



Pension Schemes (Northern Ireland) Act 1993

1993 CHAPTER 49

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.

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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 (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.

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- (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.

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

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- (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.

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.

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- (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;

“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.

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- (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.
- (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

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(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;
- (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.

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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—
 - (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.

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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.

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.

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- (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—
- “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 ^{M1}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

M1 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.

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- (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.

CHAPTER III

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

Modifications etc. (not altering text)

- C1** 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)
- (c) 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

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

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,

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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).
- (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

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(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.

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 ^{M2}Social Security Pensions (Northern Ireland) Order 1975 or section 130 of the ^{M3}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.

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- (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

M2 [S.I. 1975/1503 \(N.I. 15\)](#).

M3 [1992 c. 8](#).

CHAPTER IV

TRANSFER VALUES

Modifications etc. (not altering text)

C2 [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

[^{F1}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—

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

Textual Amendments

- F1** 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.

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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;
 - (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

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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.

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.

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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—
 - (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.

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- (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).
- (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.

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- (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
 - (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

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(b) any set-off against,
the whole or part of a pension shall be disregarded.

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