



# 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.

*Status: Point in time view as at 29/02/2008.*

*Changes to legislation: Pension Schemes (Northern Ireland) Act 1993, Part IV is up to date with all changes known to be in force on or before 21 May 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)*

## 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 <sup>[F1]</sup>wife, husband, civil partner, widow, widower or surviving civil partner], 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.

### Textual Amendments

**F1** Words in s. 66(1) substituted (5.12.2005) by [The Civil Partnership \(Pensions and Benefit Payments\) \(Consequential, etc. Provisions\) Order \(Northern Ireland\) 2005 \(S.R. 2005/434\)](#), art. 1(3), **Sch. para. 12**

## 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.

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- (2) The benefit to which a member is entitled under subsection (1) is referred to in this Act as “short service benefit”.
- [<sup>F2</sup>(3) Subject to subsection (4), short service benefit must be made payable as from an age which is no greater than—
- (a) the age of 65, or
  - (b) if in the member's case normal pension age is greater than 65, normal pension age.]
- (4) Short service benefit payable on or in respect of the member's death after normal pension age must be made payable as from his death or within such time after it as long service benefit payable on or in respect of his death would be payable.
- (5) In applying subsections (3) and (4), no regard is to be had to the operation of any scheme rule, taking effect at any time after termination of the member's pensionable service, as to what is normal pension age under the scheme.
- (6) A scheme must not provide for payment of short service benefit in the form of a lump sum at any time before normal pension age, except in such circumstances as may be prescribed.
- (7) In subsection (1) “2 years' qualifying service” means 2 years (whether a single period of that duration or two or more periods, continuous or discontinuous, totalling 2 years) in which the member was at all times employed either—
- (a) in pensionable service under the scheme; or
  - (b) in service in employment which was contracted-out by reference to the scheme; or
  - (c) in linked qualifying service under another scheme.
- (8) For the purposes of subsection (7), no regard shall be had to whether or not the service was of the same description in the whole of the 2 years.
- (9) A period of service previously terminated is not to count towards the 2 years' qualifying service unless it counts towards qualification for long service benefit, and need then count only to the same extent and in the same way.

#### Textual Amendments

**F2** S. 67(3) substituted (6.4.2005) by [The Pensions \(Northern Ireland\) Order 2005 \(S.I. 2005/255 \(N.I. 1\)\)](#), arts. 1(2), **240(1)** (with art. 285(5)); S.R. 2005/48, art. 2(7), Sch. Pt. 7

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

**C1** S. 67 modified (27.4.2005) by [The Occupational and Personal Pension Schemes \(Pension Liberation\) Regulations \(Northern Ireland\) 2005 \(S.R. 2005/193\)](#), regs. 1(1), **2(2)**

## 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—

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- (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.
- [<sup>F3</sup>(4) This section is subject to subsections (3) and (6) of section 67 (age at which short service benefit is to be payable).]

#### Textual Amendments

**F3** S. 68(4) added (6.4.2005) by [The Pensions \(Northern Ireland\) Order 2005 \(S.I. 2005/255 \(N.I. 1\)\)](#), arts. 1(2), **240(2)** (with art. 285(5)); S.R. 2005/48, art. 2(7), Sch. Pt. 7

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

- (1) Subject to subsection (2) and section 77, a member's short service benefit must be—
- (a) payable directly out of the resources of the scheme; or
  - (b) assured to him by such means as may be prescribed.
- (2) Subject to subsections (3) to (5), a scheme may, instead of providing short service benefit, provide—
- (a) for the member's accrued rights (including any transfer credits allowed under the scheme)—
    - (i) to be transferred to another occupational pension scheme with a view to acquiring transfer credits for the member under the other scheme, or
    - (ii) to be transferred to a personal pension scheme <sup>F4</sup>. . . with a view to acquiring rights for the member under the rules of the scheme <sup>F5</sup>. . . ; or
  - (b) for such alternatives to short service benefit as may be prescribed.
- (3) The option conferred by subsection (2)(a) is additional to any obligation imposed by Chapter IV of this Part.
- (4) The alternatives specified in subsection (2)(a) and (b) may only be by way of complete or partial substitute for short service benefit—
- (a) if the member consents; or
  - (b) in such other cases as may be prescribed.
- (5) An alternative prescribed under subsection (2)(b) may only include payment by way of return of contributions—
- (a) if they relate to a period of service before 6th April 1975; or
  - (b) if there has been such a payment relating to a period of service before that date and the contributions relate to a period of service of less than 5 years after that date.

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#### Textual Amendments

- F4** Words in s. 69(2)(a)(ii) ceased to have effect (1.12.1999 for certain purposes only) by [S.I. 1999/3147 \(N.I. 11\)](#), [arts. 1\(5\)\(a\), 17](#), [Sch. 2 para. 2\(a\)](#) (with transitional provisions in [art. 75\(1\)\(2\)](#)) and repealed (25.4.2000) by [S.I. 1999/3147 \(N. I. 11\)](#) art. 17, Sch. 10 Pt. I; [S.R. 2000/133](#), [art. 2\(3\)](#), [Sch. Pt. II](#)
- F5** Words in s. 69(2)(a)(ii) ceased to have effect (1.12.1999 for certain purposes only) by [S.I. 1999/3147 \(N.I. 11\)](#), [arts. 1\(5\)\(a\), 17](#), [Sch. 2 para. 2\(a\)](#) (with transitional provisions in [art. 75\(1\)](#)) and repealed (25.4.2000) by [S.I. 1999/3147 \(N. I. 11\)](#) art. 17, Sch. 10 Pt. I; [S.R. 2000/133](#), [art. 2\(3\)](#), [Sch. Pt. II](#)

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

- C2** S. 69 modified (27.4.2005) by [The Occupational and Personal Pension Schemes \(Pension Liberation\) Regulations \(Northern Ireland\) 2005 \(S.R. 2005/193\)](#), [regs. 1\(1\), 2\(5\), \(6\)](#)

## 70 Computation of short service benefit.

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

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## 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.

(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

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regulations providing for the avoidance of fractional amounts and otherwise to facilitate computation.

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

- C3** S. 71 modified (27.4.2005) by [The Occupational and Personal Pension Schemes \(Pension Liberation\) Regulations \(Northern Ireland\) 2005 \(S.R. 2005/193\)](#), regs. 1(1), **2(5)**, (6)

**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.

**F6**~~73~~

**Textual Amendments**

- F6** Ss. 73-76 repealed (6.4.1997) by [S.I. 1995/3213 \(N.I. 22\)](#), arts. 119, 168, Sch. 1 para. 14, **Sch. 5 Pt. I** (with art. 118(5)(6)); [S.R. 1997/192](#), **art. 2(b)**

**F7**~~74~~

**Textual Amendments**

- F7** Ss. 73-76 repealed (6.4.1997) by [S.I. 1995/3213 \(N.I. 22\)](#), arts. 119, 168, Sch. 1 para. 14, **Sch. 5 Pt. I** (with art. 118(5)(6)); [S.R. 1997/192](#), **art. 2(b)**

**F8**~~75~~

**Textual Amendments**

- F8** Ss. 73-76 repealed (6.4.1997) by [S.I. 1995/3213 \(N.I. 22\)](#), arts. 119, 168, Sch. 1 para. 14, **Sch. 5 Pt. I** (with art. 118(5)(6)); [S.R. 1997/192](#), **art. 2(b)**

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**F9**76 .....

