Conditions for approval of schemes and discretionary approval. FA72 s15(1) to (7); FA74 s64(1); FA92 s6(a); FA96 s131(2) and Sch5 PtII; FA97 s146(1) and Sch9 PtI par5(1) 772.—(1) Subject to this section, the Revenue Commissioners shall approve any retirement benefits scheme for the purposes of this Chapter if it satisfies all of the prescribed conditions, namely—

(a) the conditions set out in subsection (2), and

(b) the conditions as respects benefits set out in subsection (3).

(2) The conditions referred to in subsection (1) (a) are—

(a) that the scheme is bona fide established for the sole purpose of providing relevant benefits in respect of service as an employee, being benefits payable to, or to the widow or widower, children or dependants or personal representatives of, the employee;

(b) that the scheme is recognised by the employer and employees to whom it relates, and that every employee who is or has a right to be a member of the scheme has been given written particulars of all essential features of the scheme which concern the employee;

(c) that there is a person resident in the State who will be responsible for the discharge of all duties imposed on the administrator of the scheme under this Chapter;

(d) that the employer is a contributor to the scheme;

(e) that the scheme is established in connection with some trade or undertaking carried on in the State by a person resident in the State;

(f) that no amount can be paid, whether during the subsistence of the scheme or later, by means of repayment of an employee's contributions under the scheme.

(3) The conditions as respects benefits referred to in subsection (1) (b) are—

(a) that any benefit for an employee is a pension on retirement at a specified age not earlier than 60 years and not later than 70 years, or on earlier retirement through incapacity, which does not exceed one-sixtieth of the employee's final remuneration for each year of service up to a maximum of 40 years;

(b) that any pension for any widow or widower of an employee who dies before retirement shall be a pension payable on the employee's death of an amount that does not exceed two-thirds of any pension or pensions which, consonant with the condition in paragraph (a), could have been provided for the employee on retirement on attaining the specified age, if the employee had continued to serve until the employee attained that age at an annual rate of remuneration equal to the employee's final remuneration;

(c) that any lump sums provided for any widow or widower, children, dependants or personal representatives of an employee who dies before retirement shall not exceed in the aggregate 4 times the employee's final remuneration;

(d) that any benefit for any widow or widower of an employee payable on the employee's death after retirement is a pension such that the amount payable to the widow or widower does not exceed two-thirds of any pension or pensions payable to the employee;

(e) that any pensions for the children or dependants of an employee who dies before retirement or on the employee's death after retirement shall not exceed in the aggregate one-half of the pension specified in paragraph (b) or (d), as the case may be;

(f) that no pension is capable in whole or in part of surrender, commutation or assignment, except in so far as the scheme allows an employee on retirement to obtain by commutation of the employee's pension a lump sum or sums not exceeding in all three-eightieths of the employee's final remuneration for each year of service up to a maximum of 40 years;

(g) that no other benefits are payable under the scheme.

(4) (a) The Revenue Commissioners may if they think fit having regard to the facts of a particular case and subject to such conditions, if any, as they think proper to attach to the approval, approve a retirement benefits scheme for the purposes of this Chapter, notwithstanding that it does not satisfy one or more of the prescribed conditions.

(b) The Revenue Commissioners may in particular approve by virtue of this subsection a scheme which—

(i) exceeds the limits imposed by the prescribed conditions as respects benefits for less than 40 years' service,

(ii) allows benefits to be payable on retirement within 10 years of the specified age or on earlier incapacity,

(iii) provides for the return in certain contingencies of employees' contributions and payment of interest (if any) on the contributions, or

(iv) relates to a trade or undertaking carried on only partly in the State and by a person not resident in the State.

(5) Where in the opinion of the Revenue Commissioners the facts concerning any scheme or its administration cease to warrant the continuance of their approval of the scheme, they may at any time, by notice in writing to the administrator, withdraw their approval on such grounds, and from such date, as may be specified in the notice.

(6) Where an alteration has been made in a retirement benefits scheme, no approval given as regards the scheme before the alteration shall apply after the date of the alteration unless the alteration has been approved by the Revenue Commissioners.

(7) For the purpose of determining whether a retirement benefits scheme, in so far as it relates to a particular class or description of employees, satisfies or continues to satisfy the prescribed conditions, that scheme shall be considered in conjunction with any other retirement benefits scheme or schemes relating to employees of that class or description, and, if those conditions are satisfied in the case of both or all of those schemes taken together, they shall be taken to be satisfied in the case of each of them but otherwise those conditions shall be taken to be satisfied in the case of none of them.