

---

STATUTORY INSTRUMENTS

---

**1991 No 167**

**PENSIONS**

**The Occupational Pension Schemes  
(Preservation of Benefit) Regulations 1991**

*Made* - - - - *1st February 1991*  
*Laid before Parliament* *7th February 1991*  
*Coming into force* - - *28th February 1991*

The Secretary of State for Social Security, in exercise of the powers conferred by sections 51(5) and (10), 64(1A), 96(1) and (2) and 99(1) and (3) of, and paragraphs 5(1), 6(5), 9(1), (2) and (3), 12(2), 13(5), 15(4) and 20 to 26 of Schedule 16 to, the<sup>M1</sup> Social Security Act 1973, section 6(4) of the<sup>M2</sup> National Insurance Act 1974, sections 166(1) to (3A) and 168(1) of, and Schedule 20 to, the<sup>M3</sup> Social Security Act 1975 and sections 52C(5), 56P, 62(4) and 66(2) and (3) of, and paragraphs 14(3) and 20 of Schedule 1A to, the<sup>M4</sup> Social Security Pensions Act 1975, and of all other powers enabling him in that behalf, after considering the report of the Occupational Pensions Board on the proposals submitted to them<sup>M5</sup>, hereby makes the following Regulations:

**Marginal Citations**

- M1** 1973 c. 38. Section 51(5) was amended by Schedule 5 of the [Social Security Pensions Act 1975 \(c. 60\)](#). See the definition of "prescribed" in section 99(1) and the explanation of "regulations" in section 99(3). Schedule 16 has been amended by subsequent Social Security Acts and modified by the [Personal and Occupational Pension Schemes \(Modification of Enactments\) Regulations 1987 \(S.I. 1987/1116\)](#).
- M2** 1974 c. 14
- M3** 1975 c. 14. See definitions of "prescribe" and "regulations" in Schedule 20. Sections 166(1) to (3A) and 168(1) apply, by virtue of section 66(2) of the [Social Security Pensions Act 1975 \(c. 60\)](#), to the exercise of certain powers conferred by that Act.
- M4** 1975 c. 60. Section 56P was inserted by section 11 of the [Social Security Act 1986 \(c. 50\)](#). Schedule 1A was inserted by paragraph 3 of Schedule 1 to the [Social Security Act 1985 \(c. 53\)](#). The only relevant amendment to Schedule 1A was made by paragraph 30(d)(iii) of Schedule 10 to the Social Security Act 1986 which substituted a new paragraph 14(3)(b).
- M5** See section 68(1) of the Social Security Act 1973 and section 61(2) of the Social Security Pensions Act 1975.

### Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991.

(2) These Regulations come into force on 28th February 1991.

[<sup>F1</sup>(3) In these Regulations, unless the context otherwise requires—

“the Act” means the Pension Schemes Act 1993;

“the 1995 Act” means the Pensions Act 1995;

<sup>F2</sup> ...

“scheme” means an occupational pension scheme.]

[<sup>F3</sup>(4) Any information or documents required to be furnished under these Regulations to a person, may be given in accordance with regulations 26 to 28 of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (giving information and documents).]

#### Textual Amendments

**F1** Reg. 1(3) substituted (6.4.97) by S.I. 1996/2131, **reg. 2(2)**

**F2** Words in **reg. 1(3)** omitted (13.1.2019) by virtue of The Occupational Pension Schemes (Cross-border Activities)(Amendment) Regulations 2018 (S.I. 2018/1102), regs. 1(2), **4(2)**

**F3** Reg. 1(4) added (6.4.2014) by The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (S.I. 2013/2734), reg. 1(1), **Sch. 9 para. 1(2)**

### Meaning of “employer”

2.—(1) This regulation applies for the purposes of [<sup>F4</sup>Chapter I of Part IV of the Act] (occupational pension schemes).

(2) In relation to an employed earner, “employer” means the secondary contributor in relation to any payment of earnings in respect of the employment concerned.

(3) In relation to a self-employed earner, “employer” means any other person, government department, public authority or body of persons who has made, or is to make, payments to the scheme in respect of the earner.

(4) In this regulation, “employed earner” and “self-employed earner” mean the same as in section 2 of the Social Security Act 1975 (categories of earners) and “secondary contributor” means the same as in section 4 of that Act (Class 1 contributions-incidence).

#### Textual Amendments

**F4** Words in reg. 2(1) substituted (12.5.1994) by The Occupational and Personal Pension Schemes (Consequential Amendments) Regulations 1994 (S.I. 1994/1062), reg. 1(2), **Sch. 2 para. 30(3)**

### Meaning of “member” and “prospective member”

3.—(1) This regulation applies for all the purposes of [<sup>F5</sup>Chapter I of Part IV of the Act].

[<sup>F6</sup>(2) There are to be regarded as members of an occupational pension scheme any persons who—

(a) are in pensionable service under the scheme;

(b) have rights under the scheme by virtue of such pensionable service; or

- (c) have rights under the scheme by virtue of having been allowed transfer credits under the scheme.
- (3) There are to be regarded as prospective members of an occupational pension scheme—
  - (a) any persons who are able, at their own option, to become members of the scheme, and
  - (b) any persons who under the terms of their contracts of service and the scheme rules will become so able, if they continue in the same employment for a sufficiently long period.]

#### Textual Amendments

- F5** Words in reg. 3(1) substituted (12.5.1994) by [The Occupational and Personal Pension Schemes \(Consequential Amendments\) Regulations 1994 \(S.I. 1994/1062\)](#), reg. 1(2), **Sch. 2 para. 30(3)**
- F6** Reg. 3(2)(3) substituted (28.9.92) by [S.I. 1992/1531](#), **reg. 34**

#### Benefits included in supplementary credits

4.—(1) For the purposes of [<sup>F7</sup>section 75(1)(c) of the Act], in the circumstances set out in paragraph (2) below, “supplementary credits” include any increase of benefit or additional benefit that is of an amount, or at a rate, unrelated to length of pensionable service or to the number or amount of contributions paid by or for the member.

(2) The circumstances referred to in paragraph (1) are that the member becomes entitled to the increase of benefit or additional benefit in consequence of a provision made by or under the scheme after he becomes a member of it and before his pensionable service terminates.

#### Textual Amendments

- F7** Words in reg. 4(1) substituted (12.5.1994) by [The Occupational and Personal Pension Schemes \(Consequential Amendments\) Regulations 1994 \(S.I. 1994/1062\)](#), reg. 1(2), **Sch. 2 para. 30(4)**

#### Short service benefit in lump sum form

[<sup>F8</sup>5. For the purposes of section 71(6) of the Act (basic principle as to short service benefit), the circumstances in which the trustees or managers of a scheme may provide for payment of short service benefit in the form of a lump sum before normal pension age are that the payment of a lump sum—

- (a) to the member is permitted in accordance with paragraph (a), (b), [<sup>F9</sup>(ba),] (e), (f) or (g) of the lump sum rule in section 166(1) of the Finance Act 2004 (lump sum rule); or
- (b) is—
  - (i) made by a registered pension scheme (within the meaning given in section 150(2) of the Finance Act 2004 (meaning of “pension scheme”));
  - (ii) a payment that is described in Part 2 of the Registered Pension Schemes (Authorised Payments) Regulations 2009; and
  - (iii) made to or in respect of a member.]

#### Textual Amendments

- F8** Reg. 5 substituted (1.12.2009) by [Occupational and Personal Pension Schemes \(Authorised Payments\) Amendment Regulations 2009 \(S.I. 2009/2930\)](#), regs. 1, 2

**F9** Word in reg. 5(a) inserted (6.4.2015) by [The Occupational Pension Schemes \(Consequential and Miscellaneous Amendments\) Regulations 2015 \(S.I. 2015/493\)](#), regs. 1, 2

### Means of assuring short service benefit

6.—(1) For the purposes of [F10 section 73(1) of the Act], short service benefit that is not payable directly out of the resources of the scheme may be assured to the member by means of a transaction to which [F11 section 19 of the Act] (extinguishment of liability of scheme for pensions secured by insurance policies or annuity contracts) applies, and which satisfies the requirements of paragraph (2) of this regulation F12 ....

(2) A transaction satisfies the requirements of this paragraph if—

- (a) it results in the member’s short service benefit being secured by one or more policies of insurance or annuity contracts that are appropriate for the purposes of [F11 section 19 of the Act]; and
- (b) the member will be able to assign or surrender the insurance policies or annuity contracts on the conditions set out in [F13 regulation 3 of the Occupational Pension Schemes (Discharge of Liability) Regulations 1997] (conditions on which policies of insurance and annuity contracts may be assigned or surrendered).

