

## STATUTORY INSTRUMENTS

# 2000 No. 1053

## The Pension Sharing (Implementation and Discharge of Liability) Regulations 2000

### PART IV

#### DISCHARGE OF LIABILITY IN RESPECT OF A PENSION CREDIT

##### Funded pension schemes

7.—(1) The circumstances in which the trustees or managers of a scheme, to which paragraph 1 of Schedule 5 to the 1999 Act applies, may discharge their liability in respect of a pension credit in accordance with sub-paragraph (2)(b) of that paragraph are where—

- (a) the person entitled to the credit has failed to provide his consent in accordance with paragraph 1(2)(a) and (4) of that Schedule; and
- (b) the circumstances set out in paragraph 1(3) of that Schedule do not apply.

(2) The circumstances in which the trustees or managers of a scheme, to which paragraph 1 of Schedule 5 to the 1999 Act applies, may discharge their liability in respect of a pension credit in accordance with sub-paragraph (3)(c) of that paragraph are where—

- (a) the person entitled to the credit has failed to provide his consent in accordance with [F1]paragraph 1(3)(c)] of that Schedule; and
- [F2](b) either—
  - (i) the person entitled to the pension credit has failed to provide his consent in accordance with paragraph 1(2)(a) and (4) of that Schedule; or
  - (ii) the trustees or managers of the scheme have not discharged their liability in accordance with paragraph (1) above.]

**F1** Words in reg. 7(2)(a) substituted (1.12.2000) by The Pension Sharing (Consequential and Miscellaneous Amendments) Regulations 2000 (S.I. 2000/2691), regs. 1, 11(4)(a)

**F2** Reg. 7(2)(b) substituted (1.12.2000) by The Pension Sharing (Consequential and Miscellaneous Amendments) Regulations 2000 (S.I. 2000/2691), regs. 1, 11(4)(b)

##### Unfunded occupational pension schemes other than public service pension schemes

8.—(1) The circumstances in which the trustees or managers of a scheme, to which paragraph 3 of Schedule 5 to the 1999 Act applies, may discharge their liability in respect of a pension credit in accordance with sub-paragraph (3)(c) of that paragraph are those specified in—

- (a) sub-paragraphs (a) and (b) of paragraph (2), in the case of [F3]a registered] scheme; and
  - (b) sub-paragraphs (a), (b) and (c) of paragraph (2), in the case of an [F4]unregistered] scheme.
- (2) The circumstances specified in this paragraph are—

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- (a) the liability of the trustees or managers has not been discharged in accordance with the provisions of paragraph 3(2) of that Schedule;
- (b) the person entitled to the pension credit has not consented to the discharge of liability in accordance with paragraph 3(3) of that Schedule; and
- (c) the employer who is associated with the scheme from which the pension credit derives—
  - (i) consents to the trustees or managers discharging their liability for the credit in accordance with paragraph 3(3) of that Schedule; and
  - (ii) agrees to compensate the person entitled to the credit fully for any tax liability which he may incur as a result of the trustees or managers of the scheme discharging their liability for the credit in accordance with paragraph 3(3) of that Schedule.

[<sup>F5</sup>(3) In this regulation—

- (a) “registered scheme” means an occupational pension scheme which is registered under section 153 of the Finance Act 2004; and
- (b) “unregistered scheme” means an occupational pension scheme which is not a registered scheme under section 153 of the Finance Act 2004.]

- F3** Words in [reg. 8\(1\)\(a\)](#) substituted (6.4.2006) by [Taxation of Pension Schemes \(Consequential Amendments of Occupational and Personal Pension Schemes Legislation\) Order 2006 \(S.I. 2006/744\)](#), [art. 1 art. 17\(3\)\(a\)\(i\)](#)
- F4** Word in [reg. 8\(1\)\(b\)](#) substituted (6.4.2006) by [Taxation of Pension Schemes \(Consequential Amendments of Occupational and Personal Pension Schemes Legislation\) Order 2006 \(S.I. 2006/744\)](#), [art. 1 art. 17\(3\)\(a\)\(ii\)](#)
- F5** [Reg. 8\(3\)](#) substituted (6.4.2006) by [Taxation of Pension Schemes \(Consequential Amendments of Occupational and Personal Pension Schemes Legislation\) Order 2006 \(S.I. 2006/744\)](#), [art. 1 art. 17\(3\)\(b\)](#)

### Other pension arrangements

**9.—(1)** The circumstances in which the person responsible for a pension arrangement, to which paragraph 4 of Schedule 5 to the 1999 Act applies, may discharge his liability in respect of a pension credit in accordance with sub-paragraph (2)(c) of that paragraph are where his liability has not been discharged in accordance with the provisions of paragraph 4(3) or (4) of that Schedule.

