



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART XIV

PENSION SCHEMES, SOCIAL SECURITY BENEFITS, LIFE ANNUITIES ETC.

CHAPTER I

RETIREMENT BENEFIT SCHEMES

Supplementary provisions

604 Application for approval of a scheme

- (1) An application for the approval for the purposes of this Chapter of any retirement benefits scheme shall be made in writing by the administrator of the scheme to the Board before the end of the first year of assessment for which approval is required, and shall be accompanied by—
 - (a) two copies of the instrument or other document constituting the scheme; and
 - (b) two copies of the rules of the scheme and, except where the application is being sought on the setting up of the scheme, two copies of the accounts of the scheme for the last year for which such accounts have been made up; and
 - (c) such other information and particulars (including copies of any actuarial report or advice given to the administrator or employer in connection with the setting up of the scheme) as the Board may consider relevant.
- (2) The form in which an application for approval is to be made, or in which any information is to be given, in pursuance of this section may be prescribed by the Board.

605 Information

- (1) In the case of every approved scheme, the administrator of the scheme, and every employer who pays contributions under the scheme, shall, within 30 days from the date of a notice from the inspector requiring them so to do —
 - (a) furnish to the inspector a return containing such particulars of contributions paid under the scheme as the notice may require;
 - (b) prepare and deliver to the inspector a return containing particulars of all payments under the scheme, being —
 - (i) payments by way of return of contributions (including interest on contributions, if any);
 - (ii) payments by way of commutation of, or in lieu of, pensions, or other lump sum payments;
 - (iii) other payments made to an employer;
 - (c) furnish to the inspector a copy of the accounts of the scheme up to the last date previous to the notice to which such accounts have been made up together with such other information and particulars (including copies of any actuarial report or advice given to the administrator or employer in connection with the conduct of the scheme during the period to which the accounts relate) as the inspector considers relevant.
- (2) Where benefits provided for an employee under an approved scheme or a statutory scheme have been secured by means of an annuity contract with an insurance company (within the meaning given by section 599(8)), the insurance company shall, within 30 days from the date of a notice from the inspector requiring it to do so, prepare and deliver to the inspector a return containing particulars of—
 - (a) any payments under the contract by way of commutation of, or in lieu of, a pension, or any other lump sum payments under the contract; and
 - (b) any payments made under the contract to the employer.
- (3) It shall be the duty of every employer—
 - (a) if there subsists in relation to any of his employees a retirement benefits scheme to which he contributes and which is neither an approved scheme nor a statutory scheme, to deliver particulars of that scheme to the Board within three months beginning with the date on which the scheme first comes into operation in relation to any of his employees, and
 - (b) when required to do so by notice given by the Board, to furnish within the time limited by the notice such particulars as the Board may require with regard to—
 - (i) any retirement benefits scheme relating to the employer which is neither an approved scheme nor a statutory scheme; and
 - (ii) the employees of his to whom any such scheme relates.
- (4) It shall be the duty of the administrator of a retirement benefits scheme which is neither an approved scheme nor a statutory scheme, when required to do so by notice given by the Board, to furnish within the time limited by the notice such particulars as the Board may require with regard to the scheme.

606 Responsibilities of administrator of scheme, and employer

- (1) If the administrator of a retirement benefits scheme defaults or cannot be traced or dies, the employer shall be responsible in his place for the discharge of all duties imposed

on the administrator under this Chapter and shall be liable for any tax due from him in his capacity as administrator.

This subsection does not apply if the employer is not a contributor to the scheme.

- (2) No liability incurred under this Chapter by the administrator of a scheme, or by an employer, shall be affected by the termination of the scheme or by it ceasing to be an approved scheme, or to be an exempt approved scheme.
- (3) References in this section to the employer include, where the employer is resident outside the United Kingdom, references to any branch or agent of the employer in the United Kingdom, and in this subsection “branch or agent” has the meaning given by section 118(1) of the Management Act.
- (4) This section does not apply for the purposes of sections 602 and 603 and Schedule 22.

