

*These notes refer to the Child Support, Pensions and Social Security Act 2000 (c.19) which received Royal Assent on 28th July 2000*

# **CHILD SUPPORT, PENSIONS AND SOCIAL SECURITY ACT 2000**

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## **EXPLANATORY NOTES**

### ***Part II: Pensions***

#### ***Commentary on Sections***

#### ***Chapter II: Occupational and Personal Pension Schemes***

#### **Other provisions**

#### ***Schedule 5***

### **Part I: Miscellaneous Amendments**

#### ***Paragraph 1: Guaranteed minimum for widows and widowers***

597. These provisions amend section 17 of the Pension Schemes Act 1993 and are consequential upon the introduction of new bereavement benefits under the Welfare Reform and Pensions Act 1999\*. The relevant provisions in the 1999 Act are expected to be brought into force from 5 April 2001. Sub-paragraph (1) inserts new subsection (4A) in section 17.

*New subsection (4A)(a)* provides that the scheme must provide a Guaranteed Minimum Pension (GMP) for the widow or widower for any period for which a Category B pension is payable by virtue of the earner's contributions, or would have been payable but for the overlapping benefit provisions in section 43(1) of the Social Security Contributions and Benefits Act 1992. This restates the existing law.

*New subsection (4A)(b)* ensures that a GMP is payable for any period for which Widowed Parents Allowance (WPA) or Bereavement Allowance (BA) is payable to the widow or widower by virtue of the earner's contributions.

*New subsection (4A)(c)* ensures that where a person ceases to be entitled to WPA or BA when over 45, that person will still continue to receive a GMP, provided that he or she is not cohabiting with a person of the opposite sex and provided that he or she has not remarried. Currently, a person entitled to bereavement benefits (widowed mother's allowance or widow's pension) when over the age of 45 continues to receive those benefits, and accordingly a GMP, until state pension age, unless he or she remarries or cohabits with a person of the opposite sex. New subsection (4A)(c) thus preserves the current position as regards GMPs despite the fact that the position as regards entitlement to bereavement benefits is to change.

598. *Sub-paragraphs (2) and (3)* make minor amendments designed to ensure that people whose entitlement to bereavement benefits continues under the existing law also continue to be entitled to GMPs under the existing law.

***Paragraph 2: Transfer of rights to overseas personal pension schemes***

599. Section 1 of the Pensions Schemes Act 1993 provides a definition of a personal pension scheme, the scope of which is limited to schemes providing benefits to, or in respect of, persons employed in Great Britain. The effect of this is to prevent the transfer of protected rights or Guaranteed Minimum Pension rights to a personal pension scheme set up and administered wholly or primarily overseas. This paragraph amends sections 20 and 28 of the Pension Schemes Act 1993 in order to permit such rights to be transferred to overseas arrangements.

***Paragraph 3: Protected rights***

600. Protected rights are (subject to rare exceptions) that part of a member's fund within a personal pension or occupational money purchase scheme that is derived from the National Insurance contribution rebate.
601. Section 28 of the Pension Schemes Act 1993 provides that effect may only be given to protected rights in the way specified in that section. Section 28 permits effect to be given to protected rights by way of a lump sum only in limited circumstances and, in particular, not before the member has reached age 60.
602. **Paragraph 3** amends section 28 to insert a new subsection (4A) and (4B).

*New section 28(4A)* provides for effect to be given to a member's protected rights in an occupational pension scheme by way of a lump sum where the trustees or managers of the scheme are satisfied that the member, whatever his age, is terminally ill and likely to die within a year.

*New section 28(4B)* restricts the amount payable under subsection (4A) where the member is a married person on the date on which the lump sum becomes payable. The balance of the protected rights will then go to provide for survivors' benefits. The amount payable under this subsection is restricted to no more than a half of the member's protected rights.

***Paragraph 4: Review and alteration of rates of contribution***

603. This paragraph amends sections 42(1)(a)(i) and (3) of the Pension Schemes Act 1993 so that the cross-references to section 41 in these sections take account of the changes made to that section by paragraph 127 of Schedule 7 to the Social Security Act 1998.

