STATUTORY RULES OF NORTHERN IRELAND

2000 No. 146

The Pension Sharing (Pension Credit Benefit) Regulations (Northern Ireland) 2000

Part II

Pension Credit Benefit Under Occupational Pension Schemes

Commutation of the whole of pension credit benefit

3.—(1) Subject to paragraphs (3) and (4) and regulation 9 of the Safeguarded Rights Regulations (ways of giving effect to safeguarded rights—salary related schemes), the circumstances in which the whole of the pension credit benefit may be commuted for the purposes of section 97C(2)[1] (payment of pension credit benefit in the form of a lump sum before normal benefit age) are those described in paragraph (2).

(2) The circumstances described in this paragraph are that—

(a) the person entitled to the pension credit benefit is suffering from serious ill health prior to normal benefit age, or

(b) the aggregate of total benefits payable to the person under an occupational pension scheme, including any pension credit benefit, does not exceed £260 per annum.

(3) This regulation does not apply to an occupational pension scheme which is approved under section 590 of the Taxes Act (mandatory approval).

(4) In this regulation, "serious ill health" means ill health which is such as to give rise to a life expectancy of less than one year from the date on which commutation of the pension credit benefit is applied for.

Commutation of part of pension credit benefit

4.—(1) Subject to paragraphs (2) and (3) and regulation 9 of the Safeguarded Rights Regulations, the circumstances in which part of the pension credit benefit may be commuted for the purposes of section 97C(2) are—

(a) that the person entitled to pension credit benefit—

(i) subject to paragraph (2), is suffering from an incapacity prior to normal benefit age, or

(ii) has reached the age of 50, and

(b) that the commutation would not prevent approval or continuing approval of the scheme under section 591 of the Taxes Act (discretionary approval).

(2) Paragraph (1)(*a*)(i) applies where the person entitled to the pension credit benefit—

(**1**) Section 97C is inserted by Article 34 of the Welfare Reform and Pensions (Northern Ireland) Order 1999

(a) is an active member of the occupational pension scheme in which his pension credit rights are held, and

(b) has become entitled to the early payment of benefits derived from his accrued rights, other than his pension credit rights, in that scheme as a result of his incapacity prior to normal benefit age.

(3) Safeguarded rights which are held in a money purchase contracted-out scheme shall not be commuted where the circumstances specified in paragraph (1)(*a*) apply.

(4) This regulation does not apply to an occupational pension scheme which is approved under section 590 of the Taxes Act.

Means of assuring pension credit benefit

5.—(1) The prescribed means by which a person's pension credit benefit under a scheme must be assured for the purposes of section 97D(1)(*b*)(**2**) (form of pension credit benefit and its alternatives) is by means of a transaction to which section 15 (discharge of liability where guaranteed minimum pensions are secured by insurance policies or annuity contracts) applies.

(2) A transaction referred to in paragraph (1) must satisfy the requirements of regulation 12, 13 or 14 (discharge of liability where pension credit benefit or alternative benefits are secured by insurance policies or annuity contracts, conditions on which pension credit benefit secured by insurance policies and annuity contracts may be commuted, or other requirements applying to insurance policies and annuity contracts).

(3) Where a transaction referred to in paragraph (1) applies, the insurance policy must be taken out, or the annuity contract must be entered into, with an insurance company which is—

(a) authorised under section 3 or 4 of the Insurance Companies Act 1982(**3**) (authorisation of insurance business) to carry on long term business (within the meaning of section 1 of that Act(**4**) (classification));

(b) in the case of a friendly society, authorised under section 32 of the Friendly Societies Act 1992(**5**) (grant of authorisation by Commission: general) to carry out long term business under any of the Classes specified in Head A of Schedule 2 to that Act (activities of a friendly society: long term business), or

(c) an EC company as defined in section 2(6) of the Insurance Companies Act 1982(**6**) (restriction on carrying on insurance business), and which falls within paragraph (4).

(4) An EC company falls within this paragraph if it—

(a) carries on ordinary long-term insurance business (within the meaning of section 96(1) of the Insurance Companies Act 1982(**7**)) in the United Kingdom through a branch in respect of which such of the requirements of Part I of Schedule 2F to that Act(**8**) (recognition in the United Kingdom of EC and EFTA companies: EC companies carrying on business etc. in the United Kingdom) as are applicable have been complied with, or

(b) provides ordinary long-term insurance in the United Kingdom and such of the requirements of Part I of Schedule 2F to that Act as are applicable have been complied with in respect of insurance.

