Pension Schemes (Northern Ireland) Act 1993

1993 CHAPTER 49

PART IV

PROTECTION FOR EARLY LEAVERS

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.

66 Interpretation (Part IV)

(1) In this Chapter—

"scheme" means an occupational pension scheme to which this Chapter applies;

"relevant employment", in relation to a scheme, means any employment to which the scheme applies;

"long service benefit", in relation to a scheme, means the benefits which will be payable under the scheme, in accordance with legal obligation, to or in respect of a member of the scheme on the assumption—

(a) that he remains in relevant employment, and

(b) that he continues to render service which qualifies him for benefits,

until he attains normal pension age; and in this definition "benefits" means—

(i) retirement benefit for the member himself at normal pension age, or

(ii) benefit for the member's wife or husband, widow or widower, or dependants, or others, on his attaining that age or his later death, or

(iii) both such descriptions of benefit.

(2) In this Act "pensionable service", in relation to a scheme and a member of it, means, subject to subsection (3), service in relevant employment which qualifies the member (on the assumption that it continues for the appropriate period) for long service benefit under the scheme.

(3) There shall be taken into account as pensionable service only actual service, that is to say—

(a) service notionally attributable for any purposes of the scheme is not to be regarded as pensionable service; and

(b) no account is to be taken of scheme rules by which a period of service can be treated for any purpose as being longer or shorter than it actually is.

67 Basic principle as to short service benefit

(1) A scheme must make such provision that where a member's pensionable service is terminated before normal pension age and—

(a) he has at least 2 years' qualifying service, or

(b) a transfer payment in respect of his rights under a personal pension scheme has been made to the scheme,

he is entitled to benefit consisting of or comprising benefit of any description which would have been payable under the scheme as long service benefit, whether for himself or others, and calculated in accordance with this Chapter.

(2) The benefit to which a member is entitled under subsection (1) is referred to in this Act as "short service benefit".

(3) Subject to subsection (4), short service benefit must be made payable as from normal pension age or, if in the member's case that age is earlier than 60, then from the age of 60.

(4) Short service benefit payable on or in respect of the member's death after normal pension age must be made payable as from his death or within such time after it as long service benefit payable on or in respect of his death would be payable.

(5) In applying subsections (3) and (4), no regard is to be had to the operation of any scheme rule, taking effect at any time after termination of the member's pensionable service, as to what is normal pension age under the scheme.

(6) A scheme must not provide for payment of short service benefit in the form of a lump sum at any time before normal pension age, except in such circumstances as may be prescribed.

(7) In subsection (1) "2 years' qualifying service" means 2 years (whether a single period of that duration or two or more periods, continuous or discontinuous, totalling 2 years) in which the member was at all times employed either—

(a) in pensionable service under the scheme; or

(b) in service in employment which was contracted-out by reference to the scheme; or

(c) in linked qualifying service under another scheme.

(8) For the purposes of subsection (7), no regard shall be had to whether or not the service was of the same description in the whole of the 2 years.

(9) A period of service previously terminated is not to count towards the 2 years' qualifying service unless it counts towards qualification for long service benefit, and need then count only to the same extent and in the same way.

68 No discrimination between short service and long service beneficiaries

(1) A scheme must not contain any rule which results, or can result, in a member being treated less favourably for any purpose relating to short service benefit than he is, or is entitled to be, treated for the corresponding purpose relating to long service benefit.

(2) Subsection (1) does not apply to any rule in its application to members whose pensionable service terminated before the rule came into force, unless the rule—

(a) was made after the termination of a member's pensionable service; and

(b) results, or is capable of resulting, in any treatment less favourable for him than that to which he would have been entitled but for the rule.

(3) Subsection (1) does not apply to a rule which merely confers discretion on the scheme's trustees or managers, or others, so long as it is not a rule requiring the discretion to be exercised in any discriminatory manner against members in respect of their short service benefit.

69 Form of short service benefit and its alternatives

(1) Subject to subsection (2) and section 77, a member's short service benefit must be—

(a) payable directly out of the resources of the scheme; or

(b) assured to him by such means as may be prescribed.

(2) Subject to subsections (3) to (5), a scheme may, instead of providing short service benefit, provide—

(a) for the member's accrued rights (including any transfer credits allowed under the scheme)—

(i) to be transferred to another occupational pension scheme with a view to acquiring transfer credits for the member under the other scheme, or

(ii) to be transferred to a personal pension scheme or a self-employed pension arrangement with a view to acquiring rights for the member under the rules of the scheme or arrangement; or

(b) for such alternatives to short service benefit as may be prescribed.

(3) The option conferred by subsection (2)(a) is additional to any obligation imposed by Chapter IV of this Part.

(4) The alternatives specified in subsection (2)(a) and (b) may only be by way of complete or partial substitute for short service benefit—

(a) if the member consents; or

(b) in such other cases as may be prescribed.

(5) An alternative prescribed under subsection (2)(b) may only include payment by way of return of contributions—

(a) if they relate to a period of service before 6th April 1975; or

(b) if there has been such a payment relating to a period of service before that date and the contributions relate to a period of service of less than 5 years after that date.

