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Pension Schemes (Northern Ireland) Act 1993

1993 CHAPTER 49

PART III

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

CHAPTER I

CERTIFICATION

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
 - (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 ^{M1}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.

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- (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 ^{M2}National Insurance Act (Northern Ireland) 1966 and the previous corresponding enactments.

Marginal Citations

M1 1992 c. 7.

M2 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 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 ^{M3}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,

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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)

C1 S. 10 applied (1.11.1995) by S.R. 1995/389, arts. 4(1)(3)

Marginal Citations

M3 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

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- (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)

- C2** S. 11 applied (1.11.1995) by [S.R. 1995/389](#), [arts. 4\(1\)\(3\)](#)
- C3** 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

[^{F1}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
 - (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.

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- (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

- F1** 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 ^{M4}Social Security Pensions (Northern Ireland) Order 1975 or section 130 of the ^{M5}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 [^{F2}the prescribed percentage for each relevant year after the last service tax year; and the provisions included by virtue of this subsection may also conform with such additional requirements as may be prescribed]
- (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.

Textual Amendments

- F2** Words in s. 12(3) substituted (6.4.1996 for certain purposes otherwise *prosp.*) by S.I. 1995/3213 (N.I. 22), arts. 1(2), 147, Sch. 3 para. 21(a); S.R. 1996/91, art. 2(d), Sch. Pt. IV

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Modifications etc. (not altering text)

- C4** S. 12(1)(5) applied (1.11.1995) by S.R. 1995/389, **arts. 4(1)(3)**
C5 S. 12(3) modified (28.3.1997) by S.R. 1997/192, **art. 3** (with art. 9)

Marginal Citations

- M4** S.I. 1975/1503 (N.I. 15).
M5 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 ^{M6}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.
- (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)

- C6** S. 13(2)(3)(4) applied (1.11.1995) by S.R. 1995/389, **art. 5(1)**

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- M6** 1992 c. 7.

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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)

C7 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.
- (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

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- (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 ^{M7}Insurance Companies Act 1982.

Marginal Citations

M7 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;
 - (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.

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- (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 ^{M8}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

M8 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—

- (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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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 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

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- (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.

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