



Pension Schemes (Northern Ireland) Act 1993

1993 CHAPTER 49

PART VIII

RELATIONSHIP BETWEEN REQUIREMENTS AND SCHEME RULES

125 Overriding requirements

- (1) Subject to subsection (2), the provisions of Chapters II, III and IV of Part IV, Chapter I of Part V, section 106(1), sections 115 to 118 and any regulations made under Chapter I of Part V or under section 109 or 110 or sections 115 to 118 override any provision of a scheme to which they apply to the extent that it conflicts with them.
- (2) Chapter II of Part IV (as it applies to occupational pension schemes), Chapter III of that Part and Chapter I of Part V (except section 104) do not override a protected provision of a scheme and Chapter IV of Part IV does not override a provision falling within paragraph (b) of subsection (3).
- (3) In subsection (2) “protected provision” means—
 - (a) any provision contained in a scheme by virtue of section 69(2), 73(3), (4), (5) or (6), 74(2), (3), (4), (5) or (7) or 75;
 - (b) any provision of a scheme to the extent that it deals with priorities on a winding up;
 - (c) any provision of a scheme which is included in it for the purpose of effecting a transfer of rights or liabilities authorised by regulations under section 16(1);
 - (d) any provision of a scheme to the extent that it deals with commutation, suspension or forfeiture of the whole or part of a pension; and
 - (e) any provision of a scheme whereby, as respects so much of a widow’s or widower’s pension as exceeds the guaranteed minimum pension—
 - (i) no pension or a pension at a reduced rate is payable if the earner and the widow or widower married not more than six months before the earner’s death;

Status: This is the original version (as it was originally enacted).

- (ii) the whole or any part of the pension is not paid to the widow or widower, but instead comparable benefits are provided for one or more dependants of the deceased earner; or
 - (iii) no pension, or a pension at a reduced rate, is payable to the widow or widower (or, where a provision such as is mentioned in subparagraph (ii) operates, to another dependant of the deceased earner) who was more than ten years younger than the deceased earner.
- (4) For the purposes of the application of Chapter II of Part IV to schemes which are not contracted-out, subsection (3) shall have effect with the omission—
- (a) from paragraph (c), of the words from “authorised” to the end; and
 - (b) from paragraph (e), of the words from “as respects” to “guaranteed minimum pension”.

126 Extra-statutory benefits

It is hereby declared that—

- (a) nothing in Part III precludes an occupational pension scheme from providing benefits that are more favourable than those required for contracting-out purposes and, in particular, nothing in section 12(3) is to be taken as preventing the scheme from providing increases above the alternative minima there mentioned; and
- (b) nothing in the provisions of Chapter II or IV of Part IV precludes a scheme from being framed or managed more favourably to beneficiaries than is called for by those provisions.

127 Relationship of preservation requirements and scheme rules

It is hereby declared that nothing in Chapter I of Part IV—

- (a) applies with direct effect to any scheme, or to the rights or liabilities of any person in, under or by virtue of a scheme; or
- (b) precludes a scheme from being so framed as to provide benefits on any ampler scale, or (subject to any express provision made in that Chapter) payable at any earlier time or otherwise more favourable to beneficiaries, than is called for by the preservation requirements.

128 Duty to bring schemes into conformity with indirectly-applying requirements

Where the rules of an occupational pension scheme to which the preservation requirements, the equal access requirements or the voluntary contributions requirements apply or the rules of a personal pension scheme to which the voluntary contributions requirements apply do not comply with those requirements it shall be the responsibility of—

- (a) the trustees and managers of the scheme; or
- (b) in the case of a public service pension scheme, the Minister of the Crown, government department or other person or body concerned with its administration,

to take such steps as are open to them for bringing the rules of the scheme into conformity with those requirements.

129 Advice of the Board as to conformity of schemes with requirements

- (1) The Board may at any time, and shall if requested by the persons responsible under section 128 for taking steps to bring a scheme into conformity with the preservation requirements, the equal access requirements or the voluntary contributions requirements, advise whether the rules of a scheme to which those requirements apply do or do not in the Board's opinion conform with any of those requirements.
- (2) Where the Board advise that the rules do not conform, they shall indicate what steps they consider should be taken with a view to securing conformity.
- (3) The Board may at any time, and shall if requested by the trustees or managers of a scheme, advise on any question whether—
 - (a) any provision mentioned in subsection (4) does or does not override any provision of a scheme;
 - (b) any benefit is a money purchase benefit, or an average salary benefit or a flat rate benefit (within the meaning of section 80).
- (4) The provisions referred to in subsection (3)(a) are any provision of Chapter II, III or IV of Part IV, section 106(1) or regulations under section 109 or 110.

130 Determination of questions whether schemes conform with requirements

- (1) Subject to subsection (2), on an application made to them in respect of a scheme (other than a public service pension scheme) by persons competent to make such an application in respect of it, the Board shall issue a determination on any such question as is mentioned in section 129.
- (2) No application may be made under subsection (1) as respects the requirements of Chapter III of Part IV in respect of a money purchase contracted-out scheme.
- (3) The Board may at any time of their own motion issue in respect of a scheme which has come to their notice any determination which they could issue in the case of that scheme on application to them under subsection (1) as respects the preservation requirements, the equal access requirements or the voluntary contributions requirements.
- (4) At any time when the Board are concerned with a scheme for the purpose of issuing a determination under this section as respects the preservation requirements or the equal access requirements, they may include a determination (whether or not applied for) as to any of the particular matters specified in Chapter I of Part IV or, as the case may be, section 114(1).
- (5) If the Board think it expedient to do so, having regard—
 - (a) to the structure and character of a scheme in relation to which they are issuing a determination under this section; and
 - (b) to any anomalous or impractical consequences that may be expected to follow from its modification to achieve conformity with any particular provision of Chapter I of Part IV,they may determine that that provision shall not apply to that scheme or shall apply to it with such modifications as may be specified in the determination.

131 Persons competent to make applications under s. 130

- (1) The persons competent to make an application under section 130 in respect of a scheme are—
- (a) in any case—
 - (i) the trustees or managers of the scheme;
 - (ii) any person other than the trustees or managers who has power to alter any of the rules of the scheme; and
 - (iii) any member of the scheme;
 - (b) in any case where the scheme is an occupational pension scheme, any person who is an employer of persons in service in an employment to which the scheme applies;
 - (c) in any case where the scheme is an occupational pension scheme and in the case of any application in respect of the voluntary contributions requirements, any prospective member of the scheme; and
 - (d) in any case other than an application in respect of a personal pension scheme in relation to requirements under section 109, such other persons as regulations may specify, in relation to any category of schemes into which the scheme falls, as being proper persons to make an application for the purposes of this section in respect of a scheme of that category.
- (2) The reference in paragraph (d) of subsection (1) to other persons shall be construed in relation to any case as including persons other than those mentioned in paragraphs (a) to (c) by whom an application may be made in that case.