

## SCHEDULES

### SCHEDULE 16

Section 63(1).

#### REQUIREMENTS AS TO PRESERVATION OF BENEFIT UNDER OCCUPATIONAL PENSION SCHEMES

##### PART I

###### *Interpretation*

- 1 The following 4 paragraphs have effect for the interpretation of this Schedule.
- 2 " Scheme" means an occupational pension scheme; and in relation to a scheme—
- (a) " relevant employment" means any employment to which the scheme applies ;
  - (b) " long service benefit" 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 that he remains in relevant employment until he attains normal pension age ;
- and in paragraph (b) above " benefits " means retirement benefit for the member himself at normal pension age or benefit for his wife or widow, or dependants, or others, on his attaining that age or his death thereafter, or both such descriptions of benefit.
- 3 (1) " Pensionable service ", in relation to a scheme and a member of it, means 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, including service before the appointed day.
- (2) 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.
- 4 (1) In relation to a scheme and a member's pensionable service under it, " normal pension age " is to be construed as follows.
- (2) Where the scheme provides for the member only minimum benefits for recognition purposes, " normal pension age" means the earliest age at which the member is entitled to receive his minimum personal pension on retirement from relevant employment.
- (3) In any other case, " normal pension age " means the earliest age at which the member is entitled to receive benefits (other than minimum benefits) on his retirement from such employment.

- (4) For the purposes of this paragraph there is to be disregarded any scheme rule making special provision as to early retirement on grounds of ill-health or otherwise.
- 5 (1) " 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) above any transfer credits.
- (2) " Purchased credits " means supplementary credits for which, under the rules of the scheme, a member may or must make 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).
- (3) " Bonus credits " means supplementary credits other than purchased credits or transfer credits.

*Basic principle as to short service benefit*

- 6 (1) A scheme must provide so that where a member's service in relevant employment is terminated before normal pension age and—
- (a) he has attained the age of 26 ; and
  - (b) he has at least 5 years' qualifying service,
- he is entitled to benefit (calculated in accordance with the following provisions of this Schedule and there referred to as "short service 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 for others.
- (2) Subject to the following sub-paragraph, 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.
- (3) 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 thereafter as long service benefit payable on or in respect of his death would be payable.
- (4) In applying sub-paragraphs (2) and (3) above, 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.
- (5) 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.

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*Status: This is the original version (as it was originally enacted).*

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### *Qualifying service*

- 7 (1) " 5 years' qualifying service " means 5 years (whether a single period of that duration or two or more periods, continuous or discontinuous, totalling 5 years) in which the member was at all times employed either—
- (a) in pensionable service under the scheme ; or
  - (b) in service in recognised pensionable employment by reference to the scheme ; or
  - (c) in linked qualifying service under another scheme,
- no regard being had to whether or not it was the same description of service in the whole of the 5 years.
- (2) A period of service previously terminated is not to count towards the 5 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.

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

- 8 (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) The above does not apply to any rule in its application to members whose pensionable service terminated before the rule came into force, except a rule made after the termination of a member's pensionable service and resulting, or capable of resulting, for him in any treatment less favourable than that to which he would have been entitled but for the rule ; nor does it apply to a rule merely conferring a 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.

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

- 9 (1) Subject to the following sub-paragraph, a member's short service benefit must either be payable (as mentioned in paragraph 6(2) above) directly out of the resources of the scheme or be assured to him by such means as may be prescribed.
- (2) Subject to the following sub-paragraphs, a scheme may, instead of providing short service benefit, provide—
- (a) for the member's accrued rights to be transferred to another scheme (whether recognised or not) with a view to the acquisition for him of transfer credits under the other scheme; or
  - (b) for such alternatives to short service benefit as may be prescribed.
- (3) Either of the alternatives specified in sub-paragraph (2)(a) and (b) above may be by way of complete or partial substitute for short service benefit, but (except in such cases as may be prescribed) only with the member's consent.
- (4) An alternative prescribed under sub-paragraph (2)(b) above must not include any payment by way of return of contributions, except in respect of—
- (a) a period of service before the appointed day ; or
  - (b) a period of service of less than 5 years after that day if (and only if) there has been such a payment in respect of a period of service before that day.

### *Computation of benefit*

- 10 (1) A scheme must provide for short service benefit to be computed on the same basis as long service benefit.
- (2) For this 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) This paragraph does not apply to so much of any benefit as—
- (a) accrues at a higher rate, or otherwise more favourably, in the case of members with a period of pensionable service of some specified minimum length, or of those remaining in pensionable service up to some specified minimum age; or
  - (b) 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 ;
- nor does it apply to any category of schemes or members, or description of benefit, excluded from this paragraph by regulations.
- 11 So far as any short service benefit is not required to be computed in accordance with paragraph 10 above, it must be computed on the basis of uniform accrual, bearing the same proportion to long service benefit at the time when pensionable service is terminated 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.
- 12 (1) 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 Ins pensionable service is terminated.
- (2) 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.