**Textual Amendments**

**F9** Ss. 73-76 repealed (6.4.1997) by S.I. 1995/3213 (N.I. 22), arts. 119, 168, Sch. 1 para. 14, **Sch. 5 Pt. I** (with art. 118(5)(6)); S.R. 1997/192, **art. 2(b)**

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

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

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

**78 Supplementary regulations.**

- (1) Regulations may provide that a scheme is not to be treated as conforming with the preservation requirements unless it contains express rules to the effect (but not necessarily in the words) of any specified provision contained in sections 67 to [F1072].
- (2) Regulations may make provision as to the circumstances in which, for the purposes of sections 66 to [F1072]—
  - (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.

**Textual Amendments**

**F10** Word in s. 78 substituted (6.4.1997) by S.I. 1995/3213 (N.I. 22), art. 119, **Sch. 1 para. 15** (with art. 118(5)(6)); S.R. 1997/192, **art. 2(b)**

**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) [F11relevant] benefits payable to or in respect of a member of an occupational pension scheme where—



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- (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) [<sup>F11</sup>relevant] 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.

[<sup>F12</sup>(1A) The following are relevant benefits for the purposes of subsection (1)—

- (a) any benefits payable otherwise than by virtue of rights which are attributable (directly or indirectly) to a pension credit, and
- (b) in the case of a salary related occupational pension scheme, any benefits payable by virtue of such rights, to the extent that the rights involve the member being credited by the scheme with notional pensionable service.]

(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.

[<sup>F13</sup>(4) For the purposes of this section, an occupational pension scheme is salary related if—

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

#### Textual Amendments

**F11** Words in s. 79(1)(a)(b) inserted (1.12.2000) by S.I. 1999/3147 (N.I. 11), art. 74, **Sch. 9 para. 20(2)**;

S.R. 2000/133, art. 2(3), **Sch. Pt. IV**

**F12** S. 79(1A) inserted (1.12.2000) by S.I. 1999/3147 (N.I. 11), art. 74, **Sch. 9 para. 20(3)**; S.R. 2000/133, art. 2(3), **Sch. Pt. IV**

**F13** S. 79(4) added (1.12.2000) by S.I. 1999/3147 (N.I. 11), art. 74, **Sch. 9 para. 20(4)**; S.R. 2000/133, art. 2(3), **Sch. Pt. IV**

## 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 <sup>M1</sup>Social Security Administration (Northern Ireland) Act 1992; <sup>F14</sup> . . .
  - <sup>F15</sup>or
  - (b) under any arrangement which maintains the value of the pension or other benefit by reference to the rise in the retail prices index during that period,]
- <sup>F14</sup>(b) . . . . .
- 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 <sup>F16</sup>widow, widower or surviving civil partner] has not been deducted.
- <sup>F17</sup>(6) In subsection (5)(b), “retail prices index” means—
- (a) the general index of retail prices (for all items) published by the Office for National Statistics; or
  - (b) where that index is not published for a month, any substituted index or figures published by that Office.]

#### Textual Amendments

- F14** S. 80(5)(b) and the word “or” immediately preceding repealed (6.4.1997) by S.I. 1995/3213 (N.I. 22), arts. 147, 168, Sch. 3 para. 52, Sch. 5 Pt. III; S.R. 1997/192, art. 2(b)
- F15** S. 80(5)(b) and word inserted (17.2.2005) by The Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), arts. 1(3), 258(2) (with art. 285(5))
- F16** Words in s. 80(5) substituted (5.12.2005) by The Civil Partnership (Pensions and Benefit Payments) (Consequential, etc. Provisions) Order (Northern Ireland) 2005 (S.R. 2005/434), art. 1(3), Sch. para. 13
- F17** S. 80(6) added (17.2.2005) by The Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), arts. 1(3), 258(3) (with art. 285(5))

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### 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) [<sup>F18</sup>or 97D(2)(b)] by way of complete substitute for another pension or benefit.

### Textual Amendments

**F18** Words in s. 81 inserted (1.12.2000) by S.I. 1999/3147 (N.I. 11), art. 74, **Sch. 9 para. 21**; S.R. 2000/133, art. 2(3), **Sch. Pt. IV**

## 82 Supplementary provisions.

- (1) In making any calculation for the purposes of this Chapter in relation to any occupational pension scheme—
  - (a) any commutation, forfeiture or surrender of,
  - (b) any charge or lien on, and
  - (c) any set-off against,
 the whole or part of a pension shall be disregarded.
- (2) The same money may not be treated as providing both the increase in benefit required by this Chapter and the benefit required by Chapter III.

## CHAPTER III

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

### Modifications etc. (not altering text)

**C4** 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”);

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*Status: Point in time view as at 29/02/2008.*

*Changes to legislation: Pension Schemes (Northern Ireland) Act 1993, Part IV is up to date with all changes known to be in force on or before 21 May 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)*

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- (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 [<sup>F19</sup>widow, widower or surviving civil partner, the widow's, widower's or surviving civil partner's (as the case may be)] 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 [<sup>F20</sup>widow, widower or surviving civil partner] 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 [<sup>F21</sup>widow's, widower's or surviving civil partner's] pension, than the weekly rate of that pension; and
  - (b) in any other case, than the relevant aggregate.
- (4) In subsection (3) “the relevant aggregate” means the aggregate of the following—
- (a) the relevant sum;
  - (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 [<sup>F22</sup>widow's, widower's or surviving civil partner'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

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- (b) the employment ceased, or ceased for the last time, to be contracted-out in relation to him before that date.

#### Textual Amendments

- F19** Words in s. 83(2)(c) substituted (5.12.2005) by [The Civil Partnership \(Contracted-out Occupational and Appropriate Personal Pension Schemes\) \(Surviving Civil Partners\) Order \(Northern Ireland\) 2005 \(S.R. 2005/433\)](#), art. 1(3), [Sch. 1 para. 18\(a\)](#)
- F20** Words in s. 83(3) substituted (5.12.2005) by [The Civil Partnership \(Contracted-out Occupational and Appropriate Personal Pension Schemes\) \(Surviving Civil Partners\) Order \(Northern Ireland\) 2005 \(S.R. 2005/433\)](#), art. 1(3), [Sch. 1 para. 18\(b\)](#)
- F21** Words in s. 83(3)(a) substituted (5.12.2005) by [The Civil Partnership \(Contracted-out Occupational and Appropriate Personal Pension Schemes\) \(Surviving Civil Partners\) Order \(Northern Ireland\) 2005 \(S.R. 2005/433\)](#), art. 1(3), [Sch. 1 para. 18\(c\)](#)
- F22** Words in s. 83(4)(d) substituted (5.12.2005) by [The Civil Partnership \(Contracted-out Occupational and Appropriate Personal Pension Schemes\) \(Surviving Civil Partners\) Order \(Northern Ireland\) 2005 \(S.R. 2005/433\)](#), art. 1(3), [Sch. 1 para. 18\(c\)](#)

## 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 [<sup>F23</sup>widow, widower or surviving civil partner] if that person had satisfied the conditions for entitlement to a pension which are specified in the scheme.
- (2) Paragraph (a) of subsection (1) has effect subject to subsection (5) and to sections 83(5) and 87(1), and paragraph (b) of subsection (1) has effect subject to section 83(5).
- (3) The benefit other than short service benefit to which subsection (1)(a)(ii) applies is benefit—
- (a) which would have been provided as either the whole or part of the earner’s short service benefit; or
- (b) of which the earner’s short service benefit would have formed part,
- if section 67(1)(a) had effect with the substitution of a reference to the service which the earner had on the cessation date for the reference to 2 years’ qualifying service.
- (4) Any such benefit is only to be included in the relevant sum to the extent that it does not exceed the amount which the scheme would have had to provide as short service benefit if section 67(1) had effect as mentioned in subsection (3).

