



# Pensions Act 2011

## 2011 CHAPTER 19

### PART 3

#### OCCUPATIONAL PENSION SCHEMES

##### *Indexation and revaluation*

#### **19 Indexation and revaluation**

- (1) Section 84 of the Pension Schemes Act 1993 (basis of revaluation of accrued benefits) is amended as follows.
- (2) In subsection (5)(b) for the words from “maintains” to “index” substitute “, in the opinion of the Secretary of State, maintains the value of the pension or other benefit by reference to the rise in the general level of prices in Great Britain”.
- (3) Omit subsection (6).
- (4) Schedule 3 to the 1993 Act (which sets out methods for revaluing accrued benefits for the purposes of section 84 of the 1993 Act) is amended as follows.
- (5) After paragraph 1(4) insert—
  - “(5) The sub-paragraphs above are subject to sub-paragraph (6).
  - (6) If paragraph 2A applies to the pension or other benefit, the final salary method is to apply the requirement of the rules of the scheme mentioned in paragraph 2A(1).”
- (6) After paragraph 2 insert—
  - “2A (1) This paragraph applies to the pension or other benefit if the rules of the scheme under which it is payable contain a requirement that the accrued benefit be revalued by adding to the accrued benefit an amount of at least the relevant amount.
  - (2) “The accrued benefit” has the same meaning as in paragraph 1.

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- (3) “The relevant amount” means the amount which, ignoring paragraph 1(5) and (6), would be the additional amount specified in paragraph 1(1A), (1B), (1C) or (1D) (as the case may be) were the appropriate higher revaluation percentage and the appropriate lower revaluation percentage to be determined on the following basis.
- (4) The higher revaluation percentage and the lower revaluation percentage for the revaluation period mentioned in paragraph 2(7) are to be taken to be the percentages which would have been specified in the Secretary of State’s order—
- (a) had the following been substituted for paragraph 2(3)(a)—
    - “(a) the percentage increase in the retail prices index for the reference period in relation to the revaluation period (“the inflation percentage”), and”,
  - (b) had, in paragraph 2(3A)(a), the words “the percentage which appears to the Secretary of State to be” been omitted,
  - (c) had paragraph 2(4) been omitted,
  - (d) had, in paragraph 2(5), the words “sub-paragraph (3)(a)” been substituted for “that sub-paragraph”,
  - (e) had, in paragraph (b) of the definitions of “the higher maximum rate” and “the lower maximum rate” in paragraph 2(6), the words “retail prices index” been substituted for “general level of prices”, and
  - (f) had the following been inserted after paragraph 2(6)—
 

“(6A) In this paragraph “retail prices index” means—

    - (a) the general index of retail prices (for all items) published by the Statistics Board (or any predecessor), or
    - (b) where that index is not published for a month, any substituted index or figures published by the Board (or any predecessor).””
- (7) Section 51 of the Pensions Act 1995 (annual increase in rate of certain pensions) is amended as follows.
- (8) For subsections (3) and (4) substitute—
- “(3) Subsection (2) does not apply to the annual rate of a pension under an occupational pension scheme, or to a part of that rate, if under the rules of the scheme the rate or part is for the time being being increased at intervals of not more than twelve months by at least the relevant percentage.
  - (4) For the purposes of subsection (3) the relevant percentage is—
    - (a) the percentage increase in the consumer prices index for the reference period, being a period determined, in relation to each periodic increase, under the rules, or
    - (b) if lower, the default percentage for that period.
- (4ZA) Subsection (2) does not apply to the annual rate of a pension under an occupational pension scheme, or to a part of that rate, if subsection (4ZB) applies to the rate or part.