607 Pilots' benefit fund

- (1) The Board may, if they think fit, and subject to such conditions as they think proper to attach to the approval, approve a pilots' benefit fund for the purposes of this Chapter as if it were a retirement benefits scheme and notwithstanding that it does not satisfy one or more of the conditions set out in section 590(2) and (3).
- (2) If a fund is approved by virtue of this section—
 - (a) sections 592, 597 to 600 and 604 to 606 shall have effect in relation to the fund with the modifications specified in subsection (3) below;
 - (b) pensions paid out of the fund and any sums chargeable to tax in connection with the fund under section 600 shall be treated for the purposes of the Income Tax Acts as earned income; and
 - (c) Chapter III of this Part shall have effect as if a member of the fund were the holder of a pensionable office or employment and his earnings as a pilot (estimated in accordance with the provisions of Case II of Schedule D) were remuneration from such an office or employment.
- (3) The modifications referred to in subsection (2)(a) above are as follows—
 - (a) in section 592, for the references in subsection (7) to an employee and Schedule E there shall be substituted respectively references to a member of the fund and Schedule D, and subsections (4) to (6), and in subsection (7) the words from “incurred” onwards, shall be omitted;
 - (b) in sections 597 to 606 (except sections 601 to 603)—
 - (i) for references to an employee there shall be substituted references to a member or former member of the fund;
 - (ii) in section 599(1)(a) for the reference to a year of service there shall be substituted a reference to a year as a pilot licensed by a pilotage authority or authorised by a competent harbour authority;
 - (iii) section 606(1) and (3) and so much of any other provision as applies to an employer shall be omitted; and
 - (iv) in section 600, for references to Schedule E there shall be substituted references to Case VI of Schedule D.
- (4) In this section “pilots' benefit fund” means a fund established under section 15(1)(i) of the Pilotage Act 1983 or any scheme supplementing or replacing any such fund.

608 Superannuation funds approved before 6th April 1980

- (1) This section applies to any fund which immediately before 6th April 1980 was an approved superannuation fund for the purposes of section 208 of the 1970 Act if—
 - (a) it has not been approved under this Chapter (or under Chapter II of Part II of the Finance Act 1970); and
 - (b) no sum has been paid to it by way of contribution since 5th April 1980.
- (2) Subject to subsection (3) below, exemption from income tax shall, on a claim being made in that behalf, be allowed to a fund to which this section applies in respect of—
 - (a) income derived from investments or deposits of the fund;
 - (b) any underwriting commissions which apart from this subsection would be chargeable to tax under Case VI of Schedule D; and
 - (c) any profits or gains which (apart from this subsection) would be chargeable to tax under Case VI of Schedule D by virtue of section 56(1)(a) and (2);
 if, or to such extent as the Board are satisfied that, the income, commissions, profits or gains are applied for the purposes of the fund.
- (3) No claim under subsection (2) above shall be allowed unless the Board are satisfied that the terms on which benefits are payable from the fund have not been altered since 5th April 1980.
- (4) An annuity paid out of a fund to which this section applies shall be charged to tax under Schedule E and section 203 shall apply accordingly.

609 Schemes approved before 23rd July 1987

Schedule 23 to this Act, which makes provision with respect to retirement benefit schemes approved before 23rd July 1987, shall have effect.

610 Amendments of schemes

- (1) This section applies to any amendment of a retirement benefits scheme proposed in connection with an application for the Board's approval for the purposes of this Chapter which is needed in order to ensure that approval is so given, or designed to enhance the benefits under the scheme up to the limits suitable in a scheme for which approval is sought.
- (2) A provision, however expressed, designed to preclude any amendment of a scheme which would have prejudiced its approval under section 208 or 222 of the 1970 Act shall not prevent any amendment to which this section applies.
- (3) In the case of a scheme which contains no powers of amendment, the administrator of the scheme may, with the consent of all the members of the scheme, and of the employer (or of each of the employers), make any amendment to which this section applies.

