997) by S.R. 1997/192, **art. 4(2)** (with **art. 9**)

**64 Unpaid premiums: supplementary.**

- (1) Where a person charged with an offence to which section 63(2) applies is convicted of that offence in his absence under Article 24(2) of the <sup>M35</sup>Magistrates’ Courts (Northern Ireland) Order 1981, then if—
  - (a) it is proved to the satisfaction of the court, on oath or by affidavit or in the manner prescribed by magistrates’ courts rules, that notice under section 63(4) has been duly served specifying the other premiums in respect of which the complainant intends to give evidence; and
  - (b) the clerk of petty sessions has received a statement in writing purporting to be made by the accused or by a solicitor acting on his behalf to the effect that if the accused is convicted in his absence of the offence charged he desires to admit failing to pay the other premiums so specified or any of them,
 section 63(3) and (4) shall have effect as if the evidence had been given and the failure so admitted had been proved, and the court shall proceed accordingly.
- (2) Where—
  - (a) a person is convicted of an offence to which section 63(2) applies; and

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- (b) an order is made under the <sup>M36</sup>Probation Act (Northern Ireland) 1950 placing the offender on probation or discharging him absolutely or conditionally, subsection (1) and section 63(2) to (4) shall apply as if it were a conviction for all purposes.
- (3) Any sum which a person is liable to pay under subsection (1) or section 63(2) to (4) shall be recoverable from him as a penalty.
- (4) State scheme premiums recovered by the Department under those provisions shall be treated for all purposes as premiums paid to the Department in respect of the person in respect of whom they were originally payable.

#### Modifications etc. (not altering text)

**C24** S. 64 modified (28.3.1997) by S.R. 1997/192, art. 4(2) (with art. 9)

#### Marginal Citations

**M35** S.I. 1981/1675 (N.I. 26).

**M36** 1950 c. 7 (N.I.).

VALID FROM 01/12/1999

## [<sup>F26</sup>PART IIIA

### SAFEGUARDED RIGHTS

#### Textual Amendments

**F26** Pt. IIIA (ss. 64A-64D) inserted (1.12.1999 for certain purposes and otherwise 1.12.2000) by S.I. 1999/3147 (N.I. 11), arts. 1(5)(a), 33; S.R. 2000/133, art. 2(3), Sch. Pt. IV

#### 64A Safeguarded rights.

- (1) Subject to subsection (2), the safeguarded rights of a member of an occupational pension scheme or a personal pension scheme are such of his rights to future benefits under the scheme as are attributable (directly or indirectly) to a pension credit in respect of which the reference rights are, or include, contracted-out rights or safeguarded rights.
- (2) If the rules of an occupational pension scheme or a personal pension scheme so provide, a member's safeguarded rights are such of his rights falling within subsection (1) as—
- in the case of rights directly attributable to a pension credit, represent the safeguarded percentage of the rights acquired by virtue of the credit, and
  - in the case of rights directly attributable to a transfer payment, represent the safeguarded percentage of the rights acquired by virtue of the payment.

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(3) For the purposes of subsection (2)(a), the safeguarded percentage is the percentage of the rights by reference to which the amount of the credit is determined which are contracted-out rights or safeguarded rights.

(4) For the purposes of subsection (2)(b), the safeguarded percentage is the percentage of the rights in respect of which the transfer payment is made which are contracted-out rights or safeguarded rights.

(5) In this section—

“contracted-out rights” means such rights under, or derived from—

(a) an occupational pension scheme contracted-out by virtue of section 5(2) or (3), or

(b) an appropriate personal pension scheme, as may be prescribed;

“reference rights”, in relation to a pension credit, means the rights by reference to which the amount of the credit is determined.

#### **64B Requirements relating to safeguarded rights.**

Regulations may prescribe requirements to be met in relation to safeguarded rights by an occupational pension scheme or a personal pension scheme.

#### **64C Reserve powers in relation to non-complying schemes.**

(1) This section applies to—

(a) any occupational pension scheme, other than a public service pension scheme, and

(b) any personal pension scheme.

(2) If any scheme to which this section applies does not comply with a requirement prescribed under section 64B and there are any persons who—

(a) have safeguarded rights under the scheme, or

(b) are entitled to any benefit giving effect to such rights under the scheme,

the Inland Revenue may direct the trustees or managers of the scheme to take or refrain from taking such steps as they may specify in writing for the purpose of safeguarding the rights of persons falling within paragraph (a) or (b).

(3) A direction under subsection (2) shall be final and binding on the trustees or managers to whom the direction is given and any person claiming under them.

(4) An appeal on a point of law shall lie to the High Court from a direction under subsection (2) at the instance of the trustees or managers, or any person claiming under them.

(5) A direction under subsection (2) shall be enforceable in a county court, as if it were an order of that court.

#### **64D Power to control transfer or discharge of liability.**

Regulations may prohibit or restrict the transfer or discharge of any liability under an occupational pension scheme or a personal pension scheme in respect of safeguarded rights except in prescribed circumstances or on prescribed conditions.]

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## PART IV

### PROTECTION FOR EARLY LEAVERS

#### CHAPTER I

##### PRESERVATION OF BENEFIT UNDER OCCUPATIONAL SCHEMES

#### **65 Scope of Chapter I: the preservation requirements.**

- (1) This Chapter has effect in relation to the preservation of benefit under occupational pension schemes to which it applies.
- (2) In this Act “the preservation requirements” means the requirements specified in or under sections 67 to 78.
- (3) This Chapter applies to any occupational pension scheme whose resources are derived in whole or in part from—
  - (a) payments made or to be made by one or more employers of earners to whom the scheme applies, being payments either—
    - (i) under an actual or contingent legal obligation; or
    - (ii) in the exercise of a power conferred, or the discharge of a duty imposed, on a Minister of the Crown, government department or any other person, being a power or duty which extends to the disbursement or allocation of public money; or
  - (b) such other payments by the earner or his employer, or both, as may be prescribed for different categories of scheme.

#### **66 Interpretation (Part IV).**

- (1) In this Chapter—
  - “scheme” means an occupational pension scheme to which this Chapter applies;
  - “relevant employment”, in relation to a scheme, means any employment to which the scheme applies;
  - “long service benefit”, in relation to a scheme, means the benefits which will be payable under the scheme, in accordance with legal obligation, to or in respect of a member of the scheme on the assumption—
    - (a) that he remains in relevant employment, and
    - (b) that he continues to render service which qualifies him for benefits, until he attains normal pension age; and in this definition “benefits” means—
      - (i) retirement benefit for the member himself at normal pension age, or
      - (ii) benefit for the member’s wife or husband, widow or widower, or dependants, or others, on his attaining that age or his later death, or
      - (iii) both such descriptions of benefit.
- (2) In this Act “pensionable service”, in relation to a scheme and a member of it, means, subject to subsection (3), service in relevant employment which qualifies the member

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(on the assumption that it continues for the appropriate period) for long service benefit under the scheme.

- (3) There shall be taken into account as pensionable service only actual service, that is to say—
- (a) service notionally attributable for any purposes of the scheme is not to be regarded as pensionable service; and
  - (b) no account is to be taken of scheme rules by which a period of service can be treated for any purpose as being longer or shorter than it actually is.

## 67 **Basic principle as to short service benefit.**

- (1) A scheme must make such provision that where a member's pensionable service is terminated before normal pension age and—
- (a) he has at least 2 years' qualifying service, or
  - (b) a transfer payment in respect of his rights under a personal pension scheme has been made to the scheme,
- he is entitled to benefit consisting of or comprising benefit of any description which would have been payable under the scheme as long service benefit, whether for himself or others, and calculated in accordance with this Chapter.
- (2) The benefit to which a member is entitled under subsection (1) is referred to in this Act as "short service benefit".
- (3) Subject to subsection (4), short service benefit must be made payable as from normal pension age or, if in the member's case that age is earlier than 60, then from the age of 60.
- (4) Short service benefit payable on or in respect of the member's death after normal pension age must be made payable as from his death or within such time after it as long service benefit payable on or in respect of his death would be payable.
- (5) In applying subsections (3) and (4), no regard is to be had to the operation of any scheme rule, taking effect at any time after termination of the member's pensionable service, as to what is normal pension age under the scheme.
- (6) A scheme must not provide for payment of short service benefit in the form of a lump sum at any time before normal pension age, except in such circumstances as may be prescribed.
- (7) In subsection (1) "2 years' qualifying service" means 2 years (whether a single period of that duration or two or more periods, continuous or discontinuous, totalling 2 years) in which the member was at all times employed either—
- (a) in pensionable service under the scheme; or
  - (b) in service in employment which was contracted-out by reference to the scheme; or
  - (c) in linked qualifying service under another scheme.
- (8) For the purposes of subsection (7), no regard shall be had to whether or not the service was of the same description in the whole of the 2 years.
- (9) A period of service previously terminated is not to count towards the 2 years' qualifying service unless it counts towards qualification for long service benefit, and need then count only to the same extent and in the same way.

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## **68 No discrimination between short service and long service beneficiaries.**

- (1) A scheme must not contain any rule which results, or can result, in a member being treated less favourably for any purpose relating to short service benefit than he is, or is entitled to be, treated for the corresponding purpose relating to long service benefit.
- (2) Subsection (1) does not apply to any rule in its application to members whose pensionable service terminated before the rule came into force, unless the rule—
  - (a) was made after the termination of a member’s pensionable service; and
  - (b) results, or is capable of resulting, in any treatment less favourable for him than that to which he would have been entitled but for the rule.
- (3) Subsection (1) does not apply to a rule which merely confers discretion on the scheme’s trustees or managers, or others, so long as it is not a rule requiring the discretion to be exercised in any discriminatory manner against members in respect of their short service benefit.

## **69 Form of short service benefit and its alternatives.**

- (1) Subject to subsection (2) and section 77, a member’s short service benefit must be—
  - (a) payable directly out of the resources of the scheme; or
  - (b) assured to him by such means as may be prescribed.
- (2) Subject to subsections (3) to (5), a scheme may, instead of providing short service benefit, provide—
  - (a) for the member’s accrued rights (including any transfer credits allowed under the scheme)—
    - (i) to be transferred to another occupational pension scheme with a view to acquiring transfer credits for the member under the other scheme, or
    - (ii) to be transferred to a personal pension scheme or a self-employed pension arrangement with a view to acquiring rights for the member under the rules of the scheme or arrangement; or
  - (b) for such alternatives to short service benefit as may be prescribed.
- (3) The option conferred by subsection (2)(a) is additional to any obligation imposed by Chapter IV of this Part.
- (4) The alternatives specified in subsection (2)(a) and (b) may only be by way of complete or partial substitute for short service benefit—
  - (a) if the member consents; or
  - (b) in such other cases as may be prescribed.
- (5) An alternative prescribed under subsection (2)(b) may only include payment by way of return of contributions—
  - (a) if they relate to a period of service before 6th April 1975; or
  - (b) if there has been such a payment relating to a period of service before that date and the contributions relate to a period of service of less than 5 years after that date.

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## 70 Computation of short service benefit.

- (1) Subject to the provisions of this section, a scheme must provide for short service benefit to be computed on the same basis as long service benefit.
- (2) For that purpose, no account is to be taken of any rule making it (directly or indirectly) a condition of entitlement to benefit that pensionable service shall have been of any minimum duration.
- (3) Subsection (1) does not apply to so much of any benefit as accrues at a higher rate, or otherwise more favourably, in the case—
  - (a) of members with a period of pensionable service of some specified minimum length, or
  - (b) of members remaining in pensionable service up to some specified minimum age.
- (4) Subsection (1) does not apply to so much of any benefit as is of an amount or at a rate unrelated to length of pensionable service or to the number or amount of contributions paid by or for the member.
- (5) Regulations may provide that subsection (1) shall not apply to any category of schemes or members, or description of benefit.
- (6) So far as any short service benefit is not required to be computed in accordance with subsection (1), it must be computed on the basis of uniform accrual, so that at the time when pensionable service is terminated, it bears the same proportion to long service benefit as the period of that service bears to the period from the beginning of that service to the time when the member would attain normal pension age or such lower age as may be prescribed.
- (7) Where long service benefit is related to a member's earnings at, or in a specified period before, the time when he attains normal pension age, short service benefit must be related, in a corresponding manner, to his earnings at, or in the same period before, the time when his pensionable service is terminated.
- (8) A scheme must comply with any regulations relating to the basis of computation of short service benefit, including regulations providing for the avoidance of fractional amounts and otherwise to facilitate computation.

## 71 Credits.

- (1) In this section—
 

“supplementary credits”, in relation to a scheme and a member's entitlement to its benefits, means any increase of benefit or additional benefit to which the member may become entitled—

  - (a) in consequence of any provision made by or under the scheme after he becomes a member of it (to the extent that it applies to any previous pensionable service of his); or
  - (b) by reference to previous service of his (whether or not pensionable service); or
  - (c) in such other circumstances as may be prescribed,

including under paragraph (b) any transfer credits;



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“purchased credits” means supplementary credits for which, under the rules of the scheme, a member may or must make a payment in whole or in part (whether by means of additional contributions, or of deduction from benefit, or otherwise, and whether separately for each credit or by one or more payments for one or more credits);

“bonus credits” means supplementary credits other than purchased credits or transfer credits.

- (2) Subject to subsections (3) to (7), if a scheme provides for long service benefit to include supplementary credits, it must—
  - (a) provide for such credits to be included in short service benefit, and
  - (b) provide for all credits to be so included.
- (3) Where purchased credits have not been paid for in full at or before termination of pensionable service, the short service benefit must include the appropriate proportion of the credits.
- (4) In subsection (3) “the appropriate proportion of the credits” means—
  - (a) if they were to be paid for by a fixed amount, the same proportion as the amount paid bears to the full amount payable; and
  - (b) otherwise, the same proportion as the period between the time when the first payment became due and the termination of the member’s pensionable service bears to the whole period over which payment was to be made.
- (5) If the benefit includes bonus credits, or credits for which payment is to be made by deduction from that or another benefit, the credits to be included in the benefit and (where applicable) the amount of the deduction must be computed on the assumption—
  - (a) that the credits accrue in full only to a member remaining in pensionable service until normal pension age; and
  - (b) that the amount of any such credit, and also of any relevant deduction, accrues at a uniform rate from the time when the credit was awarded up to the time of his attaining that age.
- (6) Where any such deduction is a percentage of benefit, the percentage must be the same for short service as for long service benefit.
- (7) A scheme must comply with any regulations made with respect to the manner in which supplementary credits are to be included in short service benefit, including regulations providing for the avoidance of fractional amounts and otherwise to facilitate computation.

## **72 Pension increases.**

- (1) A scheme which by its rules provides for increases of long service benefit from time to time (whether by way of upwards revaluation or otherwise) must provide for corresponding increases of short service benefit in the case of members whose pensionable service terminates at any time after the coming into force of any such rule.
- (2) Where the provision for increasing long service benefit involves the exercise of a discretion, a corresponding discretion must be conferred in relation to short service benefit.

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- (3) If an increase of long service benefit is to take effect at a specified time after termination of service, the corresponding increase of short service benefit must take effect at the same time after the time when short service benefit becomes payable.
- (4) Where provision is made for increase of long service benefit otherwise than at a fixed rate, short service benefit may nevertheless be subject to increase at a fixed rate, if the rate is at least 3 per cent. a year compound.

### **73 Assignment, surrender and commutation of benefit.**

- (1) Except as provided by this section, a scheme—
  - (a) must contain rules preventing assignment of short service benefit; and
  - (b) must not enable such benefit to be surrendered or commuted.
- (2) Subsection (1) does not apply to any assignment, surrender or commutation of a policy of insurance or annuity contract in accordance with conditions prescribed by regulations under section 15(4)(b) or (c).
- (3) A scheme may enable assignment in favour of the member's widow or widower or dependant (whether or not the benefit is in payment).
- (4) A scheme may, at the option of the member, enable surrender—
  - (a) to provide benefit for the member's widow, widower or dependant;
  - (b) to acquire for the member transfer credits under the rules of another occupational pension scheme or rights under the rules of a personal pension scheme or a self-employed pension arrangement;
  - (c) to acquire for the member entitlement to further benefits under the same scheme, relating both to a period of pensionable service previously terminated and also to a subsequent period of service in relevant employment.
- (5) A scheme may enable a member's benefit to be commuted—
  - (a) in a case where he opts (at any time) to commute at or after normal pension age; or
  - (b) in exceptional circumstances of serious ill-health; or
  - (c) in such other circumstances as may be prescribed.
- (6) A scheme may enable benefit for a member's widow, widower or dependant to be commuted in such circumstances as may be prescribed.

### **74 Forfeiture, etc.**

- (1) Except so far as permitted by this section, a scheme must not contain any provision for forfeiture of short service benefit.
- (2) Provision may be made for forfeiture of the whole or part of any short service benefit by reference to an event occurring after it becomes payable if—
  - (a) long service benefit is also forfeited by reference to the event; and
  - (b) in the opinion of the Board the provision does not appear to discriminate against members entitled to short service benefit.
- (3) Provision may be made for forfeiture by reference to—
  - (a) the assignment or attempted assignment of the benefit contrary to the provisions of the scheme;

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- (b) the member's bankruptcy or, in the case of benefit for a widow or widower or dependant of the member, the beneficiary's bankruptcy.
- (4) Such forfeiture as mentioned in subsection (3) may be by reference to an event occurring either before or after the benefit would otherwise be payable, if the same provision is made in relation to long service benefit.
- (5) Provision for forfeiture may be made—
  - (a) in a public service pension scheme, by reference to the member being convicted of an offence—
    - (i) committed by him before the benefit becomes payable and in connection with relevant employment, and
    - (ii) certified by a Minister of the Crown either to have been gravely injurious to the State or to be liable to lead to serious loss of confidence in the public service;
  - (b) in any case, by reference to the member having been convicted of any offence committed before the benefit becomes payable, being—
    - (i) an offence of treason, or
    - (ii) one or more offences under the Official Secrets Acts 1911 to 1989 for which the member has been sentenced on the same occasion to a term of imprisonment of, or to two or more consecutive terms amounting in the aggregate to, at least 10 years.
- (6) No scheme rule must operate so as to deprive any person of short service benefit by reference to—
  - (a) failure by any person to make a claim for the benefit or for any payment due as benefit; or
  - (b) failure by any person, at any time after termination of pensionable service, to give any notice, or comply with any formality, required by the scheme as a condition of entitlement.
- (7) Subsection (6)(a) is not to prevent reliance on any enactment relating to the limitation of actions; and a scheme may provide for the right to receive any payment to be forfeited if it is not claimed within 6 years of the date on which it becomes due.

## **75 Charges, liens and set-offs.**

- (1) A scheme must not enable a member's employer to exercise any description of charge or lien on, or set-off against, short service benefit, to the extent that it includes transfer credits.
- (2) Subject to subsection (1), a scheme may enable a charge or lien on, or set-off against, a member's short service benefit for the purpose of enabling the employer to obtain the discharge by the member of some monetary obligation due to the employer and arising out of a criminal, negligent or fraudulent act or omission by the member.
- (3) Subject to subsection (4), a scheme must not enable the employer to recover from, or retain out of, the resources of the scheme any sum in respect of a monetary or other obligation due to him from any member.
- (4) Subsection (3) does not apply to an obligation arising as mentioned in subsection (2) but, if the scheme permits recovery or retainer of sums in respect of such an obligation, it must provide that—

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- (a) unless the employer and the member agree otherwise in writing, the recovery or retainer is limited—
  - (i) to the actuarial value of the member’s actual or prospective benefits at that time, or
  - (ii) to the amount of the obligation,
 whichever is the less; and
- (b) the member is entitled to a certificate showing the amount retained or recovered and its effect on his benefits or prospective benefits; and
- (c) in the event of any dispute as to the amount to be retained or recovered, the employer is only entitled to enforce the charge, lien or set-off after the obligation has become enforceable under an order of a competent court or the award of an arbitrator.

**76 Power to modify ss. 73 to 75 as respects alternative benefits.**

In respect of any of the benefits or rights alternative to short service benefit provided in accordance with section 69(2), sections 73 to 75 shall apply with such modifications as may be prescribed.

**77 Discharge of liability where short service or alternative benefits secured by insurance policies or annuity contracts.**

A transaction to which section 15 applies discharges the trustees or managers of an occupational pension scheme from their liability to provide for or in respect of any person short service benefit or any alternative to short service benefit—

- (a) if it is carried out not earlier than the time when that person’s pensionable service terminates; and
- (b) if and to the extent that it results in short service benefit or any alternative to short service benefit for or in respect of that person being appropriately secured (within the meaning of that section); and
- (c) if and to the extent that the requirements set out in paragraph (a) or (c) of section 15(5) are satisfied.

**78 Supplementary regulations.**

- (1) Regulations may provide that a scheme is not to be treated as conforming with the preservation requirements unless it contains express rules to the effect (but not necessarily in the words) of any specified provision contained in sections 67 to 75.
- (2) Regulations may make provision as to the circumstances in which, for the purposes of sections 66 to 75—
  - (a) a period of a person’s service in two or more different employments is to be treated as a period of service in one or more of those employments; or
  - (b) a person’s service in any employment is to be treated as terminated or not terminated.

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## CHAPTER II

### REVALUATION OF ACCRUED BENEFITS (EXCLUDING GUARANTEED MINIMUM PENSIONS)

#### 79 Scope of Chapter II.

- (1) This Chapter applies for the purpose of revaluing—
  - (a) benefits payable to or in respect of a member of an occupational pension scheme where—
    - (i) his pensionable service ends on or after 1st January 1986;
    - (ii) on the date on which his pensionable service ends (in this Chapter referred to as “the termination date”) he has accrued rights to benefit under the scheme;
    - (iii) the period beginning with the day after the termination date and ending with the date on which he attains normal pension age (in this Chapter referred to as “the pre-pension period”) is at least 365 days; and
    - (iv) in the case of benefit payable to any other person in respect of the member, the member dies after attaining normal pension age; and
  - (b) benefits payable to or in respect of a member of a personal pension scheme—
    - (i) in respect of whom contributions to the scheme have ceased to be paid; and
    - (ii) who has accrued rights to benefit under the scheme.
- (2) In calculating 365 days for the purpose of subsection (1)(a)(iii), any day which is 29th February shall be disregarded.
- (3) In subsection (1)(b)—
  - (a) the reference to a personal pension scheme does not include a scheme which is comprised in an annuity contract made before 4th January 1988; and
  - (b) the reference to contributions includes any minimum contributions.

#### 80 Basis of revaluation.

- (1) Subject to subsections (2) and (3), in the case of such benefits as are mentioned in section 79(1)(a), any pension or other retirement benefit payable under the scheme in question to the member and any pension or other benefit payable under it to any other person in respect of him, is to be revalued by the final salary method.
- (2) If—
  - (a) any such benefit is an average salary benefit or flat rate benefit; and
  - (b) it appears to the trustees or managers of the scheme under which it is payable that it is appropriate to revalue the benefit by the average salary method or, as the case may be, the flat rate method,then the benefit shall be revalued using that method.
- (3) If any benefit such as is mentioned in paragraph (a) of section 79(1) is a money purchase benefit, and in the case of such benefit as is mentioned in paragraph (b) of that section, the benefit shall be revalued using the money purchase method.
- (4) In this section—

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“average salary benefit” means benefit the rate or amount of which is calculated by reference to the average salary of a member over the period of service on which the benefit is based;

“flat rate benefit” means any benefit the rate or amount of which is calculated by reference solely to the member’s length of service;

“average salary method”, “final salary method”, “flat rate method” and “money purchase method” have the meanings given in Schedule 2.

