



# Pensions Act 2008

## 2008 CHAPTER 30

### PART 5

#### MISCELLANEOUS

##### *Miscellaneous provision relating to pensions*

#### **126 Amendments of provisions of Pensions Act 2004 relating to contribution notices or financial support directions**

Schedule 9 (which amends the Pensions Act 2004 (c. 35) in relation to contribution notices and financial support directions) has effect.

#### **Commencement Information**

- II** S. 126 wholly in force at 29.6.2009; s. 126 in force for certain purposes at Royal Assent see s. 149(3)(b); s. 126 in force so far as not already in force at 29.6.2009 by S.I. 2009/1566, art. 2(1)(a)

VALID FROM 30/06/2012

#### **127 Review of the initial operation of sections 38A and 38B of Pensions Act 2004**

- (1) The Secretary of State must carry out a review of the operation of sections 38A and 38B of the Pensions Act 2004 (which are inserted into that Act by paragraph 2 of Schedule 9 to this Act) during the period of 4 years beginning with the day on which that paragraph fully comes into force (“the commencement date”).
- (2) The Secretary of State must set out the conclusions of the review in a report and lay the report before Parliament.

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- (3) The report must be laid before the end of the period of 5 years beginning with the commencement date.

### 128 Pension sharing: power of Court of Session to extend time limits

- (1) The Welfare Reform and Pensions Act 1999 (c. 30) is amended as follows.
- (2) In section 28(10) (pension arrangements: time limit for activation of pension sharing in Scotland), for “The sheriff” substitute “ The Court of Session or the sheriff ”.
- (3) In section 48(9) (state scheme rights: time limit for activation of benefit sharing in Scotland), for “The sheriff” substitute “ The Court of Session or the sheriff ”.

VALID FROM 26/02/2010

### 129 Interest on late payment of levies

Schedule 10 (which makes provision about payment of interest on late payment of levies) has effect.

#### Commencement Information

- I2** [S. 129](#) partly in force; [S. 129](#) not in force at Royal Assent see [s. 149\(1\)](#); [s. 129](#) in force for specified purposes at 26.2.2010 by [S.I. 2010/467](#), [art. 2\(a\)](#)

### 130 Payments to employers

In section 37 of the Pensions Act 1995 (payment of surplus to employer) after subsection (1) insert—

“(1A) But this section 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).”

### 131 Appointment of trustees

- (1) In section 7 of the Pensions Act 1995 (c. 26) (appointment of trustees), in subsection (3)—
- (a) for “necessary”, in the first place where it occurs, substitute “ reasonable ”;
  - (b) omit “or” at the end of paragraph (b);
  - (c) at the end insert “, or
  - (d) otherwise to protect the interests of the generality of the members of the scheme.”
- (2) In paragraph 9(b) of Schedule 2 to the Pensions Act 2004 (c. 35) (reserved regulatory functions), for “or (c)” substitute “, (c) or (d) ”.

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### **132 Intervention by Regulator where scheme's technical provisions improperly determined**

In section 231 of the Pensions Act 2004 (powers of the Regulator), before paragraph (a) of subsection (1) insert—

“(za) that the trustees or managers, when determining the methods and assumptions to be used in calculating the scheme's technical provisions, have failed to comply with a requirement imposed under section 222(4)(c);”.

### **133 Delegation of powers by the Regulator**

(1) The Pensions Act 2004 is amended as follows.

(2) In paragraph 21 of Schedule 1 (regulations relating to delegation of the Pensions Regulator's functions), the existing provision becomes sub-paragraph (1).

(3) For paragraph (e) of that sub-paragraph substitute—

“(e) permitting the Regulator to authorise such persons, in such circumstances and under such arrangements, as the Regulator may determine, to exercise on behalf of the Regulator—

(i) the power to determine whether to exercise any of the functions listed in sub-paragraph (2);

(ii) the power to exercise any of the functions listed in sub-paragraph (2) or such other functions as may be prescribed.”