(3) For the purposes of paragraph (2) of this regulation, a policy of insurance or annuity contract which is taken out or entered into with an authorised friendly society, but which otherwise satisfies the conditions for being “appropriate” for the purposes of [F11 section 19 of the Act], is to be treated as if it were appropriate for the purposes of that section [F14 provided the terms of such policy or contract are not capable of being amended, revoked or rescinded].

(4) In this regulation—

[F15 “friendly society” has the same meaning as in the Friendly Societies Act 1992 (including any society which by virtue of section 96(2) of that Act is to be treated as a registered friendly society within the meaning of that Act);

“authorised friendly society” means a friendly society which is authorised under section 32 of the Friendly Societies Act 1992 to carry on long term business under any of the Classes specified in Head A of Schedule 2 to that Act.]

#### Textual Amendments

- F10** Words in reg. 6(1) substituted (12.5.1994) by [The Occupational and Personal Pension Schemes \(Consequential Amendments\) Regulations 1994 \(S.I. 1994/1062\)](#), reg. 1(2), **Sch. 2 para. 30(6)(a)**
- F11** Words in reg. 6(1)(2)(3) substituted (12.5.1994) by [The Occupational and Personal Pension Schemes \(Consequential Amendments\) Regulations 1994 \(S.I. 1994/1062\)](#), reg. 1(2), **Sch. 2 para. 30(7)**
- F12** Words in reg. 6(1) omitted (1.2.96) by virtue of S.I. 1995/3067, **reg. 2(2)**
- F13** Words in reg. 6(2)(b) substituted (6.4.97) by S.I. 1997/786, **sch. 1**, para. 3(2)
- F14** Words in reg. 6(3) inserted (7.2.95) by S.I. 1995/35, **reg. 8(a)**
- F15** Words in reg. 6(4) substituted (7.2.95) by S.I. 1995/35, **reg. 8(b)**

### Alternatives to short service benefit

7.—(1) For the purposes of [F16 section 73(2) of the Act], a scheme may, instead of providing short service benefit, provide any of the alternatives to short service benefit described in regulations 8 to 10 below.

(2) The alternatives described in regulations 8 to 10 may be provided by way of complete or partial substitute for short service benefit, but (except in the cases specifically referred to) only with the member's consent.

<sup>F17</sup>(3) .....

<sup>F18</sup>(4) .....

**Textual Amendments**

**F16** Words in reg. 7(1) substituted (12.5.1994) by [The Occupational and Personal Pension Schemes \(Consequential Amendments\) Regulations 1994 \(S.I. 1994/1062\)](#), reg. 1(2), **Sch. 2 para. 30(8)**

**F17** Reg. 7(3) omitted (6.4.97) by virtue of [S.I. 1996/2131](#), reg. 1, **2(4)**

**F18** Reg. 7(4) omitted (6.4.97) by virtue of [S.I. 1996/2131](#), reg. 1, **2(4)**

**Early retirement or deferred retirement**

**8.—**(1) The scheme may provide benefits that are different from those required to constitute short service benefit as regards amount, recipient and the time at which they are payable. The benefits must, however, include a benefit that is payable to the member.

<sup>F19</sup>(2) The member's benefit must not be payable before normal pension age except in the circumstances where the member has either—

- (a) met the ill-health condition specified in paragraph 1 of Schedule 28 to the Finance Act 2004 (registered pension schemes – defined benefits and money purchase arrangements – ill health condition) immediately before he became entitled to the benefit under the scheme; or
- (b) attained normal minimum pension age as defined in section 279 of that Act (other definitions).]

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

- (a) the member's earning capacity is destroyed or seriously impaired by physical or mental infirmity, and
- (b) in the opinion of the trustees or managers of the scheme, the member is incapable of deciding whether it is in his interests to consent.

(4) 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 member's 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.

**Textual Amendments**

**F19** Reg. 8(2) substituted (6.4.2007) by [Occupational and Personal Pension Schemes \(Miscellaneous Amendments\) Regulations 2007 \(S.I. 2007/814\)](#), regs. 1, **3(3)**

**Bought out benefits**

**9.—**(1) The scheme may provide for benefits different from those required to constitute short service benefit to be appropriately secured by a transaction to which [<sup>F20</sup>section 19 of the Act] applies (extinguishment of liability of scheme for pensions secured by insurance policies or annuity contracts)<sup>F21</sup>....

(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) below 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 member is requiring the trustees or managers to provide the alternative by exercising a right to a cash equivalent, as described in [F22Chapter IV of Part IV of the Act] (transfer values).

(4) A scheme may allow the alternative described in this regulation to be provided without the member’s consent where—

- (a) the member will be able to assign or surrender the insurance policy or annuity contract on the conditions set out in [F23regulation 3 of the Occupational Pension Schemes (Discharge of Liability) Regulations 1997] (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 member has less than “5 years’ qualifying service” (as defined in paragraph 7 of Schedule 16 [F24to the Social Security Act 1973] immediately before the coming into force of section 10 of the M6 Social Security Act 1986 (changes to preservation requirements)) and the requirements of paragraph (6) are satisfied; or
- (c) [F25the trustees or managers of the scheme] consider that, in the circumstances, it is reasonable for the scheme to provide the alternative without the member’s consent and the requirements of paragraph (6) are satisfied.

(6) The requirements of this paragraph are that all the conditions set out in [F26sub-paragraphs (b), (c) and (d)] are satisfied, namely—

- F27(a) . . . . .
- (b) the insurance policy is taken out or the annuity contract entered into more than 12 months after the member’s pensionable service terminates;
- (c) the trustees or managers of the scheme give the member at least 30 days’ written notice of their intention to take out the insurance policy or enter into the annuity contract unless the member exercises a right to a cash equivalent, as described in [F22Chapter IV of Part IV of the Act] (the notice being sent to the member [F28in accordance with regulations 26 to 28 (giving information and documents) of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013] or delivered to the member personally); and
- (d) 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 application by the member for a cash equivalent.

(7) For the purposes of this regulation, “appropriately secured” means the same as in [F20section 19 of the Act] except that a policy of insurance or annuity contract which is taken out or entered into with an “authorised friendly society” (as defined for the purposes of regulation 6), but which otherwise satisfies the conditions for being “appropriate” for the purposes of [F20section 19], is to be treated as if it were appropriate for the purposes of that section.

#### Textual Amendments

- F20** Words in reg. 9(1)(7) substituted (12.5.1994) by [The Occupational and Personal Pension Schemes \(Consequential Amendments\) Regulations 1994 \(S.I. 1994/1062\)](#), reg. 1(2), **Sch. 2 para. 30(7)**
- F21** Words in reg. 9(1) omitted (1.2.96) by virtue of S.I. 1995.3067, reg. 2(3)
- F22** Words in reg. 9(3)(6)(c) substituted (12.5.1994) by [The Occupational and Personal Pension Schemes \(Consequential Amendments\) Regulations 1994 \(S.I. 1994/1062\)](#), reg. 1(2), **Sch. 2 para. 30(12)**
- F23** Words in reg. 9(4)(a) substituted (6.4.97) by S.I. 1997/786, **sch. 1**, para. 3(2)
- F24** Words in reg. 9(5)(b) inserted (12.5.1994) by [The Occupational and Personal Pension Schemes \(Consequential Amendments\) Regulations 1994 \(S.I. 1994/1062\)](#), reg. 1(2), **Sch. 2 para. 30(11)**
- F25** Words in reg. 9(5)(c) substituted (6.4.97) by S.I. 1996/2131, **reg. 2(3)**
- F26** Words in reg. 9(6) substituted (6.4.2012) by [The Pensions Act 2008 \(Abolition of Protected Rights\) \(Consequential Amendments\) Order 2011 \(S.I. 2011/1246\)](#), arts. 1(2)(a), **6(a)**
- F27** Reg. 9(6)(a) omitted (6.4.2012) by virtue of [The Pensions Act 2008 \(Abolition of Protected Rights\) \(Consequential Amendments\) Order 2011 \(S.I. 2011/1246\)](#), arts. 1(2)(a), **6(b)**
- F28** Words in reg. 9(6)(c) substituted (6.4.2014) by [The Occupational and Personal Pension Schemes \(Disclosure of Information\) Regulations 2013 \(S.I. 2013/2734\)](#), reg. 1(1), **Sch. 9 para. 1(3)**

#### Marginal Citations

- M6** 1986 c. 50. s. 10 came into force on 6th April 1988

### Money purchase benefits

**10.—(1)** The scheme may provide money purchase benefits instead of all or any of the benefits that constitute short service benefit.

(2) Any scheme rule that 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 member is at least equal to the amount described in regulation 11. The scheme rule must also require the trustees or managers of the scheme to calculate <sup>F29</sup> -

- (a) the money purchase benefits, when they become payable, in accordance with the terms of an insurance policy or annuity contract in which the amount allocated to provide the benefits is invested; or
- (b) a pension under the scheme derived from the money purchase benefits, on the basis of actuarial advice.]