***Paragraph 5: Contributions equivalent premiums***

604. **Paragraph 5(1)** substitutes subsection (4) and introduces a new subsection (4A) in section 58 in the Pension Schemes Act 1993 to ensure that Contributions Equivalent Premiums (CEPs) continue to be equivalent to the National Insurance contribution (NIC) rebate. The CEP is the amount that a contracted-out salary related scheme is required to pay in order for someone with less than two years' qualifying service in the scheme to be reinstated into the State Earnings Related Pension Scheme (SERPS).
605. At present, section 58(4) provides for the CEP to be the difference between the amount of Class 1 contributions payable in respect of the earner's contracted-out employment and the amount of those contributions that would have been payable had the employment not been contracted-out. This method of calculation ensures that CEPs relating to periods prior to April 1999 are equivalent to the contracted-out rebate. Following the introduction of a new Earnings Threshold (the level of earnings at which an employer becomes liable to pay Class 1 contributions) on 6 April 1999, the existing method of calculation no longer ensures that the CEP is equivalent to the rebate. All CEPs in respect of periods after 6 April 1999 would be lower than the rebate.

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*New section 58(4) and 58(4A)* ensure that the CEP will be equal to the amount of the NIC rebate payable in respect of contracting-out for periods after 6 April 1999 (as it is already for periods before 6 April 1999).

*New section 58(4A)* provides that where trivial or fractional amounts were not included in the calculation of the rebate they are not included in the calculation of the CEP.

606. **Paragraph 5(2)** amends subsection (2) of section 61 of the Pensions Schemes Act 1993 to ensure that the employee's share of the CEP continues to be equal to the actual reduction in his primary Class 1 contributions paid throughout the period of contracting-out.
607. At present, section 61(2) provides for the employee's share of the CEP to be based on the contracted-out rebate, which is currently equal to the actual reduction in the primary Class 1 contribution. When a new Primary Threshold (the level of earnings at which an employee will become liable to pay Class 1 contributions) is introduced on 6 April 2000, section 61(2) will permit schemes to recover from employees more than that actual reduction in certain cases.
608. **Paragraph 5(3)** substitutes a new paragraph (b) in section 63(1) of the Pensions Schemes Act 1993 so that the reference to section 58 in that paragraph takes account of the changes being made by paragraph 5(1).
609. **Paragraph 5(4)** ensures that the amendments made by paragraphs 5(1), 5(2) and 5(3) have effect in relation to any CEP payable on or after 6 April 1999.

***Paragraph 6: Contribution equivalent premiums: Northern Ireland***

610. This paragraph makes corresponding provision relating to the CEP for Northern Ireland.

***Paragraph 7: Use of cash equivalent for annuity***

611. Where a member of a contracted-out money purchase occupational pension scheme exercises his right to take a cash equivalent transfer value of his accrued rights, section 95(4) of the Pension Schemes Act 1993 prohibits the purchase of an annuity. A member may ask for the cash equivalent transfer value to be transferred to another suitable occupational pension scheme or an appropriate personal pension. This paragraph removes the prohibition on annuity purchase and gives the member a further option for the use of his cash equivalent transfer value.

***Paragraph 8: Transfer values where pension in payment***

612. Subject to limited exemptions, members of occupational pension schemes are prohibited from taking their pension before they actually retire or leave service. Inland Revenue has proposed to use their discretion so that occupational pension scheme members may receive all or part of their accrued pension while still continuing in pensionable employment. Scheme members taking up this option would lose their right to a cash equivalent transfer value, since section 98(7) of the Pension Schemes Act 1993 removes this right if any part of a pension is in payment.
613. This paragraph amends section 98(7) so that a member will be able to take a transfer of his rights which have not come into payment. It also amends section 97(2) to allow regulations to take account of the amount of pension already in payment when calculating a cash equivalent transfer value. The definition of pensioner member in section 124(1) of the Pensions Act 1995 is amended so as to exclude a person with pension rights accruing as an active member of a scheme.

***Paragraph 9: Information about contracting-out***

614. This paragraph substitutes a new section 156 in the Pension Schemes Act 1993 to make further provision for the information which may be supplied to pension scheme administrators in the light of changes made to contracting-out arrangements by the Pensions Act 1995. At present, section 156 allows the Secretary of State or the Inland Revenue to provide information to pension scheme administrators in connection with any Guaranteed Minimum Pension (GMP) or its calculation. As currently in force, section 156 does not apply to appropriate personal pension schemes (APPS) and specifically excludes occupational money purchase schemes (COMPS).