- (4ZB) Subject to subsection (4ZD), this subsection applies to the rate or part if, under the rules of the scheme, the rate or part is for the time being increased, and since the relevant time has always been increased, at intervals of not more than twelve months by at least—
- (a) the percentage increase in the retail prices index for the reference period, being a period determined, in relation to each periodic increase, under the rules, or
  - (b) if lower, the default percentage for that period.
- (4ZC) In subsection (4ZB) “the relevant time” means—
- (a) the beginning of 2011 or, if later, the time when the pension became a pension in payment, or
  - (b) if the pension was transferred to the scheme from another occupational pension scheme as a pension in payment after the beginning of 2011, the time of the transfer.
- (4ZD) If the pension was transferred to the scheme as mentioned in subsection (4ZC) (b), subsection (4ZB) does not apply to the rate or part unless, immediately before the transfer, subsection (4ZB) (read with this subsection if relevant) applied to the rate or part by reference to the scheme from which the pension was transferred (or would have applied had subsection (4ZB) been in force immediately before the transfer).
- (4ZE) If only part of the pension is attributable to pensionable service or, as the case may be, to payments in respect of employment carried on on or after the appointed day, in subsections (3) to (4ZD) references to the annual rate of the pension are references to so much of that rate as is attributable to that part.
- (4ZF) For the purposes of subsections (4) and (4ZB) the default percentage for a period is the percentage for that period which corresponds to—
- (a) in the case of a category X pension, 5% per annum, and
  - (b) in the case of a category Y pension, 2.5% per annum.
- (4ZG) In subsections (4) and (4ZB)—
- “consumer prices index” means—
    - (a) the general index of consumer prices (for all items) published by the Statistics Board, or
    - (b) where that index is not published for a month, any substituted index or figures published by the Board;
  - “retail prices index” means—
    - (a) the general index of retail prices (for all items) published by the Statistics Board, or
    - (b) where that index is not published for a month, any substituted index or figures published by the Board.”
- (9) Section 40 of the Welfare Reform and Pensions Act 1999 (indexation of certain pensions giving effect to pension credit rights) is amended as follows.
- (10) In subsection (1) for “increases in the retail prices index” substitute “relevant percentage increases”.
- (11) After subsection (2A) insert—

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“(2AA) In subsection (1) “relevant percentage increases” means percentage increases estimated by the Secretary of State from time to time for the purposes of paragraph 2(3)(a) of Schedule 3 to the Pension Schemes Act 1993 for revaluation periods of 12 months.”

## **20 Pension compensation: annual increases in periodic compensation**

(1) In Schedule 7 to the Pensions Act 2004 (pension compensation provisions) paragraph 28 (annual increase in periodic compensation) is amended as follows.

(2) In sub-paragraph (3) in paragraph (a) of the definition of “appropriate percentage” for “retail prices index” substitute “general level of prices in Great Britain”.

(3) After sub-paragraph (3) insert—

“(3A) For the purposes of paragraph (a) of the definition of “appropriate percentage” in sub-paragraph (3), the Secretary of State may (from time to time) decide, as the Secretary of State thinks fit, the manner in which percentage increases in the general level of prices in Great Britain are to be determined.

(3B) The Secretary of State must publish any decision made under sub-paragraph (3A).”

(4) In paragraph 37(1) of that Schedule (definitions) omit the definition of “retail prices index”.

(5) In Schedule 5 to the Pensions Act 2008 (pension compensation payable on discharge of pension compensation credit) paragraph 17 (annual increase in periodic compensation) is amended as follows.

(6) In sub-paragraph (4) in paragraph (a) of the definition of “the appropriate percentage” for “retail prices index” substitute “general level of prices in Great Britain”.

(7) After sub-paragraph (4) insert—

“(4A) For the purposes of paragraph (a) of the definition of “the appropriate percentage” in sub-paragraph (4), the Secretary of State may (from time to time) decide, as the Secretary of State thinks fit, the manner in which percentage increases in the general level of prices in Great Britain are to be determined.

(4B) The Secretary of State must publish any decision made under sub-paragraph (4A).”