#### Textual Amendments

- F29** Words in reg. 10(2) substituted (24.7.2014) by [The Pensions Act 2011 \(Transitional, Consequential and Supplementary Provisions\) Regulations 2014 \(S.I. 2014/1711\)](#), regs. 1(1), **27(2)** (with regs. 6, 41, 44(1), 47(1), 69(2), 72(1), 76(1)); coming into force immediately after s. 29 of 2011 c 19 - see S.I. 2014/1683, art. 2

### Value of alternatives to short service benefit

**11.—(1)** The amount referred to in regulations 8, 9, and 10 is an amount equal to the value of the benefits (or, where the alternative is provided by way of partial substitute for short service benefit, the relevant part of the benefits) that have accrued to or in respect of the member under the applicable rules.

(2) For the purposes of this regulation, “the applicable rules” means the same as in <sup>F30</sup>section 94(2) of the Act] (revaluation of pensions and transfer values).

**Textual Amendments**

**F30** Words in reg. 11(2) substituted (12.5.1994) by [The Occupational and Personal Pension Schemes \(Consequential Amendments\) Regulations 1994 \(S.I. 1994/1062\)](#), reg. 1(2), **Sch. 2 para. 30(14)**

**<sup>F31</sup>Further alternative to short service benefit - transfer to an overseas arrangement**

**11A.—**(1) For the purposes of section 73(2) of the Act (alternatives to short service benefit) a scheme may, instead of providing short service benefit, provide for the member’s accrued rights to be transferred, if the member consents, to an overseas arrangement.

(2) For the purposes of paragraph (1) “overseas arrangement” means a scheme or arrangement, other than an occupational pension scheme, which—

(a) has effect, or is capable of having effect, so as to provide benefits on termination of employment or on death or retirement to or in respect of earners; <sup>F32</sup>and]

<sup>F33</sup>(b) .....

(c) is administered wholly or primarily outside the United Kingdom.]

**Textual Amendments**

**F31** Reg. 11A inserted (6.4.97) by [S.I. 1996/2131](#), **reg. 2(6)**

**F32** Word in reg. 11A(2)(a) added (6.4.2012) by [The Pensions Act 2007 \(Abolition of Contracting-out for Defined Contribution Pension Schemes\) \(Consequential Amendments\) Regulations 2011 \(S.I. 2011/1245\)](#), regs. 1(2), **3(a)**

**F33** Reg. 11A(2)(b) and word omitted (6.4.2012) by virtue of [The Pensions Act 2007 \(Abolition of Contracting-out for Defined Contribution Pension Schemes\) \(Consequential Amendments\) Regulations 2011 \(S.I. 2011/1245\)](#), regs. 1(2), **3(b)**

**Further alternative to short service benefit – transfer to a European pensions institution without consent**

<sup>F34</sup>**11B.** .....

**Textual Amendments**

**F34** [Reg. 11B](#) omitted (13.1.2019) by virtue of [The Occupational Pension Schemes \(Cross-border Activities\)\(Amendment\) Regulations 2018 \(S.I. 2018/1102\)](#), regs. 1(2), **4(3)**

**Transfer of member’s accrued rights without consent**

**12.—**(1) <sup>F35</sup>Subject to paragraph (3A), for] the purposes of <sup>F36</sup>section 73(4) of the Act], a scheme may provide for the member’s accrued rights <sup>F37</sup>[which are not relevant money purchase rights] to be transferred to another occupational pension scheme (as described in <sup>F36</sup><sup>F38</sup>section 73(2)(a)(i) of the Act]) without the member’s consent where—

(a) the scheme is being wound up and the transfer is to another scheme that applies to employment with the same employer; or



(b) the conditions set out in paragraphs (2) and (3) of this regulation are satisfied.

[<sup>F39</sup>(1A) For the purposes of section 73(4) of the Act, a scheme may provide for a transfer payment to be made to another occupational or personal pension scheme (as described in [<sup>F40</sup>section 73(2) (a)] of the Act) without the member's consent where the conditions set out in paragraph (6) of this regulation are satisfied. ]

[<sup>F41</sup>(1B) For the purposes of section 73(2)(b) and (4)(b) of the Act, a scheme may provide for the member's relevant money purchase rights to be transferred to another occupational pension scheme without the member's consent where the conditions set out in one of paragraphs (7) to (9) are satisfied.]

[<sup>F42</sup>(2) The condition set out in this paragraph is that the rights of a member are being transferred from the transferring scheme to the receiving scheme and either—

(a) the transferring scheme and the receiving scheme [<sup>F43</sup>relate to persons who are or have been in] employment with the same employer; or

(b) the transferring scheme and the receiving scheme [<sup>F44</sup>relate to persons who are or have been in] employment with different employers, the member concerned is one of a group in respect of whom transfers are being made from the transferring scheme to the receiving scheme, and either—

(i) the transfer is a consequence of a financial transaction between the employers; or

(ii) [<sup>F45</sup>the employers are companies or partnerships bearing a relationship to each other in one of the ways described in paragraph (2A).]

[<sup>F46</sup>(2A) The relationships between the employers referred to in paragraph (2)(b)(ii) are—

(a) the employers are members of a group of companies consisting of a holding company and one or more subsidiaries within the meaning of section 1159(1) of the Companies Act 2006 (meaning of “subsidiary” etc.);

(b) the employers are—

[<sup>F47</sup>(i) the scheme's principal employer or controlling employer; and]

(ii) an employer subject to the rules of the scheme; or

(c) the employers are partnerships having at least half of their partners in common.]

[<sup>F48</sup>(3) The condition set out in this paragraph is that—

(a) the relevant actuary gives a certification, by completing the certificate in Schedule 3, in relation to the members' rights in the receiving scheme;

(b) the relevant actuary sends that certificate to the trustees or managers of the transferring scheme;

(c) the transfer takes place within 3 months of the date of the relevant actuary's signature in the certificate; and

(d) there are no significant changes to the benefits, data and documents used in making the certificate (see the benefits, data and documents specified in the certificate) by the date on which the transfer takes place.]

[<sup>F49</sup>(3A) A scheme may not provide for the member's accrued rights which are not relevant money purchase rights to be transferred to a collective money purchase scheme without the member's consent.]

[<sup>F50</sup>(4) For the purposes of [<sup>F51</sup>making the certification in paragraph 1 of the certificate in Schedule 3], where long service benefit in the transferring scheme is related to a member's earnings at, or in a specified period before, the time when he attains normal pension age then, in the case of

a member in pensionable service at the date of transfer, the value of the rights to be transferred shall be based on pensionable service (including any transfer credits) in the transferring scheme up to that date and projected final pensionable earnings.

(4A) For the purposes of [<sup>F52</sup>making the certification in paragraph 2 of the certificate in Schedule 3], the [<sup>F53</sup>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.]

[<sup>F54</sup>(4B) Where it is proposed that a member's accrued rights are to be transferred in accordance with this regulation, information about the proposed transfer and details of the value of the rights to be transferred (including rights in respect of death in service benefits and survivors' benefits) shall be furnished to the member not less than one month before the proposed transfer is due to take place.]

[<sup>F55</sup>(5) In this regulation “the relevant actuary” means—

- (a) where the transferring scheme is a scheme for which an actuary is required under section 47 of the Pensions Act 1995 to be appointed, the individual for the time being appointed in accordance with subsection (1) of that section as actuary for that scheme;
- (b) in any other case, a Fellow of the [<sup>F56</sup>Institute and Faculty of Actuaries] or a person with other actuarial qualifications who is approved by the Secretary of State, 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.]

[<sup>F57</sup>(6) The conditions set out in this paragraph are that—

- (a) the transferring scheme is or has been a stakeholder pension scheme, within the meaning of section 1 of the Welfare Reform and Pensions Act 1999 or Article 3 of the Welfare Reform and Pensions (Northern Ireland) Order 1999, and the receiving scheme is such a scheme;
- (b) the transferring scheme has commenced winding-up; and
- (c) the transfer payment is of an amount at least equal to the cash equivalent of the member's rights under the scheme, as calculated and verified in a manner consistent with regulations made under section 97 of the 1993 Act (calculation of cash equivalents). ]

[<sup>F58</sup>(7) The condition set out in this paragraph is that the receiving scheme is authorised under the Pension Schemes Act 2017.

(8) The conditions set out in this paragraph are that—

- (a) the transferring scheme employer and the receiving scheme employer are undertakings;
- (b) the transferring scheme employer is a group undertaking in relation to the receiving scheme employer; and
- (c) the member whose rights are to be transferred is a current or former employee of an undertaking which is a group undertaking in relation to the transferring scheme employer or the receiving scheme employer.