**New section 156: Information for purposes of contracting-out**

*New section 156(1)* enables the Secretary of State or the Inland Revenue to provide trustees or managers of any occupational pension scheme or APPS with the information they are likely to need to enable them to discharge their obligations under the contracting-out arrangements in Part III of the Pension Schemes Act 1993. This will include, for instance, the information which scheme administrators need to help them determine the correct level of contracting-out benefit.

*New section 156(2)* enables the Secretary of State or the Inland Revenue to provide the same information to other persons in categories specified in regulations and is currently provided for by section 156(b).

***Paragraph 10: Register of disqualified trustees***

615. Section 29(3) and (4) of the Pensions Act 1995 specify the circumstances in which Opra may disqualify a person from being a trustee of an occupational pension scheme. Section 30(7) of the Act requires Opra to keep a register of all persons it disqualifies (the register does not cover automatic disqualifications under section 29(1)). Opra must, where it receives a request to do so, disclose whether a person named in the request is included in the register as being disqualified in respect of the particular scheme named in the request. This means that Opra may only answer “yes” or “no” to the enquiry and cannot volunteer other information which may be relevant. There is also no requirement for the register to be open to public inspection.
616. This paragraph inserts a requirement for Opra to make the register available for inspection in person by the public. It expands on the requirement for Opra to respond to requests. Opra still cannot volunteer information, but, if requested to do so, it must disclose whether a person named in the request is disqualified in respect of a scheme specified in the request or in respect of *all* schemes. It also allows Opra to publish, in a medium of its choosing, lists of those who appear on the register, and the fact that they are disqualified from being a trustee of all schemes, some schemes or a single scheme. The full name (including initials and titles) and date of birth must be listed if the Authority has a record of them, even if those matters are not recorded in the register itself. The schemes themselves will not be named.
617. This will provide easier access to the register for those responsible for appointing trustees and will thus reduce the risk of disqualified people being appointed as trustees. A person’s name will not be published in respect of any particular disqualification until either time limits for appeals and for applications to review that disqualification decision are passed, or (where the time limit has not passed) it is unlikely that there will be an appeal or application for review, or where an appeal or review is pending.

***Paragraph 11: Conditions of payment of surplus to an employee***

618. This paragraph makes technical changes to section 37(4)(d) of the Pensions Act 1995 and will allow occupational pension schemes that are making payments from surplus funds to an employer to use their own scheme rules to make increases to pensioner members from the surplus. Occupational pension schemes which have pension funds

which are surplus to liabilities are required to take steps to reduce the surplus. If the employer wants to take a refund, the scheme must first award increases to pensioner members' pensions. These amendments will allow schemes to avoid recalculating increases which have already been granted, under scheme rules. Pensioner members will not suffer any financial loss as a result of the proposed changes.

***Paragraph 12: Duties relating to statements of contributions***

619. The trustees or managers of every occupational pension scheme are required to appoint an auditor to obtain audited accounts and a statement about the prompt payment of contributions under the scheme during the preceding scheme year. In an “earmarked scheme” (which is a money purchase occupational scheme under which all the benefits provided are secured by one or more contracts of insurance, or by annuity contracts which are specifically allocated to the provision of benefits to, or in respect of, individual members) the auditor is only under a statutory obligation to produce a statement about contributions.
620. This paragraph replaces section 41(5) of the Pensions Act 1995 to enable regulations to be made permitting earmarked schemes to obtain a statement about contributions from a prescribed person or body as an alternative to the scheme appointing an auditor for this purpose. The existing section 41(5)(a) provides for regulations to prescribe the persons who may act as auditors or actuaries. The substituted paragraph will have the same effect. The *new subsection (5A)* enables regulations to be made which impose a duty on the trustees or managers of earmarked schemes to provide the person making the statement about contributions with sufficient information to enable them to do so. The *new subsection (5B)* allows for the imposition of civil penalties by Opra on any trustee or manager of an earmarked scheme who fails to provide the information which they are required to provide by regulations made under subsection (5A).
621. The paragraph also amends section 88 of the Pensions Act 1995. The *new subsection (5)* places a duty on the person providing the statement to report to Opra if contributions have not been paid on time during the course of the scheme year. The *new subsection (6)* provides that Opra may impose a civil sanction on any person who fails to make such a report within the time limit set out in regulations.