(5) The fact that a scheme provides for the amount of the pension or other benefit for a member or for any other person in respect of him to be increased during the pre-pension period—

(a) by the percentages specified during that period under section 132 of the <sup>M37</sup>Social Security Administration (Northern Ireland) Act 1992; or

(b) under any arrangement which, in the opinion of the Board, maintains the value of the pension or other benefit by reference to the rise in the general level of prices in Great Britain during that period,

does not in itself result in conflict with this section, if the increase falls to be determined by reference to an amount from which the guaranteed minimum for a member or a member’s widow or widower has not been deducted.

#### Marginal Citations

M37 1992 c. 8.

## 81 Revaluation not to apply to substituted benefit.

Nothing in this Chapter is to be construed as requiring the revaluation of any pension or other benefit provided by virtue of section 69(2)(b) by way of complete substitute for another pension or benefit.

## 82 Supplementary provisions.

(1) In making any calculation for the purposes of this Chapter in relation to any occupational pension scheme—

(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) The same money may not be treated as providing both the increase in benefit required by this Chapter and the benefit required by Chapter III.

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## CHAPTER III

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

#### Modifications etc. (not altering text)

**C25** Pt. 4 Ch. 3 (ss. 83-88) modified (12.2.2001 for specified purposes) by 2000 c. 4 (N.I.), s. 52, **Sch. 5 Pt. II paras. 12-15** (with s. 66(6)); S.R. 2000/374, **art. 2(e)** (art. 2(e)(ii) was omitted by virtue of S.R. 2001/141, **art. 3**)

### 83 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; and
  - (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 69(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;

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- (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.

#### **84 The relevant sum.**

- (1) For the purposes of this Chapter “the relevant sum” means—
- (a) in a case where subsection (1) of section 83 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 83(5) and 87(1), and paragraph (b) of subsection (1) has effect subject to section 83(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 67(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 67(1) had effect as mentioned in subsection (3).



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- (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.

## 85 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.

## 86 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.

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## 87 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 84(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.

## 88 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 Article 23 of the <sup>M38</sup>Social Security Pensions (Northern Ireland) Order 1975 or section 130 of the <sup>M39</sup>Social Security Administration (Northern Ireland) Act 1992 to come into operation 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 12.

(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.

### Marginal Citations

**M38** S.I. 1975/1503 (N.I. 15).

**M39** 1992 c. 8.

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## CHAPTER IV

### TRANSFER VALUES

#### Modifications etc. (not altering text)

**C26** Pt. IV Chapter IV applied (31.5.1994) by S.I. 1994/1432, art. 6(4)

#### 89 Scope of Chapter IV.

- (1) This Chapter applies—
- (a) to any member of an occupational pension scheme—
    - (i) whose pensionable service terminates on or after 1st January 1986 and at least one year before normal pension age; and
    - (ii) who on the date when it terminates (in this Chapter referred to as “the termination date”) has accrued rights to benefit under the scheme; and
  - (b) to any member of a personal pension scheme (other than a scheme which is comprised in an annuity contract made before 4th January 1988) who has accrued rights to benefit under the scheme.
- (2) Any reference to a member of an occupational pension scheme or a personal pension scheme in the following provisions of this Chapter is a reference to a member of such a scheme to whom this Chapter applies.

VALID FROM 06/04/1996

#### <sup>F27</sup>89A Salary related schemes: right to statement of entitlement.

- (1) The trustees or managers of a salary related occupational pension scheme must, on the application of any member, provide the member with a written statement (in this Chapter referred to as a “statement of entitlement”) of the amount of the cash equivalent at the guarantee date of any benefits which have accrued to or in respect of him under the applicable rules.
- (2) In this section—
  - “the applicable rules” has the same meaning as in section 90;
  - “the guarantee date” means the date by reference to which the value of the cash equivalent is calculated, and must be—
    - (a) within the prescribed period beginning with the date of the application, and
    - (b) within the prescribed period ending with the date on which the statement of entitlement is provided to the member.
- (3) Regulations may make provision in relation to applications for a statement of entitlement, including, in particular, provision as to the period which must elapse after the making of such an application before a member may make a further such application.
- (4) If, in the case of any scheme, a statement of entitlement has not been provided under this section, Article 10 of the Pensions (Northern Ireland) Order 1995 (power of the Regulatory Authority to impose civil penalties) applies to any trustee or manager

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who has failed to take all such steps as are reasonable to secure compliance with this section.]

#### Textual Amendments

**F27** S. 89A inserted (6.4.1996 for certain purposes otherwise 6.4.1997) by S.I. 1995/3213 (N.I. 22), art. 149; S.R. 1996/91, art. 2(b), Sch. Pt. IV; S.R. 1997/192, art. 2(b)

## 90 Right to cash equivalent.

(1) Subject to the following provisions of this Chapter—

- (a) a member of an occupational pension scheme acquires a right, when his pensionable service terminates, to the cash equivalent at the relevant date of any benefits which have accrued to or in respect of him under the applicable rules; and
- (b) a member of a personal pension scheme acquires a right to the cash equivalent at the relevant date of any benefits which have accrued to or in respect of him under the rules of the scheme.

(2) In this section—

“the applicable rules” means—

- (a) any provision which the rules of the scheme do not contain but which a scheme must contain if it is to conform with the requirements of Chapter I; and
- (b) the rules of the scheme, except so far as Chapter II or III overrides them; and
- (c) any provision of Chapter II or III which overrides any of the rules of the scheme;

“the relevant date” means, subject to regulations under section 94(4)—

- (a) the date of the relevant application, or
- (b) in the case of an occupational pension scheme, if it is later, the termination date;

“the relevant application” means any application which the member has made under section 91 and not withdrawn.

## 91 Ways of taking right to cash equivalent.

(1) A member of an occupational pension scheme or a personal pension scheme who acquires a right to a cash equivalent under this Chapter may only take it by making an application in writing to the trustees or managers of the scheme requiring them to use the cash equivalent to which he has acquired a right in whichever of the ways specified in subsection (2) or, as the case may be, subsection (3) he chooses.

(2) In the case of a member of an occupational pension scheme, the ways referred to in subsection (1) are—

- (a) for acquiring transfer credits allowed under the rules of another occupational pension scheme—
  - (i) the trustees or managers of which are able and willing to accept payment in respect of the member’s accrued rights, and
  - (ii) which satisfies prescribed requirements;

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- (b) for acquiring rights allowed under the rules of a personal pension scheme—
    - (i) the trustees or managers of which are able and willing to accept payment in respect of the member’s accrued rights, and
    - (ii) which satisfies prescribed requirements;
  - (c) for purchasing from one or more insurance companies such as are mentioned in section 15(4)(a), chosen by the member and willing to accept payment on account of the member from the trustees or managers, one or more annuities which satisfy prescribed requirements;
  - (d) for subscribing to other pension arrangements which satisfy prescribed requirements.
- (3) In the case of a member of a personal pension scheme, the ways referred to in subsection (1) are—
- (a) for acquiring transfer credits allowed under the rules of an occupational pension scheme—
    - (i) the trustees or managers of which are able and willing to accept payment in respect of the member’s accrued rights, and
    - (ii) which satisfies prescribed requirements;
  - (b) for acquiring rights allowed under the rules of another personal pension scheme—
    - (i) the trustees or managers of which are able and willing to accept payment in respect of the member’s accrued rights, and
    - (ii) which satisfies prescribed requirements;
  - (c) for subscribing to other pension arrangements which satisfy prescribed requirements.
- (4) In the case of the exercise of a right in respect of the cash equivalent of a member’s protected rights, if any, under a scheme which is, or was formerly, a money purchase contracted-out scheme, subsection (2) is to be construed as if paragraph (c) were omitted.
- (5) Except in such circumstances as may be prescribed—
- (a) subsection (2) is to be construed as if paragraph (d) were omitted; and
  - (b) subsection (3) is to be construed as if paragraph (c) were omitted.
- (6) Without prejudice to the generality of subsections (2) and (3), the powers conferred by those subsections include power to provide that a scheme or pension arrangement or, in the case of subsection (2), an annuity must satisfy requirements of the Inland Revenue.
- (7) A member of an occupational pension scheme may only exercise the right conferred by this section on or before the last option date.
- (8) In subsection (7) “the last option date” means, subject to regulations under section 94, the date which falls—
- (a) one year before the date on which the member attains normal pension age; or
  - (b) six months after the termination date,
- whichever is the later.
- (9) An application to the trustees or managers of the scheme under subsection (1) is to be taken to have been made if it is delivered to them personally, or sent by post in a registered letter or by the recorded delivery service.

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## 92 Further provisions concerning exercise of option under s. 91.

- (1) A member may exercise the option conferred by subsection (1) of section 91 in different ways in relation to different portions of his cash equivalent, but a member who exercises that option must do so—
  - (a) in relation to the whole of his cash equivalent; or
  - (b) if subsection (2) applies, in relation to the whole of the balance mentioned in subsection (3).
- (2) This subsection applies where—
  - (a) the trustees or managers—
    - (i) of an occupational pension scheme which is not a contracted-out scheme, or
    - (ii) of a personal pension scheme which is not an appropriate scheme, or
    - (iii) of a self-employed pension arrangement,
 are able or willing to accept a transfer payment only in respect of a member's rights other than his accrued rights to guaranteed minimum pensions or his protected rights; and
  - (b) the member has not required the trustees or managers of the scheme from which he is being transferred to use the portion of his cash equivalent which represents those accrued or protected rights in any of the ways specified in subsection (2) or, as the case may be, subsection (3) of section 91.
- (3) Where subsection (2) applies this section and sections 90, 91 and 93 are to be construed as conferring on the member an option only in respect of the balance of the cash equivalent to which the member would otherwise be entitled, after deduction of an amount sufficient for the trustees or managers of the scheme from which he is being transferred to meet their liability—
  - (a) in the case of a transfer from an occupational pension scheme, in respect of the member's and the member's widow's or, as the case may be, widower's guaranteed minimum pensions or the member's protected rights; and
  - (b) in the case of a transfer from a personal pension scheme, of the member's protected rights.

## 93 Calculation of cash equivalents.

- (1) Cash equivalents are to be calculated and verified in the prescribed manner.
- (2) Regulations may provide—
  - (a) that in calculating cash equivalents account shall be taken—
    - (i) of any surrender, commutation or forfeiture of the whole or part of a member's pension which occurs before the trustees or managers of the scheme of which he is a member do what is needed to comply with what he requires under section 91;
    - (ii) in a case where subsection (2) of section 92 applies, of the need to deduct an appropriate amount to provide for the liabilities mentioned in subsection (3) of that section; and
  - (b) that in prescribed circumstances a cash equivalent shall be increased or reduced.
- (3) Without prejudice to the generality of subsection (2), the circumstances that may be specified by virtue of paragraph (b) of that subsection include—

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- (a) in the case of an occupational pension scheme, the length of time which elapses between the termination of a member's pensionable service and his exercise of the option conferred by this Chapter or regulations made under it;
  - (b) failure by the trustees or managers of the scheme to do what is needed to carry out what a member of the scheme requires within 6 months of the date on which they receive an application from him under section 91; and
  - (c) the state of the funding of the scheme.
- (4) Regulations under subsection (2) may specify as the amount by which a cash equivalent is to be reduced such an amount that a member has no right to receive anything.

#### 94 Variation and loss of rights under s. 90.

- (1) Regulations may provide that a member of an occupational pension scheme who continues in employment to which the scheme applies after his pensionable service in that employment terminates—
- (a) only acquires a right to the cash equivalent of such part of the benefits specified in section 90(1) as may be prescribed; or
  - (b) acquires no right to a cash equivalent.
- (2) Regulations may provide for the purposes of subsection (1) that in prescribed circumstances a number of employments (whether or not consecutive) shall be treated as a single employment.
- (3) Regulations may provide that where—
- (a) by virtue of regulations under subsection (1) or (2), a member of an occupational pension scheme does not, on the termination of his pensionable service in an employment to which a scheme applies, acquire a right at the relevant date to the cash equivalent of the whole or a part of the benefits specified in section 90(1); and
  - (b) his employment terminates at least one year before normal pension age,
- that right shall accrue to him on the date when that employment terminates and be valued accordingly.
- (4) In relation to any case to which regulations under subsection (3) apply, they may substitute—
- (a) a new definition of “the relevant date” for the definition in section 90(2); and
  - (b) a new definition of “the last option date” for the definition in section 91(8).
- (5) Where the whole or any part of the benefits payable to a member of a personal pension scheme under the scheme have become payable on or before the relevant date, the right which he acquires under section 90 is only to the cash equivalent of any of the benefits mentioned in that section which have not become payable.
- (6) A member of an occupational pension scheme or a personal pension scheme loses the right to any cash equivalent under this Chapter if the scheme is wound up.
- (7) A member of an occupational pension scheme also loses that right—
- (a) if his pension or benefit in lieu of a pension or any part of it becomes payable before he attains normal pension age; or
  - (b) he fails to exercise the option conferred by section 91 on or before the last option date (within the meaning of subsection (7) of that section).

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(8) In this section “the relevant date” has the same meaning as in section 90(2).

## **95 Trustees’ duties after exercise of option.**

(1) Where—

- (a) a member has exercised the option conferred by section 91; and
- (b) the trustees or managers of the scheme have done what is needed to carry out what the member requires,

the trustees or managers shall be discharged from any obligation to provide benefits to which the cash equivalent related except, in such cases as are mentioned in section 92(2), to the extent that an obligation to provide such guaranteed minimum pensions or give effect to such protected rights continues to subsist.

(2) Subject to the following provisions of this section, if the trustees or managers of a scheme receive an application under section 91, they shall do what is needed to carry out what the member requires—

- (a) within 12 months of the date on which they receive the application; or
- (b) in the case of a member of an occupational pension scheme, by the date on which the member attains normal pension age if that is earlier.

(3) If—

- (a) disciplinary proceedings or proceedings before a court have been begun against a member of an occupational pension scheme at any time before the expiry of the period of 12 months beginning with the termination date; and
- (b) it appears to the trustees or managers of the scheme that the proceedings may lead to the whole or part of the pension or benefit in lieu of a pension payable to the member or his widow being forfeited; and
- (c) the date before which they would (apart from this subsection) be obliged under subsection (2) to carry out what the member requires is earlier than the end of the period of 3 months after the conclusion of the disciplinary or court proceedings (including any proceedings on appeal),

then, subject to the following provisions of this section, they must instead do so before the end of that period of 3 months.

(4) The Board may grant an extension of the period within which the trustees or managers of the scheme are obliged to do what is needed to carry out what a member of the scheme requires—

- (a) in any case where in the opinion of the Board—
  - (i) the scheme is being wound up or is about to be wound up;
  - (ii) the scheme is ceasing to be a contracted-out scheme or, as the case may be, an appropriate scheme;
  - (iii) the interests of the members of the scheme generally will be prejudiced if the trustees or managers of the scheme do what is needed to carry out what is required within that period; or
  - (iv) the member has not taken all such steps as the trustees or managers can reasonably expect him to take in order to satisfy them of any matter which falls to be established before they can properly carry out what he requires;
- (b) in any case where the provisions of sections 48 to 50 apply; and



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- (c) in any case where a request for an extension has been made on a ground specified in paragraph (a) or (b), and the Board's consideration of the request cannot be completed before the end of that period.
- (5) A request for an extension under subsection (4) may only be made by the trustees or managers.
- (6) If the Board are satisfied—
  - (a) that there has been a relevant change of circumstances since they granted an extension, or
  - (b) that they granted an extension in ignorance of a material fact or on the basis of a mistake as to a material fact,they may direct that the extension be shortened or revoke it.

## 96 Withdrawal of applications.

- (1) Subject to subsection (2), a member of a scheme may withdraw an application under section 91 by giving the trustees or managers of the scheme notice in writing that he no longer wishes them to do what is needed to carry out what he previously required.
- (2) Such a notice shall be of no effect if it is given to the trustees or managers at a time when, in order to comply with what the member previously required, they have already entered into an agreement with a third party to use the whole or part of the member's cash equivalent in a way specified in subsection (2) or, as the case may be, subsection (3) of section 91.
- (3) A member who withdraws an application may make another.
- (4) A notice to the trustees or managers of a scheme under this section is to be taken to have been given if it is delivered to them personally, or sent by post in a registered letter or by recorded delivery service.

## 97 Supplementary provisions.

- In making any calculation for the purposes of this Chapter—
- (a) any charge or lien on, and
  - (b) any set-off against,
- the whole or part of a pension shall be disregarded.

VALID FROM 01/12/1999

### [<sup>F28</sup>PART IVA

#### REQUIREMENTS RELATING TO PENSION CREDIT BENEFIT

##### Textual Amendments

**F28** Pt. 4A Chapters 1, 2 (ss. 97A-97Q) inserted (1.12.1999 for certain purposes and otherwise 1.12.2000) by S.I. 1999/3147 (N.I. 11), arts. 1(5)(a), 34; S.R. 2000/133, art. 2(3), Sch. Pt. IV

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## CHAPTER I

### PENSION CREDIT BENEFIT UNDER OCCUPATIONAL SCHEMES

#### **97A Scope of Chapter I.**

- (1) This Chapter applies to any occupational pension scheme whose resources are derived in whole or part from—
  - (a) payments to which subsection (2) applies made or to be made by one or more employers of earners to whom the scheme applies, or
  - (b) such other payments by the earner or his employer, or both, as may be prescribed for different categories of scheme.
- (2) This subsection applies to payments—
  - (a) under an actual or contingent legal obligation, or
  - (b) in the exercise of a power conferred, or the discharge of a duty imposed, on a Minister of the Crown, government department or any other person, being a power or duty which extends to the disbursement or allocation of public money.

#### **97B Interpretation.**

In this Chapter—

“scheme” means an occupational pension scheme to which this Chapter applies;

“pension credit rights” means rights to future benefits under a scheme which are attributable (directly or indirectly) to a pension credit;

“pension credit benefit”, in relation to a scheme, means the benefits payable under the scheme to or in respect of a person by virtue of rights under the scheme attributable (directly or indirectly) to a pension credit;

“normal benefit age”, in relation to a scheme, means the earliest age at which a person who has pension credit rights under the scheme is entitled to receive a pension by virtue of those rights (disregarding any scheme rule making special provision as to early payment of pension on grounds of ill-health or otherwise).

#### **97C Basic principle as to pension credit benefit.**

- (1) Normal benefit age under a scheme must be between 60 and 65.
- (2) A scheme must not provide for payment of pension credit benefit in the form of a lump sum at any time before normal benefit age, except in such circumstances as may be prescribed.

#### **97D Form of pension credit benefit and its alternatives.**

- (1) Subject to subsection (2) and section 97E, a person’s pension credit benefit under a scheme must be—
  - (a) payable directly out of the resources of the scheme, or
  - (b) assured to him by such means as may be prescribed.

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- (2) Subject to subsections (3) and (4), a scheme may, instead of providing a person's pension credit benefit, provide—
  - (a) for his pension credit rights under the scheme to be transferred to another occupational pension scheme or a personal pension scheme with a view to acquiring rights for him under the rules of the scheme, or
  - (b) for such alternatives to pension credit benefit as may be prescribed.
- (3) The option conferred by subsection (2)(a) is additional to any obligation imposed by Chapter II of this Part.
- (4) The alternatives specified in subsection (2)(a) and (b) may only be by way of complete or partial substitute for pension credit benefit—
  - (a) if the person entitled to the benefit consents, or
  - (b) in such other cases as may be prescribed.

**97E Discharge of liability where pension credit or alternative benefits secured by insurance policies or annuity contracts.**

- (1) A transaction to which section 15 applies discharges the trustees or managers of a scheme from their liability to provide pension credit benefit or any alternative to pension credit benefit for or in respect of a member of the scheme if and to the extent that—
  - (a) it results in pension credit benefit, or any alternative to pension credit benefit, for or in respect of the member being appropriately secured (within the meaning of that section),
  - (b) the transaction is entered into with the consent of the member or, if the member has died, of the member's widow or widower, and
  - (c) such requirements as may be prescribed are met.
- (2) Regulations may provide that subsection (1)(b) shall not apply in prescribed circumstances.

## CHAPTER II

### TRANSFER VALUES

**97F Power to give transfer notice.**

- (1) An eligible member of a qualifying scheme may by notice in writing require the trustees or managers of the scheme to use an amount equal to the cash equivalent of his pension credit benefit for such one or more of the authorised purposes as he may specify in the notice.
- (2) In the case of a member of an occupational pension scheme, the authorised purposes are—
  - (a) to acquire rights allowed under the rules of an occupational pension scheme, or personal pension scheme, which is an eligible scheme;
  - (b) to purchase from one or more insurance companies such as are mentioned in section 15(4)(a), chosen by the member and willing to accept payment on account of the member from the trustees or managers, one or more annuities which satisfy the prescribed requirements; and

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- (c) in such circumstances as may be prescribed, to subscribe to other pension arrangements which satisfy prescribed requirements.
- (3) In the case of a member of a personal pension scheme, the authorised purposes are—
  - (a) to acquire rights allowed under the rules of an occupational pension scheme, or personal pension scheme, which is an eligible scheme; and
  - (b) in such circumstances as may be prescribed, to subscribe to other pension arrangements which satisfy prescribed requirements.
- (4) The cash equivalent for the purposes of subsection (1) shall—
  - (a) in the case of a salary related occupational pension scheme, be taken to be the amount shown in the relevant statement under section 97H, and
  - (b) in any other case, be determined by reference to the date the notice under that subsection is given.
- (5) The requirements which may be prescribed under subsection (2) or (3) include, in particular, requirements of the Inland Revenue.
- (6) In subsections (2) and (3), references to an eligible scheme are to a scheme—
  - (a) the trustees or managers of which are able and willing to accept payment in respect of the member’s pension credit rights, and
  - (b) which satisfies the prescribed requirements.
- (7) In this Chapter, “transfer notice” means a notice under subsection (1).

**97G Restrictions on power to give transfer notice.**

- (1) In the case of a salary related occupational pension scheme, the power to give a transfer notice may only be exercised if—
  - (a) the member has been provided with a statement under section 97H, and
  - (b) not more than 3 months have passed since the date by reference to which the amount shown in the statement is determined.
- (2) The power to give a transfer notice may not be exercised in the case of an occupational pension scheme if—
  - (a) there is less than a year to go until the member reaches normal benefit age, or
  - (b) the pension to which the member is entitled by virtue of his pension credit rights, or benefit in lieu of that pension, or any part of it has become payable.
- (3) Where an eligible member of a qualifying scheme—
  - (a) is entitled to make an application under section 91 to the trustees or managers of the scheme, or
  - (b) would be entitled to do so, but for the fact that he has not received a statement under section 89A in respect of which the guarantee date is sufficiently recent,
 he may not, if the scheme so provides, exercise the power to give them a transfer notice unless he also makes an application to them under section 91.
- (4) The power to give a transfer notice may not be exercised if a previous transfer notice given by the member to the trustees or managers of the scheme is outstanding.

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**97H Salary related schemes: statements of entitlement.**

- (1) The trustees or managers of a qualifying scheme which is a salary related occupational pension scheme shall, on the application of an eligible member, provide him with a written statement of the amount of the cash equivalent of his pension credit benefit under the scheme.
- (2) For the purposes of subsection (1), the amount of the cash equivalent shall be determined by reference to a date falling within—
  - (a) the prescribed period beginning with the date of the application, and
  - (b) the prescribed period ending with the date on which the statement under that subsection is provided to the applicant.
- (3) Regulations may make provision in relation to applications under subsection (1) and may, in particular, restrict the making of successive applications.
- (4) If trustees or managers to whom subsection (1) applies fail to perform an obligation under that subsection, Article 10 of the Pensions (Northern Ireland) Order 1995 (power of the Regulatory Authority to impose civil penalties) shall apply to any trustee or manager who has failed to take all such steps as are reasonable to secure that the obligation was performed.