(9) The conditions set out in this paragraph are that—

- (a) within the year ending with the date of the transfer, the trustees of the transferring scheme have obtained and considered written advice in relation to the transfer from a person whom they reasonably believe to be qualified to give that advice by reason of that person's ability in, and practical experience and knowledge of, pension scheme management (“the appropriate adviser”); and

- (b) the trustees of the transferring scheme have determined that the appropriate adviser is independent of the receiving scheme after considering whether, during the year ending with the date on which the advice was provided, the appropriate adviser (or, where the appropriate adviser is an undertaking, a group undertaking in relation to the appropriate adviser) has—
- (i) received payment for services from the receiving scheme;
  - (ii) received payment from a service provider or a group undertaking in relation to a service provider; or
  - (iii) received payment from the receiving scheme employer or a group undertaking in relation to the receiving scheme employer.
- (10) Where an employer has the sole power to effect a transfer of a member’s accrued rights—
- (a) paragraph (9) has effect as if “member’s employer has” were substituted for “trustees of the transferring scheme have”; and
  - (b) the employer must confirm to the trustees of the transferring scheme that it has complied with paragraph (9) as so modified.
- (11) In this regulation—
- [<sup>F59</sup>“collective money purchase scheme” means a scheme or a section of a scheme which is a collective money purchase scheme for the purposes of Part 1 of the Pension Schemes Act 2021;]
- “controlling employer”, in relation to a scheme, is the employer that has the power to act on behalf of all employers in the scheme in relation to the scheme rules;
- “group undertaking” has the meaning given by section 1161(5) of the Companies Act 2006 (meaning of “undertaking” and related expressions);
- “principal employer”, in relation to a scheme, is the principal employer for the purposes of the scheme in accordance with the scheme rules;
- “receiving scheme employer” means the principal employer or controlling employer of the receiving scheme;
- “relevant money purchase rights” are rights to money purchase benefits, where the assets held for the purpose of providing those benefits do not include any guarantee or promise in relation to the amount of the benefits to be provided, or the amount available for the provision of the benefits;
- “services” means advisory, administration or investment services provided to the receiving scheme, and a “service provider” is a provider of such services to the scheme;
- “transferring scheme employer” means the principal employer or controlling employer of the transferring scheme;
- “undertaking” has the meaning given by section 1161(1) of the Companies Act 2006.]

#### Textual Amendments

- F35** Words in [reg. 12\(1\)](#) substituted (1.8.2022) by [The Occupational Pension Schemes \(Collective Money Purchase Schemes\) \(Modifications and Consequential and Miscellaneous Amendments\) Regulations 2022 \(S.I. 2022/337\)](#), [regs. 1\(3\)](#), [2\(2\)\(a\)](#)
- F36** Words in [reg. 12\(1\)](#) substituted (12.5.1994) by [The Occupational and Personal Pension Schemes \(Consequential Amendments\) Regulations 1994 \(S.I. 1994/1062\)](#), [reg. 1\(2\)](#), [Sch. 2 para. 30\(15\)](#)
- F37** Words in [reg. 12\(1\)](#) inserted (1.10.2019) by [The Occupational Pension Schemes \(Preservation of Benefit and Charges and Governance\) \(Amendment\) Regulations 2018 \(S.I. 2018/240\)](#), [regs. 1\(2\)](#), [2\(2\)](#)
- F38** Words in [reg. 12\(1\)](#) substituted (1.2.96) by [S.I. 1995/3067](#), [reg. 2\(4\)](#)

- F39** Reg. 12(1A) added (1.2.2000) by The Stakeholder Pension Schemes Regulations 2000 (S.I. 2000/1403), regs. 1(2), **27(a)**
- F40** Words in reg. 12(1A) substituted (1.4.2018) by The Occupational Pension Schemes (Preservation of Benefit and Charges and Governance) (Amendment) Regulations 2018 (S.I. 2018/240), regs. 1(3), **2(3)**
- F41** Reg. 12(1B) inserted (1.4.2018) by The Occupational Pension Schemes (Preservation of Benefit and Charges and Governance) (Amendment) Regulations 2018 (S.I. 2018/240), regs. 1(3), **2(4)**
- F42** Reg. 12(2) substituted (28.9.92) by S.I. 1992/1531, **reg. 35**
- F43** Words in reg. 12(2)(a) substituted (6.4.2013) by The Occupational and Stakeholder Pension Schemes (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/459), regs. 1, **2(4)**
- F44** Words in reg. 12(2)(b) substituted (6.4.2013) by The Occupational and Stakeholder Pension Schemes (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/459), regs. 1, **2(4)**
- F45** Reg. 12(2)(b)(ii) substituted (6.4.2016) by The Pensions Act 2014 (Abolition of Contracting-out for Salary Related Pension Schemes) (Consequential Amendments and Savings) Order 2016 (S.I. 2016/200), arts. 1(2), **2(2)(a)**
- F46** Reg. 12(2A) inserted (6.4.2016) by The Pensions Act 2014 (Abolition of Contracting-out for Salary Related Pension Schemes) (Consequential Amendments and Savings) Order 2016 (S.I. 2016/200), arts. 1(2), **2(2)(b)**
- F47** Reg. 12(2A)(b)(i) substituted (1.4.2018) by The Occupational Pension Schemes (Preservation of Benefit and Charges and Governance) (Amendment) Regulations 2018 (S.I. 2018/240), regs. 1(3), **2(5)**
- F48** Reg. 12(3) substituted (6.4.2011) by The Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2011 (S.I. 2011/672), regs. 1(2)(b), **3(2)(a)**
- F49** Reg. 12(3A) inserted (1.8.2022) by The Occupational Pension Schemes (Collective Money Purchase Schemes) (Modifications and Consequential and Miscellaneous Amendments) Regulations 2022 (S.I. 2022/337), regs. 1(3), **2(2)(b)**
- F50** Reg. 12(4) and Reg. 12(4A) substituted (1.9.93) for reg. 4 by S.I. 1993/1822, **reg. 2(a)**
- F51** Words in reg. 12(4) substituted (6.4.2011) by The Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2011 (S.I. 2011/672), regs. 1(2)(b), **3(2)(b)**
- F52** Words in reg. 12(4A) substituted (6.4.2011) by The Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2011 (S.I. 2011/672), regs. 1(2)(b), **3(2)(c)**
- F53** Words in reg. 12(4A) substituted (1.10.1999) by The Occupational Pension Schemes (Preservation of Benefit) Amendment Regulations 1999 (S.I. 1999/2543), regs. 1, **2(b)**
- F54** Reg. 12(4B) inserted (6.4.97) by S.I. 1996/2131, **reg. 2(7)(b)**
- F55** Reg. 12(5) substituted (1.10.1999) by The Occupational Pension Schemes (Preservation of Benefit) Amendment Regulations 1999 (S.I. 1999/2543), regs. 1, **2(c)**
- F56** Words in reg. 12(5)(b) substituted (6.4.2012) by The Pensions (Institute and Faculty of Actuaries and Consultation by Employers – Amendment) Regulations 2012 (S.I. 2012/692), regs. 1(2), **3**
- F57** Reg. 12(6) added (1.2.2000) by The Stakeholder Pension Schemes Regulations 2000 (S.I. 2000/1403), regs. 1(2), **27(b)**
- F58** Reg. 12(7)-(11) inserted (1.4.2018) by The Occupational Pension Schemes (Preservation of Benefit and Charges and Governance) (Amendment) Regulations 2018 (S.I. 2018/240), regs. 1(3), **2(6)**
- F59** Words in reg. 12(11) inserted (1.8.2022) by The Occupational Pension Schemes (Collective Money Purchase Schemes) (Modifications and Consequential and Miscellaneous Amendments) Regulations 2022 (S.I. 2022/337), regs. 1(3), **2(2)(c)**

---

**Modifications etc. (not altering text)**

- C1** Reg. 12(3) modified by S.I. 2005/3381, reg. 21(2) (as inserted (13.1.2019) by The Occupational Pension Schemes (Cross-border Activities)(Amendment) Regulations 2018 (S.I. 2018/1102), regs. 1(2), **3(7)**)

### **[<sup>F60</sup>Discharge of liabilities by collective money purchase scheme which is winding up**

**12A.**—(1) For the purposes of section 73(4) of the Act, a collective money purchase scheme may provide for the scheme’s liability to a beneficiary in respect of the beneficiary’s accrued rights to benefits under the scheme to be discharged in accordance with the default discharge option for that beneficiary without the consent of the beneficiary where—

- (a) the scheme is pursuing continuity option 1 within the meaning of sections 34 and 36 of the Pension Schemes Act 2021; and
- (b) the trustees of the scheme do not receive a notice from the beneficiary in accordance with paragraph 14 of Schedule 6 to the Occupational Pension Schemes (Collective Money Purchase Schemes) Regulations 2022.

