



# Pension Schemes Act 1993

## 1993 CHAPTER 48

### PART III

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

### CHAPTER I

#### CERTIFICATION

*[<sup>F1</sup>Requirements for certification of occupational pension schemes  
applying from the principal appointed day of the Pensions Act 1995*

#### Textual Amendments

- F1** Ss. 12A-12D and cross-heading inserted (6.4.1996 for specified purposes, 6.4.1997 in so far as not already in force) by [Pensions Act 1995 \(c. 26\)](#), **ss. 136(5), 180(1)**; [S.I. 1996/778](#), art. 2(5)(a)(7), Sch. Pt. 5

#### 12A 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 [<sup>F2</sup>widows, widowers or surviving civil partners], satisfy the statutory standard.
- (2) Subject to regulations made by virtue of section 9(2B)(c)(ii), in applying this section regard must only be had to—
  - (a) earners in employed earner's employment, or
  - (b) their [<sup>F3</sup>widows, widowers or surviving civil partners],collectively, and the pensions to be provided for persons falling within paragraph (a) or (b) must be considered as a whole.

*Status: Point in time view as at 03/01/2012.*

*Changes to legislation: Pension Schemes Act 1993, Cross Heading: Requirements for certification of occupational pension schemes applying from the principal appointed day of the Pensions Act 1995 is up to date with all changes known to be in force on or before 16 August 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)*

- (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 provide 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 from time to time by a prescribed body<sup>F4</sup> . . . .
- (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 section 47 of the Pensions Act 1995) so certifies.

#### Textual Amendments

- F2** Words in s. 12A(1) substituted (5.12.2005) by [The Civil Partnership \(Contracted-out Occupational and Appropriate Personal Pension Schemes\) \(Surviving Civil Partners\) Order 2005 \(S.I. 2005/2050\)](#), art. 1(3), [Sch. 1 para. 2](#)
- F3** Words in s. 12A(2)(b) substituted (5.12.2005) by [The Civil Partnership \(Contracted-out Occupational and Appropriate Personal Pension Schemes\) \(Surviving Civil Partners\) Order 2005 \(S.I. 2005/2050\)](#), art. 1(3), [Sch. 1 para. 2](#)
- F4** Words in s. 12A(5) repealed (1.11.2007) by [Pensions Act 2007 \(c. 22\)](#), s. 30(2), [Sch. 5 para. 5](#), [Sch. 7 Pt. 8](#); S.I. 2007/3063, art. 2(b)(c)

## 12B Reference scheme

- (1) This section applies for the purposes of section 12A.
- (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 earnings 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 [<sup>F5</sup>widows, widowers or surviving civil partners], a reference scheme is one which provides—

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- (a) for the [<sup>F5</sup>widows, widowers or surviving civil partners] 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
- [<sup>F6</sup>(b) for entitlements to those pensions to commence on the day following the death of the earners, and
- (c) except in prescribed circumstances, for the annual rate of those pensions to be—
- (i) if the earners die on or after their normal pension age, 50 per cent. of the annual rate which a reference scheme was required to provide to the deceased earners immediately before their death, or
  - (ii) if the earners die before their normal pension age, 50 per cent. of the annual rate which a reference scheme would have been required to provide to the deceased earners if the date of their death had been their normal pension age, and
- (d) if those pensions are payable in respect of earners who die—
- (i) otherwise than in pensionable service under the scheme, and
  - (ii) before their own entitlements to pensions under the scheme have commenced,
- for those pensions to be revalued in accordance with section 84 as though they were such benefits as are mentioned in section 83(1)(a).]
- (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 [<sup>F7</sup>the applicable limit].
- (6) Regulations may modify subsections (2) to (5).
- (7) In this section—
- [<sup>F8</sup>“the applicable limit” means—
- (a) in relation to a tax year before [<sup>F9</sup>2009-10], the upper earnings limit for the year multiplied by 53;
  - (b) in relation to [<sup>F9</sup>2009-10] or any subsequent tax year, the upper accrual point [<sup>F10</sup>multiplied by 53];]

“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 122(1) of the Social Security Contributions and Benefits 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.

#### Textual Amendments

- F5** Words in s. 12B(4) substituted (5.12.2005) by [The Civil Partnership \(Contracted-out Occupational and Appropriate Personal Pension Schemes\) \(Surviving Civil Partners\) Order 2005 \(S.I. 2005/2050\)](#), art. 1(3), [Sch. 1 para. 3](#)

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- F6** Ss. 12B(4)(b)-(d) substituted for s. 12B(4)(b) (6.4.1997) by [The Occupational Pension Schemes \(Reference Scheme and Miscellaneous Amendments\) Regulations 1997 \(S.I. 1997/819\)](#), regs. 1(1), 2
- F7** Words in s. 12B(5)(b) substituted (26.9.2007) by [Pensions Act 2007 \(c. 22\)](#), s. 30(3), **Sch. 1 para. 36(a)**
- F8** Words in s. 12B(7) inserted (26.9.2007) by [Pensions Act 2007 \(c. 22\)](#), s. 30(3), **Sch. 1 para. 36(b)**
- F9** Words in s. 12B(7) substituted (21.9.2008) by [National Insurance Contributions Act 2008 \(c. 16\)](#), s. 6(1), **Sch. 1 para. 9(a)**
- F10** Words in s. 12B(7) inserted (21.9.2008) by [National Insurance Contributions Act 2008 \(c. 16\)](#), s. 6(1), **Sch. 1 para. 9(b)**

## 12C **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 9(2B) of this Act 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.

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

- C1** S. 12C applied (1.4.1998) by [The Local Government Pension Scheme \(Scotland\) Regulations 1998 \(S.I. 1998/366\)](#), regs. 1, **58(5)(6)**
- C2** S. 12C(1) extended (with modifications) (6.4.1997) by [The Occupational Pension Schemes \(Discharge of Liability\) Regulations 1997 \(S.I. 1997/784\)](#), regs. 1(1), **11(3)(e)(6)**

## 12D **Entitlement to benefit**

In the case of a scheme contracted out by virtue of section 9(2B) of this Act, regulations may make provision as to the ages by reference to which benefits under the scheme are to be paid]

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