(**2**) Section 97D is inserted by Article 34 of the Welfare Reform and Pensions (Northern Ireland) Order 1999
(**3**) 1982 c. 50
(**4**) Section 1 was amended by S.I.1990/1159
(**5**) 1992 c. 40; section 32(4) was substituted by regulation 4 of S.I. 1994/1984
(**6**) Section 2(6) was inserted by regulation 4(2) of S.I. 1994/1696
(**7**) There are amendments to this section which are not relevant to these Regulations
(**8**) Schedule 2F was inserted by regulation 45 of S.I. 1994/1696

Alternatives to pension credit benefit

6.—(1) The prescribed alternatives to pension credit benefit which a scheme may provide for the purposes of section 97D(2) are described in regulations 7 to 9.

(2) For the purposes of section 97D(4)(*b*), the cases in which the alternatives described in regulations 7 to 9 may be provided without the consent of the person entitled to the benefit are described in regulations 7(4) and 8(4).

Early retirement or deferred retirement

7.—(1) Subject to paragraph (2), the scheme may provide benefits which are different from those required to constitute pension credit benefit in respect of the—

(a) amount;

(b) recipient, and

(c) time at which the benefits are payable.

(2) The benefits referred to in paragraph (1) must include a benefit that is payable to the person entitled to the pension credit benefit.

(3) The benefit of the person entitled to the benefit must not be payable before normal benefit age except in the circumstances referred to in regulation 3 or 4 (commutation of the whole of pension credit benefit, or commutation of part of pension credit benefit).

(4) Benefits consisting of, or including, a benefit that becomes payable to the person entitled to the benefit before normal benefit age may be provided without that person's consent where—

(a) that person's earning capacity is destroyed or seriously impaired by incapacity or serious ill health, and

(b) in the opinion of the trustees or managers of the scheme, the person entitled to the benefit is incapable of deciding whether it is in his interests to consent.

(5) Any scheme rule that allows the alternative described in this regulation must require the trustees or managers of the scheme to be reasonably satisfied that, when the benefit of the person entitled to the benefit becomes payable, the total value of the benefits to be provided under this regulation is at least equal to the amount described in regulation 11 (value of alternatives to pension credit benefit).

(6) In this regulation, "serious ill health" means ill health which is such as to give rise to a life expectancy of less than one year from the date on which the benefit of the person entitled to the pension credit becomes payable.

Bought out benefits

8.—(1) The scheme may provide for benefits different from those required to constitute pension credit benefit to be appropriately secured by a transaction to which section 15 applies (discharge of liability where guaranteed minimum pensions are secured by insurance policies or annuity contracts).

(2) Any scheme rule that allows the alternative described in this regulation must require the trustees or managers of the scheme to be reasonably satisfied that, except where paragraph (3) applies, the payment made to the insurance company is at least equal to the amount described in regulation 11.

(3) The exception to paragraph (2) is where the person entitled to the benefit is requiring the trustees or managers to provide the alternative by exercising his right to give a transfer notice under section 97F (power to give transfer notice).

(4) A scheme may allow the alternative described in this regulation to be provided without the consent of the person entitled to the pension credit where—

(a) the person entitled to the pension credit will be able to assign or surrender the insurance policy or annuity contract on the conditions set out in regulation 3 of the Occupational Pension Schemes (Discharge of Liability) Regulations (Northern Ireland) 1997(**9**) (conditions on which policies of insurance and annuity contracts may be assigned or surrendered), and

(b) the requirements of paragraph (5) are satisfied.

(5) The requirements of this paragraph are that—

(a) the scheme is being wound up, or

(b) the trustees or managers of the scheme consider that, in the circumstances, it is reasonable for the scheme to provide the alternative without the consent of the person entitled to the benefit and the requirements of paragraph (6) are satisfied.