**97I Calculation of cash equivalents.**

Cash equivalents for the purposes of this Chapter shall be calculated and verified in the prescribed manner.

**97J Time for compliance with transfer notice.**

- (1) Trustees or managers of a qualifying scheme who receive a transfer notice shall comply with the notice—
  - (a) in the case of an occupational pension scheme, within 6 months of the valuation date or, if earlier, by the date on which the member to whom the notice relates reaches normal benefit age, and
  - (b) in the case of a personal pension scheme, within 6 months of the date on which they receive the notice.
- (2) The Regulatory Authority may, in prescribed circumstances, extend the period for complying with the notice.
- (3) If the Regulatory Authority are satisfied—
  - (a) that there has been a relevant change of circumstances since they granted an extension under subsection (2), or
  - (b) that they granted an extension under that subsection in ignorance of a material fact or on the basis of a mistake as to a material fact,they may revoke or reduce the extension.
- (4) Where the trustees or managers of an occupational pension scheme have failed to comply with a transfer notice before the end of the period for compliance—
  - (a) they shall, except in prescribed cases, notify the Regulatory Authority of that fact within the prescribed period, and
  - (b) Article 10 of the Pensions (Northern Ireland) Order 1995 (power of the Regulatory Authority to impose civil penalties) shall apply to any trustee or

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manager who has failed to take all such steps as are reasonable to ensure that the notice was complied with before the end of the period for compliance.

- (5) If trustees or managers to whom subsection (4)(a) applies fail to perform the obligation imposed by that provision, Article 10 of the Pensions (Northern Ireland) Order 1995 shall apply to any trustee or manager who has failed to take all such steps as are reasonable to ensure that the obligation was performed.
- (6) Regulations may—
- (a) make provision in relation to applications under subsection (2), and
  - (b) provide that subsection (4) shall not apply in prescribed circumstances.
- (7) In this section “valuation date”, in relation to a transfer notice given to the trustees or managers of an occupational pension scheme, means—
- (a) in the case of a salary related scheme, the date by reference to which the amount shown in the relevant statement under section 97H is determined, and
  - (b) in the case of any other scheme, the date the notice is given.

**97K Withdrawal of transfer notice.**

- (1) Subject to subsections (2) and (3), a person who has given a transfer notice may withdraw it by giving the trustees or managers to whom it was given notice in writing that he no longer requires them to comply with it.
- (2) A transfer notice may not be withdrawn if the trustees or managers have already entered into an agreement with a third party to use the whole or part of the amount they are required to use in accordance with the notice.
- (3) If the giving of a transfer notice depended on the making of an application under section 91, the notice may only be withdrawn if the application is also withdrawn.

**97L Variation of the amount required to be used.**

- (1) Regulations may make provision for the amount required to be used under section 97F(1) to be increased or reduced in prescribed circumstances.
- (2) Without prejudice to the generality of subsection (1), the circumstances which may be prescribed include—
  - (a) failure by the trustees or managers of a qualifying scheme to comply with a notice under section 97F(1) within 6 months of the date by reference to which the amount of the cash equivalent falls to be determined, and
  - (b) the state of funding of a qualifying scheme.
- (3) Regulations under subsection (1) may have the effect of extinguishing an obligation under section 97F(1).

**97M Effect of transfer on trustees’ duties.**

Compliance with a transfer notice shall have effect to discharge the trustees or managers of a qualifying scheme from any obligation to provide the pension credit benefit of the eligible member who gave the notice.

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**97N Matters to be disregarded in calculations.**

In making any calculation for the purposes of this Chapter—

- (a) any charge or lien on, and
- (b) any set-off against,

the whole or part of a pension shall be disregarded.

**97O Service of notices.**

A notice under section 97F(1) or 97K(1) shall be taken to have been given if it is delivered to the trustees or managers personally or sent by post in a registered letter or by recorded delivery service.

**97P Interpretation of Chapter II.**

(1) In this Chapter—

“eligible member”, in relation to a qualifying scheme, means a member who has pension credit rights under the scheme;

“normal benefit age”, in relation to an eligible member of a qualifying scheme, means the earliest age at which the member is entitled to receive a pension by virtue of his pension credit rights under the scheme (disregarding any scheme rule making special provision as to early payment of pension on grounds of ill-health or otherwise);

“pension credit benefit”, in relation to an eligible member of a qualifying scheme, means the benefits payable under the scheme to or in respect of the member by virtue of rights under the scheme attributable (directly or indirectly) to a pension credit;

“pension credit rights”, in relation to a qualifying scheme, means rights to future benefits under the scheme which are attributable (directly or indirectly) to a pension credit;

“qualifying scheme” means a funded occupational pension scheme and a personal pension scheme;

“transfer notice” has the meaning given by section 97F(7).

(2) For the purposes of this Chapter, an occupational pension scheme is salary related if—

- (a) it is not a money purchase scheme, and
- (b) it does not fall within a prescribed class.

(3) In this Chapter, references to the relevant statement under section 97H, in relation to a transfer notice given to the trustees or managers of a salary related occupational pension scheme, are to the statement under that section on which the giving of the notice depended.

(4) For the purposes of this section, an occupational pension scheme is funded if it meets its liabilities out of a fund accumulated for the purpose during the life of the scheme.

**97Q Power to modify Chapter II in relation to hybrid schemes.**

Regulations may apply this Chapter with prescribed modifications to occupational pension schemes—

- (a) which are not money purchase schemes, but

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- (b) where some of the benefits that may be provided are money purchase benefits.]

## PART V

### ANNUAL INCREASES OF PENSIONS IN PAYMENT

#### CHAPTER I

##### PENSIONS UNDER FINAL SALARY SCHEMES, ETC.

#### 98 Scope of Chapter I: annual increase of certain occupational pensions.

- (1) This Chapter shall have effect for the purpose of requiring the provision by schemes to which it applies of annual increases in the annual rates of pensions under those schemes.
- (2) This Chapter applies to any occupational pension scheme—
- (a) which is neither a public service pension scheme nor a money purchase scheme; and
  - (b) the rules of which do not require the annual rate of every pension to be increased each year by at least the appropriate percentage of that rate; and in this Chapter such a scheme is referred to as a “qualifying scheme”.
- (3) In this Chapter—
- “annual rate”, in relation to a pension or a part of a pension, means the annual rate of the pension or that part of it, as previously increased under the rules of the scheme or under this Chapter;
- “the appointed day” means the day on which this Chapter comes into operation;
- “appropriate percentage”, in relation to an increase in the annual rate of a pension or a part of a pension, means the percentage specified in the last revaluation order made before the increase is to take effect as the revaluation percentage for the last revaluation period of 12 months;
- “pension”, in relation to a scheme, means any pension which commences or has commenced under the scheme, but does not include—
- (a) a guaranteed minimum pension or any increase in such a pension under section 105; or
  - (b) any money purchase benefit;
- “revaluation order” means an order under paragraph 2(1) of Schedule 2;
- “revaluation percentage” means a percentage specified for a revaluation period by a revaluation order;
- “revaluation period” has the meaning given by paragraph 2(2) of Schedule 2.



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## **99 Annual increase of later service component.**

- (1) If, apart from this Chapter, the annual rate of a pension under a qualifying scheme would not be increased as mentioned in section 98(2)(b), the annual rate of its later service component shall be increased annually by at least the appropriate percentage of the annual rate of that component.
- (2) In this section “later service component” means so much (if any) of the annual rate of the pension as is attributable to pensionable service on or after the appointed day.
- (3) The first increase by virtue of this section in the rate of a pension shall take effect not later than the first anniversary of the commencement of the pension and subsequent increases shall take effect at intervals of not more than 12 months.
- (4) This section is subject to sections 101 to 104 and 149.

## **100 Annual increase of earlier service component where scheme is in surplus.**

- (1) If on any valuation day the value of a qualifying scheme’s assets exceeds the value of its liabilities, the amount of the excess (the “valuation surplus”) shall, in accordance with this section but subject to subsection (7), be applied in providing for annual increases in the annual rate of the earlier service component of each pension under the scheme that would not, apart from this Chapter, be increased as mentioned in section 98(2)(b).
- (2) In this section “earlier service component” means so much (if any) of the annual rate of the pension as is attributable to pensionable service before the appointed day.
- (3) Each annual increase to be provided in pursuance of this section shall be equal to the appropriate percentage of the annual rate of the earlier service component of the pension in question.
- (4) Except in a case where regulations otherwise provide, the days which are “valuation days” for the purposes of this section are—
  - (a) the appointed day; and
  - (b) each subsequent day as at which the assets and liabilities of the scheme in question are actuarially valued for any purpose.
- (5) Where, in consequence of a valuation surplus, this section requires provision to be made for annual increases in the annual rate of the earlier service component of a pension, the first of those increases shall take effect not later than the first anniversary of the later of—
  - (a) the valuation day as at which the valuation was made which disclosed the valuation surplus; or
  - (b) the commencement of the pension;and subsequent increases shall take effect at intervals of not more than 12 months.
- (6) In any case where—
  - (a) a valuation of the assets and liabilities of a qualifying scheme discloses a valuation surplus, but
  - (b) the amount of the surplus is insufficient to provide in full for the annual increases otherwise required by this section in pensions under the scheme,the valuation surplus shall be applied in providing for those increases, but only at the percentage rate that would apply year by year in relation to those increases if, for the

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percentage of 5 per cent. specified in subsection (10), there were substituted such lower percentage as represents the greatest percentage by reference to which the valuation surplus is sufficient to provide for annual increases in the earlier service component of the pensions in question.

- (7) If a valuation surplus is disclosed on a valuation at any time when either—
- (a) provision has already been made by the scheme for the annual rate of the earlier service component of every such pension as is mentioned in subsection (1) to be increased annually in the aggregate by at least the appropriate percentage of that rate, or
  - (b) the application of part only of the valuation surplus would be sufficient to secure that result,
- this section does not require that surplus or, as the case may be, the remaining part of it to be applied in the provision of increases under this section.
- (8) The value of a qualifying scheme's assets and liabilities for the purposes of subsection (1) and the percentage to be substituted under subsection (6) shall be determined in accordance with regulations.
- (9) This section is subject to sections 101 to 104 and 149.
- (10) The maximum percentage of 5 per cent. referred to in subsection (5) is the maximum percentage which may be specified as the revaluation percentage in the case of a revaluation period of 12 months by a revaluation order.

### **101 Proportional increase where first period is less than 12 months.**

- (1) Where the first increase of a pension required under section 99 is to take effect on a date when the pension has been in payment for a period of less than 12 months, that increase shall be of an amount equal to one twelfth of the amount of the increase so required (apart from this subsection) for each complete month in that period.
- (2) This section shall apply in relation to the first increase of a pension by virtue of section 100 in consequence of each successive valuation surplus as it applies in relation to the first increase of a pension under section 99.

### **102 Restriction on increase where member is under 55.**

- (1) Subject to subsection (2), no increase under section 99 or 100 is required to be paid to or for a member of a scheme whose pension has commenced but who has not attained the age of 55 at the time when the increase takes effect.
- (2) Subsection (1) does not apply if the member—
  - (a) is permanently incapacitated by mental or physical infirmity from engaging in regular full-time employment, or
  - (b) has retired on account of mental or physical infirmity from the employment in respect of which, or on retirement from which, the pension is payable.
- (3) The rules of a scheme may provide that if, in a case where a pension has been paid to or for a member under the age of 55 at an increased rate in consequence of subsection (2), the member—
  - (a) ceases to suffer from the infirmity in question before he attains the age of 55, but
  - (b) continues to be entitled to the pension,

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any increases subsequently taking effect under section 99 or 100 in the annual rate of the pension shall not be paid or shall not be paid in full.

(4) In any case where—

- (a) by virtue only of subsection (1) or (3), increases are not paid to or for a member or are not paid in full, but
- (b) the member attains the age of 55 or, in a case falling within subsection (3), again satisfies the condition set out in subsection (2)(a) or (b),

his pension shall then become payable at the annual rate at which it would have been payable apart from subsection (1) or (3).

### **103 Application of Chapter I to pensions not attributable to pensionable service.**

Regulations may provide that the provisions of this Chapter shall apply in relation to any pension under a qualifying scheme as if so much of the annual rate of the pension as would not otherwise be attributable to pensionable service were attributable—

- (a) to pensionable service before the appointed day;
- (b) to pensionable service on or after that day; or
- (c) partly to pensionable service before and partly to pensionable service on or after that day.

### **104 No payments to employers from non-complying schemes.**

(1) No payment shall be made out of the resources of a qualifying scheme which is constituted by trust deed to or for a person who is or has been the employer of persons in the description or category of employment to which the scheme relates until such time as provision has been made by the scheme for every pension which commences or has commenced under it to be increased as mentioned in section 98(2)(b).

(2) Nothing in subsection (1) applies in relation to payments made to or for a person by virtue of his or any other person's membership of the scheme in question.

#### **Modifications etc. (not altering text)**

C27 S. 104 modified (28.3.1997) by S.R. 1997/192, art. 6(b) (with art. 9)

## **CHAPTER II**

### **GUARANTEED MINIMUM PENSIONS**

### **105 Annual increase of guaranteed minimum pensions.**

(1) Whenever the Secretary of State makes an order under section 109 of the <sup>M40</sup>Pension Schemes Act 1993 specifying a percentage by which there is to be an increase of the rate of that part of guaranteed minimum pensions which is attributable to earnings factors for the tax year 1988-89 and subsequent tax years for—

- (a) earners who have attained pensionable age; and
- (b) widows and widowers,

the Department may make a corresponding order for Northern Ireland.

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- (2) Where the benefits mentioned in section 42(1) to (7) are not increased on the day on which an order under this section takes effect, the order shall be treated for the purposes of that section as not taking effect until the day on which those benefits are next increased.

#### **Marginal Citations**

**M40** 1993 c. 48.

### **106 Requirement as to resources for annual increase of guaranteed minimum pensions.**

- (1) Except as permitted by subsection (2) or (3), the trustees or managers of a scheme may not make an increase in a person's pension which is required by virtue of section 105 out of money which would otherwise fall to be used for the payment of benefits under the scheme to or in respect of that person unless—
- (a) the payment is to an earner in respect of the tax year in which he attains pensionable age and the increase is the one required to be made in the next tax year; or
  - (b) the payment is to a person as the widow or widower of an earner who died before attaining pensionable age and is in respect of the tax year in which the person became a widow or widower, and the increase is the one required to be made in the next tax year.
- (2) Where in any tax year the trustees or managers of an occupational pension scheme make an increase otherwise than in pursuance of section 105, they may deduct the amount of the increase from any increase which, but for this subsection, they would be required to make under that section in the next tax year.
- (3) Where in any tax year the trustees or managers of a scheme make an increase which is partly made otherwise than in pursuance of section 105, they may deduct the part of the increase so made from any increase which, but for this subsection, they would be required to make under that section in the next year.
- (4) Where by virtue of subsection (2) or (3) guaranteed minimum pensions are not required to be increased in pursuance of section 105, or not by the full amount that they otherwise would be, their amount shall be calculated for any purpose as if they had been increased in pursuance of that section or, as the case may be, by that full amount.

## **PART VI**

### **FURTHER REQUIREMENTS FOR PROTECTION OF SCHEME MEMBERS**

#### **107 Voluntary contributions.**

- (1) Except in such cases as may be prescribed, and except so far as is necessary to ensure that an occupational pension scheme or a personal pension scheme has, or may be expected to qualify for, tax-exemption or tax-approval, the rules of the scheme—
- (a) must not prohibit, or allow any person to prohibit, the payment by a member of voluntary contributions;

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- (b) must not impose, or allow any person to impose, any upper or lower limit on the payment by a member of voluntary contributions;
  - (c) must secure that any voluntary contributions paid by a member are to be used by the trustees or managers of the scheme to provide additional benefits for or in respect of him; and
  - (d) must secure that the value of the additional benefits is reasonable, having regard—
    - (i) to the amount of the voluntary contributions; and
    - (ii) to the value of the other benefits under the scheme.
- (2) The requirements specified in this section are in this Act referred to as “the voluntary contributions requirements”.
- (3) This section does not apply in relation to any pension payable under—
- (a) Part II of the <sup>M41</sup>Judicial Pensions Act (Northern Ireland) 1951;
  - (b) Part XIII of the <sup>M42</sup>County Courts Act (Northern Ireland) 1959;
  - (c) the <sup>M43</sup>Resident Magistrates’ Pensions Act (Northern Ireland) 1960;
  - (d) section 2 of the <sup>M44</sup>Superannuation (Miscellaneous Provisions) Act (Northern Ireland) 1969;
  - (e) the <sup>M45</sup>Judicial Pensions Act 1981; or
  - (f) the <sup>M46</sup>Judicial Pensions and Retirement Act 1993;
- and accordingly none of the provisions of this Act shall, in so far as it has effect in relation to the voluntary contributions requirements, apply to any such pension.

#### Marginal Citations

- M41** 1951 c. 20 (N.I.).
- M42** 1959 c. 25 (N.I.).
- M43** 1960 c. 2 (N.I.).
- M44** 1969 c. 7 (N.I.).
- M45** 1981 c. 20.
- M46** 1993 c. 8.

VALID FROM 01/12/1999

#### [<sup>F29</sup>107A] Monitoring of employers’ payments to personal pension schemes.

- (1) This section applies where—
  - (a) an employee is a member of a personal pension scheme; and
  - (b) direct payment arrangements exist between the employee and his employer.
- (2) In this section “direct payment arrangements” means arrangements under which contributions fall to be paid by or on behalf of the employer towards the scheme—
  - (a) on the employer’s own account (but in respect of the employee); or
  - (b) on behalf of the employee out of deductions from the employee’s earnings.
- (3) The employer must secure that there is prepared, maintained and from time to time revised a record of the direct payment arrangements which complies with subsection (4).

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- (4) The record must—
- (a) show the rates and due dates of contributions payable under the direct payment arrangements, and
  - (b) satisfy prescribed requirements.
- (5) The employer must, within the prescribed period after the preparation or any revision of the record, send a copy of the record or (as the case may be) of the revised record to the trustees or managers of the scheme.
- (6) Except in prescribed circumstances, the trustees or managers of the scheme must, where any contribution shown by the record to be payable under the direct payment arrangements has not been paid on or before its due date, give notice of that fact, within the prescribed period, to the Regulatory Authority and the employee.
- (7) The trustees or managers of the scheme must before the end of prescribed intervals send the employee a statement setting out the amounts and dates of the payments made under the direct payment arrangements during a prescribed period.
- (8) If—
- (a) the employer fails to take all such steps as are reasonable to secure compliance with subsection (3) or (5), or
  - (b) a contribution payable under the direct payment arrangements is not paid to the trustees or managers of the scheme on or before its due date,
- Article 10 of the Pensions (Northern Ireland) Order 1995 (power of the Regulatory Authority to impose civil penalties) applies to the employer.
- (9) If subsection (6) or (7) is not complied with, Article 10 of the Pensions (Northern Ireland) Order 1995 applies to any trustee or manager of the scheme who has failed to take all such steps as are reasonable to secure compliance.
- (10) If—
- (a) subsection (6) or (7) is not complied with, and
  - (b) the scheme—
    - (i) is established under a trust, and
    - (ii) is or has been registered under Article 4 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (stakeholder schemes),
 Article 3 of the Pensions (Northern Ireland) Order 1995 (power of the Regulatory Authority to remove trustees) applies to any trustee of the scheme who has failed to take all such steps as are reasonable to secure compliance.
- (11) A person shall not be required by virtue of subsection (8)(b) to pay a penalty under Article 10 of the Pensions (Northern Ireland) Order 1995 in respect of a failure if in respect of that failure he has been—
- (a) required to pay a penalty under that Article by virtue of Article 5(7) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (failures in respect of stakeholder pensions), or
  - (b) convicted of an offence under subsection (12).
- (12) A person is guilty of an offence if he is knowingly concerned in the fraudulent evasion of the direct payment arrangements so far as they are arrangements for the payment by him or any other person of any such contribution towards the scheme as is mentioned in subsection (2)(b).

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- (13) A person guilty of an offence under subsection (12) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; and
  - (b) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine or both.
- (14) No prosecution shall be brought against the Crown for an offence under subsection (12), but that subsection applies to persons in the public service of the Crown as to other persons.
- (15) In this section “due date”, in relation to a contribution payable under the direct payment arrangements, means—
- (a) if the contribution falls to be paid on the employer’s own account, the latest day under the arrangements for paying it;
  - (b) if the contribution falls to be paid on behalf of the employee, the last day of a prescribed period.
- (16) Regulations may provide for this section to apply with such modifications as may be prescribed in a case where—
- (a) the direct payment arrangements give effect to a requirement arising under paragraph (5) of Article 5 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (deduction and payment of employee’s contributions to stakeholder scheme), and
  - (b) in accordance with regulations under that paragraph, that requirement is for the employer to pay contributions to a person prescribed by such regulations (instead of to the trustees or managers of the scheme).
- (17) Nothing in this section shall be taken as varying the provisions of the direct payment arrangements or as affecting their enforceability.]

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#### Textual Amendments

**F29** Ss.107A, 107B inserted (1.12.1999 for certain purposes and otherwise 6.4.2001) by [S.I. 1999/3147](#) (N.I. 11), [arts. 1\(5\)\(a\), 10](#) (with transitional provisions in [art. 75\(1\)](#)); [S.R. 2000/332](#), [art. 2\(1\)](#)

VALID FROM 01/12/1999

**<sup>F30</sup>107B Obtaining information for purposes of section 107A and corresponding legislation in Great Britain.**

- (1) Any person appearing to the Regulatory Authority to be a person who holds, or is likely to hold, information which is relevant to the issue—
- (a) whether any provision made by or under section 107A is being, or has been, complied with by an employer or the trustees or managers of a personal pension scheme,
  - (b) whether, in the case of any direct payment arrangements existing between an employee and his employer, there has been such a failure to pay a contribution as is mentioned in subsection (8)(b) of that section, or
  - (c) whether an offence has been committed under subsection (12) of that section in relation to any such arrangements,

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- must, if required to do so by the Regulatory Authority by notice in writing, produce any document which is so relevant.
- (2) To comply with subsection (1) the document must be produced in such a manner, at such a place and within such a period as may be specified in the notice.
  - (3) An inspector may, for the purposes of investigating any of the matters set out in subsection (1)(a) to (c), at any reasonable time enter premises liable to inspection and, while there—
    - (a) may make such examination and inquiry as may be necessary for such purposes,
    - (b) may require any person on the premises to produce for his inspection, or secure the production for his inspection of, any document relevant—
      - (i) to compliance with any provision made by or under section 107A, or with the direct payment arrangements, or
      - (ii) to the issue whether an offence has been committed under subsection (12) of that section in relation to those arrangements, and
    - (c) may, as to any matter so relevant, examine, or require to be examined, either alone or in the presence of another person, any person on the premises whom he has reasonable cause to believe to be able to give information relevant to that matter.
  - (4) An inspector applying for admission to any premises in pursuance of subsection (3) must, if so required, produce his certificate of appointment.
  - (5) For the purposes of subsection (3) premises are liable to inspection if the inspector has reasonable grounds to believe that—
    - (a) employees of the employer are employed there,
    - (b) documents relevant to the administration of—
      - (i) the employer’s business,
      - (ii) the direct payment arrangements, or
      - (iii) the scheme to which those arrangements relate, are kept there, or
    - (c) either of the following is being carried out there, namely—
      - (i) the administration of the employer’s business, the arrangements or the scheme, or
      - (ii) work connected with the administration of the employer’s business, the arrangements or the scheme,
 unless the premises are a private dwelling-house not used by, or by permission of, the occupier for the purposes of a trade or business.
  - (6) Article 98 of the Pensions (Northern Ireland) Order 1995 (warrants) shall have effect as if references to Article 96(1) or 97(1)(b) of that Order included references to subsection (1) or (3)(b).
  - (7) Articles 99 to 101 of that Order (penalties, savings and reports) shall have effect as if references which are or include references to Article 96 or 97 of that Order included references to this section.
  - (8) In this section—
 

“direct payment arrangements” has the same meaning as in section 107A;



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“document” includes information recorded in any form, and any reference to production of a document, in relation to information recorded otherwise than in legible form, is to producing a copy of the information in legible form;  
“inspector” means a person appointed by the Regulatory Authority as an inspector.