*Status: Point in time view as at 29/02/2008.*

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- (5) If the payment of any part of the earner’s pension is postponed beyond the cessation date, the relevant sum is an amount equal to what would have been the weekly rate of his pension on the day after the cessation date if there had been no such postponement.

#### Textual Amendments

- F23** Words in s. 84(1)(b) substituted (5.12.2005) by [The Civil Partnership \(Contracted-out Occupational and Appropriate Personal Pension Schemes\) \(Surviving Civil Partners\) Order \(Northern Ireland\) 2005 \(S.R. 2005/433\)](#), art. 1(3), [Sch. 1 para. 19](#)

### 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 [<sup>F24</sup>widow's, widower’s or surviving civil partner'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 [<sup>F24</sup>widow's, widower’s or surviving civil partner'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 [<sup>F25</sup>widow's, widower’s or surviving civil partner's] pension, the excess of that pension on that day over one half of the earner’s guaranteed minimum on that day.

#### Textual Amendments

- F24** Words in s. 85(1)(a)(b) substituted (5.12.2005) by [The Civil Partnership \(Contracted-out Occupational and Appropriate Personal Pension Schemes\) \(Surviving Civil Partners\) Order \(Northern Ireland\) 2005 \(S.R. 2005/433\)](#), art. 1(3), [Sch. 1 para. 20](#)
- F25** Words in s. 85(2)(b) substituted (5.12.2005) by [The Civil Partnership \(Contracted-out Occupational and Appropriate Personal Pension Schemes\) \(Surviving Civil Partners\) Order \(Northern Ireland\) 2005 \(S.R. 2005/433\)](#), art. 1(3), [Sch. 1 para. 20](#)

### 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 [<sup>F26</sup>widow's, widower’s or surviving civil partner's] pension, one half of that minimum; and

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- (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 [F26widow's, widower’s or surviving civil partner's] pension, one half of that minimum) on the assumptions mentioned in subsection (3).
- (3) The assumptions mentioned in subsection (2) are—
- (a) that the relevant sum were calculated on the basis that the weekly rate of the pension or benefit which determines that sum had been calculated by reference to the level of earnings by reference to which that rate would have been calculated if the earner’s cessation date had fallen on the earlier of—
- (i) the earner’s commencement of payment date, or
  - (ii) the date on which the earner ceased to be in pensionable service under the scheme; and
- (b) that the earner’s guaranteed minimum were such sum as bears the same proportion to the assumed later unguaranteed element as the guaranteed minimum mentioned in subsection (2)(a) bears to the unguaranteed element.

#### Textual Amendments

**F26** Words in s. 86(2)(a)(b) substituted (5.12.2005) by [The Civil Partnership \(Contracted-out Occupational and Appropriate Personal Pension Schemes\) \(Surviving Civil Partners\) Order \(Northern Ireland\) 2005 \(S.R. 2005/433\)](#), art. 1(3), [Sch. 1 para. 21](#)

### 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,

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- (b) any charge or lien on, and  
(c) any set-off against,  
the whole or part of a pension shall be disregarded.
- (2) In calculating an earner's guaranteed minimum for the purposes of this Chapter his earnings factor shall be taken to be that factor as increased, except as provided by subsection (3), by the last order under Article 23 of the <sup>M2</sup>Social Security Pensions (Northern Ireland) Order 1975 or section 130 of the <sup>M3</sup>Social Security Administration (Northern Ireland) Act 1992 to come into operation before the end of the tax year in which the cessation date falls.
- (3) If an earner's cessation date falls in the tax year in which he attains pensionable age, subsection (2) shall have effect in relation to him as if for the words from "tax year" onwards there were substituted the words "final relevant year".
- (4) In this section "final relevant year" has the same meaning as in section 12.
- (5) Any reference in this Chapter to the weekly rate of a pension is to be construed, in relation to a pension payable otherwise than weekly, as a reference to the weekly sum which would be payable in respect of a pension of that amount payable weekly.

#### Marginal Citations

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

**M3** [1992 c. 8](#).

## CHAPTER IV

### TRANSFER VALUES

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

**C5** Pt. 4 Ch. 4 applied (31.5.1994) by [S.I. 1994/1432](#), [art. 6\(4\)](#)

**C6** Pt. 4 Ch. 4: power to modify conferred (25.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by [The Pensions \(Northern Ireland\) Order 2005 \(S.I. 2005/255 \(N.I. 1\)\)](#), [arts. 1\(2\), 20\(7\)\(a\)](#) (with [art. 285\(5\)](#)); [S.R. 2005/48](#), [art. 2\(4\)\(a\)\(b\)](#), [Sch. Pt. 4](#)

## 89 Scope of Chapter IV.

- (1) This Chapter applies—
- [<sup>F27</sup>(a) to any member of an occupational pension scheme—
- (i) whose pensionable service has terminated at least one year before normal pension age, and
- (ii) who on the date on which his pensionable service terminated had accrued rights to benefit under the scheme,
- except a member of a salary related occupational pension scheme whose pensionable service terminated before 1st January 1986 and in respect of whom prescribed requirements are satisfied;]



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- (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.

[<sup>F28</sup>(1ZA) In subsection (1), references to accrued rights to benefit do not include rights which are attributable (directly or indirectly) to a pension credit.]

[<sup>F29</sup>(1A) For the purposes of this section and the following provisions of this Chapter, an occupational pension scheme is salary related if—

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

(1B) Regulations may—

- (a) provide for this Chapter not to apply in relation to a person of a prescribed description, or  
(b) apply this Chapter with prescribed modifications to occupational pension schemes—  
(i) which are not money purchase schemes, but  
(ii) where some of the benefits that may be provided are money purchase benefits.]

- (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.

#### Textual Amendments

- F27** S. 89(1)(a) substituted (6.4.1996 for certain purposes otherwise 6.4.1997) by S.I. 1995/3213 (N.I. 22), [art. 148\(2\)](#); S.R. 1996/91, [art. 2\(d\)](#), [Sch. Pt. IV](#); S.R. 1997/192, [art. 2\(b\)](#)  
**F28** S. 89(1ZA) inserted (1.12.2000) by S.I. 1999/3147 (N.I. 11), [art. 74](#), [Sch. 9 para. 22](#); S.R. 2000/133, [art. 2\(3\)](#), [Sch. Pt. IV](#)  
**F29** S. 89(1A)(1B) inserted (6.4.1996 for certain purposes otherwise 6.4.1997) by S.I. 1995/3213 (N.I. 22), [art. 148\(3\)](#); S.R. 1996/91, [art. 2\(d\)](#), [Sch. Pt. IV](#); S.R. 1997/192, [art. 2\(b\)](#)

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

- C7** S. 89(1)(a)(i) applied (with modifications) (1.12.2000) by S.R. 2000/142, [art. 3\(10\)](#)

[<sup>F30</sup>**89A Salary related schemes: right to statement of entitlement.**

- (1) The trustees or managers of a salary related occupational pension scheme must, on the application of any member, provide the member with a written statement (in this Chapter referred to as a “statement of entitlement”) of the amount of the cash equivalent at the guarantee date of any benefits which have accrued to or in respect of him under the applicable rules.