(4) After that sub-paragraph insert—

“(2) The functions mentioned in sub-paragraph (1)(e) are—

(a) the power to issue an improvement notice under section 13;

(b) the power to issue a third party notice under section 14;

(c) the power to recover unpaid contributions under section 17;

(d) the power to require information under section 72;

(e) the power to vary or revoke a determination, order, notice or direction under section 101;

(f) the power to require payment of a penalty under section 10 of the Pensions Act 1995;

(g) the power to issue a compliance notice under section 35 of the Pensions Act 2008;

(h) the power to issue a third party compliance notice under section 36 of that Act;

(i) the power to issue an unpaid contributions notice under section 37 of that Act;

(j) the power to issue a fixed penalty notice under section 40 of that Act;

(k) the power to issue an escalating penalty notice under section 41 of that Act;

(l) the power to recover penalties under section 42 of that Act;

(m) the power to review a notice under section 43 of that Act;

(n) the power to issue a compliance notice in respect of prohibited recruitment conduct under section 51 of that Act;

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- (o) the power to issue a penalty notice in respect of prohibited recruitment conduct under section 52 of that Act.”
- (5) Omit paragraph 28 of Schedule 1 (payment of expenses).
- (6) Subsections (2) to (4)—
  - (a) do not affect any regulations made under paragraph 21(e) of Schedule 1 to the Pensions Act 2004 (c. 35) before the coming into force of this section, and
  - (b) do not affect the powers conferred by that paragraph, so far as exercisable for the purpose of making, by way of consolidation, provision having the same effect as any provision of those regulations.

### **134 Exclusion of transfers out in certain cases**

- (1) The Pension Schemes Act 1993 (c. 48) is amended as follows.
- (2) In section 93(1B) (regulations as to the application of provisions relating to transfers for early leavers), after paragraph (a) insert—
  - “(aa) provide for this Chapter not to apply in prescribed circumstances in relation to a member of a prescribed scheme or schemes of a prescribed description;”.
- (3) In section 101F (transfer notice in respect of pension credit benefit), after subsection (6) insert—
  - “(6A) Regulations may provide for this Chapter not to apply in prescribed circumstances in relation to a member of a prescribed scheme or schemes of a prescribed description.”

#### *State and official pensions*

### **135 Additional Class 3 contributions**

- (1) The Social Security Contributions and Benefits Act 1992 (c. 4) is amended as follows.
- (2) After section 13 insert—

#### **“13A Right to pay additional Class 3 contributions in certain cases**

- (1) An eligible person is entitled, if he so wishes, but subject to any conditions prescribed by regulations made by the Treasury and to the following provisions of this section, to pay Class 3 contributions in respect of a missing year.
- (2) A missing year is a tax year not earlier than 1975-76 in respect of which the person would under regulations under section 13 be entitled to pay Class 3 contributions but for a limit on the time within which contributions may be paid in respect of that year.
- (3) A person is not entitled to pay contributions in respect of more than 6 tax years under this section.
- (4) A person is not entitled to pay any contribution under this section after the end of 6 years beginning with the day on which he attains pensionable age.

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- (5) A person is an eligible person if the following conditions are satisfied.
- (6) The first condition is that the person attained or will attain pensionable age in the period—
- (a) beginning with 6th April 2008, and
  - (b) ending with 5th April 2015.
- (7) The second condition is that there are at least 20 tax years each of which is a year to which subsection (8) or (10) applies.
- (8) This subsection applies if—
- (a) the year is one in respect of which the person has paid or been credited with contributions that are of a relevant class for the purposes of paragraph 5 or 5A of Schedule 3 or been credited (in the case of 1987-88 or any subsequent year) with earnings, and
  - (b) in the case of that year, the earnings factor derived as mentioned in subsection (9) is not less than the qualifying earnings factor for that year.
- (9) For the purposes of subsection (8)(b) the earnings factor—
- (a) in the case of 1987-88 or any subsequent year, is that which is derived from—
    - (i) so much of the person's earnings as did not exceed the upper earnings limit and upon which such of the contributions mentioned in subsection (8)(a) as are primary Class 1 contributions were paid or treated as paid or earnings credited, and
    - (ii) any Class 2 or Class 3 contributions for the year, or
  - (b) in the case of any earlier year, is that which is derived from the contributions mentioned in subsection (8)(a).
- (10) This subsection applies (in the case of a person who attained or will attain pensionable age before 6th April 2010) if the year is one in which the person was precluded from regular employment by responsibilities at home within the meaning of regulations under paragraph 5(7) of Schedule 3.
- (11) The third condition applies only if the person attained or will attain pensionable age before 6th April 2010.
- (12) That condition is that—
- (a) the person has, in respect of any one tax year before that in which he attains pensionable age, actually paid contributions that are of a relevant class for the purposes of paragraph 5 of Schedule 3, and
  - (b) in the case of that year, the earnings factor derived as mentioned in subsection (13) is not less than the qualifying earnings factor for that year.
- (13) For the purposes of subsection (12)(b) the earnings factor—
- (a) in the case of 1987-88 or any subsequent year, is that which is derived from—
    - (i) so much of the person's earnings as did not exceed the upper earnings limit and upon which such of the contributions

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- mentioned in subsection (12)(a) as are primary Class 1 contributions were paid or treated as paid, and
- (ii) any Class 2 or Class 3 contributions for the year, or
- (b) in the case of any earlier year, is that which is derived from the contributions mentioned in subsection (12)(a).”