- (9) References in this section to, or to any provision of, section 107A include references to corresponding provisions of legislation in Great Britain; and in this section as it has effect in relation to those corresponding provisions, “employee” and “employer” have the same meaning as they have for the purposes of those provisions.

#### Textual Amendments

**F30** Ss.107A, 107B inserted (1.12.1999 for certain purposes and otherwise 6.4.2001) by S.I. 1999/3147 (N.I. 11), arts. 1(5)(a), 10 (with transitional provisions in art. 75(1)); S.R. 2000/332, art. 2(1)

### 108 Restrictions on investment of scheme’s resources in employer-related assets.

- (1) An occupational pension scheme shall comply with such restrictions as may be prescribed with respect to the proportion of its resources that may at any time be invested in, or in any description of, employer-related investments.
- (2) In this section—  
“employer-related investments” means—  
(a) shares or other securities issued by the employer or by any person who is connected with, or an associate of, the employer;  
(b) land which is occupied or used by, or subject to a lease in favour of, the employer or any such person;  
(c) property (other than land) which is used for the purposes of any business carried on by the employer or any such person;  
(d) loans to the employer or any such person;  
“the employer” means the employer of persons in the description or category of employment to which the scheme in question relates;  
“securities” means any asset, right or interest falling within paragraph 1, 2, 4 or 5 of Schedule 1 to the <sup>M47</sup>Financial Services Act 1986.
- (3) If and to the extent that any sums due and payable by a person to the trustees or managers of a scheme remain unpaid—  
(a) those sums shall be regarded for the purposes of this section as loans made to that person by the trustees or managers, and  
(b) resources of the scheme shall be regarded as invested accordingly.
- (4) Articles 4 and 7 of the <sup>M48</sup>Insolvency (Northern Ireland) Order 1989 (connected and associated persons) shall apply for the purposes of this section as they apply for the purposes of that Order.

#### Marginal Citations

**M47** 1986 c. 60.

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**M48** [S.I. 1989/2405 \(N.I. 19\)](#).

## **109 Disclosure of information about schemes to members, etc.**

- (1) The Department may by regulations specify requirements to be complied with in the case of an occupational pension scheme or a personal pension scheme with respect to keeping the persons mentioned in subsection (2) informed—
  - (a) of its constitution;
  - (b) of its administration and finances;
  - (c) of the rights and obligations that arise or may arise under it; and
  - (d) of any other matters that appear to the Department to be relevant to occupational pension schemes or personal pension schemes in general or to schemes of a description to which the scheme in question belongs.
- (2) The persons referred to in subsection (1) are—
  - (a) members and, in the case of an occupational pension scheme, prospective members of the scheme;
  - (b) spouses of members and, in the case of an occupational pension scheme, of prospective members;
  - (c) persons within the application of the scheme and qualifying or prospectively qualifying for its benefits;
  - (d) in the case of an occupational pension scheme, independent trade unions recognised to any extent for the purposes of collective bargaining in relation to members and to prospective members of the scheme.
- (3) Without prejudice to the generality of section 177(2), the regulations may distinguish between—
  - (a) cases in which information is to be given as of course; and
  - (b) cases in which information need only be given on request or in other prescribed circumstances.
- (4) The regulations shall make provision for referring to an industrial tribunal any question whether an organisation is such a trade union as is mentioned in subsection (2)(d).

## **110 Additional documents for members, etc. and Registrar.**

- (1) Without prejudice to the generality of the power conferred on it by section 109(1), the Department may by regulations require the trustees of an occupational pension scheme or, if there are no trustees, the managers—
  - (a) to obtain at such times as may be prescribed documents to which this subsection applies; and
  - (b) to make copies of them available to the persons specified in section 109(2).
- (2) In relation to any scheme, the documents to which subsection (1) applies are—
  - (a) its audited accounts;
  - (b) an auditor's statement about contributions under it;
  - (c) an actuarial valuation of its assets in relation to its liabilities; and
  - (d) an actuary's statement concerning such aspects of any such valuation as may be prescribed.
- (3) The Department may by regulations—

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- (a) prescribe the persons who may act as auditors or actuaries for the purposes of this section; or
  - (b) provide that the persons who may so act shall be—
    - (i) persons with prescribed professional qualifications or experience; or
    - (ii) persons approved by the Department.
- (4) The Department may by regulations make provision as to the form and content of any such document as is mentioned in subsection (2).

**Modifications etc. (not altering text)**

**C28** S. 110 modified (28.3.1997) by S.R. 1997/192, art. 7 (with art. 9)

**111 Powers as respects failure to comply with information requirements.**

- (1) If the trustees or managers of an occupational pension scheme or a personal pension scheme, having made default in complying with regulations under section 109 or 110(1)(b), fail to make good the default within 14 days after the service on them of a notice requiring them to do so, an order may be made under this subsection.
- (2) The Department may by regulations specify forms for notices under subsection (1).
- (3) An order under subsection (1) is an order directing the trustees or managers to make good the default within such time as may be specified in the order.
- (4) The power to make such an order shall be exercisable by a county court on the application of any person mentioned in subsection (5).
- (5) The persons referred to in subsection (4) are—
  - (a) the Department;
  - (b) any person authorised by the Department to make an application under this section; and
  - (c) any aggrieved person.
- (6) An order under this section may provide that all costs of and incidental to the application shall be borne personally by any of the trustees or managers of the scheme.

**112 Regulations as to auditors.**

The Department may by regulations make provision as to—

- (a) the appointment, resignation and removal of auditors of occupational pension schemes;
- (b) the duty of employers and auditors of employers to disclose information to the trustees or managers of occupational pension schemes and the auditors of such schemes;
- (c) the duty of trustees or managers of an occupational pension scheme to disclose information and to make documents available to the auditors of the scheme.

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### 113 Regulations as to form and content of advertisements.

Regulations may be made relating to the form and content of advertisements and such other material as may be prescribed issued by or on behalf of the trustees or managers of a personal or occupational pension scheme for the purposes of the scheme.

### 114 Equal access requirements.

- (1) Subject to section 149(3), the equal access requirements in relation to an occupational pension scheme are that membership of the scheme is open to both men and women on terms which are the same as to age and length of service needed for becoming a member.
- (2) A rule does not contravene the equal access requirements only because it confers on the scheme's trustees or managers, or others, a discretion whose exercise may result in a person being more or less favourably treated than he otherwise would be, so long as it does not provide for the discretion to be exercised in any discriminatory manner as between men and women.
- (3) The equal access requirements have effect in relation to any occupational pension scheme whose resources are derived in whole or in part from—
  - (a) payments made or to be made by one or more employers of earners to whom the scheme applies, being payments either—
    - (i) under an actual or contingent legal obligation; or
    - (ii) in the exercise of a power conferred, or the discharge of a duty imposed, on a Minister of the Crown, government department or any other person, being a power or duty which extends to the disbursement or allocation of public money; or
  - (b) such other payments by the earner or his employer, or both, as may be prescribed for different categories of scheme.
- (4) Regulations may make provision—
  - (a) for the <sup>M49</sup>Equal Pay Act (Northern Ireland) 1970 to have effect, in relation to terms of employment relating to membership of an occupational pension scheme, with such modifications as may be prescribed;
  - (b) for imposing requirements on employers as to the payment of contributions and otherwise in case of their failing or having failed to comply with any such terms;
  - (c) for the consequential modification of a scheme's rules where there has been an alteration under the Equal Pay Act <sup>M50</sup>(Northern Ireland) 1970 of any such terms.
- (5) A reference in this section to terms of employment includes (where the context permits) a reference to—
  - (a) any collective agreement or pay structure;
  - (b) a wages regulation order within section 4 of the <sup>M51</sup>Equal Pay Act (Northern Ireland) 1970; and
  - (c) an agricultural wages order within section 5 of that Act.

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#### Marginal Citations

**M49** 1970 c. 32 (N.I.).

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**M50** 1970 c. 32 (N.I.).

**M51** 1970 c. 32 (N.I.).

## PART VII

### INSOLVENCY OF EMPLOYERS

#### CHAPTER I

##### INDEPENDENT TRUSTEES

### 115 Requirement for independent trustee where employer becomes insolvent, etc.

- (1) This section applies in relation to an occupational pension scheme which is constituted by trust deed—
- (a) if a person (“the practitioner”) commences to act as an insolvency practitioner in relation to a company which, or an individual who, is the employer of persons in the description or category of employment to which the scheme relates; or
  - (b) if the official receiver becomes—
    - (i) the liquidator or provisional liquidator of a company which is the employer of any such persons, or
    - (ii) the receiver and the manager, or the trustee, of the estate of a bankrupt who is the employer of any such persons.
- (2) If and so long as this section applies to a scheme, subject to subsection (5), it shall be the duty of the practitioner or official receiver—
- (a) to satisfy himself that at all times at least one of the trustees of the scheme is an independent person; and
  - (b) if at any time he is not so satisfied, to appoint under this paragraph, or to secure the appointment of, an independent person as a trustee of the scheme.
- (3) For the purposes of subsection (2) a person is “independent” only if—
- (a) he has no interest in the assets of the employer or of the scheme, otherwise than as trustee of the scheme;
  - (b) he is neither connected with, nor an associate of—
    - (i) the employer;
    - (ii) any person for the time being acting as an insolvency practitioner in relation to the employer; or
    - (iii) the official receiver, acting in any of the capacities mentioned in subsection (1)(b) in relation to the employer; and
  - (c) he satisfies such other requirements as may be prescribed;
- and any reference in this section or sections 116 to 118 to an “independent trustee” shall be construed accordingly.
- (4) Articles 4 and 7 of the <sup>M52</sup>Insolvency (Northern Ireland) Order 1989 (connected and associated persons) shall apply for the purposes of subsection (3)(b) as they apply for the purposes of that Order.

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- (5) Where, apart from this subsection, the duties imposed by subsection (2) in relation to a scheme would fall to be discharged at the same time by two or more persons acting in different capacities, those duties shall be discharged—
- (a) if the employer is a company, by the person or persons acting as the company’s liquidator, provisional liquidator or administrator; or
  - (b) if the employer is an individual, by the person or persons acting as his trustee in bankruptcy or interim receiver of his property.
- (6) Where this section applies in relation to a scheme, it shall cease to do so—
- (a) if some person other than the employer mentioned in subsection (1) becomes the employer of persons in the description or category of employment to which the scheme relates; or
  - (b) if at any time neither the practitioner nor the official receiver is acting in relation to the employer.
- (7) Nothing in subsection (6) affects the application of this section in relation to the scheme on any subsequent occasion when the conditions specified in subsection (1) (a) or (b) are satisfied in relation to it.
- (8) In this section—
- “acting as an insolvency practitioner” and “official receiver” shall be construed in accordance with Articles 2(2) and 3 of the <sup>M53</sup>Insolvency (Northern Ireland) Order 1989;
- “bankrupt” has the meaning given by Article 9(1) of the Insolvency (Northern Ireland) Order 1989;
- “company” means a company within the meaning given by Article 3(1) of the <sup>M54</sup>Companies (Northern Ireland) Order 1986 or a company which may be wound up under Part VI of the Insolvency (Northern Ireland) Order 1989 (unregistered companies).
- (9) References in this section to an individual include references to a partnership.

#### **Marginal Citations**

**M52** S.I. 1989/2405 (N.I. 19).

**M53** S.I. 1989/2405 (N.I. 19).

**M54** S.I. 1986/1032 (N.I. 6).

## **116 Members’ powers to apply to court to enforce duty under s. 115.**

If—

- (a) section 115 applies in relation to a scheme; but
- (b) the practitioner or official receiver neglects or refuses to discharge any duty imposed on him by subsection (2) of that section in relation to the scheme,

any member of the scheme may apply to the High Court for an order requiring him to discharge his duties under that subsection.

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## **117 Further provisions as to appointment and powers of independent trustees.**

- (1) If, immediately before the appointment of an independent trustee under subsection (2) (b) of section 115, there is no trustee of the scheme other than the employer, the employer shall cease to be a trustee upon the appointment of the independent trustee.
- (2) If and so long as section 115 applies in relation to a scheme—
  - (a) any power vested in the trustees or managers of the scheme and exercisable at their discretion shall be exercisable only by the independent trustee; and
  - (b) any power—
    - (i) which the scheme confers on the employer (otherwise than as trustee or manager of the scheme), and
    - (ii) which is exercisable by him at his discretion but only as trustee of the power,shall be exercisable only by the independent trustee;but if, in either case, there is more than one independent trustee, the power shall also be exercisable with the consent of at least half of those trustees by any person who could exercise it apart from this subsection.
- (3) If and so long as section 115 applies in relation to a scheme, no independent trustee of the scheme shall be removed from being a trustee by virtue only of any provision of the scheme.
- (4) If a trustee appointed under subsection (2)(b) of section 115 ceases to be an independent trustee, then—
  - (a) he shall immediately give written notice of that fact to the practitioner or official receiver by whom the duties under that provision fall to be discharged; and
  - (b) subject to subsection (5), he shall cease to be a trustee of the scheme.
- (5) If, in a case where subsection (4) applies, there is no other trustee of the scheme than the former independent trustee, he shall not cease by virtue of that subsection to be a trustee until such time as another trustee is appointed.
- (6) A trustee appointed under subsection (2)(b) of section 115 shall be entitled to be paid out of the scheme's resources his reasonable fees for acting in that capacity and any expenses reasonably incurred by him in doing so, and to be so paid in priority to all other claims falling to be met out of the scheme's resources.

## **118 Duty of insolvency practitioner or official receiver to give information to scheme trustees.**

- (1) Notwithstanding anything in Article 133 of the <sup>M55</sup>Insolvency (Northern Ireland) Order 1989 (court orders for inspection, etc.), if and so long as section 115 applies in relation to a scheme, it shall be the duty of the practitioner or official receiver to provide the trustees of the scheme, as soon as practicable after the receipt of a request, with any information which the trustees may reasonably require for the purposes of the scheme.
- (2) Any expenses incurred by the practitioner or official receiver in complying with a request under subsection (1) shall be recoverable by him as part of the expenses incurred by him in discharge of his duties.

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- (3) The practitioner or official receiver shall not be required under subsection (1) to take any action which involves expenses that cannot be so recovered, unless the trustees of the scheme undertake to meet them.

**Marginal Citations**

**M55** S.I. 1989/2405 (N.I. 19).

## CHAPTER II

### PAYMENT BY THE DEPARTMENT OF UNPAID SCHEME CONTRIBUTIONS

#### 119 Interpretation of Chapter II.

- (1) For the purposes of this Chapter, an employer shall be taken to be insolvent if, but only if, in Northern Ireland—

- (a) he has been adjudged bankrupt or has made a composition or arrangement with his creditors;
- (b) he has died and his estate falls to be administered in accordance with an order under Article 365 of the Insolvency (Northern Ireland) Order 1989; or
- (c) where the employer is a company—
  - (i) a winding-up order or an administration order is made or a resolution for voluntary winding up is passed with respect to it,
  - (ii) a receiver or manager of its undertaking is duly appointed,
  - (iii) possession is taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge, or
  - (iv) a voluntary arrangement proposed for the purpose of Part II of the <sup>M56</sup>Insolvency (Northern Ireland) Order 1989 is approved under that Part.

- (2) In this Chapter—

“contract of employment”, “employee” and “employer” and other expressions which are defined in the <sup>M57</sup>Industrial Relations (Northern Ireland) Order 1976 have the same meaning as in that Order, except that the definition of “employee” in Article 2(2) of that Order shall be construed as if the words “otherwise than in police service” were omitted;

“holiday pay” means—

- (a) pay in respect of a holiday actually taken; or
- (b) any accrued holiday pay which under the employee’s contract of employment would in the ordinary course have become payable to him in respect of the period of a holiday if his employment with the employer had continued until he became entitled to a holiday;

“occupational pension scheme” means any scheme or arrangement which provides or is capable of providing, in relation to employees in any description of employment, benefits, in the form of pensions or otherwise, payable to or in respect of any such employees on the termination of their employment or on their death or retirement.



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- (3) For the purposes of this Chapter, the definition of “personal pension scheme” in section 1 has effect with the substitution for the words “employed earners” of the word “employees”.
- (4) Any reference in this Chapter to the resources of a scheme is a reference to the funds out of which the benefits provided by the scheme are from time to time payable.

#### Marginal Citations

**M56** S.I. 1989/2405 (N.I. 19).

**M57** S.I. 1976/1043 (N.I. 16).

### 120 Duty of Department to pay unpaid contributions to schemes.

- (1) If, on an application made to it in writing by the persons competent to act in respect of an occupational pension scheme or a personal pension scheme, the Department is satisfied—
  - (a) that an employer has become insolvent; and
  - (b) that at the time he did so there remained unpaid relevant contributions falling to be paid by him to the scheme,then, subject to the provisions of this section and section 121, the Department shall pay into the resources of the scheme the sum which in its opinion is payable in respect of the unpaid relevant contributions.
- (2) In this section and section 121 “relevant contributions” means contributions falling to be paid by an employer to an occupational pension scheme or a personal pension scheme, either on his own account or on behalf of an employee; and for the purposes of this section a contribution shall not be treated as falling to be paid on behalf of an employee unless a sum equal to that amount has been deducted from the pay of the employee by way of a contribution from him.
- (3) The sum payable under this section in respect of unpaid contributions of an employer on his own account to an occupational pension scheme or a personal pension scheme shall be the least of the following amounts—
  - (a) the balance of relevant contributions remaining unpaid on the date when he became insolvent and payable by the employer on his own account to the scheme in respect of the 12 months immediately preceding that date;
  - (b) the amount certified by an actuary to be necessary for the purpose of meeting the liability of the scheme on dissolution to pay the benefits provided by the scheme to or in respect of the employees of the employer;
  - (c) an amount equal to 10 per cent. of the total amount of remuneration paid or payable to those employees in respect of the 12 months immediately preceding the date on which the employer became insolvent.
- (4) For the purposes of subsection (3)(c), “remuneration” includes holiday pay, statutory sick pay, statutory maternity pay under Part VI of the <sup>M58</sup>Social Security (Northern Ireland) Order 1986 or Part XII of the <sup>M59</sup>Social Security Contributions and Benefits (Northern Ireland) Act 1992 and any such payment as is referred to in Article 42(4)(a) to (d) of the <sup>M60</sup>Industrial Relations (Northern Ireland) Order 1976 (guarantee payments, etc.).

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- (5) Any sum payable under this section in respect of unpaid contributions on behalf of an employee shall not exceed the amount deducted from the pay of the employee in respect of the employee’s contributions to the scheme during the 12 months immediately preceding the date on which the employer became insolvent.

**Marginal Citations**

**M58** [S.I. 1986/1888 \(N.I. 18\)](#).

**M59** [1992 c. 7](#).

**M60** [S.I. 1976/1043 \(N.I. 16\)](#).

**121 Certification of amounts payable under s. 120 by insolvency officers.**

- (1) This section applies where one of the officers mentioned in subsection (2) (“the relevant officer”) is acting or has been or is required to be appointed in connection with an employer’s insolvency.
- (2) The officers referred to in subsection (1) are—
- (a) the official receiver; or
  - (b) any such person as is referred to in paragraph (1) or (2) of Article 3 of the <sup>M61</sup>Insolvency (Northern Ireland) Order 1989 (insolvency practitioners), as read with paragraphs (3) and (4) of that Article.
- (3) Subject to subsection (5), where this section applies the Department shall not make any payment under section 120 in respect of unpaid relevant contributions until it has received a statement from the relevant officer of the amount of relevant contributions which appear to have been unpaid on the date on which the employer became insolvent and to remain unpaid; and the relevant officer shall on request by the Department provide it as soon as reasonably practicable with such a statement.
- (4) Subject to subsection (5), an amount shall be taken to be payable, paid or deducted as mentioned in subsection (3)(a) or (c) or (5) of section 120 only if it is so certified by the relevant officer.
- (5) If the Department is satisfied—
- (a) that it does not require a statement under subsection (3) in order to determine the amount of relevant contributions that was unpaid on the date on which the employer became insolvent and remains unpaid, or
  - (b) that it does not require a certificate under subsection (4) in order to determine the amounts payable, paid or deducted as mentioned in subsection (3)(a) or (c) or (5) of section 120,

it may make a payment under that section in respect of the contributions in question without having received such a statement or, as the case may be, such a certificate.

**Marginal Citations**

**M61** [S.I. 1989/2405 \(N.I. 19\)](#).

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## **122 Complaint to industrial tribunal.**

- (1) Any persons who are competent to act in respect of an occupational pension scheme or a personal pension scheme and who have applied for a payment to be made under section 120 into the resources of the scheme may present a complaint to an industrial tribunal that—
  - (a) the Department has failed to make any such payment; or
  - (b) any such payment made by the Department is less than the amount which should have been paid.
- (2) Such a complaint must be presented within the period of three months beginning with the date on which the decision of the Department on that application was communicated to the persons presenting it or, if that is not reasonably practicable, within such further period as is reasonable.
- (3) Where an industrial tribunal finds that the Department ought to make a payment under section 120, it shall make a declaration to that effect and shall also declare the amount of any such payment which it finds that the Department ought to make.

## **123 Transfer to Department of rights and remedies.**

- (1) Where in pursuance of section 120 the Department makes any payment into the resources of an occupational pension scheme or a personal pension scheme in respect of any contributions to the scheme, any rights and remedies in respect of those contributions belonging to the persons competent to act in respect of the scheme shall, on the making of the payment, become rights and remedies of the Department.
- (2) Where—
  - (a) the Department makes any such payment as is mentioned in subsection (1); and
  - (b) the sum (or any part of the sum) falling to be paid by the employer on account of the contributions in respect of which the payment is made constitutes a preferential debt within the meaning of the <sup>M62</sup>Insolvency (Northern Ireland) Order 1989 for the purposes of any provision of that Order (including any such provision as applied by an order made under that Order) or any provision of the <sup>M63</sup>Companies (Northern Ireland) Order 1986,then, without prejudice to the generality of subsection (1), there shall be included among the rights and remedies which become rights and remedies of the Department in accordance with that subsection any right arising under any such provision by reason of the status of that sum (or that part of it) as a preferential or preferred debt.
- (3) In computing for the purposes of any provision referred to in subsection (2)(b) the aggregate amount payable in priority to other creditors of the employer in respect of—
  - (a) any claim of the Department to be so paid by virtue of subsection (2); and
  - (b) any claim by the persons competent to act in respect of the scheme,any claim falling within paragraph (a) shall be treated as if it were a claim of those persons; but the Department shall be entitled, as against those persons, to be so paid in respect of any such claim of the Department (up to the full amount of the claim) before any payment is made to them in respect of any claim falling within paragraph (b).