(2) In this regulation—

“beneficiary” has the meaning given by section 36(8) of the Pension Schemes Act 2021;

“collective money purchase scheme” means a scheme or a section of a scheme which is a collective money purchase scheme for the purposes of Part 1 of the Pension Schemes Act 2021;

“default discharge option” has the meaning given by paragraph 1(1) of Schedule 6 to the Occupational Pension Schemes (Collective Money Purchase Schemes) Regulations 2022.]

#### **Textual Amendments**

**F60** Reg. 12A inserted (1.8.2022) by [The Occupational Pension Schemes \(Collective Money Purchase Schemes\) \(Modifications and Consequential and Miscellaneous Amendments\) Regulations 2022 \(S.I. 2022/337\)](#), regs. 1(3), **2(3)**

### **Benefits attributable to waiting periods**

**13.**—(1) This regulation applies where—

- (a) an earner in relevant employment is required to complete a period of service (“waiting period”) before joining the scheme, and
- (b) if the earner joins the scheme, a specific part of long service benefit will<sup>F61</sup>... be attributable to the waiting period.

(2) Where this regulation applies, the preservation requirements are modified so that—

- (a) the waiting period is treated as pensionable service,
- (b) the earner is treated as a member during that period, and
- (c) the part of long service benefit that will<sup>F62</sup>... be attributable to the waiting period is treated as accruing at such a rate as to accrue in full over the whole of the waiting period.

(3) This paragraph applies where the rate at which long service benefit is treated as accruing during the waiting period is lower than the rate at which the rest of long service benefit accrues. In such circumstances short service benefit must be computed on the basis of uniform accrual (in accordance with [<sup>F63</sup>section 74(6) of the Act]) except that the scheme may provide for short service benefit to be computed on the same basis as long service benefit (in accordance with [<sup>F63</sup>section 74(1) of the Act]) where [<sup>F64</sup>the waiting period does not exceed 2 years.]

#### **Textual Amendments**

**F61** Words in reg. 13(1)(b) omitted (6.4.97) by virtue of [S.I. 1996/2131](#), **reg. 2(8)(a)**

**F62** Words in reg. 13(2)(c) omitted (6.4.97) by virtue of [S.I. 1996/2131](#), **reg. 2(8)(a)**

- F63** Words in reg. 13(3) substituted (12.5.1994) by [The Occupational and Personal Pension Schemes \(Consequential Amendments\) Regulations 1994 \(S.I. 1994/1062\)](#), reg. 1(2), **Sch. 2 para. 30(16)**
- F64** Words in reg. 13(3) substituted (6.4.97) by S.I. 1996/2131, **reg. 2(8)(b)**

**Computation of benefit-money purchase benefits**

<sup>F65</sup>14. ....

**Textual Amendments**

- F65** Reg. 14 omitted (24.7.2014) by virtue of [The Pensions Act 2011 \(Transitional, Consequential and Supplementary Provisions\) Regulations 2014 \(S.I. 2014/1711\)](#), regs. 1(1), **27(3)** (with regs. 6, 41, 44(1), 47(1), 69(2), 72(1), 76(1)); coming into force immediately after s. 29 of 2011 c 19 - see S.I. 2014/1683, art. 2

**[<sup>F66</sup>Benefits to which section 74(6) does not apply – money purchase benefits**

**14A.** Section 74(6) of the Act (computation of short service benefit) does not apply to money purchase benefits.]

**Textual Amendments**

- F66** Reg. 14A substituted (24.07.2014) by [The Pensions Act 2011 \(Transitional, Consequential and Supplementary Provisions\) Regulations 2014 \(S.I. 2014/1711\)](#) regs.1(1), 27(4)

**Computation of benefit-earnings related benefits**

**15.** Where long service benefit is related to a member’s earnings during a specified period and the member’s pensionable service is less than that period, the scheme must provide for short service benefit to be correspondingly related to the member’s earnings during the whole of the member’s pensionable service.

**Computation of benefit-uniform accrual**

**16.—(1)** This regulation applies where short service benefit is computed on the basis of uniform accrual, in accordance with [<sup>F67</sup>section 74(6) of the Act].

(2) Where this regulation applies long service benefit at the time when the member’s pensionable service terminates is to be calculated on the assumption that the member’s earnings would have remained constant from the time when pensionable service terminates until normal pension age.

(3) For the purpose of computing a member’s short service benefit, the trustees or managers of the scheme may make such assumptions as [<sup>F68</sup>they] consider reasonable as to—

- (a) the level at which the member’s earnings would have remained constant,
- (b) the dates on which bonuses would have been declared and the rates of those bonuses, and
- (c) the value of, and the rate of interest on, securities.

**Textual Amendments**

- F67** Words in reg. 16(1) substituted (12.5.1994) by [The Occupational and Personal Pension Schemes \(Consequential Amendments\) Regulations 1994 \(S.I. 1994/1062\)](#), reg. 1(2), **Sch. 2 para. 30(16)**

**F68** Words in reg. 16(3) substituted (6.4.97) by S.I. 1996/2131, **reg. 2(11)**

### Computation of benefit-rounding

17.—(1) For the purpose of computing short service benefit on the basis of uniform accrual (in accordance with [<sup>F69</sup>section 74(6) of the Act]), a scheme may provide for both the periods mentioned in that paragraph (the period of pensionable service and the period from the beginning of that service to the time when the member would attain normal pension age) to be calculated to the nearest, next highest, or next lowest whole month.

(2) For the purpose of calculating the proportion of purchased credits that must be included in short service benefit (in accordance with [<sup>F70</sup>section 75(3) of the Act]), a scheme may provide for both the periods mentioned in [<sup>F70</sup>section 75(4)(b) of the Act] (the period between the time when the first payment became due and the termination of the member’s pensionable service, and the whole period over which payment was to be made) to be calculated to the nearest, next highest, or next lowest whole month.

(3) For the purpose of calculating the proportion of bonus credits, or credits for which payment is to be made by deduction from some benefit, that must be included in short service benefit (in accordance with [<sup>F71</sup>section 75(5) of the Act]), a scheme may provide for both the periods described in paragraph (4) to be calculated to the nearest, next highest, or next lowest whole month. Where applicable, the scheme must make the same provision for the purpose of calculating the amount of any relevant deduction.

(4) The periods referred to in paragraph (3) are—

- (a) the period over which, on the assumption referred to in [<sup>F72</sup>section 75(5)(a) of the Act], the credits would have accrued in full, and
- (b) the period between the time when any credit was awarded and the termination of the member’s pensionable service.

(5) Where a scheme provides for rounding as described in this regulation, it must provide for both the periods referred to in each paragraph to be rounded in the same way.

#### Textual Amendments

- F69** Words in reg. 17(1) substituted (12.5.1994) by [The Occupational and Personal Pension Schemes \(Consequential Amendments\) Regulations 1994 \(S.I. 1994/1062\)](#), reg. 1(2), **Sch. 2 para. 30(16)**
- F70** Words in reg. 17(2) substituted (12.5.1994) by [The Occupational and Personal Pension Schemes \(Consequential Amendments\) Regulations 1994 \(S.I. 1994/1062\)](#), reg. 1(2), **Sch. 2 para. 30(17)(a)**
- F71** Words in reg. 17(3) substituted (12.5.1994) by [The Occupational and Personal Pension Schemes \(Consequential Amendments\) Regulations 1994 \(S.I. 1994/1062\)](#), reg. 1(2), **Sch. 2 para. 30(17)(b)**
- F72** Words in reg. 17(4)(a) substituted (12.5.1994) by [The Occupational and Personal Pension Schemes \(Consequential Amendments\) Regulations 1994 \(S.I. 1994/1062\)](#), reg. 1(2), **Sch. 2 para. 30(17)(c)**

### Commutation of benefit

<sup>F73</sup>18. . . . .

#### Textual Amendments

- F73** Reg. 18 revoked (6.4.97) by [S.I. 1996/2131](#), **reg. 2(12)**



**Widows, widowers<sup>F74</sup>, surviving civil partners] and dependants**

19. This regulation applies to schemes that provide long service benefit payable to a person other than the member only if the person is married to, [<sup>F75</sup>in a civil partnership with,] or dependent on, the member when the member reaches normal pension age. These schemes are required to provide short service benefit payable to the person concerned only if the person was also married to, or (as the case may be) [<sup>F76</sup>in a civil partnership with, or] dependent on, the member when the member’s pensionable service terminated.