(3) In section 1(2)(d) (outline of contribution system) after “section 13” insert “ or 13A ”.

### **136 Additional Class 3 contributions (Northern Ireland)**

- (1) The Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) is amended as follows.
- (2) After section 13 insert—

#### **“13A Right to pay additional Class 3 contributions in certain cases**

- (1) An eligible person is entitled, if he so wishes, but subject to any conditions prescribed by regulations made by the Treasury and to the following provisions of this section, to pay Class 3 contributions in respect of a missing year.
- (2) A missing year is a tax year not earlier than 1975-76 in respect of which the person would under regulations under section 13 be entitled to pay Class 3 contributions but for a limit on the time within which contributions may be paid in respect of that year.
- (3) A person is not entitled to pay contributions in respect of more than 6 tax years under this section.
- (4) A person is not entitled to pay any contribution under this section after the end of 6 years beginning with the day on which he attains pensionable age.
- (5) A person is an eligible person if the following conditions are satisfied.
- (6) The first condition is that the person attained or will attain pensionable age in the period—
- (a) beginning with 6th April 2008, and
  - (b) ending with 5th April 2015.
- (7) The second condition is that there are at least 20 tax years each of which is a year to which subsection (8) or (10) applies.
- (8) This subsection applies if—
- (a) the year is one in respect of which the person has paid or been credited with contributions that are of a relevant class for the purposes of paragraph 5 or 5A of Schedule 3 or been credited (in the case of 1987-88 or any subsequent year) with earnings, and
  - (b) in the case of that year, the earnings factor derived as mentioned in subsection (9) is not less than the qualifying earnings factor for that year.
- (9) For the purposes of subsection (8)(b) the earnings factor—
- (a) in the case of 1987-88 or any subsequent year, is that which is derived from—

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- (i) so much of the person's earnings as did not exceed the upper earnings limit and upon which such of the contributions mentioned in subsection (8)(a) as are primary Class 1 contributions were paid or treated as paid or earnings credited, and
    - (ii) any Class 2 or Class 3 contributions for the year, or
  - (b) in the case of any earlier year, is that which is derived from the contributions mentioned in subsection (8)(a).
- (10) This subsection applies (in the case of a person who attained or will attain pensionable age before 6th April 2010) if the year is one in which the person was precluded from regular employment by responsibilities at home within the meaning of regulations under paragraph 5(7) of Schedule 3.
- (11) The third condition applies only if the person attained or will attain pensionable age before 6th April 2010.
- (12) That condition is that—
- (a) the person has, in respect of any one tax year before that in which he attains pensionable age, actually paid contributions that are of a relevant class for the purposes of paragraph 5 of Schedule 3, and
  - (b) in the case of that year, the earnings factor derived as mentioned in subsection (13) is not less than the qualifying earnings factor for that year.
- (13) For the purposes of subsection (12)(b) the earnings factor—
- (a) in the case of 1987-88 or any subsequent year, is that which is derived from—
    - (i) so much of the person's earnings as did not exceed the upper earnings limit and upon which such of the contributions mentioned in subsection (12)(a) as are primary Class 1 contributions were paid or treated as paid, and
    - (ii) any Class 2 or Class 3 contributions for the year, or
  - (b) in the case of any earlier year, is that which is derived from the contributions mentioned in subsection (12)(a).”
- (3) In section 1(2)(d) (outline of contribution system) after “section 13” insert “ or 13A ”.

VALID FROM 13/03/2014

### 137 Official pensions: adjustment of increases in survivors' pensions

- (1) Section 59 of the Social Security Pensions Act 1975 (c. 60) (increase of official pensions) is amended as follows.
- (2) Subsection (5ZA) is amended as follows.
- (3) In the words before paragraph (a)—
  - (a) for “or widower's” substitute “, widower's or surviving civil partner's ”;
  - (b) after “spouse” insert “ or civil partner ”.
- (4) In paragraph (a), after “spouse” insert “ or civil partner ”.