70 Computation of short service benefit

(1) Subject to the provisions of this section, a scheme must provide for short service benefit to be computed on the same basis as long service benefit.

(2) For that purpose, no account is to be taken of any rule making it (directly or indirectly) a condition of entitlement to benefit that pensionable service shall have been of any minimum duration.

(3) Subsection (1) does not apply to so much of any benefit as accrues at a higher rate, or otherwise more favourably, in the case—

(a) of members with a period of pensionable service of some specified minimum length, or

(b) of members remaining in pensionable service up to some specified minimum age.

(4) Subsection (1) does not apply to so much of any benefit as is of an amount or at a rate unrelated to length of pensionable service or to the number or amount of contributions paid by or for the member.

(5) Regulations may provide that subsection (1) shall not apply to any category of schemes or members, or description of benefit.

(6) So far as any short service benefit is not required to be computed in accordance with subsection (1), it must be computed on the basis of uniform accrual, so that at the time when pensionable service is terminated, it bears the same proportion to long service benefit as the period of that service bears to the period from the beginning of that service to the time when the member would attain normal pension age or such lower age as may be prescribed.

(7) Where long service benefit is related to a member's earnings at, or in a specified period before, the time when he attains normal pension age, short service benefit must be related, in a corresponding manner, to his earnings at, or in the same period before, the time when his pensionable service is terminated.

(8) A scheme must comply with any regulations relating to the basis of computation of short service benefit, including regulations providing for the avoidance of fractional amounts and otherwise to facilitate computation.

71 Credits

(1) In this section—

"supplementary credits", in relation to a scheme and a member's entitlement to its benefits, means any increase of benefit or additional benefit to which the member may become entitled—

(a) in consequence of any provision made by or under the scheme after he becomes a member of it (to the extent that it applies to any previous pensionable service of his); or

(b) by reference to previous service of his (whether or not pensionable service); or

(c) in such other circumstances as may be prescribed,

including under paragraph (b) any transfer credits;

"purchased credits" means supplementary credits for which, under the rules of the scheme, a member may or must make a payment in whole or in part (whether by means of additional contributions, or of deduction from benefit, or otherwise, and whether separately for each credit or by one or more payments for one or more credits);

"bonus credits" means supplementary credits other than purchased credits or transfer credits.

(2) Subject to subsections (3) to (7), if a scheme provides for long service benefit to include supplementary credits, it must—

(a) provide for such credits to be included in short service benefit, and

(b) provide for all credits to be so included.

(3) Where purchased credits have not been paid for in full at or before termination of pensionable service, the short service benefit must include the appropriate proportion of the credits.

(4) In subsection (3) "the appropriate proportion of the credits" means—

(a) if they were to be paid for by a fixed amount, the same proportion as the amount paid bears to the full amount payable; and

(b) otherwise, the same proportion as the period between the time when the first payment became due and the termination of the member's pensionable service bears to the whole period over which payment was to be made.

(5) If the benefit includes bonus credits, or credits for which payment is to be made by deduction from that or another benefit, the credits to be included in the benefit and (where applicable) the amount of the deduction must be computed on the assumption—

(a) that the credits accrue in full only to a member remaining in pensionable service until normal pension age; and

(b) that the amount of any such credit, and also of any relevant deduction, accrues at a uniform rate from the time when the credit was awarded up to the time of his attaining that age.

(6) Where any such deduction is a percentage of benefit, the percentage must be the same for short service as for long service benefit.

(7) A scheme must comply with any regulations made with respect to the manner in which supplementary credits are to be included in short service benefit, including regulations providing for the avoidance of fractional amounts and otherwise to facilitate computation.

72 Pension increases

(1) A scheme which by its rules provides for increases of long service benefit from time to time (whether by way of upwards revaluation or otherwise) must provide for corresponding increases of short service benefit in the case of members whose pensionable service terminates at any time after the coming into force of any such rule.

(2) Where the provision for increasing long service benefit involves the exercise of a discretion, a corresponding discretion must be conferred in relation to short service benefit.

(3) If an increase of long service benefit is to take effect at a specified time after termination of service, the corresponding increase of short service benefit must take effect at the same time after the time when short service benefit becomes payable.

(4) Where provision is made for increase of long service benefit otherwise than at a fixed rate, short service benefit may nevertheless be subject to increase at a fixed rate, if the rate is at least 3 per cent. a year compound.

73 Assignment, surrender and commutation of benefit

(1) Except as provided by this section, a scheme—
- (a) must contain rules preventing assignment of short service benefit; and
- (b) must not enable such benefit to be surrendered or commuted.

(2) Subsection (1) does not apply to any assignment, surrender or commutation of a policy of insurance or annuity contract in accordance with conditions prescribed by regulations under section 15(4)(b) or (c).

(3) A scheme may enable assignment in favour of the member's widow or widower or dependant (whether or not the benefit is in payment).