(2) The circumstances in which the person responsible for the pension arrangement may discharge his liability in respect of the pension credit under paragraph 4(4) of Schedule 5 to the 1999 Act are where the person responsible for the pension arrangement has not discharged his liability in accordance with the provisions of—

- (a) paragraph (1) above;
- (b) paragraph 4(2) of that Schedule; or
- (c) paragraph 4(3) of that Schedule.

### Calculation of the value of appropriate rights

[<sup>F6</sup>**10.** The value of rights conferred on a person entitled to a pension credit are to be calculated in a manner which is consistent with the methods adopted and assumptions made when transfers of other pension rights are received by the person responsible for the pension arrangement.]

- F6** [Reg. 10](#) substituted (1.10.2008) by [Occupational Pension Schemes \(Transfer Values\) \(Amendment\) Regulations 2008 \(S.I. 2008/1050\)](#), [reg. 1\(1\)](#), [Sch. 2 para. 6\(b\)](#)

## Qualifying arrangements

**11.**—(1) The requirements referred to in paragraph 6(2)(b) of Schedule 5 to the 1999 Act (requirements applying to annuity contracts or policies of insurance for the purpose of subparagraph (1) of that paragraph) are that the annuity contract is entered into or the insurance policy is taken out with an insurance company which is—

[<sup>F7</sup>(a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to effect or carry out contracts of long-term insurance; <sup>F8</sup>...

<sup>F8</sup>(b) .....]

[<sup>F9</sup>(2) Paragraph (1)(a) <sup>F10</sup>... must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.]

- F7** Reg. 11(1)(a)(b) substituted (1.12.2001) for reg. 11(1)(a)-(c) by [The Financial Services and Markets Act 2000 \(Consequential Amendments and Repeals\) Order 2001 \(S.I. 2001/3649\)](#), arts. 1, **591(1)**
- F8** Reg. 11(1)(b) and word omitted (31.12.2020) by virtue of [The Occupational and Personal Pension Schemes \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/192\)](#), regs. 1, **13(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F9** Reg. 11(2) substituted (1.12.2001) by [The Financial Services and Markets Act 2000 \(Consequential Amendments and Repeals\) Order 2001 \(S.I. 2001/3649\)](#), arts. 1, **591(2)**
- F10** Words in reg. 11(2) omitted (31.12.2020) by virtue of [The Occupational and Personal Pension Schemes \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/192\)](#), regs. 1, **13(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

## Disqualification as a destination for pension credit—general

**12.** The requirements referred to in paragraph 7(1)(b) of Schedule 5 to the 1999 Act (requirements to be satisfied to qualify pension arrangements as destinations for pension credits) are that the pension arrangement—

- (a) is an arrangement which carries on pension business as defined by section 431B of the Income and Corporation Taxes Act 1988 <sup>M1</sup> (meaning of “pension business”);
- (b) is an overseas arrangement within the meaning given by regulation 1(2) of the Contracting-out (Transfer and Transfer Payment) Regulations 1996 <sup>M2</sup> (citation, commencement and interpretation); [<sup>F11</sup>or]
- (c) is an overseas scheme within the meaning given by regulation 1(2) <sup>M3</sup> of the Contracting-out (Transfer and Transfer Payment) Regulations 1996.

- F11** Word in reg. 12(b) substituted (1.12.2000) by [The Pension Sharing \(Consequential and Miscellaneous Amendments\) Regulations 2000 \(S.I. 2000/2691\)](#), regs. 1, **11(6)**

### Marginal Citations

- M1** Section 431B was inserted by paragraph 2 of Schedule 8 to the [Finance Act 1995 \(c. 4\)](#).
- M2** [S.I. 1996/1462](#).
- M3** The definition of “overseas scheme” was amended by paragraph 7(2) of Schedule 1 to [S.I. 1997/786](#).