### *Credits*

- 13 (1) If a scheme provides for long service benefit to include supplementary credits, it must provide for such credits to be included in short service benefit, and provide for all credits to be so included, subject to the following sub-paragraphs.
- (2) Where purchased credits have not been paid for in full at or before termination of pensionable service—
- (a) if they were to be paid for by a fixed amount, the benefit must include so much of the whole of the credits as bears the same proportion to them as the amount which the member has paid bears to the full amount payable by him;
  - (b) if they were to be paid for otherwise than by a fixed amount, the benefit must include such part of the credits as bears the same proportion to the whole 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.
- (3) 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 basis of the following assumptions—

- (a) that the credits accrue in full only to a member remaining in pensionable service until normal pension age ;
  - (b) that entitlement to any credit, and also the amount 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.
- (4) Where any such deduction from benefit as is referred to in sub-paragraph (3) above is a percentage of benefit, the percentage must be the same for short service as for long service benefit.
- (5) 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.

#### *Pension-increases*

- 14 (1) A scheme which by its rules provides for increases of long service benefit from time to time (whether by way of upwards re-valuation 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 provision to this effect is made in such a way as to involve the exercise of a discretion in relation to increase of long service benefit, 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, so long as the rate is not less than 3 per cent, a year compound.

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

- 15 (1) Except as provided by this paragraph, a scheme must contain rules preventing assignment of short service benefit, and must not enable such benefit to be surrendered or commuted.
- (2) Provisions enabling assignment are permissible (whether assignment before or after the benefit comes into payment) if it is assignment in favour of the member's widow or a dependant of his.
- (3) Provisions enabling surrender (at the option of the member) are permissible where it is—
- (a) to provide benefit for the member's widow or a dependant of his;
  - (b) to acquire for the member entitlement to transfer credits under another scheme ;
  - (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.

- (4) Provision may be made for a member's benefit to be commuted, but only—
- (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 ;
- and where a scheme provides benefit for a member's widow or dependant, it may provide for commutation by the beneficiary in such circumstances as may be prescribed.
- (5) In respect of any of the benefits or rights alternative to short service benefit provided in accordance with paragraph 9(2) above, this paragraph shall apply with such modifications as may be prescribed.
- (6) In the application of this paragraph to Scotland, for reference to assignment there shall be substituted references to assignation.

*Forfeiture, etc.*

- 16 (1) Except so far as permitted by this paragraph, and subject to paragraph 17 below, 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 the benefit becomes payable, but only an event by reference to which long service benefit would be forfeited; and such a provision must not be in terms which in the opinion of the Occupational Pensions Board 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 or, in Scotland, the assignation or attempted assignation 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 dependant of the member, the beneficiary's bankruptcy ;
- and in this case forfeiture may be by reference to an event occurring either before or after the benefit would otherwise be payable, so long as the like provision is made in relation to long service benefit.
- (4) 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 1939 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.
- 17 (1) No rule must operate so as to deprive a person of short service benefit (whether a member himself, or his widow or a dependant) by reference to—
- (a) failure by him or any other person to make a claim for the benefit or for any payment due as benefit; or
  - (b) failure by him or any other person, at any time after termination of relevant employment, to give any notice, or comply with any formality, required by the scheme as a condition of entitlement.
- (2) Sub-paragraph (1)(a) above is not to prevent reliance on any enactment relating to the limitation of actions ; and in cases of failure to claim, the scheme may provide for the right to receive any payment to be forfeited in the event of its not being claimed within 6 years of the date on which it became due.
- 18 (1) A scheme must contain no rule enabling 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 ; but a charge or lien on, or set-off against, a member's short service benefit is permissible (insofar as it does not include transfer credits) 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.
- (2) No rule is to permit 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, except an obligation arising as mentioned in sub-paragraph (1) ; and rules permitting such recovery or retainer must so provide that—
- (a) in respect of any such obligation, recovery or retainer is limited to the actuarial value of the member's actual or prospective benefits at that time, or the amount of the obligation, whichever is the less (subject to any different agreement in writing between the employer and the member) ; 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 not entitled to enforce the charge, lien or set-off except after the obligation has become enforceable under an order of a competent court or the award of an arbitrator or in Scotland an arbiter to be appointed (failing agreement between the parties) by the sheriff.
- 19 In respect of any of the benefits or rights alternative to short service benefit provided in accordance with paragraph 9(2) above, paragraphs 16 to 18 shall apply with such modifications as may be prescribed.

## PART II

### SUPPLEMENTARY REGULATIONS

- 20 Regulations may, in respect of any specified provision contained in Part I of this Schedule, 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 that provision.

- 21 Regulations may modify Part I of this Schedule 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.
- 22 Regulations may make provision as to the circumstances in which, for the purposes of Part I of this Schedule—
- (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 ;
  - (b) a person's service in any employment is to be treated as terminated or not terminated.
- 23 Regulations may modify Part I of this Schedule in its application to cases where an earner is for the time being, or has been, employed in pensionable service under, or in recognised pensionable employment by reference to, different schemes applying to the same employment and these regulations may relate to service under or, as the case may be, by reference to different schemes at the same time, or at different times.
- 24 Regulations may make such provision modifying Part I of this Schedule as the Secretary of State 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.
- 25 Regulations may modify Part I of this Schedule in any manner which the Secretary of State thinks appropriate with a view to securing the orderly implementation of the provisions of section 63 of this Act and to obtaining general compliance with that section ; and regulations made under this paragraph may include incidental and supplementary provisions, including provisions appearing to the Secretary of State to be required in consequence of different provisions of Part I of this Schedule being brought into force at different times.
- 26 Without prejudice to any of the foregoing provisions, regulations may provide for the preservation requirements to apply with such modifications and exceptions as the Secretary of State considers to be necessary for particular cases or classes of cases.