[ In subsection (1), the reference to benefits which have accrued does not include  
<sup>F31</sup>(1A) benefits which are attributable (directly or indirectly) to a pension credit.]

(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

- F30** 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\(b\)](#)
- F31** S. 89A(1A) inserted (1.12.2000) by S.I. 1999/3147 (N.I. 11), [art. 74](#), [Sch. 9 para. 23](#); S.R. 2000/133, [art. 2\(3\)](#), [Sch. Pt. IV](#)

## 90 Right to cash equivalent.

- (1) Subject to the following provisions of this Chapter—
- (a) a member of an occupational pension scheme [<sup>F32</sup>other than a salary related scheme] acquires a right, when his pensionable service terminates [<sup>F33</sup>(whether before or after 1st January 1986)], 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
  - [<sup>F34</sup>(aa) a member of a salary related occupational pension scheme who has received a statement of entitlement and has made a relevant application within three months beginning with the guarantee date in respect of that statement acquires a right to his guaranteed cash equivalent;]
  - (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.

[<sup>F35</sup>(1A) For the purposes of subsection (1)(aa), a person’s “guaranteed cash equivalent” is the amount stated in the statement of entitlement mentioned in that subsection.]

[<sup>F36</sup>(1B) In subsection (1), references to benefits which have accrued do not include benefits which are attributable (directly or indirectly) to a pension credit.]

- (2) In this section—

[<sup>F37</sup>“ the applicable rules ” means—

- (a) the rules of the scheme, except so far as overridden by a relevant legislative provision;
- (b) the relevant legislative provisions, to the extent that they have effect in relation to the scheme and are not reflected in the rules of the scheme; and

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(c) any provision which the rules of the scheme do not contain but which the scheme must contain if it is to conform with Chapter 1 of Part IV of this Act;]

[<sup>F38</sup>“the guarantee date” has the same meaning as in section 89A(2);]

“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.

[<sup>F39</sup>(2A) For the purposes of subsection (2)—

(a) “relevant legislative provision” means any provision contained in any of the following provisions—

(i) Schedule 5 to the Social Security (Northern Ireland) Order 1989 (equal treatment for men and women);

(ii) this Chapter or Chapter 2, 3 or 5 or regulations made under this Chapter or any of those Chapters;

(iii) Part IVA or regulations made under that Part;

(iv) section 106(1);

(v) Part II of the Pensions (Northern Ireland) Order 1995 (occupational pensions) or orders or regulations made or having effect as if made under that Part;

(vi) Article 28 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (pension debits: reduction of benefit);

(vii) any provision mentioned in Article 279(2) of the Pensions (Northern Ireland) Order 2005,

(b) a relevant legislative provision is to be taken to override any of the provisions of the scheme if, and only if, it does so by virtue of any of the following provisions—

(i) paragraph 3 of Schedule 5 to the Social Security (Northern Ireland) Order 1989;

(ii) section 125(1);

(iii) Article 114(1) of the Pensions (Northern Ireland) Order 1995;

(iv) Article 28(4) of the Welfare Reform and Pensions (Northern Ireland) Order 1999;

(v) Article 279(1) of the Pensions (Northern Ireland) Order 2005.]

[<sup>F40</sup>(3) Regulations may provide that, in prescribed circumstances, subsection (1)(aa) does not apply to members of salary related occupational pension schemes or applies to them with prescribed modifications.]

#### Textual Amendments

**F32** Words in s. 90(1)(a) inserted (6.4.1996 for certain purposes otherwise 6.4.1997) by S.I. 1995/3213 (N.I. 22), **art. 150(1)(a)**; S.R. 1996/91, **art. 2(d)**, **Sch. Pt. IV**; S.R. 1997/192, **art. 2(b)**

**F33** Words in s. 90(1)(a) inserted (6.4.1996 for certain purposes otherwise 6.4.1997) by S.I. 1995/3213 (N.I. 22), **art. 150(1)(b)**; S.R. 1996/91, **art. 2(d)**, **Sch. Pt. IV**; S.R. 1997/192, **art. 2(b)**

**F34** S. 90(1)(aa) inserted (6.4.1996 for certain purposes otherwise 6.4.1997) by S.I. 1995/3213 (N.I. 22), **arts. 150(2)**; S.R. 1996/91, **art. 2(d)**, **Sch. Pt. IV**; S.R. 1997/192, **art. 2(b)**

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- F35** S. 90(1A) inserted (6.4.1996 for certain purposes otherwise 6.4.1997) by S.I. 1995/3213 (N.I. 22), **art. 150(3)**; S.R. 1996/91, **art. 2(d)**, **Sch. Pt. IV**; S.R. 1997/192, **art. 2(b)**
- F36** S. 90(1B) inserted (1.12.2000) by S.I. 1999/3147 (N.I. 11), **art. 74**, **Sch. 9 para. 24**; S.R. 2000/133, **art. 2(3)**, **Sch. Pt. IV**
- F37** Words in s. 90(2) substituted (6.4.2006) by The Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), **art. 1(2)**, **Sch. 10 para. 9(2)**; S.R. 2005/543, **art. 2(6)**, **Sch. Pt. 6**
- F38** Definition of “the guarantee date” in s. 90(2) inserted (6.4.1996 for certain purposes otherwise 6.4.1997) by S.I. 1995/3213 (N.I. 22), **art. 150(4)**; S.R. 1996/91, **art. 2(d)**, **Sch. Pt. IV**; S.R. 1997/192, **art. 2(b)**
- F39** S. 90(2A) inserted (6.4.2006) by The Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), **art. 1(2)**, **Sch. 10 para. 9(3)**; S.R. 2005/543, **art. 2(6)**, **Sch. Pt. 6**
- F40** S. 90(3) inserted (6.4.1996 for certain purposes otherwise 6.4.1997) by S.I. 1995/3213 (N.I. 22), **art. 150(5)**; S.R. 1996/91, **art. 2(d)**, **Sch. Pt. IV**; S.R. 1997/192, **art. 2(b)**

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

- C8** S. 90 modified (12.2.2001 for specified purposes, otherwise *prosp.*) by 2000 c. 4 (N.I.), s. 52, **Sch. 5 Pt. II para. 14** (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**)

**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 [F41 paragraph (a), (aa) or (b) of section 90(1)] 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 [F42:insurer]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—

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- (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.

<sup>F43</sup>(4) . . . . .

- (5) Except in such circumstances as may be prescribed—
  - (a) subsection (2) is to be construed as if paragraph (d) were omitted; and
  - (b) subsection (3) is to be construed as if paragraph (c) were omitted.
- (6) Without prejudice to the generality of subsections (2) and (3), the powers conferred by those subsections include power to provide that a scheme or pension arrangement or, in the case of subsection (2), an annuity must satisfy requirements of the Inland Revenue.
- (7) A member of an occupational pension scheme may only exercise the right conferred by this section on or before the last option date.
- (8) In subsection (7) “the last option date” means, subject to regulations under section 94, the date which falls—
  - (a) one year before the date on which the member attains normal pension age; or
  - (b) six months after the termination date,whichever is the later.
- (9) An application to the trustees or managers of the scheme under subsection (1) is to be taken to have been made if it is delivered to them personally, or sent by post in a registered letter or by the recorded delivery service.