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## Disqualification as a destination for pension credit—contracted-out or safeguarded rights

<sup>F12</sup>13. ....

**F12** Reg. 13 omitted (6.4.2009) by virtue of Pensions Act 2008 (Abolition of Safeguarded Rights) (Consequential) Order 2009 (S.I. 2009/598), arts. 1, 7(3)

## Disqualification as a destination for pension credit—occupational pension schemes

14. The calculation of the value of the rights of the person entitled to the pension credit for the purposes of paragraph 7(3) of Schedule 5 to the 1999 Act shall be made in accordance with the methods adopted and assumptions made by the scheme which are consistent with the methods adopted and assumptions made by that scheme when transfers of other pension rights are received by the scheme.

## Disqualification as a destination for pension credit—annuity contracts and insurance policies

15.—(1) The circumstances referred to in paragraph 7(4) of Schedule 5 to the 1999 Act (circumstances in which an annuity contract or insurance policy is disqualified as a destination for a pension credit) are where the requirements specified in paragraphs (2) to (7) are not satisfied.

(2) The annuity contract or insurance policy must provide that that contract or policy, as the case may be, may not be assigned or surrendered unless—

- (a) the person entitled to the pension credit; or
- (b) if the person entitled to the pension credit has died, his [<sup>F13</sup>widow, widower or surviving civil partner],

has consented to the assignment or surrender.

(3) The benefits previously secured by the annuity contract or insurance policy become secured, or are replaced by benefits which are secured by another qualifying arrangement.

(4) The annuity contract or insurance policy, as the case may be, must provide that the benefits secured by that contract or policy may be commuted if <sup>F14</sup>...—

- (a) the conditions set out in paragraph (5) are satisfied; or
- [<sup>F15</sup>(aa) the condition set out in paragraph (5A) is satisfied; or]
- (b) the conditions set out in paragraph (6) are satisfied.

(5) The conditions referred to in paragraph (4)(a) are—

- (a) the benefits secured by the annuity contract or insurance policy have become payable <sup>F16</sup>...;
- [<sup>F17</sup>(b) any lump sum payment—
  - (i) is permitted by the lump sum rule in section 166 of the Finance Act 2004; and
  - (ii) qualifies as a trivial commutation lump sum for the purposes of paragraph 7 of Part 1 of Schedule 29 to that Act; and]
- (c) all of the interest of the person entitled to the pension credit under the annuity contract or insurance policy is discharged upon payment of a lump sum.

[<sup>F18</sup>(5A) The condition referred to in paragraph (4)(aa) is that the lump sum payment is—

- (a) made by a registered pension scheme (within the meaning given in section 150(2) of the Finance Act 2004 (meaning of “pension scheme”));

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- (b) a payment that is described in Part 2 of the Registered Pension Schemes (Authorised Payments) Regulations 2009; and
  - (c) made to or in respect of a member.]
- (6) The conditions referred to in paragraph (4)(b) are—
- (a) the benefits secured by the annuity contract or insurance policy have become payable and the person entitled to the pension credit requests or consents to the commutation;
  - (b) the person entitled to the pension credit is suffering from serious ill health prior to normal benefit age; and
  - (c) the insurance company with which the annuity contract is entered into, or with which the insurance policy is taken out, assumes an obligation to pay the benefits secured by the annuity contract or insurance policy to—
    - (i) the person entitled to the pension credit;
    - (ii) the trustees of a trust for the benefit of the person entitled to the pension credit; or
    - (iii) the trustees of a trust for the benefit of the dependants of the person entitled to the pension credit.

(7) The annuity contract or insurance policy must contain, or be endorsed with, terms so as to provide for any increase in accordance with regulation 32 of the Pension Sharing (Pension Credit Benefit) Regulations 2000<sup>M4</sup> (increase of relevant pension) which would have been applied to the benefits which have become secured or been replaced by the annuity contract or insurance policy had the discharge of liability not taken place.

(8) 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 benefits secured by the annuity contract or insurance policy is applied for.