### **Marginal Citations**

**M62** [S.I. 1989/2405 \(N.I. 19\)](#).

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**M63** [S.I. 1986/1032 \(N.I. 6\)](#).

## CHAPTER III

### PRIORITY IN BANKRUPTCY

#### 124 **Priority in bankruptcy, etc.**

Schedule 3 shall have effect for affording priority in cases of insolvency to liabilities in respect of contributions to occupational pension schemes and in respect of state scheme premiums.

## PART VIII

### RELATIONSHIP BETWEEN REQUIREMENTS AND SCHEME RULES

#### 125 **Overriding requirements.**

- (1) Subject to subsection (2), the provisions of Chapters II, III and IV of Part IV, Chapter I of Part V, section 106(1), sections 115 to 118 and any regulations made under Chapter I of Part V or under section 109 or 110 or sections 115 to 118 override any provision of a scheme to which they apply to the extent that it conflicts with them.
- (2) Chapter II of Part IV (as it applies to occupational pension schemes), Chapter III of that Part and Chapter I of Part V (except section 104) do not override a protected provision of a scheme and Chapter IV of Part IV does not override a provision falling within paragraph (b) of subsection (3).
- (3) In subsection (2) “protected provision” means—
  - (a) any provision contained in a scheme by virtue of section 69(2), 73(3), (4), (5) or (6), 74(2), (3), (4), (5) or (7) or 75;
  - (b) any provision of a scheme to the extent that it deals with priorities on a winding up;
  - (c) any provision of a scheme which is included in it for the purpose of effecting a transfer of rights or liabilities authorised by regulations under section 16(1);
  - (d) any provision of a scheme to the extent that it deals with commutation, suspension or forfeiture of the whole or part of a pension; and
  - (e) any provision of a scheme whereby, as respects so much of a widow’s or widower’s pension as exceeds the guaranteed minimum pension—
    - (i) no pension or a pension at a reduced rate is payable if the earner and the widow or widower married not more than six months before the earner’s death;
    - (ii) the whole or any part of the pension is not paid to the widow or widower, but instead comparable benefits are provided for one or more dependants of the deceased earner; or
    - (iii) no pension, or a pension at a reduced rate, is payable to the widow or widower (or, where a provision such as is mentioned in subparagraph (ii) operates, to another dependant of the deceased earner) who was more than ten years younger than the deceased earner.

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- (4) For the purposes of the application of Chapter II of Part IV to schemes which are not contracted-out, subsection (3) shall have effect with the omission—
- (a) from paragraph (c), of the words from “authorised” to the end; and
  - (b) from paragraph (e), of the words from “as respects” to “guaranteed minimum pension”.

#### **126 Extra-statutory benefits.**

It is hereby declared that—

- (a) nothing in Part III precludes an occupational pension scheme from providing benefits that are more favourable than those required for contracting-out purposes and, in particular, nothing in section 12(3) is to be taken as preventing the scheme from providing increases above the alternative minima there mentioned; and
- (b) nothing in the provisions of Chapter II or IV of Part IV precludes a scheme from being framed or managed more favourably to beneficiaries than is called for by those provisions.

#### **127 Relationship of preservation requirements and scheme rules.**

It is hereby declared that nothing in Chapter I of Part IV—

- (a) applies with direct effect to any scheme, or to the rights or liabilities of any person in, under or by virtue of a scheme; or
- (b) precludes a scheme from being so framed as to provide benefits on any ampler scale, or (subject to any express provision made in that Chapter) payable at any earlier time or otherwise more favourable to beneficiaries, than is called for by the preservation requirements.

#### **128 Duty to bring schemes into conformity with indirectly-applying requirements.**

Where the rules of an occupational pension scheme to which the preservation requirements, the equal access requirements or the voluntary contributions requirements apply or the rules of a personal pension scheme to which the voluntary contributions requirements apply do not comply with those requirements it shall be the responsibility of—

- (a) the trustees and managers of the scheme; or
- (b) in the case of a public service pension scheme, the Minister of the Crown, government department or other person or body concerned with its administration,

to take such steps as are open to them for bringing the rules of the scheme into conformity with those requirements.

#### **129 Advice of the Board as to conformity of schemes with requirements.**

- (1) The Board may at any time, and shall if requested by the persons responsible under section 128 for taking steps to bring a scheme into conformity with the preservation requirements, the equal access requirements or the voluntary contributions requirements, advise whether the rules of a scheme to which those requirements apply do or do not in the Board’s opinion conform with any of those requirements.

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- (2) Where the Board advise that the rules do not conform, they shall indicate what steps they consider should be taken with a view to securing conformity.
- (3) The Board may at any time, and shall if requested by the trustees or managers of a scheme, advise on any question whether—
  - (a) any provision mentioned in subsection (4) does or does not override any provision of a scheme;
  - (b) any benefit is a money purchase benefit, or an average salary benefit or a flat rate benefit (within the meaning of section 80).
- (4) The provisions referred to in subsection (3)(a) are any provision of Chapter II, III or IV of Part IV, section 106(1) or regulations under section 109 or 110.

### **130 Determination of questions whether schemes conform with requirements.**

- (1) Subject to subsection (2), on an application made to them in respect of a scheme (other than a public service pension scheme) by persons competent to make such an application in respect of it, the Board shall issue a determination on any such question as is mentioned in section 129.
- (2) No application may be made under subsection (1) as respects the requirements of Chapter III of Part IV in respect of a money purchase contracted-out scheme.
- (3) The Board may at any time of their own motion issue in respect of a scheme which has come to their notice any determination which they could issue in the case of that scheme on application to them under subsection (1) as respects the preservation requirements, the equal access requirements or the voluntary contributions requirements.
- (4) At any time when the Board are concerned with a scheme for the purpose of issuing a determination under this section as respects the preservation requirements or the equal access requirements, they may include a determination (whether or not applied for) as to any of the particular matters specified in Chapter I of Part IV or, as the case may be, section 114(1).
- (5) If the Board think it expedient to do so, having regard—
  - (a) to the structure and character of a scheme in relation to which they are issuing a determination under this section; and
  - (b) to any anomalous or impractical consequences that may be expected to follow from its modification to achieve conformity with any particular provision of Chapter I of Part IV,
 they may determine that that provision shall not apply to that scheme or shall apply to it with such modifications as may be specified in the determination.

### **131 Persons competent to make applications under s. 130.**

- (1) The persons competent to make an application under section 130 in respect of a scheme are—
  - (a) in any case—
    - (i) the trustees or managers of the scheme;
    - (ii) any person other than the trustees or managers who has power to alter any of the rules of the scheme; and

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- (iii) any member of the scheme;
  - (b) in any case where the scheme is an occupational pension scheme, any person who is an employer of persons in service in an employment to which the scheme applies;
  - (c) in any case where the scheme is an occupational pension scheme and in the case of any application in respect of the voluntary contributions requirements, any prospective member of the scheme; and
  - (d) in any case other than an application in respect of a personal pension scheme in relation to requirements under section 109, such other persons as regulations may specify, in relation to any category of schemes into which the scheme falls, as being proper persons to make an application for the purposes of this section in respect of a scheme of that category.
- (2) The reference in paragraph (d) of subsection (1) to other persons shall be construed in relation to any case as including persons other than those mentioned in paragraphs (a) to (c) by whom an application may be made in that case.

## PART IX

### MODIFICATION AND WINDING UP OF SCHEMES

#### *Modification*

#### **132 Applications to the Board to modify schemes (other than public service schemes).**

- (1) On an application made to them in respect of an occupational pension scheme or a personal pension scheme by persons competent to make such an application, the Board may make an order—
- (a) authorising the modification of the scheme with a view to achieving—
    - (i) any one or more of the purposes specified in subsection (2); or
    - (ii) any one or more of such other purposes as may be prescribed; or
  - (b) modifying the scheme with a view to achieving any one or more of those purposes.
- (2) The purposes referred to in subsection (1)(a)(i) are—
- (a) to enable the scheme to provide for the transfer of accrued rights (including any transfer credits allowed under the scheme) to another scheme (whether an occupational or personal pension scheme) with a view to the acquisition, for those whose rights are transferred, of rights under the other scheme in connection with change of employment or otherwise, and for the allowance of transfer credits;
  - (b) to enable the scheme to be one to which section 159 applies or to have included in or removed from it provisions designed to avoid the effect of the rules of law relating to perpetuities;
  - (c) without prejudice to section 135(2), to comply with the voluntary contributions requirements;
  - (d) to enable the trustees or managers of the scheme, or others concerned with or having rights under it, to enter into alternative arrangements having regard to any provision of this Act, or of any other enactment (enacted or made or

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- to be enacted or made) amending or replacing any such provision or making provision for similar purposes; or
- (e) in the case of an occupational pension scheme only, to enable the scheme—
- (i) to be so treated that an employment to which it applies may be contracted-out employment by reference to it;
  - (ii) to qualify for the approval of the Inland Revenue for the purposes of Chapter I of Part XIV of the <sup>M64</sup>Income and Corporation Taxes Act 1988 or to provide benefits enhanced up to the limits suitable in a scheme for which such approval is sought;
  - (iii) to provide for accrued rights to benefit (whether in payment or not), so far as payable out of the resources of the scheme, to be surrendered by beneficiaries (at their option and not otherwise, so long as the scheme remains in force and is not being, or to be, wound up) in exchange for other rights assured by means of one or more policies of insurance or annuity contracts, or by other means; or
  - (iv) without prejudice to section 135(2), to comply with the preservation requirements or the equal access requirements.
- (3) An order under subsection (1)(a)—
- (a) shall be framed so as to confer the power of modification on such persons as the Board think proper (who may include persons who were not parties to the application made to the Board); and
  - (b) shall include such directions as the Board think appropriate, having regard to the purposes of the order, indicating the modifications which they consider to be called for.

#### Marginal Citations

M64 1988 c. 1.

### 133 Persons competent to make applications under s. 132.

The persons competent to make an application under section 132(1) in respect of a scheme are—

- (a) the trustees or managers of the scheme;
- (b) any person other than the trustees or managers who has power to alter any of the rules of the scheme;
- (c) in the case of an occupational pension scheme only, any person who is an employer of persons in service in an employment to which the scheme applies; and
- (d) such other persons as regulations may specify, in relation to any category of schemes into which the scheme falls, as being proper persons to make such an application in respect of a scheme of that category.

### 134 Further provisions concerning the Board's powers under s. 132.

- (1) The Board shall not entertain an application for an order by them under section 132 unless they are satisfied that the purposes of the application—
- (a) cannot be achieved otherwise than by means of such an order; or
  - (b) can only be achieved in accordance with a procedure which—



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- (i) is liable to be unduly complex or protracted, or
  - (ii) involves the obtaining of consents which cannot be obtained, or can only be obtained with undue delay or difficulty.
- (2) Subject to subsection (1), the Board may on such an application make (with the consent of the applicants) any one or more such orders as are specified in section 132(1).
- (3) The extent of those powers is not limited, in relation to any purposes for which they are exercisable, to the minimum necessary to achieve those purposes.
- (4) The Board shall not make an order under section 132(1) unless they are satisfied that it is reasonable in all the circumstances to make it.
- (5) The Board shall not make any such order under that section as would, or might in their opinion, result in any existing or prospective entitlement of a member of the scheme, in respect of a period before the coming into operation of the order or of any modification which the order authorises, being diminished or curtailed without his consent, unless they are satisfied that it is in the interests of the generality of members that the order should be made.
- (6) In considering whether or not to make an order under that section, the Board shall have regard—
  - (a) to the structure and character of the scheme and the benefits provided by it;
  - (b) to the provisions of this Act and Chapter I of Part XIV of the <sup>M65</sup>Income and Corporation Taxes Act 1988 ; and
  - (c) to all the circumstances in general.
- (7) Regulations may provide that in prescribed circumstances subsections (4) and (5) shall not apply to occupational pension schemes or shall apply to them with prescribed modifications.

#### Marginal Citations

M65 1988 c. 1.

### 135 Other functions of the Board as respects modification of schemes.

- (1) If in the case of a scheme to which section 49 applies the Board are not satisfied as to the soundness and adequacy of any investments held for the purposes of the scheme (so far as relevant to the considerations of section 20(1)), they may by order—
  - (a) modify the scheme’s rules, or
  - (b) direct the scheme’s trustees or managers to take such steps as the order may specify,with a view to ensuring that the guaranteed minimum pensions under the scheme are adequately secured to its beneficiaries, both present and future.
- (2) If the Board determine under section 130 that a scheme does not conform with the preservation requirements, the equal access requirements or the voluntary contributions requirements they shall, either at the time of issuing their determination or as soon afterwards as they think expedient—
  - (a) by order direct the trustees or managers of the scheme or any other persons who have power to alter any of its rules to exercise such powers as they possess for modifying the scheme with a view to bringing it into conformity with those

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- requirements (including in their order such directions as they think appropriate to indicate the modification appearing to them to be called for); or
- (b) if there is no person with power to modify the scheme as required by the Board, by order authorise the trustees or managers, or other persons named in the order (and, in particular, in the case of an occupational pension scheme, any employer of persons in service in an employment to which the scheme applies) to make that modification; or
  - (c) themselves by order modify the scheme with a view to bringing it into conformity with the requirements in question.
- (3) The Board may exercise their powers under subsection (2) in relation to any scheme in respect of which they have issued a determination under section 130, and may exercise the powers together or separately.

### **136 Effect of orders under ss. 132 and 135.**

- (1) An order under paragraph (a) of section 132(1) may enable those exercising any power conferred by the order to exercise it retrospectively (whether or not the power could otherwise be so exercised) and an order under paragraph (b) of that section may modify a scheme retrospectively.
- (2) An order under paragraph (a) of section 135(2) may require persons to exercise a power retrospectively (whether or not the power could otherwise be so exercised), and an order under paragraph (b) or (c) of that section may operate retrospectively.
- (3) In this section “retrospectively” means with effect from a date before that on which the power is exercised or, as the case may be, the order is made, but—
  - (a) in the case of an order under section 132(1), that date shall be such date as may be proposed for the purposes of this subsection by the persons applying for the order; and
  - (b) in the case of an order under section 135(2), that date shall not be a date earlier than the operative date for the requirements.
- (4) In subsection (3)(b) “the operative date for the requirements” means—
  - (a) in the case of the preservation requirements, 5th September 1973;
  - (b) in the case of the voluntary contributions requirements—
    - (i) as respects a personal pension scheme in so far as it is comprised in an annuity contract, 1st July 1988, but otherwise 4th January 1988, and
    - (ii) as respects an occupational pension scheme, 6th April 1988; and
  - (c) in the case of the equal access requirements, 6th April 1978.
- (5) Any modification of a scheme made in pursuance of an order of the Board under section 132(1) or 135(2)(b) or (c) shall be as effective in law as if it had been made under powers conferred by or under the scheme.
- (6) An order under section 132(1) or 135(2)(b) or (c) may be made and complied with in relation to a scheme—
  - (a) notwithstanding any enactment or rule of law, or any rule of the scheme, which would otherwise operate to prevent the modification being made;
  - (b) without regard to any such enactment, rule of law or rule of the scheme as would otherwise require, or might otherwise be taken to require, the implementation of any procedure or the obtaining of any consent, with a view to the making of the modification.

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### **137 Modification of public service schemes.**

- (1) Nothing in the previous provisions of this Part applies to public service pension schemes but, subject to the provisions of this section, the appropriate authority shall, in relation to such a scheme, have power to make such provision for the modification of the scheme as could be made by an order of the Board under subsection (1)(b) of section 132 with a view to achieving any of the purposes mentioned in subsection (2) of that section in the case of a scheme other than a public service pension scheme.
- (2) In this section “the appropriate authority”, in relation to a scheme, means such Minister of the Crown or government department as may be designated by the Treasury or the Department of Finance and Personnel as having responsibility for the particular scheme.
- (3) The powers of the appropriate authority under this section shall be exercisable by means of an order—
  - (a) directly modifying the scheme (without regard, in the case of a scheme contained in or made under powers conferred by an enactment, to the terms of the enactment or any of its restrictions); or
  - (b) modifying an enactment under which the scheme was made or by virtue of which it has effect.
- (4) Any such order shall contain such incidental, supplementary and transitional provisions as the appropriate authority considers to be required for the purposes of the order, including provisions adapting, amending or repealing any such enactment as is referred to in paragraph (a) or (b) of subsection (3).

#### *Winding up*

### **138 Powers of the Board to wind up schemes.**

- (1) On an application made to them in respect of an occupational pension scheme or a personal pension scheme by persons competent to make such an application, the Board may make an order directing or authorising the scheme to be wound up on grounds specified in subsection (2).
- (2) Those grounds are that, having regard to any provision of this Act, or to any other enactment (enacted or made or to be enacted or made) amending or replacing any such provision or making provision for similar purposes, the scheme—
  - (a) ought to be replaced (in whole or in part) by a different scheme, or
  - (b) is no longer required.
- (3) An order of the Board under subsection (1) authorising a scheme to be wound up shall include such directions with respect to the manner and timing of the winding up as the Board think appropriate having regard to the purposes of the order.
- (4) Sections 133 and 134 and subsections (5) and (6) of section 136 shall apply with the necessary modifications in relation to an application or an order under subsection (1) as they apply in relation to an application or, as the case may be, an order under section 132(1), taking references in those subsections to modification as references to winding up.

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- (5) If in the case of a scheme to which section 49 applies the Board are satisfied that the guaranteed minimum pensions under the scheme are not, and cannot be, adequately secured to its beneficiaries, they may by order—
- (a) require the scheme to be wound up in accordance with such directions in that behalf as may be contained in the order; or
  - (b) direct the trustees or managers to take such steps for the winding up of the scheme as the order may specify.
- (6) On a winding up in pursuance of an order under subsection (5) the same powers shall be exercisable by the Board in relation to the scheme's winding-up rules as are exercisable by them under section 49(4) and (5) in relation to other rules.

### **139 Winding up of public service schemes.**

- (1) Nothing in section 138 applies to public service pension schemes but, subject to the provisions of this section, the appropriate authority shall, in relation to such a scheme, have power to make such provision for the winding up of the scheme as could be made by an order of the Board under subsection (1) of that section in the case of a scheme other than a public service pension scheme.
- (2) The powers of the appropriate authority under this section shall be exercisable by means of an order directing that the scheme be wound up and including directions with respect to the manner and timing of the winding up.
- (3) Subsections (2) and (4) of section 137 apply to an order under this section as they apply to an order under subsection (1) of that section.

### **140 Deficiencies in the assets of a scheme on winding up.**

- (1) If, in the case of an occupational pension scheme which is not a money purchase scheme, the value at the applicable time of the scheme's liabilities exceeds the value of its assets, then an amount equal to the excess shall be treated as a debt due from the employer to the trustees of the scheme.
- (2) If—
- (a) a relevant insolvency event occurs in relation to the employer; and
  - (b) the debt mentioned in subsection (1) has not been discharged at the time that event occurs,
- then, for the purposes of the law relating to winding up, bankruptcy as it applies in relation to the employer, that debt shall be taken to arise immediately before that time.
- (3) In this section—
- “the applicable time” means—
- (a) if the scheme is being wound up before a relevant insolvency event occurs in relation to the employer, any time when it is being wound up before such an event occurs; and
  - (b) otherwise, immediately before the relevant insolvency event occurs; and
- “the employer” means the employer of persons in the description or category of employment to which the scheme relates.
- (4) For the purposes of this section a relevant insolvency event occurs in relation to the employer—

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- (a) where the employer is a company, when it goes into liquidation, within the meaning of Article 6(2) of the <sup>M66</sup>Insolvency (Northern Ireland) Order 1989; or
  - (b) where the employer is an individual, at the commencement of his bankruptcy, within the meaning of Article 252 of that Order.
- (5) The value of a scheme’s assets and liabilities for the purposes of subsection (1) shall be determined in accordance with regulations and such regulations may provide that, in calculating the value of the scheme’s liabilities, any provision of the scheme which limits the amount of its liabilities by reference to the amount of its assets is to be disregarded.
- (6) This section is without prejudice to any other right or remedy which the trustees may have in respect of the deficiency in the scheme’s assets.
- (7) A debt due by virtue only of this section shall not be regarded as a preferential debt for the purposes of the Insolvency (Northern Ireland) Order 1989.
- (8) The provisions of this section and of any regulations made under section 149(5) modifying this section override any provision of a scheme to the extent that it conflicts with this section or those regulations.

**Modifications etc. (not altering text)**

**C29** S. 140 modified (19.4.1994) by S.R. 1994/107, **regs. 3, 4**

S. 140 modified (28.3.1997) by S.R. 1997/192, **art. 11(3)** (with **art. 9**)

**Marginal Citations**

**M66** S.I. 1989/2405 (N.I. 19).

## PART X

### INVESTIGATIONS: THE PENSIONS OMBUDSMAN

#### 141 The Pensions Ombudsman.

- (1) In this Part “the Pensions Ombudsman” means the person appointed under section 145 of the <sup>M67</sup>Pension Schemes Act 1993.
- (2) The Department may make available such staff and other facilities as it thinks fit for the Pensions Ombudsman and any function of the Pensions Ombudsman, other than the determination of complaints made and disputes referred under this Part, may be performed by any member of that staff who is authorised for that purpose by the Pensions Ombudsman.
- (3) The Department may reimburse the Pensions Ombudsman in respect of any expenses incurred by him in the performance of his functions.

**Marginal Citations**

**M67** 1993 c. 48.

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## 142 Functions of the Pensions Ombudsman.

- (1) The Pensions Ombudsman may investigate and determine any complaint made to him in writing by or on behalf of an authorised complainant who alleges that he has sustained injustice in consequence of maladministration in connection with any act or omission of the trustees or managers of an occupational pension scheme or personal pension scheme.
- (2) The Pensions Ombudsman may also investigate and determine any dispute of fact or law which arises in relation to such a scheme between—
  - (a) the trustees or managers of the scheme, and
  - (b) an authorised complainant,
 and which is referred to him in writing by or on behalf of the authorised complainant.
- (3) Subsection (2) does not have effect in relation to any scheme constituted under—
  - (a) Part XIII of the <sup>M68</sup>County Courts Act (Northern Ireland) 1959;
  - (b) the <sup>M69</sup>Resident Magistrates' Pensions Act (Northern Ireland) 1960;
  - (c) Schedule 10 to the <sup>M70</sup>Social Security (Northern Ireland) Act 1975;
  - (d) the <sup>M71</sup>Judicial Pensions Act 1981; or
  - (e) the <sup>M72</sup>Judicial Pensions and Retirement Act 1993;
- (4) The Department may by regulations provide that, subject to any modifications or exceptions specified in the regulations, this Part shall apply in relation to—
  - (a) the employer in relation to any description or category of employment to which an occupational pension scheme relates or has related, or
  - (b) any prescribed person concerned with the financing or administration of, or the provision of benefits under, any occupational or personal pension scheme, as it applies in relation to the trustees or managers of such a scheme.
- (5) The Pensions Ombudsman may investigate a complaint or dispute notwithstanding that it arose, or relates to a matter which arose, before 1st October 1990 (the date on which the provisions under which his office was constituted came into force).
- (6) The Pensions Ombudsman shall not investigate or determine a complaint or dispute—
  - (a) if before the making of the complaint or the reference of the dispute, proceedings have been begun in any court in respect of the matters which would be the subject of the investigation;
  - (b) if the scheme is of a description which is excluded from the jurisdiction of the Pensions Ombudsman by regulations under this subsection; or
  - (c) if and to the extent that the complaint or dispute, or any matter arising in connection with the complaint or dispute, is of a description which is excluded from the jurisdiction of the Pensions Ombudsman by regulations under this subsection.
- (7) The persons who, for the purposes of this Part are “authorised complainants” in relation to a scheme are—
  - (a) a member of the scheme;
  - (b) the widow or widower, or any surviving dependant, of a deceased member of the scheme;
  - (c) where the complaint or dispute relates to the question—
    - (i) whether a person who claims to be such a person as is mentioned in paragraph (a) or (b) is such a person, or

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(ii) whether a person who claims to be entitled to become a member of the scheme is so entitled,  
the person so claiming.