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- (5) In paragraph (b)—
- (a) after “period” insert “ (“the relevant time”) ”;
  - (b) for the words from “one half” to the end substitute “ the rate provided for in subsection (5ZB); ”.
- (6) In paragraph (c), for “or widower's” substitute “ , widower's or surviving civil partner's ”.
- (7) Omit the words from “but this subsection” to the end.
- (8) After subsection (5ZA) insert—
- “(5ZB) The rate referred to in subsection (5ZA)(b) is—
- (a) in the case of a widow's pension, one half of the rate of the deceased husband's guaranteed minimum pension at the relevant time;
  - (b) in the case of a widower's pension, one half of so much of the rate of the deceased wife's guaranteed minimum pension at the relevant time as is attributable to earnings factors for the tax year 1988-89 and subsequent tax years;
  - (c) in the case of a surviving civil partner's pension, one half of so much of the rate of the deceased civil partner's guaranteed minimum pension at the relevant time as is attributable to earnings factors for the tax year 1988-89 and subsequent tax years.
- (5ZC) Subsection (5ZA)—
- (a) does not apply to a widow's or widower's pension in respect of any service of the deceased spouse if the deceased spouse's pension in respect of that service became payable before 24 July 1990;
  - (b) applies to a surviving civil partner's pension only in respect of amounts payable after the coming into force of this subsection.”

### 138 War pensions: effect of later marriage or civil partnership

- (1) Section 168 of the Pensions Act 1995 (c. 26) (war pensions for widows: effect of remarriage) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) In determining whether a pension is payable to a person as a widow, widower or surviving civil partner under any of the enactments mentioned in subsection (3) in respect of any period beginning on or after the commencement date, no account may be taken of the fact that the person has married or formed a civil partnership with another person if, before the beginning of that period—
- (a) the marriage or civil partnership has been terminated,
  - (b) the parties to it have been judicially separated, or
  - (c) in the case of a civil partnership, a separation order has been made in respect of the parties.
- (1A) The commencement date is—
- (a) for the purpose of determining whether a pension is payable to a person as a widow or widower, 19 July 1995;



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- (b) for the purpose of determining whether a pension is payable to a person as a surviving civil partner, 5 December 2005.”
- (3) In subsection (2), in paragraph (a)—
  - (a) after “a marriage” insert “ or civil partnership ”;
  - (b) for “the termination of the marriage” substitute “ its termination ”.
- (4) In that subsection, after “divorce” insert “ , dissolution ”.
- (5) In subsection (3)(a), for “The Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983” substitute “ The Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 2006 ”.

### **139 Polish Resettlement Act 1947: effect of residence in Poland**

- (1) In section 1(3) of the Polish Resettlement Act 1947 (c. 19) (power to apply Royal Warrant as to pensions etc to certain Polish forces) for “, and the scheme shall contain provision for securing that no payment shall be made thereunder to or in respect of any person as to whom the Secretary of State is satisfied that he is resident in Poland” substitute “ (including exceptions applying by virtue of a person's residence in Poland at any time prior to 1 May 2004) ”.
- (2) Subsection (3) below applies where—
  - (a) a person (“A”) was resident in Poland at any time in the relevant period, and
  - (b) but for that fact, an amount would have been payable to or in respect of A under the scheme made under section 1 of the Polish Resettlement Act 1947.
- (3) The power to make the scheme includes power to make provision for payments to or in respect of A in relation to any part of the relevant period.
- (4) In this section “the relevant period” means the period beginning with 1 May 2004 and ending with the coming into force of this section.

### **140 Pre-1948 insurance affecting German pension entitlement**

- (1) This section applies where the conditions in subsections (2) and (3) are satisfied.
- (2) The first condition is satisfied if it appears to the Secretary of State that a person (the “pensioner”) is, or was immediately before death, a person—
  - (a) whose German pension entitlement is (or was) reduced by one or more periods of pre-1948 insurance, or
  - (b) who would have (or would have had) a German pension entitlement, but for one or more periods of pre-1948 insurance.
- (3) The second condition is satisfied if—
  - (a) the insured person entered the United Kingdom as an unaccompanied child directly or indirectly from Germany, Austria, Czechoslovakia or Poland in the period beginning with 2 December 1938 and ending with 31 May 1940, or
  - (b) the Secretary of State otherwise considers it appropriate to give a direction under subsection (4).
- (4) At the request of the pensioner or (where the pensioner is dead) any other person claiming to be affected, the Secretary of State may direct that, on the giving of the

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direction, subsection (5) takes effect in relation to the period or periods of pre-1948 insurance.

