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STATUTORY INSTRUMENTS

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**1996 No. 775**

**PENSIONS**

**The Occupational Pension Schemes (Discharge of  
Protected Rights on Winding Up) Regulations 1996**

<i>Made</i>	- - - -	<i>13th March 1996</i>
<i>Laid before Parliament</i>		<i>15th March 1996</i>
<i>Coming into force</i>	- -	<i>6th April 1996</i>

The Secretary of State for Social Security, in exercise of powers conferred on him by sections 32A, 181(1) and 182(2) and (3) of the Pension Schemes Act 1993<sup>(1)</sup>, and all other powers enabling him in that behalf, by this instrument, which contains only regulations which are consequential upon section 146 of the Pensions Act 1995<sup>(2)</sup> and is made before the end of the period of six months beginning with the coming into force of that enactment, hereby makes the following Regulations<sup>(3)</sup>:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Discharge of Protected Rights on Winding Up) Regulations 1996 and shall come into force on 6th April 1996.

(2) In these Regulations—

“the Act” means the Pension Schemes Act 1993;

“administrative charges” means any charges or costs incurred as a result of taking out or entering into an appropriate policy of insurance but excluding any new commission costs; and

“normal pension age” has the same meaning as in section 180 of the Act.

(3) A reference to a numbered regulation is to the regulation in these Regulations bearing that number and, unless the context otherwise requires, a reference in a regulation to a numbered paragraph is to the paragraph bearing that number in that regulation.

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- (1) 1993 c. 48. Section 32A was inserted into the Pension Schemes Act 1993 by section 146 of the Pensions Act 1995 c. 26. Section 181(1) is cited because of the meaning ascribed to “prescribed” and “regulations”.
- (2) 1995 c. 26.
- (3) See section 185(6) of the Pension Schemes Act 1993 and section 173(5) of the Social Security Administration Act 1992 (c. 5) under which the requirement to consult does not apply where regulations are consequential upon a specific enactment and are made before the end of the period of six months beginning with the coming into force of that enactment.

### **Conditions subject to which effect may be given to protected rights of a member of a scheme on winding up by insurance policies**

2.—(1) For the purposes of section 32A(1) of the Act (effect may be given to protected rights where a scheme is being wound up and such conditions as may be prescribed are satisfied) the prescribed conditions are that the trustees or managers give written notice to the member, in accordance with paragraph (3), of the proposal to give effect to his protected rights by means of an appropriate policy of insurance under section 32A(1)(a) or (b) of the Act and either—

- (a) the member agrees in writing within 3 months from the date of the written notice;
- (b) where the condition in sub-paragraph (a) is not satisfied—
  - (i) no application for a cash equivalent under section 95 of the Act (ways of taking right to cash equivalent) is received by the trustees or managers within 3 months from the date of the written notice; or
  - (ii) an application for a cash equivalent under section 95 of the Act is received by the trustees or managers within 3 months of the date of the written notice and any of the conditions referred to in paragraph (2) are satisfied.
- (2) The conditions referred to in paragraph (1)(b)(ii) are—
  - (a) the member withdraws his application for a cash equivalent in accordance with section 100 of the Act;
  - (b) the member loses his right to the cash equivalent under section 98(7) of the Act (variation and loss of rights); or
  - (c) it is not possible for the trustees or managers within the period specified in section 99(2) of the Act (trustees' duties after exercise of option) to do what is needed to carry out what the member requires.
- (3) The written notice referred to in paragraph (1) shall—
  - (a) be sent by post to the member's last known address; and
  - (b) include the information specified in the Schedule to these Regulations.

### **Requirements applying to insurance companies**

3. The requirements referred to in section 32A(2)(a)(ii) of the Act (policy of insurance appropriate if the insurance company satisfies prescribed requirements) are that the insurance company—

- (a) is authorised under section 3 or 4 (authorisation of insurance business) of the Insurance Companies Act 1982<sup>(4)</sup>;
- (b) in the case of an EC company as defined in section 2(6) of the Insurance Companies Act 1982<sup>(5)</sup> which either carries on or provides long-term insurance business in the United Kingdom, complies with such requirements of Part I of Schedule 2F to the Insurance Companies Act 1982 (EC companies carrying on business, etc., in the United Kingdom) as are applicable; or
- (c) in the case of a Friendly Society, is authorised under section 32 of the Friendly Societies Act 1992<sup>(6)</sup> (activities of Friendly Societies: long-term business) to carry on long-term business under any of the Classes specified in Head A of Schedule 2 to that Act.

(4) 1982 c. 50.

(5) Section 2(6) was inserted by regulation 4(2) of S.I.1994/1696.

(6) 1992 c. 40.