**Textual Amendments**

- F41** Words in s. 91(1) substituted (6.4.1997) by S.I. 1995/3213 (N.I. 22), art. 165, **Sch. 4 para. 5**; S.R. 1997/192, **art. 2(b)**
- F42** Words in s. 91(2)(c) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 133**
- F43** S. 91(4) repealed (1.1.2001) by 2000 c. 4 (N.I.), ss. 52, 67, **Sch. 5 Pt. I para. 4, Sch. 9 Pt. III(6)** (with s. 66(6)); S.R. 2000/374, art. 2(e), **Sch. Pt. II**

**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).

*Status: Point in time view as at 29/02/2008.*

*Changes to legislation: Pension Schemes (Northern Ireland) Act 1993, Part IV is up to date with all changes known to be in force on or before 21 May 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)*

- (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,<sup>F44</sup> . . . . .
    - <sup>F44</sup>(iii) . . . . .

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 [<sup>F45</sup>his accrued rights so far as attributable to service in contracted-out employment on or after the principal appointed day] 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 [<sup>F46</sup>widow's, widower's or surviving civil partner's (as the case may be)] [<sup>F47</sup>pensions, being guaranteed minimum pensions or pensions so far as attributable to service in contracted-out employment on or after the principal appointed day] 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.
- <sup>F48</sup>(4) Where a member of an occupational pension scheme or a personal pension scheme—
- (a) is entitled to give a notice under section 97F(1) to the trustees or managers of the scheme, or
  - (b) would be entitled to do so, but for section 97G(1),
- he may not, if the scheme so provides, make an application to them under section 91 unless he also gives them a notice under section 97F(1).]

#### Textual Amendments

- F44** S. 92(2)(a)(iii) and the preceding word “or” ceased to have effect (1.12.1999 for certain purposes only) by S.I. 1999/3147 (N.I. 11), arts. 1(5)(a), 17, **Sch. 2 para. 2(2)(b)** (with transitional provisions in art. 75(1)(2)) and repealed (25.4.2000) by S. I. 1999/3147, art. 17, **Sch. 10 Pt. I**; S.R. 2000/133, art. 2(3), **Sch. Pt. II**
- F45** Words in s. 92(2)(a) inserted (6.4.1997) by S.I. 1995/3213 (N.I. 22), art. 147, **Sch. 3 para. 53(a)**; S.R. 1997/192, **art. 2(b)**
- F46** Words in s. 92(3)(a) substituted (5.12.2005) by *The Civil Partnership (Pensions and Benefit Payments) (Consequential, etc. Provisions) Order (Northern Ireland) 2005* (S.R. 2005/434), art. 1(3), **Sch. para. 14**
- F47** Words in s. 92(3)(a) substituted (6.4.1997) by S.I. 1995/3213 (N.I. 22), art. 147, **Sch. 3 para. 53(b)**; S.R. 1997/192, **art. 2(b)**

*Status: Point in time view as at 29/02/2008.*

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**F48** S. 92(4) added (1.12.2000) by S.I. 1999/3147 (N.I. 11), art. 74, **Sch. 9 para. 25**; S.R. 2000/133, art. 2(3), **Sch. Pt. IV**

### 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 [<sup>F49</sup>except guaranteed cash equivalents (as defined in section 90 (1A))] 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;
  - [<sup>F50</sup>(aa) for a cash equivalent, including a guaranteed cash equivalent, to be reduced so as to take account of the extent (if any) to which an entitlement has arisen under the scheme to the present payment of the whole or any part of—
    - (i) any pension; or
    - (ii) any benefit in lieu of pension; 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 [<sup>F51</sup>the appropriate date]
    - (c) the state of the funding of the scheme.
  - [<sup>F52</sup>(3A) For the purposes of subsection (3), the "appropriate date" —
    - (a) in the case of a salary related occupational pension scheme, is the guarantee date (within the meaning of section 89A), and
    - (b) in any other case, is the date on which the trustees receive an application from the member under section 91.]
  - (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.

#### Textual Amendments

**F49** Words in s. 93(2)(a) inserted (6.4.1996 for certain purposes otherwise 6.4.1997) by S.I. 1995/3213 (N.I. 22), art. 165, **Sch. 4 para. 6(a)**; S.R. 1996/91, art. 2(d), **Sch. Pt. IV**; S.R. 1997/192, art. 2(b)

**F50** Word in s. 93(2)(a) substituted (20.11.2000) for s. 93(2)(aa) by 2000 c. 4 (N.I.), s. 52, **Sch. 5 Pt. I para. 5(1)** (with s. 66(6))

*Status: Point in time view as at 29/02/2008.*

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- F51** Words in s. 93(3)(b) substituted (6.4.1996 for certain purposes otherwise 6.4.1997) by S.I. 1995/3213 (N.I. 22), art. 165, **Sch. 4 para. 6(b)**; S.R. 1996/91, art. 2(d), **Sch. Pt. IV**; S.R. 1997/192, **art. 2(b)**
- F52** S. 93(3A) inserted (6.4.1996 for certain purposes otherwise 6.4.1997) by S.I. 1995/3213 (N.I. 22), art. 165, **Sch. 4 para. 6(c)**; S.R. 1996/91, art. 2(d), **Sch. Pt. IV**; S.R. 1997/192, **art. 2(b)**

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

- (1) Regulations may provide that a member of an occupational pension scheme [<sup>F53</sup>other than a salary related scheme] who continues in employment to which the scheme applies after his pensionable service in that employment terminates—
- only acquires a right to the cash equivalent of such part of the benefits specified in section 90(1) as may be prescribed; or
  - acquires no right to a cash equivalent.

[<sup>F54</sup>(1A) Regulations may provide that a member of a salary related occupational pension scheme who continues in employment to which the scheme applies after his pensionable service in that employment terminates—

- acquires a right to only part of his guaranteed cash equivalent, or
- acquires no right to his guaranteed cash equivalent;]

(2) Regulations may provide for the purposes of subsection (1) [<sup>F55</sup>or (1A)] 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—

- by virtue of regulations under subsection (1) or (2), a member of an occupational pension scheme [<sup>F56</sup>other than a salary related 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);

[<sup>F57</sup>or

- by virtue of regulations under subsection (1A) or (2), a member of a salary related occupational pension scheme does not, on such termination, acquire a right to the whole or any part of his guaranteed cash equivalent,

and his employment terminates at least one year before normal pension age] that right shall accrue to him on the date when that employment terminates and be valued accordingly.

(4) In relation to any case to which regulations under subsection (3) apply, they may substitute—

- a new definition of “the relevant date” for the definition in section 90(2); and
- a new definition of “the last option date” for the definition in section 91(8).

(5) Where the whole or any part of the [<sup>F58</sup>relevant] 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 [<sup>F59</sup>benefits] 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 [<sup>F60</sup>if]—



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- <sup>F61</sup>(a) .....
- (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—

[<sup>F62</sup>“relevant benefits” means any benefits not attributable (directly or indirectly) to a pension credit; and]