- (5) On this subsection taking effect in relation to any period—
- (a) the insured person is deemed not to have been, not to have been deemed to be, and not to have been treated as being, insured for that period under the Widows', Orphans' and Old Age Contributory Pensions Acts 1936 to 1941 or under any provision of Northern Ireland legislation corresponding to those Acts, and
  - (b) any contribution mentioned in section 141(2)(b) or (c) is deemed not to have been credited to the insured person.
- (6) The Secretary of State may give directions specifying how any request for the purposes of subsection (4) must be made.
- (7) Where subsection (5) has taken effect in relation to a period or periods of pre-1948 insurance, the relevant authority may pay to any person an amount not exceeding any amount that would, but for subsection (5), have been payable to that person in respect of—
- (a) a benefit specified in section 20(1) of the Social Security Contributions and Benefits Act 1992 (c. 4) (contributory benefits), or
  - (b) a benefit specified in any provision of Northern Ireland legislation corresponding to that provision.
- (8) In this section—
- “child” means a person aged under 18;
  - “German pension entitlement” means entitlement to benefits arising under insurance with the Deutsche Rentenversicherung, or any other entitlement that appears to the Secretary of State to be relevant for the purposes of this section;
  - “insured person” is to be read in accordance with section 141;
  - the “relevant authority” means—
    - (a) in relation to a benefit within subsection (7)(b), the Department for Social Development in Northern Ireland;
    - (b) in any other case, the Secretary of State;
  - “unaccompanied” means unaccompanied by an adult family member.

## **141 Pre-1948 insurance: supplementary**

- (1) In section 140 a “period of pre-1948 insurance” means any period ending before 6 April 1948 to which subsection (2) applies by reference to any person (“the insured person”).
- (2) This subsection applies to a period which is one of the following—
- (a) a period for which the insured person at any time was, was deemed to be, or was treated as, insured under the Widows', Orphans' and Old Age Contributory Pensions Acts 1936 to 1941, or under any provision of Northern Ireland legislation corresponding to those Acts;
  - (b) a period for or in respect of which contributions of any class were credited to the insured person in accordance with the provisions of the National Insurance Act 1965 (c. 51) or regulations made under that Act, or in accordance with any provision of Northern Ireland legislation corresponding to that Act or such regulations;

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- (c) a period for which contributions are credited to the insured person by any provision of the Social Security (Widow's Benefit, Retirement Pensions and Other Benefits) (Transitional) Regulations 1979 (S.I. 1979/643), or by any provision of Northern Ireland legislation corresponding to a provision of those regulations.

#### *Information relating to state pension credit recipients*

### **142 Disclosure of information relating to state pension credit recipients**

- (1) The Secretary of State may by regulations make provision authorising the Secretary of State, or a person providing services to the Secretary of State, to supply relevant persons with social security information about persons in receipt of state pension credit.
- (2) In this section “relevant person” means—
  - (a) a person who holds a licence under section 6(1)(d) of the Electricity Act 1989 (c. 29) or section 7A(1) of the Gas Act 1986 (c. 44) (supply of electricity or gas to premises), or
  - (b) a person providing services to the Secretary of State or to a person within paragraph (a).
- (3) Regulations under this section must specify the purposes for which information may be supplied by virtue of subsection (1), which must be purposes in connection with enabling the provision of assistance to persons in receipt of state pension credit.
- (4) Regulations under this section may authorise the supply of information by a relevant person to the Secretary of State or another relevant person—
  - (a) for the purpose of determining what information is to be supplied by virtue of subsection (1), or
  - (b) to enable information supplied to a relevant person by virtue of subsection (1) to be used by that or another relevant person for purposes within subsection (3).
- (5) Regulations under this section may—
  - (a) make provision as to the use or disclosure of information supplied under the regulations (including provision creating criminal offences);
  - (b) provide for the recovery by the Secretary of State of costs incurred in connection with the supply or use of information under the regulations.
- (6) In this section—
 

“social security information” means information held by or on behalf of the Secretary of State and obtained as a result of, or for the purpose of, the exercise of the Secretary of State's functions in relation to social security;

“state pension credit” has the meaning given by section 1(1) of the State Pension Credit Act 2002 (c. 16).

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