(8) In this Part—

“employer”, in relation to a pension scheme, includes a person—

- (a) who is or has been an employer in relation to the scheme, or
- (b) who is or has been treated under section 176(2) as an employer in relation to the scheme for the purposes of any provision of this Act, or under section 181(2) of the <sup>M73</sup>Pension Schemes Act 1993 as an employer in relation to the scheme for the purposes of any provision of that Act;

“member”, in relation to a pension scheme, includes a person—

- (a) who is or has been in pensionable service under the scheme, or
- (b) who is or has been treated under section 176(4) as a member in relation to the scheme for the purposes of any provision of this Act or under section 181(4) of the Pension Schemes Act 1993 as a member in relation to the scheme for the purposes of any provision of that Act;

“trustees or managers”, in relation to a pension scheme which is a public service pension scheme or a United Kingdom public service pension scheme, includes the scheme’s administrators;

“United Kingdom public service pension scheme” means a public service pension scheme as defined in section 181(1) of the <sup>M74</sup>Pension Schemes Act 1993;

and in this subsection “pensionable service” includes pensionable service as defined in section 181(1) of the <sup>M75</sup>Pension Schemes Act 1993.

#### Marginal Citations

- M68** 1959 c. 25 (N.I.).
- M69** 1960 c. 2 (N.I.).
- M70** 1975 c. 15.
- M71** 1981 c. 20.
- M72** 1993 c. 8.
- M73** 1993 c. 48.
- M74** 1993 c. 48.
- M75** 1993 c. 48.

### 143 Death, insolvency or disability of authorised complainant.

(1) Where an authorised complainant dies or is a minor or is otherwise unable to act for himself, then, unless subsection (3) applies—

- (a) any complaint or dispute (whenever arising) which the authorised complainant might otherwise have made or referred under this Part may be made or referred by the appropriate person, and
- (b) anything in the process of being done by or in relation to the authorised complainant under this Part may be continued by or in relation to the appropriate person,

and any reference in this Part, except this section, to an authorised complainant shall be construed as including a reference to the appropriate person.

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- (2) For the purposes of subsection (1) “the appropriate person” means—
- (a) where the authorised complainant has died, his personal representatives; or
  - (b) in any other case, a member of the authorised complainant’s family, or some body or individual suitable to represent him.
- (3) Where a person is acting as an insolvency practitioner in relation to an authorised complainant, investigations under this Part shall be regarded for the purposes of the <sup>M76</sup>Insolvency (Northern Ireland) Order 1989 as legal proceedings.
- (4) In this section “acting as an insolvency practitioner” shall be construed in accordance with Article 3 of the Insolvency (Northern Ireland) Order 1989, but disregarding paragraph (5) of that Article (exclusion of official receiver).

#### Marginal Citations

**M76** S.I. 1989/2405 (N.I. 19).

### 144 Staying court proceedings where a complaint is made or a dispute is referred.

- (1) This section applies where—
- (a) a complaint has been made or a dispute referred to the Pensions Ombudsman; and
  - (b) any party to the investigation subsequently commences any legal proceedings in any court against any other party to the investigation in respect of any of the matters which are the subject of the complaint or dispute.
- (2) Where this section applies, any party to the legal proceedings may—
- (a) if the proceedings are in the High Court, at any time after an appearance has been entered and before delivering any pleadings or taking any other step in the proceedings;
  - (b) if the proceedings are in the county court, at any time after the civil bill or other originating process has been served and before taking any other step in the proceedings,
- apply to the court to stay the proceedings.
- (3) On an application under subsection (2) the court may make an order staying the proceedings if it is satisfied—
- (a) that there is no sufficient reason why the matter should not be investigated by the Pensions Ombudsman; and
  - (b) that the applicant was at the time when the legal proceedings were commenced and still remains ready and willing to do all things necessary to the proper conduct of the investigation.
- (4) For the purposes of this section the parties to an investigation are—
- (a) the authorised complainant in question;
  - (b) the trustees or managers of the scheme in question;
  - (c) any person against whom allegations are made in the complaint or reference; and
  - (d) any person claiming under a person falling within paragraphs (a) to (c).



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#### **145 Procedure on an investigation.**

- (1) Where the Pensions Ombudsman proposes to conduct an investigation into a complaint made or dispute referred under this Part, he shall give—
  - (a) the trustees and managers of the scheme concerned, and
  - (b) any other person against whom allegations are made in the complaint or reference,an opportunity to comment on any allegations contained in the complaint or reference.
- (2) The Department may make rules with respect to the procedure which is to be adopted in connection with the making of complaints, the reference of disputes, and the investigation of complaints made and disputes referred, under this Part.
- (3) The rules may include provision—
  - (a) requiring any oral hearing held in connection with such an investigation to take place in public, except in such cases as may be specified in the rules; and
  - (b) as to the persons entitled to appear and be heard on behalf of parties to an investigation, as defined in section 144(4).
- (4) Subject to any provision made by the rules, the procedure for conducting such an investigation shall be such as the Pensions Ombudsman considers appropriate in the circumstances of the case; and he may in particular obtain information from such persons and in such manner, and make such inquiries, as he thinks fit.

#### **146 Investigations: further provisions.**

- (1) For the purposes of an investigation under this Part or under any corresponding legislation having effect in Great Britain, the Pensions Ombudsman may require—
  - (a) any trustee or manager of the scheme concerned, or
  - (b) any other person who, in his opinion, is able to furnish information or produce documents relevant to the investigation,to furnish any such information or produce any such documents.
- (2) For the purposes of any such investigation the Pensions Ombudsman shall have the same powers as a county court in respect of the attendance and examination of witnesses (including the administration of oaths and affirmations and the examination of witnesses abroad) and in respect of the production of documents.
- (3) No person shall be compelled for the purposes of any such investigation to give any evidence or produce any document which he could not be compelled to give or produce in civil proceedings before a county court.
- (4) If any person without lawful excuse obstructs the Pensions Ombudsman in the performance of his functions or is guilty of any act or omission in relation to an investigation under this Part which, if that investigation were a proceeding in a county court, would constitute contempt of court, the Pensions Ombudsman may certify the offence to a county court.
- (5) Where an offence is certified under subsection (4) the court may inquire into the matter and, after hearing any witnesses who may be produced against or on behalf of the person charged with the offence and hearing any statement that may be offered in defence, deal with him in any manner in which the court could deal with him if he had committed the like offence in relation to the court.

*Status: Point in time view as at 13/04/1995. This version of this Act contains provisions that are not valid for this point in time.*

*Changes to legislation: Pension Schemes (Northern Ireland) Act 1993 is up to date with all changes known to be in force on or before 27 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (6) To assist him in an investigation, the Pensions Ombudsman may obtain advice from any person who in his opinion is qualified to give it and may pay to any such person such fees or allowances as he may with the approval of the Department of Finance and Personnel determine.
- (7) The Pensions Ombudsman may refer any question of law arising for determination in connection with a complaint or dispute to the Court of Appeal.

#### 147 Determinations of the Pensions Ombudsman.

- (1) Where the Pensions Ombudsman has conducted an investigation under this Part he shall send by ordinary post a written statement of his determination of the complaint or dispute in question—
  - (a) to the authorised complainant in question; and
  - (b) to the trustees or managers of the scheme in question;
 and any such statement shall contain the reasons for his determination.
- (2) Where the Pensions Ombudsman makes a determination under this Part or under any corresponding legislation having effect in Great Britain, he may direct the trustees or managers of the scheme concerned to take, or refrain from taking, such steps as he may specify in the statement referred to in subsection (1) or otherwise in writing.
- (3) Subject to subsection (4), the determination by the Pensions Ombudsman of a complaint or dispute, and any direction given by him under subsection (2), shall be final and binding on—
  - (a) the authorised complainant in question;
  - (b) the trustees or managers of the scheme concerned; and
  - (c) any person claiming under them respectively.
- (4) An appeal on a point of law shall lie to the Court of Appeal from a determination or direction of the Pensions Ombudsman at the instance of any person falling within paragraphs (a) to (c) of subsection (3).
- (5) Any determination or direction of the Pensions Ombudsman shall be enforceable as if it were a judgment or order of the county court.
- (6) If the Pensions Ombudsman considers it appropriate to do so in any particular case, he may publish in such form and manner as he thinks fit a report of any investigation under this Part and of the result of that investigation.
- (7) For the purposes of the law of defamation, the publication of any matter by the Pensions Ombudsman—
  - (a) in submitting or publishing a report under section 145(6) of the <sup>M77</sup>Pension Schemes Act 1993 or subsection (6) of this section, or
  - (b) in sending to any person a statement under subsection (1) or a direction under subsection (2),
 shall be absolutely privileged.

#### Marginal Citations

M77 1993 c. 48.

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VALID FROM 23/07/1996

**[<sup>F31</sup>147A Interest on late payment of benefit.**

Where under this Part the Pensions Ombudsman directs a person responsible for the management of an occupational or personal pension scheme to make any payment in respect of benefit under the scheme which, in his opinion, ought to have been paid earlier, his direction may also require the payment of interest at the prescribed rate.]

**Textual Amendments**

**F31** S. 147A inserted (23.7.1996 for certain purposes otherwise 6.4.1997) by [S.I. 1995/3213 \(N.I. 22\)](#), [art. 156](#); [S.R. 1996/307](#), [art. 2\(a\)](#), [Sch. Pt. I](#); [S.R. 1997/192](#), [art. 2\(b\)](#)

**148 Power to apply county court rules.**

Without prejudice to the generality of section 145, rules made by the Department under this section may, to any extent and with or without modifications, apply any county court rules to proceedings under or by virtue of this Part.

**PART XI**

GENERAL AND MISCELLANEOUS PROVISIONS

*Modification powers*

**149 Power to modify certain provisions of this Act.**

- (1) The Department may by regulations direct that Chapters II, III and IV of Part IV and Chapter I of Part V (except section 104) shall have effect, in such cases as it may specify in the regulations, subject to such modifications as it may specify.
- (2) Regulations may modify Chapter I of Part IV—
  - (a) in its application to cases where an earner is for the time being, or has been, employed in pensionable service under, or in contracted-out employment by reference to, different schemes applying to the same employment;
  - (b) in such manner as the Department thinks fit for securing that the preservation requirements include requirements for provision to be made in a scheme as to the preservation of a member's benefit in the event of the scheme being wound up;
  - (c) without prejudice to paragraph (a) or (b), so that the preservation requirements apply with such modifications and exceptions as the Department considers to be necessary for particular cases or classes of case;

and regulations under paragraph (a) may relate to service under or, as the case may be, by reference to different schemes at the same time, or at different times.

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- (3) Regulations may provide for the equal access requirements to apply, whether to an occupational pension scheme or to terms of employment relating to membership of it, or to both, with such modifications and exceptions as the Department considers necessary for particular cases or classes of case.
- (4) Subsection (5) of section 114 applies to subsection (3) as if it were in that section.
- (5) The Department may make regulations modifying Chapter I of Part VII, section 125 (so far as it applies to that Chapter) or section 140, in their application—
  - (a) to any occupational pension scheme which applies to earners in employments under different employers;
  - (b) to any occupational pension scheme of which there are no members who are in pensionable service under the scheme;
  - (c) to any case where a partnership is the employer, or one of the employers, in relation to an occupational pension scheme; or
  - (d) in the case of regulations modifying section 140, to any case where the assets and liabilities of the scheme are transferred to another occupational pension scheme.
- (6) Regulations may also provide that sections 115 to 118 and section 125 (so far as it applies to those sections) shall not apply in relation to an occupational pension scheme of a prescribed description.
- (7) Regulations may modify the provisions of section 140 in any manner which the Department thinks appropriate with a view to securing the orderly implementation of those provisions and to obtaining general compliance with them.
- (8) The Department may by order provide that any enactment in Chapter II of Part VII which is specified in the order shall not apply to persons or to employments of such classes as may be prescribed in the order.

In this subsection “employments” has the same meaning as in that Chapter.

#### **150 Application of enactments as respects personal pension schemes.**

- (1) Regulations may provide that any provision of this Act which relates to occupational pension schemes (other than a provision to which subsection (2) applies) shall have effect in relation to personal pension schemes subject to prescribed modifications.
- (2) This subsection applies to section 62, section 107 so far as it relates to occupational pension schemes (and Part VIII and section 149 so far as they have effect for the purposes of section 107 as it so relates), sections 113, 119 to 123, 151, 153, 156 and 157.

#### *Information about schemes*

#### **151 Requirement to give information to the Department or the Board for the purposes of certain provisions.**

Regulations may require the furnishing by prescribed persons to the Department or the Board of such information as it or they require for the purposes of sections 3, 5, 22 to 29, 30, 34, 39 to 41 (so far as they relate to personal pension schemes), section 44 (so far as it relates to minimum contributions), section 46 (so far as it relates to personal

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pension schemes), section 50, sections 51 to 60 (so far as they relate to personal pension protected rights premiums), section 107 (and Part VIII and section 149 so far as they have effect for the purposes of section 107), section 113 and section 155 (so far as it relates to protected rights payments).

**152 Information as to guaranteed minimum pensions.**

The Department may give—

- (a) the trustees or managers of an occupational pension scheme which is not a money purchase contracted-out scheme; and
- (b) such other persons as may be prescribed,

information as to the amount of the guaranteed minimum pension to which it appears to the Department that any person is immediately or prospectively entitled under the scheme or as to any other matter required for calculating that amount.

**153 Power of Department to obtain information in connection with applications under s. 120.**

- (1) Where an application is made to the Department under section 120 in respect of contributions to an occupational pension scheme or personal pension scheme falling to be made, by an employer the Department may require—
  - (a) the employer to provide it with such information as the Department may reasonably require for the purpose of determining whether the application is well founded; and
  - (b) any person having the custody or control of any relevant records or other documents to produce for examination on behalf of the Department any such document in that person's custody or under his control which is of such a description as the Department may require.
- (2) Any such requirement shall be made by notice in writing given to the person on whom the requirement is imposed and may be varied or revoked by a subsequent notice so given.
- (3) If a person refuses or wilfully neglects to furnish any information or produce any document which he has been required to furnish or produce by a notice under this section he shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) If a person, in purporting to comply with a requirement of a notice under this section, knowingly or recklessly makes any false statement, he shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) This section shall be construed as if it were in Chapter II of Part VII.

**154 Disclosure of information between government departments, etc.**

- (1) No obligation as to secrecy imposed by statute or otherwise on persons employed in relation to the Inland Revenue shall prevent information obtained or held in connection with the assessment or collection of income tax from being disclosed—
  - (a) to the Department,
  - (b) to the Secretary of State, or

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- (c) to an officer of either of them authorised to receive such information, in connection with the operation of this Act (except Chapter II of Part VII and sections 153 and 157) or of any corresponding legislation in Great Britain.
- (2) No such obligation shall prevent information from being disclosed to any member of the Board, or an officer of the Board authorised to receive it, in connection with the exercise by the Board of any of their functions.
- (3) No such obligation shall prevent such information as is mentioned in subsection (2) from being disclosed to any person whose duty it is to give advice to the Board, in so far as the information—
- (a) is required by him solely to enable him to perform that duty adequately; and
  - (b) is information which the Board have power under any enactment to require any person to provide.
- (4) In relation to persons who are carrying on or have carried on a trade, profession or vocation income from which is chargeable to tax under Case I or II of Schedule D, disclosure under subsection (1) relating to that trade, profession or vocation shall be limited to information about the commencement or cessation of, and employed earners engaged in, that trade profession or vocation, but sufficient information may also be given to identify the persons concerned.
- (5) Subsections (1) to (3) extend only to disclosure by or under the authority of the Inland Revenue.
- (6) Subject to subsection (7), information which is the subject of disclosure to any person by virtue of subsection (1), (2) or (3) shall not be further disclosed to any other person, except where the further disclosure is made—
- (a) to a person to whom disclosure could by virtue of this section have been made by or under the authority of the Inland Revenue; or
  - (b) for the purposes of any civil or criminal proceedings in connection with the operation of this Act (except Chapter II of Part VII and sections 153 and 157); or
  - (c) for the purposes of sections 15 to 60 of the <sup>M78</sup>Social Security Administration (Northern Ireland) Act 1992 or any corresponding provisions of legislation in Great Britain; or
  - (d) in the case of such information as is mentioned in subsection (2), where the further disclosure—
    - (i) is made to the trustees or managers of an occupational pension scheme,
    - (ii) relates to a member of the scheme, and
    - (iii) is made with his consent.
- (7) The Department, the Inland Revenue and the Board may provide the Registrar with such information as he may request for the purposes of the register; and no obligation as to secrecy or confidentiality imposed by statute or otherwise on—
- (a) persons employed in the Department,
  - (b) persons employed in relation to the Inland Revenue, or
  - (c) the staff of the Board,
- shall prevent them from disclosing to the Registrar such information as is necessary for the purposes of the register.

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- (8) The Board may inform any person claiming to be entitled to a pension under an occupational pension scheme or a personal pension scheme of the name and address of any person appearing to the Board to be responsible for paying that pension notwithstanding that information with respect to that matter has come into the Board's possession by virtue of this section.

#### Marginal Citations

M78 1992 c. 8.

VALID FROM 06/04/1996

#### <sup>F32</sup>154A Other disclosures by the Department.

- (1) The Department may, in spite of any obligation as to secrecy or confidentiality imposed by statute or otherwise on the Department or on persons employed in it, disclose any information received by it in connection with its functions under this Act or the Pensions (Northern Ireland) Order 1995 to any person specified in the first column of the following Table if it considers that the disclosure would enable or assist the person to discharge the functions specified in relation to the person in the second column of the Table.

TABLE

Persons	Functions
The Treasury.	Functions under the Financial Services Act 1986.
The Bank of England.	Functions under the Banking Act 1987 or any other functions.
The Regulatory Authority.	Functions under this Act or the Pensions (Northern Ireland) Order 1995 or any enactment in force in Great Britain corresponding to either of them.
The Pensions Compensation Board.	Functions under the Pensions (Northern Ireland) Order 1995 or any corresponding enactment in force in Great Britain.
The Friendly Societies Commission.	Functions under the enactments relating to friendly societies.
The Building Societies Commission.	Functions under the Building Societies Act 1986.
An inspector appointed by the Secretary of State.	Functions under section 94 or 177 of the Financial Services Act 1986.
A person authorised to exercise powers under section 106 of the Financial Services Act 1986.	Functions under that section.

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A designated agency or transferee body or the competent authority (within the meaning of the Financial Services Act 1986). Functions under the Financial Services Act 1986.

A recognised self-regulating organisation, recognised professional body, recognised investment exchange or recognised clearing house (within the meaning of the Financial Services Act 1986). Functions in its capacity as an organisation, body, exchange or clearing house recognised under the Financial Services Act 1986.

(2) The Department may by order—

- (a) amend the Table in subsection (1) by—
  - (i) adding any person exercising regulatory functions and specifying functions in relation to that person,
  - (ii) removing any person for the time being specified in the Table, or
  - (iii) altering the functions for the time being specified in the Table in relation to any person, or
- (b) restrict the circumstances in which, or impose conditions subject to which, disclosure is permitted in the case of any person for the time being specified in the Table.]

#### Textual Amendments

**F32** S. 154A inserted (6.4.1996) by S.I. 1995/3213 (N.I. 22), art. 165, **Sch. 4 para. 9**; S.R. 1996/91, art. 2(c), **Sch. Pt. III**

#### *Avoidance of certain transactions and provisions*

### **155 Inalienability of guaranteed minimum pension and protected rights payments.**

(1) Where—

- (a) a person is entitled or prospectively entitled to a guaranteed minimum pension under an occupational pension scheme or to payments giving effect to protected rights under such a scheme; and
- (b) his entitlement is in respect of his or another person's service in employment which was contracted-out by reference to that scheme;

then—

- (i) every assignment of or charge on that pension or those payments, and
  - (ii) every agreement to assign or charge that pension or those payments,
- shall be void.

(2) In subsection (1), the references to assignments of and agreements to assign a guaranteed minimum pension do not include references to any assignment of or agreement to assign a policy of insurance or annuity contract in accordance with conditions prescribed by regulations under section 15(4)(b).



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- (3) Subsection (1) has effect whether or not the assignment, charge or agreement was made at a time when the employment was contracted-out employment or the scheme was a contracted-out scheme in relation to the employment.
- (4) Every assignment of or charge on and every agreement to assign or charge protected rights under a personal pension scheme or payments giving effect to such protected rights shall be void.
- (5) On the bankruptcy of a person who—
  - (a) is entitled or prospectively entitled as is mentioned in subsection (1), or
  - (b) is entitled to such rights or to such a payment as is mentioned in subsection (4),nothing shall pass to any trustee or other person acting on behalf of his creditors the assignment of which is or would be made void by either of those subsections.

**Modifications etc. (not altering text)**

**C30** S. 155(4) excluded (1.8.1996) by S.I. 1995/3213 (N.I. 22), **art. 162(5)(a)**; S.R. 1996/284, **art. 3(b)**

VALID FROM 01/12/1999

**[<sup>F33</sup>155A No forfeiture on bankruptcy of rights under personal pension schemes.**

- (1) A person's rights under a personal pension scheme cannot be forfeited by reference to his bankruptcy.
- (2) For the purposes of this section—
  - (a) a person shall be treated as having a right under a personal pension scheme where—
    - (i) he is entitled to a credit under Article 26(1)(b) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (sharing of rights on divorce etc.),
    - (ii) he is so entitled as against the person responsible for the scheme (within the meaning of Chapter I of Part V of that Order), and
    - (iii) the person so responsible has not discharged his liability in respect of the credit; and
  - (b) forfeiture shall be taken to include any manner of deprivation or suspension.]

**Textual Amendments**

**F33** S. 155A inserted (1.12.1999 for certain purposes and otherwise *prosp.*) by S.I. 1999/3147 (N.I. 11), **arts. 1(5)(a), 14(1)** (with transitional provisions in **art. 75(1)**)

**156 Terms of contracts of service or schemes restricting choice to be void.**

- (1) Subject to such exceptions as may be prescribed—
  - (a) any term of a contract of service (whenever made) or any rule of a personal or occupational pension scheme to the effect that an employed earner must be a member—

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- (i) of a personal or occupational pension scheme,
- (ii) of a particular personal occupational pension scheme, or
- (iii) of one or other of a number of particular personal or occupational pension schemes,

shall be void; and

- (b) any such term or rule to the effect that contributions shall be paid by or in respect of an employed earner—
  - (i) to a particular personal or occupational pension scheme of which the earner is not a member, or
  - (ii) to one or other of a number of personal or occupational pension schemes of none of which he is a member,

shall be unenforceable for so long as he is not a member of the scheme or any of the schemes.

- (2) Subsection (1) shall not be construed so as to have the effect that an employer is required, when he would not otherwise be—
  - (a) to make contributions to a personal or occupational pension scheme; or
  - (b) to increase an employed earner’s pay in lieu of making contributions to a personal or occupational pension scheme.