(4) A scheme may, at the option of the member, enable surrender—
- (a) to provide benefit for the member's widow, widower or dependant;
- (b) to acquire for the member transfer credits under the rules of another occupational pension scheme or rights under the rules of a personal pension scheme or a self-employed pension arrangement;
- (c) to acquire for the member entitlement to further benefits under the same scheme, relating both to a period of pensionable service previously terminated and also to a subsequent period of service in relevant employment.

(5) A scheme may enable a member's benefit to be commuted—
- (a) in a case where he opts (at any time) to commute at or after normal pension age; or
- (b) in exceptional circumstances of serious ill-health; or

(c) in such other circumstances as may be prescribed.

(6) A scheme may enable benefit for a member's widow, widower or dependant to be commuted in such circumstances as may be prescribed.

74 Forfeiture, etc

(1) Except so far as permitted by this section, a scheme must not contain any provision for forfeiture of short service benefit.

(2) Provision may be made for forfeiture of the whole or part of any short service benefit by reference to an event occurring after it becomes payable if—
- (a) long service benefit is also forfeited by reference to the event; and
- (b) in the opinion of the Board the provision does not appear to discriminate against members entitled to short service benefit.

(3) Provision may be made for forfeiture by reference to—
- (a) the assignment or attempted assignment of the benefit contrary to the provisions of the scheme;
- (b) the member's bankruptcy or, in the case of benefit for a widow or widower or dependant of the member, the beneficiary's bankruptcy.

(4) Such forfeiture as mentioned in subsection (3) may be by reference to an event occurring either before or after the benefit would otherwise be payable, if the same provision is made in relation to long service benefit.

(5) Provision for forfeiture may be made—
- (a) in a public service pension scheme, by reference to the member being convicted of an offence—
  - (i) committed by him before the benefit becomes payable and in connection with relevant employment, and
  - (ii) certified by a Minister of the Crown either to have been gravely injurious to the State or to be liable to lead to serious loss of confidence in the public service;
- (b) in any case, by reference to the member having been convicted of any offence committed before the benefit becomes payable, being—
  - (i) an offence of treason, or
  - (ii) one or more offences under the Official Secrets Acts 1911 to 1989 for which the member has been sentenced on the same occasion to a term of imprisonment of, or to two or more consecutive terms amounting in the aggregate to, at least 10 years.

(6) No scheme rule must operate so as to deprive any person of short service benefit by reference to—
- (a) failure by any person to make a claim for the benefit or for any payment due as benefit; or
- (b) failure by any person, at any time after termination of pensionable service, to give any notice, or comply with any formality, required by the scheme as a condition of entitlement.

(7) Subsection (6)(a) is not to prevent reliance on any enactment relating to the limitation of actions; and a scheme may provide for the right to receive any payment to be forfeited if it is not claimed within 6 years of the date on which it becomes due.

75 Charges, liens and set-offs

(1) A scheme must not enable a member's employer to exercise any description of charge or lien on, or set-off against, short service benefit, to the extent that it includes transfer credits.

(2) Subject to subsection (1), a scheme may enable a charge or lien on, or set-off against, a member's short service benefit for the purpose of enabling the employer to obtain the discharge by the member of some monetary obligation due to the employer and arising out of a criminal, negligent or fraudulent act or omission by the member.

(3) Subject to subsection (4), a scheme must not enable the employer to recover from, or retain out of, the resources of the scheme any sum in respect of a monetary or other obligation due to him from any member.

(4) Subsection (3) does not apply to an obligation arising as mentioned in subsection (2) but, if the scheme permits recovery or retainer of sums in respect of such an obligation, it must provide that—

(a) unless the employer and the member agree otherwise in writing, the recovery or retainer is limited—

(i) to the actuarial value of the member's actual or prospective benefits at that time, or

(ii) to the amount of the obligation,

whichever is the less; and

(b) the member is entitled to a certificate showing the amount retained or recovered and its effect on his benefits or prospective benefits; and

(c) in the event of any dispute as to the amount to be retained or recovered, the employer is only entitled to enforce the charge, lien or set-off after the obligation has become enforceable under an order of a competent court or the award of an arbitrator.

76 Power to modify ss. 73 to 75 as respects alternative benefits

In respect of any of the benefits or rights alternative to short service benefit provided in accordance with section 69(2), sections 73 to 75 shall apply with such modifications as may be prescribed.

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

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

(a) if it is carried out not earlier than the time when that person's pensionable service terminates; and

(b) if and to the extent that it results in short service benefit or any alternative to short service benefit for or in respect of that person being appropriately secured (within the meaning of that section); and

(c) if and to the extent that the requirements set out in paragraph (a) or (c) of section 15(5) are satisfied.

78 Supplementary regulations

(1) Regulations may provide that a scheme is not to be treated as conforming with the preservation requirements unless it contains express rules to the effect (but not necessarily in the words) of any specified provision contained in sections 67 to 75.

(2) Regulations may make provision as to the circumstances in which, for the purposes of sections 66 to 75—

(a) a period of a person's service in two or more different employments is to be treated as a period of service in one or more of those employments; or

(b) a person's service in any employment is to be treated as terminated or not terminated.