



# Pension Schemes (Northern Ireland) Act 1993

## 1993 CHAPTER 49

### PART IV

#### PROTECTION FOR EARLY LEAVERS

#### IV

#### TRANSFER VALUES

#### 89 Scope of Chapter IV

- (1) This Chapter applies—
- (a) to any member of an occupational pension scheme—
    - (i) whose pensionable service terminates on or after 1st January 1986 and at least one year before normal pension age; and
    - (ii) who on the date when it terminates (in this Chapter referred to as “the termination date”) has accrued rights to benefit under the scheme; and
  - (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.
- (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.

#### 90 Right to cash equivalent

- (1) Subject to the following provisions of this Chapter—
- (a) a member of an occupational pension scheme acquires a right, when his pensionable service terminates, to the cash equivalent at the relevant date of

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any benefits which have accrued to or in respect of him under the applicable rules; and

- (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.

(2) In this section—

“the applicable rules” means—

- (a) any provision which the rules of the scheme do not contain but which a scheme must contain if it is to conform with the requirements of Chapter I; and
- (b) the rules of the scheme, except so far as Chapter II or III overrides them; and
- (c) any provision of Chapter II or III which overrides any of the rules of the scheme;

“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“the relevant application” means any application which the member has made under section 91 and not withdrawn.

## **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 this Chapter 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 insurance companies 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—
    - (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.
- (4) In the case of the exercise of a right in respect of the cash equivalent of a member’s protected rights, if any, under a scheme which is, or was formerly, a money purchase contracted-out scheme, subsection (2) is to be construed as if paragraph (c) were omitted.
- (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.

## **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).
- (2) This subsection applies where—
  - (a) the trustees or managers—

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- (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, or
  - (iii) of a self-employed pension arrangement,
- 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 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 widow's or, as the case may be, widower's guaranteed minimum pensions 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.

### **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 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; 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 the date on which they receive an application from him under section 91; and
  - (c) the state of the funding of the scheme.
- (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.

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

- (1) Regulations may provide that a member of an occupational pension scheme who continues in employment to which the scheme applies after his pensionable service in that employment terminates—
  - (a) only acquires a right to the cash equivalent of such part of the benefits specified in section 90(1) as may be prescribed; or
  - (b) acquires no right to a cash equivalent.
- (2) Regulations may provide for the purposes of subsection (1) 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—
  - (a) by virtue of regulations under subsection (1) or (2), a member of an occupational pension 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); and
  - (b) 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) a new definition of “the relevant date” for the definition in section 90(2); and
  - (b) a new definition of “the last option date” for the definition in section 91(8).
- (5) Where the whole or any part of the 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 any of the benefits mentioned in that section 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—
  - (a) if his pension or benefit in lieu of a pension or any part of it becomes payable before he attains normal pension age; or
  - (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 “the relevant date” has the same meaning as in section 90(2).

## **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

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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—

- (a) within 12 months of the date on which they receive the application; or
- (b) in the case of a member of an occupational pension scheme, by the date on which the member attains normal pension age if that is earlier.

(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.

(4) The Board may 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—

- (a) in any case where in the opinion of the Board—
  - (i) the scheme is being wound up or is about to be wound up;
  - (ii) the scheme is ceasing to be a contracted-out scheme or, as the case may be, an appropriate scheme;
  - (iii) the interests of the members of the scheme generally will be prejudiced if the trustees or managers of the scheme do what is needed to carry out what is required within that period; or
  - (iv) the member has not taken all such steps as the trustees or managers can reasonably expect him to take in order to satisfy them of any matter which falls to be established before they can properly carry out what he requires;
- (b) in any case where the provisions of sections 48 to 50 apply; and
- (c) in any case where a request for an extension has been made on a ground specified in paragraph (a) or (b), and the Board's consideration of the request cannot be completed before the end of that period.

(5) A request for an extension under subsection (4) may only be made by the trustees or managers.

(6) If the Board are satisfied—

- (a) that there has been a relevant change of circumstances since they granted an extension, or
- (b) that they granted an extension in ignorance of a material fact or on the basis of a mistake as to a material fact,

they may direct that the extension be shortened or revoke it.

## **96 Withdrawal of applications**

- (1) Subject to subsection (2), 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.
- (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.

## **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.