(6) The requirements of this paragraph are that all the conditions set out in sub-paragraphs (*a*) and (*b*) are satisfied, namely—

(a) the trustees or managers of the scheme give the person entitled to the benefit at least 30 days' written notice of their intention to take out the insurance policy or enter into the annuity contract unless the person entitled to the benefit exercises a right to give a transfer notice under section 97F (the first mentioned notice being sent to that person at his last known address or delivered to that person personally), and

(b) when the trustees or managers of the scheme agree with the insurance company to take out the insurance policy or enter into the annuity contract, there is no outstanding transfer notice by the person entitled to the benefit under section 97F.

(7) For the purposes of this regulation "appropriately secured" means secured by an insurance policy or annuity contract to which regulation 5 applies.

Money purchase benefits

9.—(1) The scheme may, with the consent of the person entitled to the benefit, provide money purchase benefits instead of all or any of the benefits that constitute pension credit benefit.

(2) Any scheme rule which allows this alternative must require the trustees or managers of the scheme to be reasonably satisfied that the amount allocated to provide money purchase benefits in respect of the person entitled to the benefit is at least equal to the amount described in regulation 11.

Transfer of a person's pension credit rights without consent

10.—(1) For the purposes of section 97D(4) (form of pension credit benefit and its alternatives), the trustees or managers of an occupational pension scheme may provide for a person's pension credit rights under that scheme to be transferred to another occupational pension scheme without that person's consent where the conditions set out in paragraphs (2) and either (3) or (7), as the case may be, are satisfied.

(2) The condition set out in this paragraph is that the trustees or managers of the transferring scheme consider that, in the circumstances, it is reasonable for the transfer to be made without the person's consent and the requirements of paragraph (5) are satisfied.

(3) The condition set out in this paragraph is that, subject to paragraph (6), a relevant actuary certifies to the trustees or managers of the transferring scheme that—

(a) the transfer credits to be acquired for each person with pension credit rights under the receiving scheme are, broadly, no less favourable than the rights to be transferred, and

(**9**) S.R. 1997 No. 159, to which there are amendments not relevant to these regulations

(b) where it is the established custom for discretionary benefits or increases in benefits to be awarded under the transferring scheme, there is good cause to believe that the award of discretionary benefits or increases in benefits under the receiving scheme will (making allowance for any amount by which transfer credits under the receiving scheme are more favourable than the rights to be transferred) be broadly no less favourable.

(4) For the purpose of paragraph (3)(*b*), the relevant actuary shall, in considering whether there is good cause, have regard to all the circumstances of the case and in particular—

(a) to any established custom of the receiving scheme with regard to the provision of discretionary benefits or increases in benefits, and

(b) to any announcements made with regard to the provision of such benefits under the receiving scheme.

(5) The requirements of this paragraph are that all the conditions set out in sub-paragraphs (*a*) and (*b*) are satisfied, namely—

(a) the trustees or managers of the scheme give the person with pension credit rights at least 30 days' written notice of their intention to transfer those rights to another occupational pension scheme unless the person with those rights exercises a right to give a transfer notice under section 97F (the first mentioned notice being sent to that person at his last known address or delivered to that person personally), and

(b) when the trustees or managers of the scheme agree with the trustees or managers of the receiving scheme to transfer those rights, there is no outstanding transfer notice by the person with pension credit rights under section 97F.

(6) Paragraph (3) does not apply where the whole of the pension credit rights to be transferred are derived from rights accrued in a money purchase scheme.

(7) The condition set out in this paragraph is that any scheme rule which allows the transfer of a person's pension credit rights derived from rights accrued in a money purchase scheme without the consent of the person with those rights must require the trustees or managers of the scheme to be reasonably satisfied that the amount transferred is at least equal to the amount described in regulation 11.

(8) In this regulation—

"relevant actuary" means—

(a) where the transferring scheme is a scheme for which an actuary is required under Article 47 (professional advisers) to be appointed, the individual for the time being appointed in accordance with paragraph (1) of that Article as actuary for that scheme;

(b) in any other case, a Fellow of the Institute of Actuaries, a Fellow of the Faculty of Actuaries(**10**), or a person with other actuarial qualifications who is approved by the Department, at the request of the trustees or managers of the scheme, as being a proper person to act for the purposes of this regulation in connection with the scheme.