**Textual Amendments**

- F74** Words in heading to reg. 19 inserted (5.12.2005) by [The Civil Partnership \(Pensions, Social Security and Child Support\) \(Consequential, etc. Provisions\) Order 2005 \(S.I. 2005/2877\)](#), art. 1, **Sch. 2 para. 2(a)** (with art. 3)
- F75** Words in reg. 19 inserted (5.12.2005) by [The Civil Partnership \(Pensions, Social Security and Child Support\) \(Consequential, etc. Provisions\) Order 2005 \(S.I. 2005/2877\)](#), art. 1, **Sch. 2 para. 2(b)** (with art. 3)
- F76** Words in reg. 19 inserted (5.12.2005) by [The Civil Partnership \(Pensions, Social Security and Child Support\) \(Consequential, etc. Provisions\) Order 2005 \(S.I. 2005/2877\)](#), art. 1, **Sch. 2 para. 2(c)** (with art. 3)

**Deductions from short service benefit**

20.—(1) This regulation applies where a scheme provides that, in computing the amount of long service benefit payable to any person, a deduction will be made, either to take account of benefits payable to that person under the <sup>M7</sup> Social Security Act 1975 or otherwise.

(2) Where this regulation applies, the scheme may provide for a corresponding deduction from short service benefit.<sup>F77</sup> ...

<sup>F78</sup>(3) .....

**Textual Amendments**

- F77** Words in reg. 20(2) omitted (6.4.97) by virtue of [S.I. 1996/2131](#), **reg. 2(13)(a)**
- F78** Reg. 20(3) omitted (6.4.97) by virtue of [S.I. 1996/2131](#), **reg. 2(13)(b)**

**Marginal Citations**

- M7** 1975 c.14.

**Breaks in pensionable service**

21.—(1) In the case of a member whose pensionable service has been broken, the preservation requirements are modified as described in this regulation. For this purpose, a member’s pensionable service is broken if, after it terminates, the member returns to pensionable service under the same scheme.

(2) If paragraph (3) applies to the break and the member’s pensionable service is again terminated before normal pension age, the period of pensionable service previously terminated, and any linked qualifying service in relation to that period, must count towards the 2 years’ qualifying service whether or not it counts towards qualification for long service benefit. [<sup>F79</sup>section 71(9) of the Act] is modified accordingly.



(3) This paragraph applies to the break in pensionable service if one or more of the following conditions is satisfied—

- (a) the break does not exceed one month;
- (b) the break corresponds to the member’s absence from work wholly or partly because of pregnancy or confinement, the member returns to work after the break in exercise of a right under section 45(1) of the <sup>M8</sup>Employment Protection (Consolidation) Act 1978 (right to return to work) and the member returns to pensionable service no later than one month after returning to work;
- (c) the break corresponds to the member’s absence from work in furtherance of a “trade dispute”, as defined in section 19(2)(b) of the <sup>M9</sup> Social Security Act 1975 (loss of employment due to stoppage of work).

(4) If paragraph (5) applies to the break and the member’s pensionable service is again terminated before normal pension age, the scheme must provide for the member to be entitled to short service benefit in respect of pensionable service after the break whether or not the conditions described in [F80section 71(1) of the Act] are satisfied. [F80Section 71(1) of the Act] is modified accordingly.

(5) This paragraph applies to the break in pensionable service if the member became entitled to short service benefit when his pensionable service previously terminated. This paragraph does not apply, however, if all the member’s accrued rights in respect of the period before the break have been—

- (a) transferred to another scheme as described in [F81section 73(2) of the Act];
- (b) “appropriately secured” by a transaction to which [F82section 19 of the Act] applies (extinguishment of liability of scheme for pensions secured by insurance policies or annuity contracts) <sup>F83</sup>...; or
- (c) extinguished by payment of a state scheme premium under [F84Chapter III of Part III of the Act] or by payment of a lump sum.

(6) A scheme may provide that, when the member returns to pensionable service under the scheme, the member’s pensionable service before and after the break be treated as continuous so that the whole period qualifies the member for long service benefit under the scheme. The scheme will not then be required to provide short service benefit in respect of the period before the break.

(7) For the purposes of this regulation, “appropriately secured” means the same as in [F85section 19 of the Act] except that a policy of insurance or annuity contract which is taken out or entered into with an “authorised friendly society” (as defined for the purposes of regulation 6), but which otherwise satisfies the conditions for being “appropriate” for the purposes of [F85section 19], is to be treated as if it were appropriate for the purposes of that section.

#### Textual Amendments

- F79** Words in reg. 21(2) substituted (12.5.1994) by [The Occupational and Personal Pension Schemes \(Consequential Amendments\) Regulations 1994 \(S.I. 1994/1062\)](#), reg. 1(2), **Sch. 2 para. 30(20)(a)**
- F80** Words in reg. 21(4) substituted (12.5.1994) by [The Occupational and Personal Pension Schemes \(Consequential Amendments\) Regulations 1994 \(S.I. 1994/1062\)](#), reg. 1(2), **Sch. 2 para. 30(20)(b)**
- F81** Words in reg. 21(5)(a) substituted (12.5.1994) by [The Occupational and Personal Pension Schemes \(Consequential Amendments\) Regulations 1994 \(S.I. 1994/1062\)](#), reg. 1(2), **Sch. 2 para. 30(8)**
- F82** Words in reg. 21(5)(b) substituted (12.5.1994) by [The Occupational and Personal Pension Schemes \(Consequential Amendments\) Regulations 1994 \(S.I. 1994/1062\)](#), reg. 1(2), **Sch. 2 para. 30(7)**
- F83** Words in reg. 21(5)(b) omitted (1.2.96) by virtue of [S.I. 1995/3067](#), **reg. 2(5)**
- F84** Words in reg. 21(5)(c) substituted (12.5.1994) by [The Occupational and Personal Pension Schemes \(Consequential Amendments\) Regulations 1994 \(S.I. 1994/1062\)](#), reg. 1(2), **Sch. 2 para. 30(20)(d)**

*Changes to legislation: There are currently no known outstanding effects for the The Occupational Pension Schemes (Preservation of Benefit) Regulations 1991. (See end of Document for details)*

**F85** Words in reg. 21(7) substituted (12.5.1994) by [The Occupational and Personal Pension Schemes \(Consequential Amendments\) Regulations 1994 \(S.I. 1994/1062\)](#), reg. 1(2), **Sch. 2 para. 30(7)**

**Marginal Citations**

- M8** 1978 c. 44.
- M9** 1975 c. 14.

**Postponement or suspension of benefit**

**22.**—(1) The preservation requirements are modified as described in this regulation where—

- (a) a scheme provides for payment of long service benefit to be postponed, or suspended, for any period after normal pension age during which the member is in service in relevant employment (whether or not that service qualifies the member for additional benefits under the scheme); and
- (b) a member continues in, or returns to, service in relevant employment after becoming entitled to short service benefit under the scheme.

(2) The scheme may provide for payment of short service benefit to be postponed, or suspended, for any period after normal pension age during which the member is in service in relevant employment. [<sup>F86</sup>Section 71(3) of the Act] is modified accordingly.

**Textual Amendments**

**F86** Words in reg. 22(2) substituted (12.5.1994) by [The Occupational and Personal Pension Schemes \(Consequential Amendments\) Regulations 1994 \(S.I. 1994/1062\)](#), reg. 1(2), **Sch. 2 para. 30(21)**

**Refunds of additional voluntary contributions**

<sup>F87</sup>**23.** . . . . .

**Textual Amendments**

**F87** Reg. 23 omitted (6.4.2006) by virtue of [Taxation of Pension Schemes \(Consequential Amendments of Occupational and Personal Pension Schemes Legislation\) Order 2006 \(S.I. 2006/744\)](#), arts. 1, **6(2)**

**Schemes funded by level annual premiums**

**24.**—(1) This regulation applies in the case of a member of a scheme that satisfies all the requirements of paragraph (3) below whose pensionable service under that scheme began before 6th April 1975.

- (2) In this regulation—
  - “policy” means a policy of insurance or an annuity contract; and
  - “premium” means any payment made in consideration for the assurance of the benefit under a policy.
- (3) The requirements of this paragraph are that—
  - (a) the scheme was in existence on 6th April 1974 and has not, in the Occupational Pensions Board’s opinion, been materially altered since that date;
  - (b) the benefit for each member under the scheme is related to the member’s earnings at a specified time, or over a specified period not exceeding 5 years;

- (c) the benefit for each member is secured by one or more policies;
- (d) each policy provides separate assurance in respect of each member and the proceeds of the policy are to go to that member, at least to the extent that they are not greater than the benefits to which the member is entitled at normal pension age; and
- (e) a premium is payable under each policy at least once a year and the yearly rate of the premium does not change during the member's pensionable service, except as a result of the declaration of a bonus or a change in the premium rate of the insurer.

[<sup>F88</sup>(3A) For the purposes of paragraph (3)(a), any alteration of the scheme which arises solely from the abolition of contracting-out for salary related schemes under the Pensions Act 2014 does not constitute a material alteration.]