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

#### Textual Amendments

- F53** Words in s. 94(1) inserted (6.4.1996 for certain purposes otherwise 6.4.1997) by S.I. 1995/3213 (N.I. 22), art. 165, **Sch. 4 para. 7(a)**; S.R. 1996/91, art. 2(d), **Sch. Pt. IV**; S.R. 1997/192, **art. 2(b)**
- F54** S. 94(1A) inserted (6.4.1996 for certain purposes otherwise 6.4.1997) by S.I. 1995/3213 (N.I. 22), art. 165, **Sch. 4 para. 7(b)**; S.R. 1996/91, art. 2(d), **Sch. Pt. IV**; S.R. 1997/192, **art. 2(b)**
- F55** Words in s. 94(2) inserted (6.4.1996 for certain purposes otherwise 6.4.1997) by S.I. 1995/3213 (N.I. 22), art. 165, **Sch. 4 para. 7(c)**; S.R. 1996/91, art. 2(d), **Sch. Pt. IV**; S.R. 1997/192, **art. 2(b)**
- F56** Words in s. 94(3)(a) inserted (6.4.1996 for certain purposes otherwise 6.4.1997) by S.I. 1995/3213 (N.I. 22), art. 165, **Sch. 4 para. 7(d)(i)**; S.R. 1996/91, art. 2(d), **Sch. Pt. IV**; S.R. 1997/192, **art. 2(b)**
- F57** S. 94(3)(aa) and the word “or” immediately preceding it substituted (6.4.1996 for certain purposes otherwise 6.4.1997) for s. 94(3)(b) and the word “and” immediately preceding it by S.I. 1995/3213 (N.I. 22), art. 165, **Sch. 4 para. 7(d)(ii)**; S.R. 1996/91, art. 2(d), **Sch. Pt. IV**; S.R. 1997/192, **art. 2(b)**
- F58** Word in s. 94(5) inserted (1.12.2000) by S.I. 1999/3147 (N.I. 11), art. 74, **Sch. 9 para. 26(2)(a)**; S.R. 2000/133, art. 2(3), **Sch. Pt. IV**
- F59** Word in s. 94(5) inserted (1.12.2000) by S.I. 1999/3147 (N.I. 11), art. 74, **Sch. 9 para. 26(2)(b)**; S.R. 2000/133, art. 2(3), **Sch. Pt. IV**
- F60** Word in s. 94(7) inserted (1.1.2001) by 2000 c. 4 (N.I.), s. 52, **Sch. 5 Pt. I para. 5(2)(a)** (with s. 66(6)); S.R. 2000/374, art. 2, **Sch. Pt. II**
- F61** S. 94(7)(a) repealed (1.1.2001 with effect as mentioned in Sch. 5 Pt. I para. 5(4) of the amending Act) by 2000 c. 4 (N.I.), ss. 52, 67, Sch. 5 Pt. I para. 5(2)(b), **Sch. 9 Pt. III** (with s. 66(6)); S.R. 2000/374, art. 2, **Sch. Pt. II**
- F62** S. 94(8): Definition of “relevant benefits” inserted (1.12.2000) by S.I. 1999/3147 (N.I. 11), art. 74, **Sch. 9 para. 26(3)**; S.R. 2000/133, art. 2(3), **Sch. Pt. IV**

## 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—

- [<sup>F63</sup>(a) in the case of a member of a salary related occupational pension scheme, within 6 months of the guarantee date, or (if earlier) by the date on which the member attains normal pension age,

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- (b) in the case of a member of any other occupational pension scheme, within 6 months of the date on which they receive the application, or (if earlier) by the date on which the member attains normal pension age, or
  - (c) in the case of a member of a personal pension scheme, within 6 months of the date on which they receive the application.]
- (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.

[<sup>F64</sup>(3A) In this section, “guarantee date” has the same meaning as in section 89A.]

[<sup>F65</sup>(4) The Regulatory Authority may, in prescribed circumstances, [<sup>F66</sup>by direction,] 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.

(4A) Regulations may make provision [<sup>F67</sup>requiring applications for extensions under subsection (4) to meet prescribed requirements] .]

<sup>F68</sup>(6) .....

[<sup>F69</sup>(7) Where the trustees or managers of an occupational pension scheme have not done what is needed to carry out what a member of the scheme requires within 6 months of the date mentioned in paragraph (a) or (b) of subsection (2)—

- (a) they must, except in prescribed cases, notify the Regulatory Authority of that fact within the prescribed period, and
  - (b) Article 10 of the Pensions (Northern Ireland) Order 1995 (power of the Regulatory Authority to impose civil penalties) shall apply to any trustee or manager who has failed to take all such steps as are reasonable to ensure that it was so done.
- (8) Regulations may provide that in prescribed circumstances subsection (7) shall not apply in relation to an occupational pension scheme.]

#### Textual Amendments

**F63** S. 95(2)(a)-(c) substituted (6.4.1997) for s. 95(a)(b) by S.I. 1995/3213 (N.I. 22), art. 165, **Sch. 4 para. 8(a)**; S.R. 1997/192, **art. 2(b)**

**F64** S. 95(3A) inserted (6.4.1997) by S.I. 1995/3213 (N.I. 22), art. 165, **Sch. 4 para. 8(b)**; S.R. 1997/192, **art. 2(b)**

**F65** S. 95(4)(4A) substituted (6.4.1996 for certain purposes otherwise 6.4.1997) for s. 95(4)(5) by S.I. 1995/3213 (N.I. 22), art. 165, **Sch. 4 para. 8(c)**; S.R. 1996/91, art. 2(d), **Sch. Pt. IV**; S.R. 1997/192, **art. 2(b)**

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- F66** Words in s. 95(4) inserted (6.4.2006) by The Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), art. 1(2), **Sch. 10 para. 10(a)**; S.R. 2006/95, art. 2(c), Sch. Pt. 3
- F67** Words in s. 95(4A) substituted (6.4.2006) by The Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), art. 1(2), **Sch. 10 para. 10(b)**; S.R. 2006/95, art. 2(c), Sch. Pt. 3
- F68** S. 95(6) repealed (6.4.2005) by The Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), art. 1(2), **Sch. 11**; S.R. 2005/166, art. 2(6), Sch. 1
- F69** S. 95(7)(8) added (6.4.1996 for certain purposes otherwise 6.4.1997) by S.I. 1995/3213 (N.I. 22), art. 165, **Sch. 4 para. 8(e)**; S.R. 1996/91, art. 2(d), **Sch. Pt. IV**; S.R. 1997/192, **art. 2(b)**

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

- C9** S. 95 modified (28.3.1997) by S.R. 1997/192, **art. 5** (with art. 9)
- C10** S. 95 modified (27.4.2005) by The Occupational and Personal Pension Schemes (Pension Liberation) Regulations (Northern Ireland) 2005 (S.R. 2005/193), regs. 1(1), **3(1)**
- C11** S. 95(2) modified (6.4.2005) by The Pensions Regulator (Freezing Orders and Consequential Amendments) Regulations (Northern Ireland) 2005 (S.R. 2005/114), regs. 1(1), **3**

## **96 Withdrawal of applications.**

- (1) Subject to [<sup>F70</sup>subsections (2) and (2A)], 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.

[<sup>F71</sup>(2A) If the making of the application depended on the giving of a notice under section 97F(1), the application may only be withdrawn if the notice is also withdrawn.]

- (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.

#### **Textual Amendments**

- F70** Words in s. 96(1) substituted (1.12.2000) by S.I. 1999/3147 (N.I. 11), art. 74, **Sch. 9 para. 27(2)**; S.R. 2000/133, art. 2(3), **Sch. Pt. IV**
- F71** S. 96(2A) inserted (1.12.2000) by S.I. 1999/3147 (N.I. 11), art. 74, **Sch. 9 para. 27(3)**; S.R. 2000/133, art. 2(3), **Sch. Pt. IV**

## **97 Supplementary provisions.**

In making any calculation for the purposes of this Chapter—

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

the whole or part of a pension shall be disregarded.