## **21 Indexation requirements for cash balance benefits**

(1) Section 51 of the Pensions Act 1995 (annual increase in rate of certain pensions) is amended as follows.

(2) In subsection (1) for “subsection (6)” substitute “subsections (6) and (7)”.

(3) After subsection (6) insert—

“(7) This section does not apply to any pension (or part of a pension) under a relevant occupational pension scheme which—

- (a) is a cash balance benefit (see section 51ZB), and
  - (b) first comes into payment on or after the day on which section 21 of the Pensions Act 2011 comes into force.
- (8) An occupational pension scheme is a “relevant occupational pension scheme” if—
  - (a) it has not, on or after the appointed day, been contracted-out by virtue of satisfying section 9(2) of the Pension Schemes Act 1993, or
  - (b) it has, on or after the appointed day, been so contracted-out, but no person is entitled to receive, or has accrued rights to, benefits under the scheme attributable to the period on or after that day when it was so contracted-out.”
- (4) After section 51ZA of the Pensions Act 1995 insert—

**“51ZB Meaning of “cash balance benefit”**

- (1) For the purposes of section 51(7)(a), a pension provided to or in respect of a member of an occupational pension scheme is a “cash balance benefit” if conditions 1 and 2 are met.
- (2) Condition 1 is that the rate of the pension is calculated by reference to a sum of money (“the available sum”) which is available under the scheme for the provision of benefits to or in respect of the member.
- (3) Condition 2 is that under the scheme—
  - (a) there is a promise about the amount of the available sum, but
  - (b) there is no promise about the rate or amount of the benefits to be provided.
- (4) The promise mentioned in subsection (3)(a) includes in particular a promise about the change in the value of, or the return from, payments made under the scheme by the member or by any other person in respect of the member.
- (5) The promise mentioned in subsection (3)(b) includes a promise that—
  - (a) the amount of the available sum will be sufficient to provide benefits of a particular rate or amount;
  - (b) the rate or amount of a benefit will represent a particular proportion of the available sum.
- (6) But a pension is not prevented from being a cash balance benefit merely because under the scheme there is a promise that—
  - (a) the rate or amount of a benefit payable in respect of a deceased member will be a particular proportion of the rate or amount of a benefit which was (or would have been) payable to the member;
  - (b) the amount of a lump sum payable to a member, or in respect of a deceased member, will represent a particular proportion of the available sum.”

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*Pension Protection Fund*

**22 Pension Protection Fund**

Schedule 4 (which makes provision relating to the Pension Protection Fund) has effect.

*Financial assistance scheme*

**23 Financial assistance scheme: amount of payments**

(1) In section 286 of the Pensions Act 2004 (financial assistance scheme) after subsection (1B) insert—

“(1C) Regulations under subsection (1) may prescribe circumstances in which subsection (1A) does not apply.”

(2) In section 18 of the Pensions Act 2007 (financial assistance scheme: increased levels of payments) after subsection (9) insert—

“(9A) The Secretary of State may by regulations—

- (a) prescribe circumstances in which subsections (5) and (6) do not apply where the scheme manager has made a determination as specified in subsection (4), and
- (b) make alternative provision for the amount of any initial payment payable to the member or the survivor of the member in those circumstances,

and, accordingly, subsection (8) does not apply in those circumstances.”

(3) In that section in subsection (10) (affirmative resolution procedure) after “subsection (9)” insert “or (9A)”.

**24 Financial assistance scheme: transfer of assets**

In section 286 of the Pensions Act 2004 (financial assistance scheme) in subsection (3) (c) (power to make provision for property, rights and liabilities of qualifying pension schemes to be transferred to the scheme manager) for “the scheme manager” substitute “a prescribed person”.

*Miscellaneous*

**25 Payment of surplus to employer: transitional power to amend scheme**

(1) Section 251 of the Pensions Act 2004 (payment of surplus to employer: transitional power to amend scheme) is amended as follows.