(4) Where this regulation applies, if the member becomes entitled to short service benefit under the scheme, the short service benefit must be the greater of the amounts described below, namely—

- (a) the total benefit payable to, or in respect of, the member, under the policy, on the basis that no further premiums are to fall due after the date on which the member's pensionable service is terminated; and
- (b) the appropriate proportion of the benefits (excluding any bonuses) that would have been payable under the policy to, or in respect of, the member if the member had continued in pensionable service until normal pension age, plus any bonuses declared in respect of the policy before the date on which the member's pensionable service actually terminated.

(5) For the purposes of paragraph (4)(b) of this regulation, the "appropriate proportion" means the proportion that the number of premiums that have fallen due in respect of each policy bears to the number of premiums that would have been payable if the member had continued in pensionable service under the scheme until normal pension age.

#### **Textual Amendments**

**F88** Reg. 24(3A) inserted (6.4.2016) by [The Pensions Act 2014 \(Abolition of Contracting-out for Salary Related Pension Schemes\) \(Consequential Amendments and Savings\) Order 2016 \(S.I. 2016/200\)](#), arts. 1(2), 2(3)

#### **Schemes with an overseas element**

**25.**—(1) This regulation applies to schemes with an overseas element, that is to say, schemes established, or relating to employment, or with parties domiciled, resident or carrying on business, in any part of the world outside the United Kingdom, or otherwise not confined in their operation to the United Kingdom.

(2) [<sup>F89</sup>Sections 69 to 80 of the Act are] modified in relation to a scheme with an overseas element, so that the preservation requirements apply to the scheme only if the scheme is established in the United Kingdom or has an appointed representative in the United Kingdom.

(3) In the case of a scheme with any overseas element to which the preservation requirements apply, [<sup>F90</sup>section 71(1) of the Act] is modified so that the scheme is required to provide short service benefit only for those members whose pensionable service terminates while they are in employment in the United Kingdom.

(4) For the purposes of this regulation—

- (a) a scheme has an appointed representative in the United Kingdom if there is a person resident in the United Kingdom who is appointed for tax purposes in relation to the scheme or who performs one or more functions that<sup>F91</sup>... would normally be performed by a trustee or manager of the scheme;

- (b) a member’s employment outside the United Kingdom is to be treated as employment in the United Kingdom if the most recent payment of earnings in respect of that employment gave rise to liability for primary Class I contributions, or would have done so had the level of earnings not been below the lower earnings limit; and
- (c) “Class 1 contributions” means the same as in section 1(2) of the <sup>M10</sup>Social Security Act 1975 (outline of contributory system) and “lower earnings limit” means the same as in section 4(1) of that Act (Class 1 contributions-incidence).

**Textual Amendments**

- F89** Words in reg. 25(2) substituted (12.5.1994) by [The Occupational and Personal Pension Schemes \(Consequential Amendments\) Regulations 1994 \(S.I. 1994/1062\)](#), reg. 1(2), **Sch. 2 para. 30(22)(a)**
- F90** Words in reg. 25(3) substituted (12.5.1994) by [The Occupational and Personal Pension Schemes \(Consequential Amendments\) Regulations 1994 \(S.I. 1994/1062\)](#), reg. 1(2), **Sch. 2 para. 30(22)(b)**
- F91** Words in reg. 25(4)(a) omitted (6.4.97) by virtue of [S.I. 1996/2131](#), **reg. 2(15)**

**Marginal Citations**

- M10** 1975 c. 14.

**Transfers to overseas schemes**

<sup>F92</sup>26. . . . .

**Textual Amendments**

- F92** Reg. 26 revoked (6.4.97) by [S.I. 1996/2131](#), **reg. 2(16)**

**Specific provisions to be included in scheme rules**

27.—(1) Except where paragraph (2) applies, a scheme is not to be treated as conforming with the preservation requirements unless it contains express rules to the effect (but not necessarily in the words) of the following provisions of [<sup>F93</sup>Chapter I of Part IV of the Act], to the extent that they apply to the scheme concerned, namely—

- (a) [<sup>F93</sup>section 71(1)] (members who must be entitled to short service benefit);
- (b) [<sup>F93</sup>section 71(3) and (4)] (age or time at which short service benefit must be made payable);
- (c) [<sup>F93</sup>section 74] (computation of benefit);
- (d) [<sup>F93</sup>section 75] (supplementary credits to be included in short service benefit); and
- (e) [<sup>F93</sup>section 76] (pension increases).

(2) A scheme that is constituted or amended by an interim trust deed or other interim instrument or agreement [<sup>F94</sup>shall be treated] as satisfying the preservation requirements if both the following conditions are satisfied, namely—

- (a) the instrument or agreement constituting or amending the scheme requires the trustees or managers of the scheme to operate it in accordance with the preservation requirements; and
- (b) [<sup>F95</sup>members and prospective members have been notified] of the general effect of the definitive provisions of the scheme that will give effect to the provisions of [<sup>F93</sup>Chapter I of Part IV of the Act] referred to in paragraph (1) above.

#### Textual Amendments

- F93** Words in reg. 27 substituted (12.5.1994) by [The Occupational and Personal Pension Schemes \(Consequential Amendments\) Regulations 1994 \(S.I. 1994/1062\)](#), reg. 1(2), **Sch. 2 para. 30(24)**
- F94** Words in reg. 27(2) substituted (6.4.97) by [S.I. 1996/2131](#), **reg. 2(17)(a)**
- F95** Words in reg. 27(2)(b) substituted (6.4.97) by [S.I. 1996/2131](#), **reg. 2(17)(b)**

#### [<sup>F96</sup>Information to be furnished to early leavers

**27A.**—(1) The trustees or managers of any scheme must furnish in writing the information specified in paragraph (2)—

- (a) as of course to any person as soon as practicable and, in any event, within 2 months after he or his employer has notified the trustees that his pensionable service has terminated; and
- (b) to any member or prospective member on request (not being a request made less than 12 months after the last occasion on which such information was furnished to him) as soon as practicable and, in any event, within 2 months after he requests it.

(2) The information referred to in paragraph (1) is information as to the rights and options (if any) available to a member whose pensionable service terminates before he attains normal pension age.

(3) The trustees or managers of any scheme must furnish in writing the information specified in paragraph (4) on request (not being a request made—

- (a) after such information has already been furnished to the same person in a case where the information was that no refund of contributions would be available in any circumstances; or
- (b) less than 12 months after the last occasion on which such information was furnished to the same person, in any other case), to any person who has paid contributions to the scheme which have not been refunded, as soon as practicable and, in any event, within 2 months after he requests it.

(4) The information referred to in paragraph (3) is information as to whether a refund of contributions is available or would be available in any circumstances, and in either case, an estimate of the amount of the refund and an explanation of the method of calculating it.

#### Textual Amendments

- F96** Reg. 27A and Reg. 27B inserted (6.4.97) by [S.I. 1996/2131](#), **reg. 2(18)**

#### Offence and penalties

**27B.** Where a person fails, without reasonable excuse, to comply with any requirement imposed on him by regulation 12(4B)(requirement to provide information regarding a transfer of accrued rights without consent) or 27A, the [<sup>F97</sup>Regulatory Authority may by notice in writing] require him to pay, within 28 days, a penalty which—

- (a) in case of an individual, shall not exceed £1, 000; and
- (b) in any other case, shall not exceed £10,000.]

#### Textual Amendments

- F96** Reg. 27A and Reg. 27B inserted (6.4.97) by [S.I. 1996/2131](#), **reg. 2(18)**

---

**Changes to legislation:** There are currently no known outstanding effects for the The Occupational Pension Schemes (Preservation of Benefit) Regulations 1991. (See end of Document for details)

---

**F97** Words in reg. 27B substituted (6.4.2009) by Occupational, Personal and Stakeholder Pensions (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/615), regs. 1(2), **2(2)**

### Related amendments to other Regulations

**28.** <sup>F98</sup> ....

#### Textual Amendments

**F98** Reg. 28 revoked in part(6.4.1997) by The Occupational Pension Schemes (Discharge of Liability) Regulations 1997 (S.I. 1997/784), reg. 1(1), **Sch. 2**

### Revocations

**29.** The Regulations specified in column 1 of Schedule 2 are revoked to the extent specified in column 2 of that Schedule.

Signed by authority of the Secretary of State for Social Security.

*Nicholas Scott*  
Minister of State,  
Department of Social Security

SCHEDULE 1

Regulation 28

RELATED AMENDMENTS OF OTHER REGULATIONS

**Amendment of the Occupational Pension Schemes (Discharge of Liability) Regulations 1985**

<sup>F99</sup>1. ....

**Textual Amendments**

**F99** Sch. 1 revoked in part (6.4.1997) by [The Occupational Pension Schemes \(Discharge of Liability\) Regulations 1997 \(S.I. 1997/784\)](#), reg. 1(1), **Sch. 2**

**Amendments of the Occupational Pension Schemes (Transfer Values) Regulations 1985**

<sup>F100</sup>2. ....