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## [<sup>F72</sup>CHAPTER 5

### EARLY LEAVERS: CASH TRANSFER SUMS AND CONTRIBUTION REFUNDS

#### Textual Amendments

**F72** Pt. 4 Ch. 5 inserted (1.1.2006 for specified purposes, 6.4.2006 in so far as not already in force) by [The Pensions \(Northern Ireland\) Order 2005 \(S.I. 2005/255 \(N.I. 1\)\)](#), arts. 1(2), **241** (with art. 285(5)); S.R. 2005/543, art. 2(5), Sch. Pt. 5

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

- C12** Pt. 4 Ch. 5: power to modify conferred (1.1.2006) by [The Pensions \(Northern Ireland\) Order 2005 \(S.I. 2005/255 \(N.I. 1\)\)](#), arts. 1(2), **20(7)(b)** (with art. 285(5)); S.R. 2005/48, art. 2(7), Sch. Pt. 7
- C13** Pt. 4 Ch. 5 applied by S.I. 1995/3213 (N.I. 22), art. 73(9) (as substituted (6.4.2005 for specified purposes, 1.1.2006 in so far as not already in force) by [The Pensions \(Northern Ireland\) Order 2005 \(S.I. 2005/255 \(N.I. 1\)\)](#), arts. 1(2), **247** (with art. 285(5)); S.R. 2005/48, art. 2(4)(a)(b), Sch. Pt. 4 (with art. 2(8)(9)))
- C14** Pt. 4 Ch. 5 excluded (1.1.2006) by [The Pensions \(Northern Ireland\) Order 2005 \(S.I. 2005/255 \(N.I. 1\)\)](#), art. 1(2), **Sch. 6 para. 20(1)(c)**; S.R. 2005/48, art. 2(7), Sch. Pt. 7

#### 97AA Scope of Chapter 5

- (1) This Chapter applies to any member of an occupational pension scheme to which Chapter 1 applies (see section 65(3)) if—
  - (a) his pensionable service terminates before he attains normal pension age, and
  - (b) on the date on which his pensionable service terminates—
    - (i) the three month condition is satisfied, but
    - (ii) he does not have relevant accrued rights to benefit under the scheme.
- (2) For the purposes of subsection (1), the three month condition is that the period of the member's pensionable service under the scheme, taken together with—
  - (a) any previous period of his pensionable service under the scheme, and
  - (b) any period throughout which he was employed in linked qualifying service under another scheme,
 amounts to at least three months.
- (3) A period counts for the purposes of paragraph (a) or (b) of subsection (2) only so far as it counts towards qualification for long service benefit within the meaning of Chapter 1.
- (4) For the purposes of subsection (1), “relevant accrued rights to benefit under the scheme”, in relation to a member of a scheme, means rights which—
  - (a) have accrued to or in respect of him under the scheme, and
  - (b) entitle him to the relevant benefits which would have accrued to or in respect of him under the applicable rules if paragraphs (a) and (b) of section 67(1) (and the word “and” immediately preceding them) did not have effect.
- (5) References in the following provisions of this Chapter to a member, in relation to an occupational pension scheme, are to a member of the scheme to which this Chapter applies.

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### **97AB Right to cash transfer sum and contribution refund**

- (1) On the termination of his pensionable service, a member of an occupational pension scheme acquires a right to whichever one he elects of the following options—
  - (a) a cash transfer sum;
  - (b) a contribution refund.
- (2) Subsection (1) is subject to the following provisions of this Chapter.
- (3) In this Chapter “cash transfer sum” means, in relation to a member of an occupational pension scheme, the cash equivalent, at the date on which his pensionable service terminates, of the benefits mentioned in section 97AA(4)(b).
- (4) In this Chapter, “contribution refund” means, in relation to a member of an occupational pension scheme, a sum representing the aggregate of—
  - (a) the member's employee contributions to the scheme, and
  - (b) where transfer credits have been allowed to the member under the scheme by virtue of a payment (“the transfer payment”) made by the trustees or managers of another occupational pension scheme, the member's employee contributions to that other scheme, so far as they—
    - (i) relate to the transfer payment, and
    - (ii) do not, in aggregate, exceed the amount of the transfer payment.
- (5) In subsection (4), “employee contributions” means, in relation to a member of an occupational pension scheme, contributions made to the scheme by or on behalf of the member on his own account, but does not include—
  - (a) a transfer payment by virtue of which transfer credits have been allowed to the member under the scheme, or
  - (b) any pension credit or amount paid to the scheme which is attributable (directly or indirectly) to a pension credit.

### **97AC Notification of right to cash transfer sum or contribution refund**

- (1) This section applies where the pensionable service of a member of an occupational pension scheme has terminated.
- (2) The trustees or managers of the scheme must—
  - (a) within a reasonable period after the termination give the member a statement in writing containing information adequate to explain—
    - (i) the nature of the right acquired by him under section 97AB, and
    - (ii) how he may exercise the right,
 and such other information as may be prescribed, and
  - (b) afford the member a reasonable period after giving him that statement within which to exercise the right.
- (3) The statement given under subsection (2)(a) must specify, in particular—
  - (a) in relation to the cash transfer sum to which the member acquires a right under section 97AB, its amount and the permitted ways in which the member can use it,
  - (b) the amount of the contribution refund to which the member so acquires a right, and

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- (c) the last day on which the member may, disregarding section 97AI(2), exercise the right (“the reply date”).
- (4) Information which may be prescribed under subsection (2)(a) includes, in particular—
  - (a) information about any tax liability in respect of, or deduction required or permitted to be made from, the cash transfer sum or contribution refund, and
  - (b) information about the effect on other rights of the member (whether under the applicable rules or otherwise) of exercising the right.
- (5) The trustees or managers may notify the member that, if he does not exercise the right mentioned in subsection (2)(a)(i) on or before the reply date, the trustees or managers will be entitled to pay the contribution refund to him.
- (6) Where the trustees or managers of the scheme fail to comply with subsection (2), Article 10 of the Pensions (Northern Ireland) Order 1995 (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

#### **97AD Exercise of right under section 97AB**

- (1) This section applies where a member of an occupational pension scheme acquires a right under section 97AB.
- (2) The member may exercise the right by giving a notice in writing to that effect to the trustees or managers stating—
  - (a) which of the options under section 97AB(1) he elects, and
  - (b) if he elects for the cash transfer sum, the permitted way in which he requires that sum to be used.
- (3) The notice under subsection (2) must be given on or before—
  - (a) the reply date, or
  - (b) such later date as the trustees or managers may allow in his case under section 97AI(2).

#### **97AE Permitted ways of using cash transfer sum**

- (1) This section applies in relation to a cash transfer sum to which a member of an occupational pension scheme acquires a right under section 97AB.
- (2) The ways in which the cash transfer sum may be used are—
  - (a) for acquiring transfer credits allowed under the rules of another occupational pension scheme—
    - (i) whose trustees or managers are able and willing to accept the cash transfer sum, and
    - (ii) which satisfies prescribed requirements,
  - (b) for acquiring rights allowed under the rules of a personal pension scheme—
    - (i) whose trustees or managers are able and willing to accept the cash transfer sum, and
    - (ii) which satisfies prescribed requirements,
  - (c) for purchasing one or more appropriate annuities,
  - (d) in such circumstances as may be prescribed, for subscribing to other pension arrangements which satisfy prescribed requirements.

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- (3) For the purposes of subsection (2), “appropriate annuity” means an annuity which satisfies prescribed requirements and is purchased from an insurer who—
- (a) falls within section 15(4)(a),
  - (b) is chosen by the member, and
  - (c) is willing to accept payment on account of the member from the trustees or managers of the scheme.