Value of alternatives to pension credit benefit

11. The amount referred to in regulations 7, 8 and 9 is an amount equal to the value of the benefits (or, where the alternative is provided by way of partial substitute for pension credit benefit, the relevant part of the benefits) that have accrued to or in respect of the person entitled to the benefit.

(**10**) The Institute of Actuaries is at Staple Inn Hall, High Holborn, London WC1V 7QJ. The Faculty of Actuaries is at Maclaurin House, 18 Dublin Street, Edinburgh EH1 3PP

Discharge of liability where pension credit benefit or alternative benefits are secured by insurance policies or annuity contracts

12. The requirements which must be met for the purposes of section 97E(1)(*c*) (discharge of liability where pension credit or alternative benefits are secured by insurance policies or annuity contracts) are those described in regulations 13 and 14.

Conditions on which pension credit benefit secured by insurance policies and annuity contracts may be commuted

13. Pension credit benefit secured by an insurance policy or an annuity contract may be commuted if it satisfies the requirements of regulation 3 or 4 (commutation of the whole of pension credit benefit, or commutation of part of pension credit benefit).

Other requirements applying to insurance policies and annuity contracts

14. The requirements described in this regulation are—

(a) that the insurance company with which the insurance policy is taken out or the annuity contract entered into assumes an obligation to the person entitled to the benefit or to the trustees of a trust for the benefit of the person entitled to the benefit and, if appropriate, dependants of his, to pay the benefits secured by that policy or contract to him or, as the case may be, to dependants of his, or to the trustees of such a trust, and

(b) that the insurance policy or annuity contract contains, or is endorsed with, terms so as to provide for any increase, which would have been applicable as a consequence of Article 37 of the 1999 Order (indexation: other pension schemes) had the discharge of liability of the pension credit benefit, or its alternative, not taken place, to apply to the benefits which have become secured or been replaced by that policy or contract.

Further conditions on which liability may be discharged

15.—(1) Section 97E(1)(*b*) (transactions with the consent of the person entitled to the benefit which discharge liability where pension credit or alternative benefits secured by insurance policies or annuity contracts) shall not apply in the circumstances described in paragraph (2), (3), (4) or (5).

(2) The circumstances described in this paragraph are that—

(a) the person entitled to the benefit is dead and the benefit is payable to a person other than his widow or widower, and

(b) the arrangement for securing the pension credit benefit or its alternative was made at the request of the person entitled to it.

(3) The circumstances described in this paragraph are that the benefit is provided as an alternative to pension credit benefit by virtue of regulation 8(4) (bought out benefits without consent).

(4) The circumstances described in this paragraph are that—

(a) the scheme is being wound up;

(b) Articles 73 and 74(**11**) (preferential liabilities on winding up, and discharge of liabilities by insurance, etc.) and the Winding Up Regulations do not apply;

(c) the person entitled to the benefit is able to assign or surrender the insurance policy or the annuity contract, and

(d) the condition set out in section 97E(1)(*a*) is satisfied.

(**11**) Article 73 was modified by regulation 3 of S.R. 1996 No. 621 (as amended by regulation 9 of S.R. 1999 No. 486) and amended by Article 35(1) of, and paragraph 44 of Schedule 9 to, the Welfare Reform and Pensions (Northern Ireland) Order 1999. Article 74 is amended by paragraph 45 of Schedule 9 to that Order. *See also* Article 11 of S.R. 1997 No. 192 (C. 10)

(5) The circumstances described in this paragraph are that—

(a) the trustees or managers of the scheme consider that, in the circumstances, it is reasonable for the scheme to provide the alternative without the consent of the person entitled to the benefit;

(b) the trustees or managers of the scheme give the person entitled to the benefit at least 30 days' written notice of their intention to take out the insurance policy or enter into the annuity contract, unless the person entitled to the benefit exercises a right to give a transfer notice under section 97F (power to give transfer notice) (the first mentioned notice being sent to that person at his last known address or delivered to that person personally), and

(c) when the trustees or managers of the scheme agree with the insurance company to take out the insurance policy or enter into the annuity contract, there is no outstanding transfer notice given by the person entitled to the benefit under section 97F.

(6) The payment made to the insurance company in the circumstances described in paragraph (5) must be at least an amount equal to the value of the pension credit benefit which has accrued to the person entitled to the benefit at the date the payment is made.