**Textual Amendments**

**F100** Sch. 1 para. 2 revoked (6.4.1997) by [The Occupational Pension Schemes \(Transfer Values\) Regulations 1996 \(S.I. 1996/1847\)](#), reg. 1(1), **Sch. 3** (with reg. 21(2), Sch. 2)

**Amendment of the Occupational Pension Schemes (Disclosure of Information) Regulations 1986**

<sup>F101</sup>3. ....

**Textual Amendments**

**F101** Sch. 1 para. 3 revoked (6.4.1997) by [The Occupational Pension Schemes \(Disclosure of Information\) Regulations 1996 \(S.I. 1996/1655\)](#), reg. 1(1), **Sch. 4** (with reg. 2)

**Amendment of the Occupational Pension Schemes (Auditors) Regulations 1987**

4. Regulation 1(2) of the <sup>M11</sup> Occupational Pension Schemes (Auditors) Regulations 1987 (interpretation) is amended by replacing the words “regulation 2(4) and (5) of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1984” in the definition of “employer” with the words “ regulation 2 of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 ”.

**Marginal Citations**

**M11** [S.I.1987/1102](#).

**Amendments of the Occupational Pension Schemes (Qualifying Service-Consequential and Other Provisions) Regulations 1987**

5.—(1) Regulation 6 of the <sup>M12</sup>Occupational Pension Schemes (Qualifying Service - Consequential and Other Provisions) Regulations 1987 (purpose for which the Occupational

*Changes to legislation:* There are currently no known outstanding effects for the The Occupational Pension Schemes (Preservation of Benefit) Regulations 1991. (See end of Document for details)

Pensions Board may modify occupational pension schemes) is amended as described in subparagraphs (2) and (3).

(2) Paragraph (a) is replaced with the following—

“(a) to provide the alternative to short service benefit described in regulation 9 of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 (bought out benefits) without the member’s consent in the circumstances described in paragraph (5) (b) of that regulation; and”.

(3) In paragraph (b), the words “the conditions specified in regulation 5(c)” are replaced with the words “ the requirements of regulation 5(5) ”.

**Marginal Citations**  
M12 [S.I. 1987/1106](#).

SCHEDULE 2

Regulation 29

REVOCATIONS

<b>Column 1</b> <b>Regulations</b>	<b>Column 2</b> <b>Extent of revocation</b>
The Occupational Pension Schemes (Preservation of Benefit) Regulations 1984 (S.I. 1984/614)	The whole of the Regulations.
The Contracting-out (Transfer) Regulations 1985 (S.I. 1985/1323)	Regulation 4(6).
The Occupational Pension Schemes (Preservation of Benefit) Amendment Regulations 1985 (S.I. 1985/1926)	The whole of the Regulations.
The Contracting-out (Requisite Benefits-Consequential Provisions) Regulations 1986 (S.I. 1986/1716)	Regulation 4.
The Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1986 (S.I. 1986/2171)	Regulation 2.
The Occupational Pension Schemes (Qualifying Service-Consequential and Other Provisions) Regulations 1987 (S.I. 1987/1106)	Regulation 3.
The Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1988 (S.I. 1988/476)	Regulation 2.
The Personal and Occupational Pension Schemes (Miscellaneous Amendments) (No. 2) Regulations 1989 (S.I. 1989/1641)	Regulation 2.



The Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1990 (S.I. 1990/1141)	Regulation 3.
The Personal and Occupational Pension Schemes (Miscellaneous Amendments) (No. 2) Regulations 1990 (S.I. 1990/1142)	Regulation 3.

---

[<sup>F102</sup> SCHEDULE 3

Regulation 12(3)

Actuary's certificate

**Textual Amendments**

**F102** Sch. 3 inserted (6.4.2011) by [The Occupational and Personal Pension Schemes \(Miscellaneous Amendments\) Regulations 2011 \(S.I. 2011/672\)](#), reg. 1(2)(b), **Sch. 1**

**Modifications etc. (not altering text)**

**C2** [Sch. 3](#) modified by S.I. 2005/3381, reg. 21(2)(a) (as inserted (13.1.2019) by [The Occupational Pension Schemes \(Cross-border Activities\)\(Amendment\) Regulations 2018 \(S.I. 2018/1102\)](#), regs. 1(2), **3(7)**)

Given for the purposes of regulation 12(3) of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991.]

**THIS CERTIFICATE IS SUBJECT TO THE NOTES BELOW**

The name of the transferring scheme is:

The reference number of Her Majesty's Revenue and Customs for that scheme is:

The name of the receiving scheme is:

The reference number of Her Majesty's Revenue and Customs for that scheme is:

**1.** I certify that in my opinion, the transfer credits to be acquired for each member under the receiving scheme in the categories of member covered by this certificate are, broadly, no less favourable than the rights to be transferred.

**2.** Where it is the established custom for discretionary benefits or increases in benefits to be awarded under the transferring scheme, I certify that in my opinion, 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.

**Changes to legislation:** There are currently no known outstanding effects for the The Occupational Pension Schemes (Preservation of Benefit) Regulations 1991. (See end of Document for details)

In making this certification:

- I used these benefits:
  
- I used this data:
  
- I used these key actuarial assumptions to value the rights, transfer credits, any discretionary benefits and any discretionary increases in benefits:
  
- I used these documents:

The categories of member covered by this certificate are:

Signature:

Date of signature:

Name:

Qualification:

Address:

Name of employer (if applicable):

**Notes:**

Phrases used in this certificate have the same meaning as in the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 (“the 1991 Regulations”).

The certification in paragraph 1 was made in accordance with regulation 12(4) of the 1991 Regulations. The certification in paragraph 2 was made in accordance with regulation 12(4A) of the 1991 Regulations.

This certificate is valid only for the purposes of the 1991 Regulations.

This certificate must not be taken by the trustees or managers of the scheme as authority to make a transfer without members’ consents. It must also not be taken as a recommendation to make a transfer without members’ consents. The trustees or managers of the scheme need to satisfy themselves that making the transfer is consistent with their duties to the transferring members and the remaining members. The trustees of the scheme need to satisfy themselves that making the transfer is consistent with their responsibilities and powers under trust law.

The actuary is not expressing in this certificate an opinion on whether or not the amount of the transfer value is reasonable.

The actuary has taken account of the benefits accrued by the date of this certificate. The actuary has not taken account of any differences between the terms and conditions of any benefits that may accrue in the future under the transferring scheme and the receiving scheme.

---

## EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations consolidate, with amendments, Regulations relating to the preservation of benefits under occupational pension schemes.

The requirements as to preservation of benefit under occupational pension schemes are contained in Part I of Schedule 16 to the Social Security Act 1973. Part II of that Schedule has effect for enabling the Secretary of State to make regulations modifying those requirements and generally in relation to the preservation of benefit under occupational pension schemes. Section 63 of that Act has effect for securing that occupational pension schemes conform with the preservation requirements insofar as conformity can be achieved by the use of powers conferred by that section (in addition to any power otherwise exercisable) on those concerned with such schemes and on the Occupational Pensions Board.

These Regulations prescribe the persons who are to be treated as “employers”, “members” and “prospective members” in relation to occupational pension schemes (regulations 2 and 3) and extend the definition of “supplementary credits” (regulation 4). They prescribe means of assuring short service benefit (regulation 6), the alternatives to short service benefit that may be provided instead of short service benefit (regulations 7 to 11), requirements relating to the basis of computation of short service benefit (regulations 14 to 17), the deductions that may be made from short service benefit (regulation 20) and specific provisions relating to preservation of benefit that must be included in scheme rules (regulation 27).

These Regulations also prescribe the circumstances in which short service benefit in the form of a lump sum may be paid before normal pension age (regulation 5), a member’s accrued rights may be transferred to another occupational pension scheme without the member’s consent (regulation 12), “wailing periods” must be treated as pensionable service (regulation 13), short service benefit and benefits or rights alternative to short service benefit may be commuted (regulation 18), short service benefit must be provided for people other than the member (regulation 19), payment of short service benefit may be postponed or suspended (regulation 22) and transfers may be made to “overseas schemes” (regulation 26).

Finally, these Regulations modify the preservation requirements in cases where a member whose pensionable service is broken returns to pensionable service under the same scheme (regulation 21) and cases where schemes provide for the payment by members of voluntary contributions (regulation 23), and in their application to schemes funded by level annual premiums (regulation 24) and schemes with an overseas element (regulation 25).

The report of the Occupational Pensions Board on the draft of these Regulations which was referred to them, together with a statement by the Secretary of State showing the extent to which these Regulations give effect to the Board’s recommendations, is contained in Command Paper No. 1409, published by Her Majesty’s Stationery Office.

**Changes to legislation:**

There are currently no known outstanding effects for the The Occupational Pension Schemes (Preservation of Benefit) Regulations 1991.