#### **97AF Calculation of cash transfer sum and contribution refund**

- (1) Cash transfer sums are to be calculated and verified in the prescribed manner.
- (2) Any calculation of a contribution refund must conform with such requirements as may be prescribed.
- (3) Regulations may provide—
  - (a) for amounts to be deducted in respect of administrative costs in calculating cash transfer sums;
  - (b) for a cash transfer sum or contribution refund to be increased or reduced in prescribed circumstances.
- (4) The circumstances that may be prescribed under subsection (3)(b) include in particular—
  - (a) a failure by the trustees or managers of the scheme to comply with section 97AG(2) or (4) in relation to the cash transfer sum or contribution refund, and
  - (b) the state of funding of the scheme.
- (5) Regulations under subsection (3)(b) may provide—
  - (a) for a cash transfer sum to be reduced so that the member has no right to have any amount paid by way of cash transfer sum in respect of him;
  - (b) for a contribution refund to be reduced so that the member has no right to receive any amount by way of contribution refund under this Chapter.

#### **97AG Duties of trustees or managers following exercise of right**

- (1) This section applies where a member of an occupational pension scheme has exercised a right under section 97AB in accordance with section 97AD.
- (2) Where the member has elected for the cash transfer sum, the trustees or managers of the scheme must, within a reasonable period beginning with the date on which the right was exercised, do what is needed to carry out the requirement specified in the member's notice under section 97AD(2)(b).
- (3) When the trustees or managers have done what is needed to carry out that requirement, they are discharged from any obligation—
  - (a) in respect of any rights (including conditional rights) of, or in respect of, the member to relevant benefits under the applicable rules, and
  - (b) to make any other payment by way of refund to or in respect of the member of, or in respect of—
    - (i) the contributions, or any payment, mentioned in section 97AB(4), or

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- (ii) any other contributions made to the scheme, or any other scheme, in respect of the member (other than any pension credit or amount attributable (directly or indirectly) to a pension credit).
- (4) Where the member has elected for the contribution refund, the trustees or managers of the scheme must, within a reasonable period beginning with the date on which the right was exercised, do what is needed to secure that the amount of the contribution refund is paid to the member or as he directs.
- (5) When the trustees or managers have done what is needed to secure the payment of the contribution refund as mentioned in subsection (4)—
  - (a) they are discharged from any obligation in respect of any rights (including conditional rights) of, or in respect of, the member to relevant benefits under the applicable rules, and
  - (b) if they are required under the applicable rules, or determine in accordance with those rules, to make any payment ( “the refund payment”) by way of refund to or in respect of the member of, or in respect of—
    - (i) the contributions, or any payment, mentioned in section 97AB(4), or
    - (ii) any other contributions made to the scheme, or any other scheme, in respect of the member (other than any pension credit or amount attributable (directly or indirectly) to a pension credit),
 the amount of the contribution refund may be set off against the refund payment.
- (6) Where the trustees or managers fail to comply with subsection (2) or (4), Article 10 of the Pensions (Northern Ireland) Order 1995 (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

#### **97AH Powers of trustees or managers where right not exercised**

- (1) This section applies where—
  - (a) a member of an occupational pension scheme does not exercise a right acquired by him under section 97AB on or before the reply date or such later date as the trustees or managers of the scheme allow in his case under section 97AI(2), and
  - (b) the trustees or managers of the scheme have notified the member as mentioned in section 97AC(5).
- (2) The trustees or managers may within a reasonable period beginning with—
  - (a) the reply date, or
  - (b) if a later date has been allowed as mentioned in subsection (1), that later date,
 pay the contribution refund to the member.
- (3) When the trustees or managers have paid the contribution refund to the member—
  - (a) they are discharged from any obligation in respect of any rights (including conditional rights) of, or in respect of, the member to relevant benefits under the applicable rules, and
  - (b) if they are required under the applicable rules, or determine in accordance with those rules, to make any payment ( “the refund payment”) by way of refund to or in respect of the member of, or in respect of—
    - (i) the contributions, or any payment, mentioned in section 97AB(4), or



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- (ii) any other contributions made to the scheme, or any other scheme, in respect of the member (other than any pension credit or amount attributable (directly or indirectly) to a pension credit),
- the amount of the contribution refund may be set off against the refund payment.

### **97AI Rights under section 97AB: further provisions**

- (1) A member of an occupational pension scheme loses any right acquired by him under section 97AB—
  - (a) if the scheme is wound up, or
  - (b) subject to subsection (2), if he fails to exercise the right on or before the reply date.
- (2) If the member has failed to exercise any such right on or before the reply date, the trustees or managers of the scheme may allow him to exercise it on or before such later date as they may determine on the application of the member.
- (3) Where the trustees or managers determine a later date under subsection (2)—
  - (a) they must give a notice in writing to that effect to the member, and
  - (b) subsection (1)(b) applies in relation to the member as if the reference to the reply date were a reference to the later date.
- (4) For the purposes of section 24(1) of the Interpretation Act (Northern Ireland) 1954 (service of documents) in its application to this section and sections 97AC(2) and 97AD(2)—
  - (a) omit the word “registering”, and
  - (b) the last known address of any person is his latest address known to the trustees or managers of the scheme.
- (5) This Chapter is subject to any provision made by or under section 57 (deduction of contributions equivalent premium from refund of scheme contributions)—
  - (a) permitting any amount to be deducted from any payment of a contribution refund, or
  - (b) requiring the payment of a contribution refund to be delayed.
- (6) In this Chapter, except where the context otherwise requires, the following expressions have the following meanings—
 

“the applicable rules” means—

  - (a) the rules of the scheme, except so far as overridden by a relevant legislative provision,
  - (b) the relevant legislative provisions, to the extent that they have effect in relation to the scheme and are not reflected in the rules of the scheme, and
  - (c) any provision which the rules of the scheme do not contain but which the scheme must contain if it is to conform with the requirements of Chapter 1;

“member” has the meaning given in section 97AA(5);

“permitted way”, in relation to a cash transfer sum, means any of the ways specified in section 97AE(2) in which the sum may be used;

“relevant benefits” means benefits which are not attributable (directly or indirectly) to a pension credit;

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“reply date”, in relation to a member whose pensionable service has terminated, has the meaning given in section 97AC(3)(c).

(7) For the purposes of subsection (6)—

- (a) “relevant legislative provision” means any provision contained in any of the following provisions—
- (i) Schedule 5 to the Social Security (Northern Ireland) Order 1989 (equal treatment for men and women);
  - (ii) this Chapter or Chapter 2, 3 or 4 or regulations made under this Chapter or any of those Chapters;
  - (iii) Part IVA or regulations made under that Part;
  - (iv) section 106(1);
  - (v) Part II of the Pensions (Northern Ireland) Order 1995 (occupational pensions) or orders or regulations made or having effect as if made under that Part;
  - (vi) Article 28 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (pension debits: reduction of benefit);
  - (vii) any provision mentioned in Article 279(2) of the Pensions (Northern Ireland) Order 2005;
- (b) a relevant legislative provision is to be taken to override any of the provisions of the scheme if, and only if, it does so by virtue of any of the following provisions—
- (i) paragraph 3 of Schedule 5 to the Social Security (Northern Ireland) Order 1989;
  - (ii) section 125(1);
  - (iii) Article 114(1) of the Pensions (Northern Ireland) Order 1995;
  - (iv) Article 28(4) of the Welfare Reform and Pensions (Northern Ireland) Order 1999;
  - (v) Article 279(1) of the Pensions (Northern Ireland) Order 2005.]

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