### **Conditions on which policies of insurance may be surrendered**

4. The conditions referred to in section 32A(2)(b) of the Act (policy of insurance appropriate for the purposes if it may not be surrendered except on conditions which satisfy prescribed requirements) are—

- (a) that the consent of the beneficiary to the surrender is given in writing to the insurance company; and
- (b) that, in consideration of the surrender, the benefits previously secured by the policy of insurance are replaced by benefits which are secured by means of one of the following, namely—
  - (i) another policy of insurance which is appropriate within the meaning of section 32A(2) of the Act; or
  - (ii) the acquisition of transfer credits under the rules of a contracted-out occupational pension scheme; or
  - (iii) the acquisition of rights under the rules of an appropriate personal pension scheme.

### **Conditions on which appropriate policies of insurance may be commuted**

5. The conditions referred to in section 32A(2)(c) of the Act (policy of insurance appropriate where commutation conditional on satisfying prescribed requirements) are—

- (a) that the benefits secured by the policy of insurance have become payable and the aggregate of those benefits payable to the beneficiary, or, as the case may be, to his widow or her widower does not exceed £260 per annum; and
- (b) all of the beneficiary's interest under the policy of insurance is discharged upon payment of a lump sum.

### **Other requirements applying to policies of insurance**

6.—(1) For the purposes of section 32A(2)(d) of the Act (policy of insurance appropriate if it satisfies such other requirements as may be prescribed) the prescribed requirements are—

- (a) where the appropriate policy of insurance is to be taken out or entered into with the same insurance company which issued the original insurance policy, no new costs except administrative charges in respect of the proposed policy of insurance are to be attributed to the beneficiary;
- (b) that the age at which the beneficiary is to be entitled to receive benefits (“the normal retirement age”) is to be the same age as the normal pension age under the scheme being wound up or such other age (“the agreed retirement age”), not being earlier than the age of 60, as agreed by the beneficiary;
- (c) that the policy contains provision to the effect that, or is endorsed so as to provide that—
  - (i) any rights under the insurance policy (“the insured rights”) which derive from the protected rights of the member of the scheme which is being wound up, are to be treated as if they were protected rights under an occupational pension scheme and, subject to paragraph (2), as if sections 27, 28, 29 and 32 and Chapter IV of Part IV of the Act and regulations made under those sections and under section 145 of the Pensions Act 1995 were applicable to them;
  - (ii) an annual statement is to be sent to the beneficiary stating the value of that beneficiary's insured rights under the policy; and
  - (iii) information is to be sent to the beneficiary in respect of the rights and options (if any) available to him not less than 4 months and not more than 6 months before

the agreed retirement age or, if there is no such agreed retirement age, the normal retirement age.

(2) For the purposes of paragraph (1)(c)(i) the provisions in the Act referred to in that subparagraph shall be construed as if—

- (a) the policy of insurance is an occupational pension scheme;
- (b) the insurance company is the trustee or manager of the scheme;
- (c) the beneficiary is the member of the scheme; and
- (d) the terms of the policy are the scheme rules.

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

13th March 1996

*Oliver Heald*  
Parliamentary Under-Secretary of State,  
Department of Social Security

## SCHEDULE

Regulation 2(3)

### INFORMATION TO BE SPECIFIED IN THE WRITTEN NOTICE

1. Details of the proposal to—
    - (i) wind-up the scheme;
    - (ii) give effect to protected rights by means of an appropriate policy of insurance on or after 3 months from the date of the written notice.
  2. An explanation of the effect of winding-up a scheme.
  3. Details of the cash equivalent of the member's protected rights at a date not earlier than 3 months prior to the date of the written notice.
  4. A statement that if the member does not wish his protected rights to be secured by an appropriate policy of insurance, notification of where those protected rights are to be transferred to must be given to the trustees or managers within 3 months from the date of the written notice.
  5. The options available to the member in respect of his protected rights.
  6. The name and address of the insurance company providing the appropriate policy of insurance and where appropriate a statement confirming that the insurance company is the same company which manages the scheme and issues the insurance policy or policies securing the benefits under that scheme.
  7. Where appropriate, details of any administrative charges or other costs or charges which will be incurred and on whom they fall in respect of the proposed appropriate policy of insurance.
  8. The rights and options available under the appropriate policy of insurance in respect of assignment, surrender and commutation.
  9. The availability of independent financial advice.
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### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are the first regulations to be made under section 32A of the Pension Schemes Act 1993 as inserted by section 146 of the Pensions Act 1995. They are made before the end of the period of six months beginning with the coming into force of section 146 of the Pensions Act 1995 and therefore the requirement to consult does not apply.

Regulation 2 and the Schedule provide for the conditions on which effect may be given to protected rights of a member of a scheme on winding up by means of an appropriate policy of insurance.

Regulation 3 prescribes the requirements which an insurance company must satisfy.

Regulations 4 and 5 prescribe the conditions which the policies of insurance must satisfy before they can be surrendered or commuted.

Regulation 6 prescribes other requirements which the policies of insurance must satisfy.

An assessment of the compliance cost for employers of the measures arising from the Pensions Act 1995, including regulations, has been placed in the libraries of both Houses of Parliament. Copies

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

can be obtained by post from the Department of Social Security, 11th Floor, Adelphi, 1-11 John Adam Street, London WC2N 6HT.