#### **157 Provisions excluding Chapter II of Part VII to be void.**

Any provision in an agreement (whether a contract of employment or not) shall be void in so far as it purports—

- (a) to exclude or limit the operation of any provision of Chapter II of Part VII; or
- (b) to preclude any person from presenting a complaint to, or bringing any proceedings before, an industrial tribunal under that Chapter.

#### **158 Removal of restrictions on friendly societies’ pension business.**

- (1) The Department may make such regulations as it thinks appropriate for enabling a registered society to conduct group insurance business with a view to the establishment of occupational pension schemes or personal pension schemes.
- (2) The power to make regulations under this section shall extend to enabling registered societies to conduct such business as is mentioned in subsection (1) freed from any restrictions of the relevant legislation as to the amounts which a member, or a person claiming through a member, is entitled to receive from any one or more societies or branches.
- (3) Regulations under this section may include such adaptations and modifications of the relevant legislation, and such other supplementary and incidental provisions, as the Department considers to be necessary or expedient for achieving the purposes referred to in subsection (1).
- (4) In this section—
  - (a) “the relevant legislation” means the <sup>M79</sup>Friendly Societies Act 1974,
  - (b) “registered society” has the same meaning as in that Act, and
  - (c) “group insurance business” has the same meaning as in section 65A(2) of that Act.

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**Marginal Citations**

M79 1974 c. 46.

**159 Exemption of certain schemes from rule against perpetuities.**

- (1) The rules of law relating to perpetuities shall not apply to the trusts of, or any disposition made under or for the purposes of a personal or occupational pension scheme at any time when this section applies to it.
- (2) This section applies to—
  - (a) a public service pension scheme;
  - (b) an occupational pension scheme which is a contracted-out scheme in relation to any employment;
  - (c) a personal pension scheme which is an appropriate scheme; and
  - (d) an occupational or personal pension scheme which satisfies prescribed requirements.
- (3) Subsection (1) applies whether the trusts or dispositions in question are created or made before or after this section first applies to the scheme, but this section does not validate with retrospective effect any trusts or dispositions which the rules of law relating to perpetuities (including, where applicable, section 3(1) of the <sup>M80</sup>Perpetuities Act (Northern Ireland) 1966 (“wait and see”)) already require to be treated as void before this section applies to the scheme.
- (4) Regulations under subsection (2)(d) may require a scheme—
  - (a) to contain provisions in any prescribed form, or to any prescribed effect; or
  - (b) to have tax-exemption or tax-approval or to be such a scheme that it may be expected to qualify for tax-exemption or tax-approval.
- (5) Such regulations may be so framed that, in prescribed circumstances, the requirements can be treated as satisfied if application has been duly made to the Inland Revenue with a view to obtaining tax-approval for the scheme.
- (6) Regulations may include provision by which a scheme (other than a public service pension scheme) to which this section ceases to apply may nevertheless be treated as continuing to be a scheme to which it applies for a period of two years from its ceasing to be such a scheme, or for such longer period as the Board consider to be reasonable in the case of a particular scheme.
- (7) If this section ceases to apply to a scheme, trusts created and dispositions made under it or for its purposes shall then again be subject to the rules of law relating to perpetuities as if this section had never applied to it.
- (8) Subsection (7) is without prejudice to any rights which vested while this section applied.
- (9) Regulations may provide for a scheme, whose fund was registered under the <sup>M81</sup>Superannuation and other Trust Funds (Validation) Act (Northern Ireland) 1928 immediately before the repeal of that Act took effect, to retain the benefit of that Act, subject to prescribed conditions and either indefinitely or for a prescribed period.

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#### **Marginal Citations**

**M80** 1966 c. 2 (N.I.).

**M81** 1928 c. 6 (N.I.).

### *Special classes of earner*

#### **160 Crown employment.**

- (1) Subject to subsection (3), the following provisions shall apply to persons employed by or under the Crown in like manner as if such persons were employed by a private person—
  - (a) Chapter I of Part IV and the other provisions of this Act, so far as they relate to the preservation requirements;
  - (b) the remaining provisions of this Act, except for—
    - (i) sections 132 to 134, 135(2) and (3), 136, 137, 138(1) to (4), 139, 149(2), 154(1) to (5), 158, 159, 167, 168 and 171;
    - (ii) Chapter II of Part VII and sections 153 and 157;
    - (iii) section 162 and the provisions mentioned in subsection (2).
- (2) A person who is employed by or under the Crown shall be treated as an employed earner for the purposes of sections 3, 5, 22 to 30, 34, 39 to 41 (so far as they relate to personal pension schemes), section 44 (so far as it relates to minimum contributions), section 46 (so far as it relates to personal pension schemes), section 50, sections 51 to 60 (so far as they relate to personal pension protected rights premiums), section 107 (and Part VIII and section 149 so far as they have effect for the purposes of section 107), sections 113, 150 and 151 and section 155 (so far as it relates to protected rights payments) and sections 156 and 162.
- (3) So far as subsection (1) relates to the provisions within paragraph (b) of that subsection, it does not apply to a person who is serving as a member of Her Majesty's forces.
- (4) Subject to subsections (3) and (5), a person who is serving as a member of Her Majesty's forces shall, while he is so serving, be treated for the purposes of the provisions within subsection (1)(b) and those within subsection (2) (except for sections 150 and 162) as an employed earner in respect of his membership of those forces.
- (5) The Secretary of State may make regulations modifying sections 37, 38, 42(1), 43(2) and (5) and 44 in such manner as he thinks proper, in their application to persons who are or have been members of Her Majesty's forces.
- (6) For the purposes of this section Her Majesty's forces shall be taken to consist of such establishments and organisations as may be prescribed by regulations made by the Secretary of State, being establishments and organisations in which persons serve under the control of the Defence Council.

#### **161 Application of certain provisions to cases with foreign element.**

- (1) Regulations may modify the provisions mentioned in subsection (2) in such manner as the Department thinks proper, in their application to any person who is, or has been, or is to be—

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- (a) employed on board any ship, vessel, hovercraft or aircraft;
  - (b) outside Northern Ireland at any prescribed time or in any prescribed circumstances; or
  - (c) in prescribed employment in connection with continental shelf operations.
- (2) The provisions referred to in subsection (1) are—
- (a) sections 3, 5, 22 to 30, 34, 39 to 41 (so far as they relate to personal pension schemes), section 44 (so far as it relates to minimum contributions), section 46 (so far as it relates to personal pension schemes), section 50, sections 51 to 60 (so far as they relate to personal pension protected rights premiums), section 107 (and Part VIII and section 149 so far as they have effect for the purposes of section 107), sections 113, 150 and 151 and section 155 (so far as it relates to protected rights payments) and sections 156 and 162; and
  - (b) sections 37 and 38, subsections (1), (6) and (7) of section 42 (and subsection (8) of that section so far as it has effect for the purposes of those subsections) and sections 43(2) and (5) and 44.
- (3) Subject to subsection (4), regulations under subsection (1) may in particular provide—
- (a) for any of those provisions to apply to any such person, notwithstanding that it would not otherwise apply;
  - (b) for any such provision not to apply to any such person, notwithstanding that it would otherwise apply;
  - (c) for excepting any such person from the application of any such provision where he neither is domiciled nor has a place of residence in any part of Northern Ireland;
  - (d) for the taking of evidence, for the purposes of the determination of any question arising under any such provision, in a country or territory outside Northern Ireland, by a British consular official or such other person as may be determined in accordance with regulations.
- (4) Subsection (3)(b) does not apply as respects the application of the provisions mentioned in subsection (2)(b) and paragraphs (a), (c) and (d) of subsection (3) do not apply as respects the application of those provisions to such persons as are mentioned in subsection (1) (b) or (c).
- (5) Without prejudice to the generality of section 149(2)(c), regulations may modify Chapter I of Part IV in relation to schemes with any overseas element, that is to say, schemes established, or relating to employment, or with parties domiciled, resident or carrying on business, in any part of the world outside the United Kingdom, or otherwise not confined in their operation to the United Kingdom.
- (6) Chapter II of Part VII and section 153 do not apply—
- (a) to employment where under his contract of employment the employee ordinarily works outside the territory of the member States, or
  - (b) to employment as master or as a member of the crew of a fishing vessel where the employee is remunerated only by a share in the profits or gross earnings of the vessel;
- and sections 120 and 121 do not apply to employment as a merchant seaman, but section 137 of the <sup>M82</sup>Employment Protection (Consolidation) Act 1978 (power to extend employment protection legislation) applies to Chapter II of Part VII and section 153 as it does to the legislation mentioned in section 137(1)(b) of that Act.
- (7) In this section—

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“continental shelf operations” means any activities which, if paragraphs (a) and (d) of subsection (6) of section 23 of the <sup>M83</sup>Oil and Gas (Enterprise) Act 1982 (application of civil law to certain off-shore activities) were omitted, would nevertheless fall within subsection (2) of that section;

“employment as a merchant seaman” has the meaning given in Article 76(8) of the <sup>M84</sup>Industrial Relations (Northern Ireland) Order 1976.

#### **Marginal Citations**

**M82** 1978 c. 44.

**M83** 1982 c. 23.

**M84** S.I. 1976/1043 (N.I. 16).

### *Reciprocity with other countries*

#### **162 Reciprocity with other countries.**

- (1) For the purpose of giving effect—
  - (a) to any agreement with the government of a country outside the United Kingdom providing for reciprocity in matters relating to payments for purposes similar or comparable to the purposes of this Act, or
  - (b) to any such agreement as it would be if it were altered in accordance with proposals to alter it which, in consequence of any change in the law of Northern Ireland, the government of the United Kingdom has made to the other government in question,

the Secretary of State may by order make provision for modifying or adapting this Act in its application to cases affected by the agreement or proposed alterations.
- (2) An order made by virtue of subsection (1) may, instead of or in addition to making specific modifications or adaptations, provide generally that this Act shall be modified to such extent as may be required to give effect to the provisions contained in the agreement or, as the case may be, alterations in question.
- (3) The modifications of this Act which may be made by virtue of subsection (1) include provision—
  - (a) for securing that acts, omissions and events having any effect for the purposes of the law of the country in respect of which the agreement is made have a corresponding effect for the purposes of this Act (but not so as to confer a right to a double benefit);
  - (b) for determining in cases where rights accrue both under this Act and under the law of that country, which of those rights is to be available to the person concerned; and
  - (c) for making any necessary financial adjustments.
- (4) An order made by virtue of subsection (1) which modifies or adapts any of the provisions referred to in section 160 may, in particular, provide for the Department to make payments for any period beginning on or after 6th April 1987 and may make provision with respect to any matters relating to payments so made.
- (5) References in this section to this Act do not include references to Chapter I of Part IV, Chapter II of Part VII, Part VIII so far as it applies for the purposes of Chapter I of

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Part IV, sections 132 to 134, 135(2) and (3), 136, 137, 138(1) to (4), 139, 149(2), 153, 154(1) to (5), 157, 158, 159, 167, 168 and 171.

*Application of provisions relating to social security administration*

**163 Application of general provisions relating to administration of social security.**

- (1) The <sup>M85</sup>Social Security Administration (Northern Ireland) Act 1992 shall apply as if references to that Act in the provisions mentioned in subsection (2) included references to the provisions referred to in section 160(1)(b) of this Act (in this section referred to as “the relevant provisions”).
- (2) The provisions referred to in subsection (1) are the following provisions of the Social Security Administration (Northern Ireland) Act 1992—
  - section 110 (legal proceedings)
  - section 118 (regulations as to notification of deaths)
  - section 153 (co-ordination with Great Britain)
  - section 156 (payment of travelling expenses by the Department).
- (3) Section 56 of that Act (regulations as to determination of questions and matters arising out of, or pending, reviews and appeals) shall apply to the relevant provisions as it applies to the <sup>M86</sup>Social Security Contributions and Benefits (Northern Ireland) Act 1992.
- (4) The references in section 57(2)(a) of the <sup>M87</sup>Social Security Administration (Northern Ireland) Act 1992 (procedure regulations) and in section 59(1)(a) of that Act (regulations as to matters arising pending determinations) to Parts II to IV of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 and to Part I of that Act shall be taken respectively to include a reference to section 42 and a reference to sections 37 and 38 of this Act.
- (5) Section 120 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (treatment of certain marriages) shall apply to the relevant provisions.

**Marginal Citations**

**M85** 1992 c. 8.

**M86** 1992 c. 7.

**M87** 1992 c. 8.

*General provisions as to offences*

**164 Breach of regulations.**

Regulations under any provision of this Act (other than Chapter II of Part VII) may provide for the contravention of, or failure to comply with any provision contained in regulations under any such provision to be an offence under this Act and for the recovery on summary conviction for any such offence of penalties not exceeding—

- (a) for any one offence, level 3 on the standard scale; or

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- (b) for an offence of continuing any such contravention or failure after conviction, £40 for each day on which it is so continued.

VALID FROM 06/04/1996

**[<sup>F34</sup>164A Offence in connection with the Registrar.**

- (1) Any person who knowingly or recklessly provides the Registrar with information which is false or misleading in a material particular is guilty of an offence if the information—
- (a) is provided in purported compliance with a requirement under section 2, or
  - (b) is provided otherwise than as mentioned in paragraph (a) but in circumstances in which the person providing the information intends, or could reasonably be expected to know, that it would be used by the Registrar for the purpose of discharging his functions under this Act.
- (2) Any person guilty of an offence under subsection (1) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum,
  - (b) on conviction on indictment, to imprisonment or a fine, or both.]

**Textual Amendments**

**F34** Ss. 164, 164A substituted (6.4.1996 for certain purposes, 23.7.1996 for other certain purposes otherwise 6.4.1997) for s. 164 by *S.I. 1995/3213 (N.I. 22)*, **art. 151(1)**; *S.R. 1996/91*, art. 2(d), **Sch. Pt. IV**; *S.R. 1996/307*, art. 2(a), **Sch. Pt. I**; *S.R. 1997/192*, **art. 2(b)**

*General provisions as to determinations and appeals*

**165 Determination of questions by Department.**

- (1) The questions to which section 15(1) of the <sup>M88</sup>Social Security Administration (Northern Ireland) Act 1992 (questions for determination by the Department) applies include—
- (a) any question as to the amount of a person's guaranteed minimum for the purposes of section 9 or 13;
  - (b) any question—
    - (i) whether a state scheme premium is payable or has been paid in any case or as to the amount of any such premium; or
    - (ii) otherwise arising in connection with any state scheme premium;
  - (c) any question whether for the purposes of this Act a cash sum paid or an alternative arrangement made under the <sup>M89</sup>Policyholders Protection Act 1975 provides the whole or any part of the guaranteed minimum pension to which an earner or an earner's widow or widower was entitled under a contracted-out scheme; and
  - (d) any question arising in connection with minimum contributions or payments under Article 9 of the <sup>M90</sup>Social Security (Northern Ireland) Order 1986, other than a question such as is mentioned in paragraph (b)(ii) or (d) which is required by virtue of this Act to be determined by the Board.



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- (2) The Department may make any determination required by subsection (1)(c) on such basis as it considers appropriate.
- (3) Any question arising under this Act as to whether the employment of an earner in employed earner's employment at any time is or was contracted-out employment in relation to him shall be referred by the Department to the Board and determined by them.
- (4) Neither section 15(1) nor section 18(1) of the <sup>M91</sup>Social Security Administration (Northern Ireland) Act 1992 (questions for determination by adjudication officers) shall apply to any such question as is mentioned in subsection (3).
- (5) Any question arising in proceedings before any court or tribunal whether the rules of an occupational pension scheme conform with the equal access requirements shall be referred to and determined by the Board.
- (6) Subsection (4) of section 130 shall apply to determinations under subsection (5) as it applies to determinations under that section.

#### Marginal Citations

- M88** 1992 c. 8.  
**M89** 1975 c. 75.  
**M90** S.I. 1986/1888 (N.I. 18).  
**M91** 1992 c. 8.

## 166 Questions arising in proceedings.

- (1) Where in any proceedings—
  - (a) for an offence under this Act; or
  - (b) involving any question as to the payment of a state scheme premium;any such question arises as is mentioned in section 165(1)(a), (b)(i) or (c), the decision of the Department shall be conclusive for the purpose of the proceedings.
- (2) If—
  - (a) a decision of any such question is necessary for the determination of the proceedings; and
  - (b) the decision of the Department has not been obtained or a question has been raised with a view to a review of the decision obtained,the question shall be referred to the Department for determination or review in accordance (subject to any necessary modifications) with sections 15 to 17 of the <sup>M92</sup>Social Security Administration (Northern Ireland) Act 1992.
- (3) Subsection (1) does not apply if—
  - (a) an appeal under section 16 of that Act is pending; or
  - (b) the time for appealing has not expired; or
  - (c) a question has been raised with a view to a review of the Department's decision under section 17 of that Act,and the court dealing with the case shall adjourn the proceedings until such time as a final decision on the question has been obtained.

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**Modifications etc. (not altering text)**

**C31** S. 166(1) modified (28.3.1997) by S.R. 1997/192, **art. 4(2)** (with **art. 9**)

**Marginal Citations**

**M92** 1992 c. 8.

VALID FROM 05/07/1999

**[<sup>F35</sup>166A Reports by Inland Revenue.**

- (1) The Inland Revenue shall prepare, either annually or at such times or intervals as may be prescribed, a report on the standards achieved by their officers in the making of decisions against which, by virtue of section 165(6), an appeal lies to an appeal tribunal constituted under Chapter I of Part II of the Social Security (Northern Ireland) Order 1998.
- (2) Any report under this section—
  - (a) may be included in any annual report by the Inland Revenue of which a copy is laid before each House of Parliament, or
  - (b) may be annexed to any report of the Secretary of State under section 81 of the Social Security Act 1998 <sup>F36</sup>.
- (3) A copy of every report under this section shall be laid before each House of Parliament unless the report is included in, or annexed to, a report of which a copy is so laid.]

**Textual Amendments**

**F35** S. 166A inserted (5.7.1999) by S.I. 1999/671, art. 17, **Sch. 6 para. 14**; S.R. 1999/271, art. 2(b), **Sch. Pt. II**

**F36** 1998 c. 14.

**167 Review of the Board's determinations.**

- (1) Subject to the provisions of this section and section 168, where the Board have—
  - (a) determined to issue, cancel or vary a contracting-out certificate or an appropriate scheme certificate; or
  - (b) determined to make, or not to make, any order which they have power to make under section 132, 135 or 138; or
  - (c) determined any other question which it is within their functions to determine, their determination shall be final.
- (2) The Board may on the application of a person appearing to them to be interested—
  - (a) at any time review any such determination of theirs as is mentioned in subsection (1), or a determination given by them on a previous review, if they are satisfied that there has been a relevant change of circumstances since the determination was made, or that the determination was made in ignorance of

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- a material fact or based on a mistake as to a material fact or was erroneous in point of law;
  - (b) at any time within a period of six months from the date of the determination, or within such longer period as they may allow in any particular case, review such a determination on any ground.
- (3) The Board’s powers on a review under this section shall include power—
- (a) to vary or revoke any determination or order previously made;
  - (b) to substitute a different determination or order; and
  - (c) generally to deal with the matters arising on the review as if they had arisen on the original determination.

## **168 References and appeals from the Board.**

- (1) Any question of law arising in connection with—
- (a) any matter arising under this Act for determination by the Board;
  - (b) any other matter which under section 165(3) falls to be determined by them;
  - (c) any matter arising on an application to the Board for a review of a determination by them, or on a review by them entered upon without an application,
- may, if the Board think fit, be referred for decision to the Court of Appeal.
- (2) If the Board determine in accordance with subsection (1) to refer any question of law to the Court, they shall give notice in writing of their intention to do so—
- (a) in a case where the question arises on an application made to the Board, to the applicant; and
  - (b) in any case to such persons as appear to them to be concerned with the question.
- (3) Any person who is aggrieved—
- (a) by a determination of the Board given on a review under section 167, or
  - (b) by the refusal of the Board to review a determination,
- where the determination involves a question of law and that question is not referred by the Board to the Court of Appeal under subsection (1), may on that question appeal from the determination to the Court.
- (4) The Board shall be entitled to appear and be heard on any reference or appeal under this section.
- (5) Notwithstanding anything in any enactment, the decision of the court on a reference or appeal under this section shall be final.
- (6) On any such reference or appeal the court may order the Board to pay the costs of any other person, whether or not the decision is in that other person’s favour and whether or not the Board appear on the reference or appeal.

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### *Financial provisions*

#### **169 Grants by the Board to advisory bodies, etc.**

- (1) The Board may make grants on such terms and conditions as they think fit to any person providing advice or assistance, or carrying out other prescribed functions, in connection with occupational or personal pensions.
- (2) The Department may pay the Board such sums as the Department may think fit towards any expenditure of theirs in making grants under this section.

#### **170 Levies towards meeting certain costs and grants.**

- (1) For the purpose of meeting some or all of the expenditure under sections 2 and 169 and Part X, regulations may make provision for imposing a levy in respect of such occupational or personal pension schemes as may be prescribed.
- (2) Any levy imposed under this section shall be payable to the Department by or on behalf of—
  - (a) the administrators of such public service pension schemes as may be prescribed;
  - (b) the trustees or managers of such other occupational or personal pension schemes as may be prescribed; or
  - (c) such other persons as may be prescribed,at such rates and at such times as may be prescribed.
- (3) The amount payable by any person on account of the levy shall be a debt due from him to the Department and shall be recoverable accordingly.
- (4) Without prejudice to the generality of subsection (1), regulations under this section may include provision relating to the collection and recovery of amounts payable by way of levy under this section.

#### **171 Fees for official services to schemes.**

Where at the request of the trustees or managers of an occupational pension scheme or a personal pension scheme or of any employer of earners who are members of such a scheme, official services are provided in connection with the operation or administration of the scheme either by the Department or by the Board on its behalf, the Department may require the payment of fees for the provision of those services.

#### **172 General financial arrangements.**

- (1) There shall be paid out of the National Insurance Fund—
  - (a) minimum contributions paid by the Department under section 39;
  - (b) payments by it under section 120.
- (2) Subject to subsection (3), there shall be paid out of the National Insurance Fund into the Consolidated Fund—
  - (a) sums equal to the amount of any expenses incurred by the Department (or by persons acting on its behalf) in exercising its functions under Chapter II of Part VII and section 153;

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- (b) such sums as the Department may estimate to be the amount of the administrative expenses of the Department or any government department in carrying into effect the remaining provisions of this Act, other than—
  - (i) Chapter I of Part IV and Part VIII so far as it applies for the purposes of that Chapter, sections 132 to 134, 135(2) and (3), 136, 137, 138(1) to (4), 139, 149(2), 154(1) to (5), 158, 159, 167, 168 and 171;
  - (ii) sections 3, 5, 22 to 30, 34 and 46 (so far as they relate to personal pension schemes), section 44 (so far as it relates to minimum contributions), section 46 (so far as it relates to personal pension schemes), section 50, sections 51 to 60 (so far as they relate to personal pension protected rights premiums), section 107 (and Part VIII and section 149 so far as they have effect for the purposes of section 107), sections 113, 150 and 151 and section 155 (so far as it relates to protected rights payments) and sections 156 and 162.
- (3) The sums payable under subsection (2)(b)—
  - (a) shall be estimated in accordance with any directions given by the Department of Finance and Personnel and (except in the case of functions relating to minimum contributions) shall exclude such categories of expenses as that Department may direct, or any enactment may require, to be so excluded; and
  - (b) shall be payable at such times and in such manner as the Department of Finance and Personnel may direct.
- (4) Subject to subsection (5), there shall be paid into the Consolidated Fund any sum recovered by the Department under the provisions within subsection (2)(b)(ii).
- (5) So far as any such sum relates to a payment out of the National Insurance Fund, it shall be paid into that Fund.
- (6) There shall be paid into the Consolidated Fund of the United Kingdom all fees paid to the Registrar.
- (7) There shall also be paid into the National Insurance Fund—
  - (a) sums recovered under section 39(5) or (6);
  - (b) any personal pension protected rights premium;
  - (c) any sum recovered by the Department in exercising any right or pursuing any remedy which is the Department's by virtue of section 123; and
  - (d) any sums received by it by way of such payments as are mentioned in paragraph 5(4) of Schedule 1.