(2) In subsection (1) after “scheme” insert—

- “(a) which is one to which section 37 of the Pensions Act 1995 applies, and
- (b)”.

(3) After subsection (2) insert—

- “(2A) But subsection (2) does not apply in the case of any of the payments listed in paragraphs (c) to (f) of section 175 of the Finance Act 2004 (authorised employer payments other than public service scheme payments or authorised surplus payments).”
- (4) In subsection (3) for “then applied” substitute “applied immediately before the commencement of section 250”.
- (5) In subsection (6)—
- (a) after paragraph (a) insert—
- “(aa) may be exercised even if the payments to which it relates are, to any extent, payments to which subsection (2) does not apply,”;
- (b) in paragraph (b) for “only be exercised once” substitute “be exercised, after the commencement of section 25 of the Pensions Act 2011, only once (whether or not also exercised before 6 April 2011)”;
- (c) in paragraph (c) for “five years after the commencement of this section” substitute “on 6 April 2016”.
- (6) After subsection (6) insert—
- “(6A) A resolution passed under this section after the commencement of section 25 of the Pensions Act 2011 may amend or revoke a resolution passed under this section before 6 April 2011.”
- (7) The amendments made by this section do not affect the continued operation of any resolution passed under section 251(3) or (4) of the 2004 Act before 6 April 2011.

## **26 Contribution notices and financial support directions**

- (1) Section 38 of the Pensions Act 2004 (contribution notices where avoidance of employer debt) is amended as follows.
- (2) In subsections (5)(c)(i) and (6)(b)(ii) for “determination by the Regulator to exercise the power to issue” substitute “giving of a warning notice in respect of”.
- (3) After subsection (13) insert—
- “(14) In this section “a warning notice” means a notice given as mentioned in section 96(2)(a).”
- (4) Section 43 of the Pensions Act 2004 (financial support directions) is amended as follows.
- (5) In subsection (9) for “determination by the Regulator to exercise the power to issue” substitute “giving of a warning notice in respect of”.
- (6) After subsection (11) insert—
- “(12) In this section “a warning notice” means a notice given as mentioned in section 96(2)(a).”
- (7) In section 96 of the Pensions Act 2004 (exercise of regulatory functions: standard procedure) after subsection (6) insert—
- “(6A) Subsection (6B) applies in relation to a warning notice given to a person—

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- (a) in respect of a contribution notice under section 38, or
- (b) in respect of a financial support direction under section 43.

(6B) Regulations may provide that no determination notice in respect of the contribution notice or the financial support direction may be given after the end of the prescribed period beginning with the day on which the warning notice is given.”

## **27 Technical amendment to Schedule 4 to the Pensions Act 2007**

In Schedule 4 to the Pensions Act 2007 (abolition of contracting-out for defined contribution pension schemes) in paragraph 60(4) for paragraphs (b) and (c) substitute—

- “(b) in the definition of “the percentage for contributing earners”—
  - (i) omit the words “(a) in relation to a salary related contracted-out scheme.”;
  - (ii) omit paragraph (b) and the preceding “and”;
- (c) in the definition of “the percentage for non-contributing earners”—
  - (i) omit the words “(a) in relation to a salary related contracted-out scheme.”;
  - (ii) omit paragraph (b) and the preceding “and”.”

## **28 Technical amendment to section 42(6) of the Pension Schemes Act 1993**

(1) In section 42 of the Pension Schemes Act 1993 (review and alteration of rates of contributions applicable under section 41) in subsection (6) for “paragraph 2(3)” substitute “the definition of “the percentage for contributing earners” or “the percentage for non-contributing earners” in paragraph 2(5)”.

(2) After that subsection insert—

“(7) Until paragraph 60(4) of Schedule 4 to the Pensions Act 2007 comes into force, subsection (6) has effect as if the reference to the definition of “the percentage for contributing earners” or “the percentage for non-contributing earners” were a reference to paragraph (a) of either of those definitions.”