



Pensions Act 1995

1995 CHAPTER 26

PART III

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

New certification requirements applying as from the principal appointed day

136 New requirements for contracted-out schemes

- (1) In section 7 of the Pension Schemes Act 1993 (issue of contracting-out etc. certificates), after subsection (2) there is inserted—

“(2A) The regulations may provide, in the case of contracting-out certificates issued before the principal appointed day, for their cancellation by virtue of the regulations—

- (a) at the end of a prescribed period beginning with that day, or
- (b) if prescribed conditions are not satisfied at any time in that period,

but for them to continue to have effect until so cancelled; and the regulations may provide that a certificate having effect on and after that day by virtue of this subsection is to have effect, in relation to any earner's service on or after that day, as if issued on or after that day.

- (2B) In this Part, “the principal appointed day” means the day designated by an order under section 180 of the Pensions Act 1995 as the principal appointed day for the purposes of Part III of that Act”.

- (2) In section 8 of that Act (definition of terms), for subsection (1)(a)(i) there is substituted—

“(i) his service in the employment is for the time being service which qualifies him for a pension provided by an occupational pension scheme contracted out by virtue of satisfying section 9(2) (in this Act referred to as “a salary related contracted-out scheme”)”.

(3) In section 9 of that Act (requirements for certification of schemes: general), for subsection (2) (requirement for guaranteed minimum pension) there is substituted—

“(2) An occupational pension scheme satisfies this subsection only if—

- (a) in relation to any earner’s service before the principal appointed day, it satisfies the conditions of subsection (2A), and
- (b) in relation to any earner’s service on or after that day, it satisfies the conditions of subsection (2B).

(2A) The conditions of this subsection are that—

- (a) the scheme complies in all respects with sections 13 to 23 or, in such cases or classes of case as may be prescribed, with those sections as modified by regulations, and
- (b) the rules of the scheme applying to guaranteed minimum pensions are framed so as to comply with the relevant requirements.

(2B) The conditions of this subsection are that the Secretary of State is satisfied that—

- (a) the scheme complies with section 12A,
- (b) restrictions imposed under section 40 of the Pensions Act 1995 (restriction on employer-related investments) apply to the scheme and the scheme complies with those restrictions,
- (c) the scheme satisfies such other requirements as may be prescribed (which—
 - (i) must include requirements as to the amount of the resources of the scheme and,
 - (ii) may include a requirement that, if the only members of the scheme were those falling within any prescribed class or description, the scheme would comply with section 12A); and
- (d) the scheme does not fall within a prescribed class or description,

and is satisfied that the rules of the scheme are framed so as to comply with the relevant requirements.

(2C) Regulations may modify subsection (2B)(a) and (b) in their application to occupational pension schemes falling within a prescribed class or description.”

(4) In subsection (3) of that section (requirement for protected rights, etc.) after “case” in paragraph (a) there is inserted—

“(aa) the Secretary of State is satisfied that the scheme does not fall within a prescribed class or description”.

(5) After section 12 of that Act there is inserted—

*“Requirements for certification of occupational pension schemes
applying from the principal appointed day of the Pensions Act 1995*

12A The statutory standard

- (1) Subject to the provisions of this Part, the scheme must, in relation to the provision of pensions for earners in employed earner's employment, and for their widows or widowers, satisfy the statutory standard.
- (2) Subject to regulations made by virtue of section 9(2B)(c)(ii), in applying this section regard must only be had to—
 - (a) earners in employed earner's employment, or
 - (b) their widows or widowers,collectively, and the pensions to be provided for persons falling within paragraph (a) or (b) must be considered as a whole.
- (3) For the purposes of this section, a scheme satisfies the statutory standard if the pensions to be provided for such persons are broadly equivalent to, or better than, the pensions which would be provided for such persons under a reference scheme.
- (4) Regulations may provide for the manner of, and criteria for, determining whether the pensions to be provided for such persons under a scheme are broadly equivalent to, or better than, the pensions which would be provided for such persons under a reference scheme.
- (5) Regulations made by virtue of subsection (4) may provide for the determination to be made in accordance with guidance prepared from time to time by a prescribed body and approved by the Secretary of State.
- (6) The pensions to be provided for such persons under a scheme are to be treated as broadly equivalent to or better than the pensions which would be provided for such persons under a reference scheme if and only if an actuary (who, except in prescribed circumstances, must be the actuary appointed for the scheme in pursuance of section 47 of the Pensions Act 1995) so certifies.

12B Reference scheme

- (1) This section applies for the purposes of section 12A.
- (2) A reference scheme is an occupational pension scheme which—
 - (a) complies with each of subsections (3) and (4), and
 - (b) complies with any prescribed requirements.
- (3) In relation to earners employed in employed earner's employment, a reference scheme is one which provides—
 - (a) for them to be entitled to a pension under the scheme commencing at a normal pension age of 65 and continuing for life, and
 - (b) for the annual rate of the pension at that age to be—
 - (i) 1/80th of average qualifying earnings in the last three tax years preceding the end of service,multiplied by

- (ii) the number of years service, not exceeding such number as would produce an annual rate equal to half the earnings on which it is calculated.
- (4) In relation to widows or widowers, a reference scheme is one which provides—
 - (a) for the widows or widowers of earners employed in employed earner's employment (whether the earners die before or after attaining the age of 65) to be entitled, except in prescribed circumstances, to pensions under the scheme, and
 - (b) except in prescribed circumstances, for the annual rate of the pensions, at the time when the widows or widowers first become entitled to them, to be—
 - (i) in the case of widows or widowers of persons whose age when they died was, or was greater than, normal pension age, 50 per cent. of the annual rate which a reference scheme is required to provide for persons of that age, and
 - (ii) in the case of widows or widowers of other persons, 50 per cent. of the annual rate which a reference scheme would have been required to provide in respect of the persons' actual periods of service if those persons had attained that age.
- (5) For the purposes of this section, an earner's qualifying earnings in any tax year are 90 per cent. of the amount by which the earner's earnings—
 - (a) exceed the qualifying earnings factor for that year, and
 - (b) do not exceed the upper earnings limit for that year multiplied by fifty-three.
- (6) Regulations may modify subsections (2) to (5).
- (7) In this section—
 - “normal pension age”, in relation to a scheme, means the age specified in the scheme as the earliest age at which pension becomes payable under the scheme (apart from any special provision as to early retirement on grounds of ill-health or otherwise),
 - “qualifying earnings factor”, in relation to a tax year, has the meaning given by section 122(1) of the Social Security Contributions and Benefits Act 1992, and
 - “upper earnings limit”, in relation to a tax year, means the amount specified for that year by regulations made by virtue of section 5(3) of that Act as the upper earnings limit for Class 1 contributions.

12C Transfer, commutation, etc

- (1) Regulations may prohibit or restrict—
 - (a) the transfer of any liability—
 - (i) for the payment of pensions under a relevant scheme, or
 - (ii) in respect of accrued rights to such pensions,
 - (b) the discharge of any liability to provide pensions under a relevant scheme, or

- (c) the payment of a lump sum instead of a pension payable under a relevant scheme,
except in prescribed circumstances or on prescribed conditions.
- (2) In this section “relevant scheme” means a scheme contracted out by virtue of section 9(2B) of this Act and references to pensions and accrued rights under the scheme are to such pensions and rights so far as attributable to an earner’s service on or after the principal appointed day.
- (3) Regulations under subsection (1) may provide that any provision of this Part shall have effect subject to such modifications as may be specified in the regulations.

12D Entitlement to benefit

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