611 Definition of “retirement benefits scheme”

- (1) In this Chapter “retirement benefits scheme” means, subject to the provisions of this section, a scheme for the provision of benefits consisting of or including relevant benefits, but does not include any national scheme providing such benefits.

- (2) References in this Chapter to a scheme include references to a deed, agreement, series of agreements, or other arrangements providing for relevant benefits notwithstanding that it relates or they relate only to—
- (a) a small number of employees, or to a single employee, or
 - (b) the payment of a pension starting immediately on the making of the arrangements.
- (3) The Board may, if they think fit, treat a retirement benefits scheme relating to employees of two or more different classes or descriptions as being for the purposes of this Chapter two or more separate retirement benefits schemes relating respectively to such one or more of those classes or descriptions of those employees as the Board think fit.
- (4) For the purposes of this section, and of any other provision of this Chapter—
- (a) employees may be regarded as belonging to different classes or descriptions if they are employed by different employers; and
 - (b) a particular class or description of employee may consist of a single employee, or any number of employees, however small.
- (5) Without prejudice to subsections (3) and (4) above, the Board may continue to treat as two different schemes, for the purposes of this Chapter, any retirement benefits scheme which, in pursuance of paragraph 5 of Schedule 3 to the Finance Act 1971 (schemes in existence before 5th April 1973), they treated, immediately before the coming into force of this Chapter, as two separate schemes for the purposes of Chapter II of Part II of the Finance Act 1970.

612 Other interpretative provisions, and regulations for purposes of this Chapter

- (1) In this Chapter, except where the context otherwise requires—
- “administrator”, in relation to a retirement benefits scheme, means the person or persons having the management of the scheme;
 - “approved scheme” means a retirement benefits scheme for the time being approved by the Board for the purposes of this Chapter;
 - “director” in relation to a company includes—
 - (a) in the case of a company the affairs of which are managed by a board of directors or similar body, a member of that board or body,
 - (b) in the case of a company the affairs of which are managed by a single director or similar person, that director or person,
 - (c) in the case of a company the affairs of which are managed by the members themselves, a member of that company;and includes a person who is to be or has been a director;
 - “employee”—
 - (a) in relation to a company, includes any officer of the company, any director of the company and any other person taking part in the management of the affairs of the company, and
 - (b) in relation to any employer, includes a person who is to be or has been an employee;and “employer” and other cognate expressions shall be construed accordingly;
 - “exempt approved scheme” has the meaning given by section 592(1);

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

“final remuneration” means the average annual remuneration of the last three years' service;

“pension” includes annuity;

“the permitted maximum” has the meaning given by section 590(3);

“relevant benefits” means any pension, lump sum, gratuity or other like benefit given or to be given on retirement or on death, or in anticipation of retirement, or, in connection with past service, after retirement or death, or to be given on or in anticipation of or in connection with any change in the nature of the service of the employee in question, except that it does not include any benefit which is to be afforded solely by reason of the disablement by accident of a person occurring during his service or of his death by accident so occurring and for no other reason;

“remuneration” does not include—

- (a) anything in respect of which tax is chargeable under Schedule E and which arises from the acquisition or disposal of shares or an interest in shares or from a right to acquire shares; or
- (b) anything in respect of which tax is chargeable by virtue of section 148;

“service” means service as an employee of the employer in question and other expressions, including “retirement”, shall be construed accordingly; and

“statutory scheme” means a retirement benefits scheme established by or under any enactment—

- (a) the particulars of which are set out in any enactment, or in any regulations made under any enactment, or
- (b) which has been approved as an appropriate scheme by a Minister or government department (including the head of a Northern Ireland department or a Northern Ireland department).

- (2) Any reference in this Chapter to the provision of relevant benefits, or of a pension, for employees of an employer includes a reference to the provision of relevant benefits or a pension by means of a contract between the administrator or the employer or the employee and a third person; and any reference to pensions or contributions paid, or payments made, under a scheme includes a reference to pensions or contributions paid, or payments made, under such a contract entered into for the purposes of the scheme.
- (3) The Board may make regulations generally for the purpose of carrying the preceding provisions of this Chapter into effect.