## PART XII

### SUPPLEMENTARY PROVISIONS

#### *Interpretation*

#### 173 **Managers of schemes.**

The Department may by regulations provide who is to be treated as a manager of an occupational pension scheme for any of the purposes of the provisions of this Act (except Chapter II of Part VII or section 153), the Social Security Acts (Northern

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Ireland) 1975 to 1991, or Part VI of the <sup>M93</sup>Social Security Administration (Northern Ireland) Act 1992.

#### **Marginal Citations**

**M93** 1992 c. 8.

#### **174 Linked qualifying service.**

- (1) Subject to subsections (2) to (4), for the purposes of this Act any period of an earner's service in an employment is linked qualifying service in relation to a later period of service (whether in the same or another employment) if—
  - (a) under the rules of a scheme applying to him in the earlier period of service—
    - (i) there was made a transfer of his accrued rights under that scheme (including any transfer credits allowed under the scheme) to another scheme applying to him in the later period of service; or
    - (ii) those rights were secured by a policy of insurance or an annuity contract and were subsequently transferred to another scheme applying to him in the later period of service; and
  - (b) in consequence of the transfer of his accrued rights to the second scheme, there are (or were) allowed to him transfer credits under the rules of that other scheme.
- (2) For any service to be taken into account as linked qualifying service, it must be actual service and no regard shall be had to any scheme rule which provides for service to be treated for any purposes of benefit or otherwise as longer or shorter than it actually was.
- (3) Only so much of the earlier period as is a period of service in respect of which there accrued under the first scheme any of the rights transferred to the second scheme shall be linked qualifying service in relation to the later period of service.
- (4) For the purposes of Chapter I of Part IV, as respects any case where the rules of the scheme provide—
  - (a) that an earner is not entitled to become a member unless he satisfies specified conditions, but
  - (b) that, if he becomes a member, rights are to accrue to him in respect of periods of service before he satisfied any such conditions,
 regulations may provide for any such periods to be treated, in such cases and to such extent as may be prescribed, as linked qualifying service with later periods of service.

#### **175 Normal pension age.**

- (1) In this Act “normal pension age”, in relation to a scheme and a member's pensionable service under it, means—
  - (a) in a case where the scheme provides for the member only a guaranteed minimum pension, the earliest age at which the member is entitled to receive the guaranteed minimum pension on retirement from any employment to which the scheme applies; and

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- (b) in any other case, the earliest age at which the member is entitled to receive benefits (other than a guaranteed minimum pension) on his retirement from such employment.
- (2) For the purposes of subsection (1) any scheme rule making special provision as to early retirement on grounds of ill-health or otherwise is to be disregarded.

VALID FROM 01/12/2001

**[<sup>F37</sup>175A Insurer and long-term insurance business**

- (1) In this Act “insurer” means—
  - (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to effect or carry out contracts of insurance, or
  - (b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of insurance.
- (2) In this Act “long term insurance business” means business which consists of the effecting or carrying out of contracts of long-term insurance.
- (3) This section must be read with—
  - (a) section 22 of the Financial Services and Markets Act 2000;
  - (b) any relevant order under that section; and
  - (c) Schedule 2 to that Act.]

**Textual Amendments**

**F37** S. 175A inserted (1.12.2001) by [S.I. 2001/3649](#), [arts. 1, 137\(1\)](#)

**176 General interpretation.**

- (1) In this Act—
  - “accrued rights premium” has the meaning given in section 51(6)(a);
  - “age”, in relation to any person, shall be construed so that—
    - (a) he is over or under a particular age if he has or, as the case may be, has not attained that age;
    - (b) he is between two particular ages if he has attained the first but not the second;
  - “appropriate scheme certificate” and references to an appropriate scheme shall be construed in accordance with section 3;
  - “the Assembly” means the Northern Ireland Assembly;
  - “the Board” means the Occupational Pensions Board;
  - “Category A retirement pension” and “Category B retirement pension” mean the retirement pensions of those descriptions payable under Part II of the <sup>M94</sup>Social Security Contributions and Benefits (Northern Ireland) Act 1992;

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“contract of service” has the same meaning as in section 121(1) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

“contracted-out employment” shall be construed in accordance with section 4;

“contracted-out protected rights premium” has the meaning given in section 51(6)(c);

“contracting-out certificate” and references to a contracted-out scheme and to contracting-out shall be construed in accordance with section 3;

“contributions equivalent premium” has the meaning given in section 51(6)(e);

“the Department” means the Department of Health and Social Services for Northern Ireland;

“the Department of Finance and Personnel” means the Department of Finance and Personnel in Northern Ireland;

“earner” and “earnings” shall be construed in accordance with sections 3, 4 and 112 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

“earnings factors” shall be construed in accordance with sections 22 and 23 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

“employed earner” has the same meaning as in section 2 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

“employee” means a person gainfully employed in Northern Ireland either under a contract of service or in an office (including an elective office) with emoluments chargeable to income tax under Schedule E;

“employer” means—

- (a) in the case of an employed earner employed under a contract of service, his employer;
- (b) in the case of an employed earner employed in an office with emoluments—
  - (i) such person as may be prescribed in relation to that office; or
  - (ii) if no person is prescribed, the government department, public authority or body of persons responsible for paying the emoluments of the office;

“employment” includes any trade, business, profession, office or vocation and “employed” shall be construed accordingly except in the expression “employed earner”;

“equal access requirements” has the meaning given in section 114(1);

“government department” includes a department of the government of the United Kingdom;

“guaranteed minimum pension” has the meaning given in section 4(2);

“independent trade union” has the meaning given in Article 2(2) of the <sup>M95</sup>Industrial Relations (Northern Ireland) Order 1992;

“industrial tribunal” means a tribunal established or having effect as if established under Article 30 of the <sup>M96</sup>Industrial Training (Northern Ireland) Order 1984;

“the Inland Revenue” means the Commissioners of Inland Revenue;

“insurance company” has the meaning given in section 96(1) of the <sup>M97</sup>Insurance Companies Act 1982;

“limited revaluation premium” has the meaning given in section 51(6)(g);



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“linked qualifying service” has the meaning given in section 174;

“long-term benefit” has the meaning given in section 20(2) of the <sup>M98</sup>Social Security Contributions and Benefits (Northern Ireland) Act 1992;

“lower earnings limit” and “upper earnings limit” shall be construed in accordance with section 5 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 and “current”, in relation to those limits, means for the time being in force;

“minimum contributions” shall be construed in accordance with sections 39 to 41;

“minimum payment” has the meaning given in section 4(2);

“modifications” includes additions, omissions and amendments;

“money purchase benefits”, in relation to a member of a personal or occupational pension scheme or the widow or widower of a member of such a scheme, means benefits the rate or amount of which is calculated by reference to a payment or payments made by the member or by any other person in respect of the member and which are not average salary benefits;

“money purchase contracted-out scheme” has the meaning given in section 4(1)(a)(ii);

“money purchase scheme” has the meaning given in section 1;

“National Insurance Fund” means the Northern Ireland National Insurance Fund;

“normal pension age” has the meaning given in section 175;

“occupational pension scheme” has the meaning given in section 1;

“pensionable age” has the same meaning as in section 121 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

“pensionable service” has the meaning given in section 66(2);

“pensioner’s rights premium” has the meaning given in section 51(6)(b);

“personal pension protected rights premium” has the meaning given in section 51(6)(d);

“personal pension scheme” has the meaning given in section 1;

“prescribe” means prescribe by regulations;

“the prescribed equivalent” means the equivalent prescribed under sections 6(1) and 8(3) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

“the preservation requirements” has the meaning given in section 65(2);

“primary Class 1 contributions” and “secondary Class 1 contributions” have the same meanings as in section 6 of the <sup>M99</sup>Social Security Contributions and Benefits (Northern Ireland) Act 1992;

“protected rights” has the meaning given in section 6;

“public service pension scheme” has the meaning given in section 1;

“the register” has the meaning given in section 2;

“the Registrar” has the meaning given in section 2;

“regulations” means regulations made by the Department under this Act;

“resources”, in relation to an occupational pension scheme, means the funds out of which the benefits provided by the scheme are payable from time to time, including the proceeds of any policy of insurance taken out, or annuity contract entered into, for the purposes of the scheme;

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“rights”, in relation to accrued rights (within the meaning of section 69, 132 or 174) or transfer credits, includes rights to benefit and also options to have benefits paid in a particular form or at a particular time;

“self-employed pension arrangement” means an approved personal pension scheme within the meaning of Chapter IV of Part XIV of the <sup>M100</sup>Income and Corporation Taxes Act 1988, being neither—

- (a) a contract or scheme approved under Chapter III of that Part, nor
- (b) a personal pension scheme within the meaning of this Act;

“short service benefit” has the meaning given in section 67(2);

“state scheme premium” means a state scheme premium under Chapter III of Part III or under any corresponding provision in force in Great Britain;

“tax-exemption” and “tax-approval” mean respectively exemption from tax and approval of the Inland Revenue, in either case under any such provision of the Income Tax Acts as may be prescribed;

“tax week” means one of the successive periods in a tax year beginning with the first day of that year and every seventh day thereafter, the last day of a tax year (or, in a leap year, the last two days) being treated accordingly as a separate tax week;

“tax year” means the 12 months beginning with 6th April in any year;

“transfer credits” means rights allowed to an earner under the rules of an occupational pension scheme by reference to a transfer to that scheme of his accrued rights from another scheme (including any transfer credits allowed by that scheme);

“transfer premium” has the meaning given in section 51(6)(f);

“voluntary contributions requirements” has the meaning given in section 107(2);

“week” means a period of seven days beginning with Sunday;

“working life” has the meaning given in paragraph 5(8) of Schedule 3 to the <sup>M101</sup>Social Security Contributions and Benefits (Northern Ireland) Act 1992.

- (2) References to employers in the provisions of this Act (other than sections 119 to 123, 153, 156 and section 133 so far as it relates to the voluntary contributions requirements (“the excluded provisions”)) are to be treated, in relation to persons within the application of an occupational pension scheme and qualifying or prospectively qualifying for its benefits, as including references to persons who in relation to them and their employment are treated by regulations as being employers for the purposes of those provisions.
- (3) Subject to any such regulations, references to an employer in any of the provisions of this Act (other than the excluded provisions or section 2, Chapter I of Part IV, Part VIII so far as it applies for the purposes of Chapter I of Part IV, sections 132 to 134, 135(2) and (3), 136, 137, 138(1) to (4), 139, 149(2), 154(1) to (5), 158, 159, 167, 168 and 171) shall, in relation to an earner employed in an office with emoluments, be construed as references to—
  - (a) such person as may be prescribed in relation to that office; or
  - (b) if no person is prescribed, the government department, public authority or body of persons responsible for paying the emoluments of that office.
- (4) Regulations may for any purpose of any provision of this Act (other than the excluded provisions or section 2, 23, 24, 25, 27, 28, 39, 40, 107, 156, 160 or 161) prescribe the persons who are to be regarded as members or prospective members of an occupational

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pension scheme and as to the times at which and the circumstances in which a person is to be treated as becoming, or as ceasing to be, a member or prospective member.

- (5) In sections 161 and 162—
- (a) references to the United Kingdom include references to the territorial waters of the United Kingdom; and
  - (b) references to Northern Ireland include references to the territorial waters of the United Kingdom adjacent to Northern Ireland.
- (6) Any reference in section 180 or 181 to an order or regulations under this Act includes a reference to an order or regulations made under any provision of an enactment passed after this Act and directed to be construed as one with it; but this subsection applies only so far as a contrary intention is not expressed in the enactment so passed, and shall be without prejudice to the generality of any such direction.
- (7) The <sup>M102</sup>Interpretation Act (Northern Ireland) 1954 shall apply to this Act—
- (a) as it applies to a Measure of the Assembly;
  - (b) as if any reference in that Act to an enactment or an Act included a reference to this Act.
- (8) For the purposes of Part III of the <sup>M103</sup>Northern Ireland Constitution Act 1973 (validity of Measures of the Assembly, including Orders in Council under the <sup>M104</sup>Northern Ireland Act 1974), provisions of this Act which re-enact provisions of such an Order are to be treated as provisions of such an Order.

#### Marginal Citations

- M94 1992 c. 7.
- M95 S.I. 1992/807 (N.I. 5).
- M96 S.I. 1984/1159 (N.I. 9).
- M97 1982 c. 50.
- M98 1992 c. 7.
- M99 1992 c. 7.
- M100 1988 c. 1.
- M101 1992 c. 7.
- M102 1954 c. 33 (N.I.).
- M103 1973 c. 36.
- M104 1974 c. 28.

*Subordinate legislation, etc.*

## 177 Orders and regulations (general provisions).

- (1) Any power under this Act to make regulations or orders (except a power of the Board or the court to make orders and regulations made by the Secretary of State under section 160) and the powers to make rules under sections 145(2) and 148(1) shall be exercisable by statutory rule for the purposes of the <sup>M105</sup>Statutory Rules (Northern Ireland) Order 1979.
- (2) Where a power conferred by this Act is expressed to be exercisable for alternative purposes it may be exercised in relation to the same case for any or all of those purposes.

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- (3) Any power to make regulations or an order for the purposes of any one provision of this Act shall be without prejudice to any power to make regulations or an order for the purposes of any other provision.
- (4) Any power conferred by this Act to make regulations or an order shall include power to make such incidental, supplementary, consequential or transitional provision as appears to the authority making the regulations or order to be expedient for the purposes of the regulations or order.
- (5) Subsection (4) has effect—
  - (a) in its application to regulations and orders made under the following provisions, namely Chapter I of Part IV, Part VIII so far as it applies for the purposes of Chapter I of Part IV, sections 132 to 134, 135(2) and (3), 136, 137, 138(1) to (4), 139, 149(2), 154(1) to (5), 158, 159, 167, 168 and 171, with the omission of the words “consequential or transitional”; and
  - (b) in its application to orders made under section 149(8), with the omission of the word “consequential”.
- (6) Any power conferred on the Department by this Act to make any regulations or order (except an order under section 149(8)), where the power is not expressed to be exercisable with the consent of the Department of Finance and Personnel, shall if that Department so directs be exercisable only in conjunction with it.
- (7) The power conferred on the Secretary of State by section 160 to make regulations is exercisable by statutory instrument; and subsections (2) to (4) and section 178(1) apply to those regulations as they apply to regulations made by the Department.
- (8) The power conferred on the Secretary of State by section 160 to make regulations shall if the Treasury so direct be exercisable only in conjunction with them.

#### Marginal Citations

M105 S.I. 1979/1573 (N.I. 12).

### 178 Sub-delegation.

- (1) Without prejudice to any specific provisions in this Act, a power conferred by this Act to make regulations or an order (other than regulations and orders made under Chapter I of Part IV, Part VIII so far as it applies for the purposes of Chapter I of Part IV, sections 132 to 134, 135(2) and (3), 136, 137, 138(1) to (4), 139, 149(2), 154(1) to (5), 158, 159, 167, 168 and 171) includes power to provide for a person to exercise a discretion in dealing with any matter.
- (2) Where any provision in Parts III to VI (except sections 22, 23, 39 to 41, 47, 62 to 64, 66 to 76, 78 to 82, 90, 97, 99 to 104 and 113), Chapter I of Part VII, Part VIII or IX or section 149 (except subsection (8)), 152, 155, 158 or 159 or any of sections 167 to 169 allows for specified matters to be dealt with by, or determined in accordance with, regulations made by the Department, or by it and the Department of Finance and Personnel acting jointly, any regulations made by virtue of that provision may provide—
  - (a) for those matters to be dealt with by the Board in their discretion or to be determined in accordance with the exercise by the Board of a discretion vested in them by the regulations, and

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- (b) for the Board’s discretion to be exercised either generally in regard to those matters or differently in regard to particular cases or classes of case.
- (3) Regulations under sections 23(3), 59(2), 93(1), 100(8) and 140(5) may provide that the values there mentioned shall be calculated and verified or, in the case of regulations under section 100(8), that the percentage there mentioned shall be determined—
- (a) in such manner as may, in the particular case, be approved—
    - (i) by a prescribed person;
    - (ii) by a person with prescribed professional qualifications or experience;
    - or
    - (iii) by a person approved by the Department; or
  - (b) in accordance with guidance prepared by a prescribed body;
- and regulations under section 100(8) may also provide that such calculation and verification or, as the case may be, determination shall be—
- (i) in accordance with prescribed principles and requirements; or
  - (ii) in accordance with principles determined by the person who performs the duties of calculation and verification.

#### **179 Consultation with Social Security Advisory Committee.**

- (1) The Department may refer to the Social Security Advisory Committee (“the Committee”) for consideration and advice such questions relating to the operation of section 32(6) as the Department thinks fit (including questions as to the advisability of amending it).
- (2) Subject to subsection (3) and to section 150 of the <sup>M106</sup>Social Security Administration (Northern Ireland) Act 1992 (cases where consultation not required), where the Department proposes to make regulations under section 32(6) it shall refer the proposals, in the form of draft regulations or otherwise, to the Committee.
- (3) Subsection (2) does not apply to the regulations specified in paragraph 9 or 10 of Schedule 5 to the Social Security Administration (Northern Ireland) Act 1992.
- (4) The Committee shall consider any proposals referred to it by the Department under subsection (2) and shall make to the Department a report containing such recommendations with respect to the subject-matter of the proposals as the Committee thinks appropriate.
- (5) If, after receiving a report of the Committee, the Department lays before the Assembly any regulations which comprise the whole or part of any subject-matter of the proposals referred to the Committee, the Department shall lay with the regulations a copy of the Committee’s report and a statement showing—
  - (a) the extent (if any) to which the Department has in framing the regulations given effect to the Committee’s recommendations; and
  - (b) in so far as effect has not been given to them, the Department’s reasons why not.
- (6) In relation to regulations required to be made by the Department in conjunction with the Department of Finance and Personnel, any reference in this section to the Department shall be construed as a reference to the Department and the Department of Finance and Personnel.

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### Marginal Citations

M106 1992 c. 8.

## 180 Consultations about other regulations.

- (1) The power of the Department to make regulations under section 158 shall be exercisable only after consultation with the Chief Registrar of Friendly Societies.
- (2) Before making any regulations under paragraph 7 of Schedule 1 the appropriate government department shall consult with such bodies concerned with employments of the class in question as appear to it fairly to represent the interests of the employers and earners in those employments.

## 181 Assembly, etc. control of regulations and orders.

- (1) The regulations and orders to which this subsection applies shall be laid before the Assembly after being made and shall take effect on such date as may be specified in the regulations or order, but shall (without prejudice to the validity of anything done thereunder or to the making of new regulations or a new order) cease to have effect upon the expiration of a period of six months from that date unless at some time before the expiration of that period the regulations have, or the order has, been approved by a resolution of the Assembly.
- (2) Subsection (1) applies to regulations made by the Department under section 60(1) and to orders made by it under section 149(8).
- (3) Subsection (1) does not apply to—
  - (a) regulations under any provision mentioned in subsection (2) which are to be made for the purpose of consolidating regulations thereby revoked;
  - (b) regulations which, in so far as they are made under any provision mentioned in subsection (2), only replace provisions of previous regulations with new provisions to the same effect.
- (4) Subject to subsection (6), all regulations and orders made by the Department under this Act (other than regulations or orders to which subsection (1) applies and orders made under section 186) shall be subject to negative resolution.
- (5) This subsection applies to any regulations or order made under this Act which—
  - (a) but for subsection (6), would be subject to negative resolution, and
  - (b) are or is contained in a statutory rule which includes any regulations or order subject to the confirmatory procedure.
- (6) Any regulations or order to which subsection (5) applies shall not be subject to negative resolution, but shall be subject to the confirmatory procedure.
- (7) Subject to subsection (9), regulations made under this Act by the Secretary of State shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) This subsection applies to any regulations made under this Act which—
  - (a) but for subsection (9), would be subject to annulment in pursuance of a resolution of either House of Parliament, and

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- (b) are contained in an instrument which is subject to any requirement that a draft of the instrument be laid before and approved by a resolution of each House of Parliament.
- (9) Any regulations to which subsection (8) applies shall not be subject as mentioned in subsection (8)(a), but shall be subject to the procedure described in subsection (8)(b).
- (10) In this section “the confirmatory procedure” means the procedure described in subsection (1).

### *Supplemental provisions*

## **182 Repeals.**

- (1) The enactments specified in Parts I and II of Schedule 4 are repealed to the extent specified in the third column.
- (2) The subordinate legislation specified in Part III of that Schedule is revoked to the extent specified in the third column.
- (3) The repeals and revocations have effect subject to any relevant savings in Schedule 5.

### **Commencement Information**

- II** S. 182 partly in force; s. 182 not in force at Royal Assent, see s. 186(2)(3); s. 182(1) in force for specified purposes at 7.2.1994 by [S.R. 1994/17](#), [art. 2](#)

## **183 Transitional provisions and savings.**

- (1) Schedule 5 (which makes transitional provision and contains savings in connection with the repeals and revocations made by this Act) shall have effect.
- (2) Nothing in that Schedule affects the operation of section 28 of the <sup>M107</sup>Interpretation Act (Northern Ireland) 1954 (general savings implied on repeal).

### **Marginal Citations**

- M107** 1954 c. 33 (N.I.).

## **184 Prospective and consequential amendments.**

Schedule 6 (which re-enacts or makes consequential amendments of provisions which make prospective amendments of enactments including those repealed by this Act, so that the re-enacted or amended provisions prospectively amend this Act and other enactments) and Schedule 7 (which makes other consequential amendments) shall have effect, subject to any relevant transitional provisions in Schedule 5.

### **Commencement Information**

- I2** S. 184 partly in force; s. 184 not in force at Royal Assent, see s. 186(2); s. 184 in force for specified purposes at 7.2.1994 by [S.R. 1994/17](#), [art. 2](#)

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## 185 Transitory modifications.

Schedule 8 (which makes transitory modifications of this Act pending the commencement of the provisions there mentioned) shall have effect.

## 186 Short title, commencement and extent.

- (1) This Act may be cited as the Pension Schemes (Northern Ireland) Act 1993.
- (2) Subject to the provisions of Schedule 8, this Act shall come into operation on such day as the Department may by order appoint.
- (3) As respects the coming into operation of—
  - (a) Part II of Schedule 4 and section 182(1) so far as it relates to it; or
  - (b) Schedule 6 and section 184 so far as it relates to it,
 an order under subsection (2) may appoint different days from the day appointed for the other provisions of this Act or different days for different purposes.
- (4) Subject to subsection (5), this Act extends to Northern Ireland only.
- (5) The amendments in Schedule 7 of provisions of the <sup>M108</sup>Income and Corporation Taxes Act 1988 and the <sup>M109</sup>Finance Act 1989 have the same extent as the provisions amended.

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### Subordinate Legislation Made

**P1** S. 186(2)(3) power partly exercised: 7.2.1994 appointed for specified provisions by [S.R. 1994/17, art. 2](#)

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### Marginal Citations

**M108** 1988 c. 1.

**M109** 1989 c. 26.



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