- F13** Words in reg. 15(2)(b) substituted (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. 1 para. 4** (with art. 3)
- F14** Word in reg. 15(4) omitted (1.12.2009) by virtue of [Occupational and Personal Pension Schemes \(Authorised Payments\) Amendment Regulations 2009 \(S.I. 2009/2930\)](#), regs. 1, **8(a)(i)**
- F15** Reg. 15(4)(aa) inserted (1.12.2009) by [Occupational and Personal Pension Schemes \(Authorised Payments\) Amendment Regulations 2009 \(S.I. 2009/2930\)](#), regs. 1, **8(a)(ii)**
- F16** Words in reg. 15(5)(a) omitted (6.4.2006) by virtue of [Taxation of Pension Schemes \(Consequential Amendments of Occupational and Personal Pension Schemes Legislation\) Order 2006 \(S.I. 2006/744\)](#), art. 1 **art. 17(4)(a)**
- F17** Reg. 15(5)(b) substituted (6.4.2006) by [Taxation of Pension Schemes \(Consequential Amendments of Occupational and Personal Pension Schemes Legislation\) Order 2006 \(S.I. 2006/744\)](#), art. 1 **art. 17(4)(b)**
- F18** Reg. 15(5A) inserted (1.12.2009) by [Occupational and Personal Pension Schemes \(Authorised Payments\) Amendment Regulations 2009 \(S.I. 2009/2930\)](#), regs. 1, **8(b)**

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**Marginal Citations**

**M4** [S.I. 2000/1054](#).

**Adjustments to the amount of the pension credit—occupational pension schemes which are underfunded on the valuation day**

**16.—(1)** The circumstances referred to in paragraph 8(1)(d) of Schedule 5 to the 1999 Act (adjustments to amount of pension credit) are—

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- (a) the discharge of liability in respect of the pension credit in accordance with paragraph 1(3) of Schedule 5 to the 1999 Act is at the request, or with the consent, of the person entitled to the pension credit;
- (b) the person entitled to the pension credit has refused an offer by the trustees or managers of the occupational pension scheme from which the pension credit is derived to discharge their liability in respect of the pension credit, without any reduction in the amount of the credit, in accordance with the provisions of paragraph 1(2) of Schedule 5 to the 1999 Act (conferring appropriate rights in that scheme on the person entitled to the pension credit); and
- (c) prior to making his request or giving his consent in accordance with sub-paragraph (a) the person entitled to the pension credit has received from the trustees or managers of the occupational pension scheme from which the pension credit is derived, a written statement which provides the following information—
  - (i) the reasons why the amount of the pension credit has been reduced;
  - (ii) the amount by which the pension credit has been reduced; and
  - (iii) where possible, an estimate of the date by which it will be possible to pay the full, unadjusted amount of the pension credit.

[<sup>F19</sup>(2) Reductions may be made to a pension credit in accordance with paragraphs 2 to 6 of Schedule 1A to the Transfer Values Regulations modified as if—

- (a) in paragraph 2, the reference to “initial cash equivalent” were a reference to “pension credit”;
- (b) in paragraph 3(b), the words “in respect of which the member’s cash equivalent is being calculated and verified” were “to which the pension credit relates”;
- (c) in paragraph 4, the words “member’s initial cash equivalent that is payable in respect of” were “pension credit that relates to”; and
- (d) in paragraph 5, the words “a member’s initial cash equivalent” were “the pension credit”.]

**F19** Reg. 16(2) substituted (1.10.2008) for reg. 16(2)-(3) by [Occupational Pension Schemes \(Transfer Values\) \(Amendment\) Regulations 2008 \(S.I. 2008/1050\)](#), reg. 1(1), [Sch. 2 para. 6\(c\)](#)

### **Adjustments to the amount of the pension credit—payments made without knowledge of the pension debit**

**17.** For the purposes of paragraph 9 of Schedule 5 to the 1999 Act (adjustments to amount of pension credit), where the cash equivalent of the member’s shareable rights after deduction of the payment referred to in sub-paragraph (b) of that paragraph, is less than the amount of the pension debit, the pension credit shall be reduced to that lesser amount.

### **Adjustments to the amount of the pension credit—increasing the amount of the pension credit**

**18.—(1)** For the purposes of paragraph 10 of Schedule 5 to the 1999 Act (adjustments to amount of pension credit) the trustees or managers of an occupational pension scheme to which paragraph 1(3) or 3(3) of Schedule 5 to the 1999 Act applies shall increase the amount of the pension credit by—

- (a) the amount, if any, by which the amount of that pension credit falls short of what it would have been if the valuation day had been the day on which the trustees or managers make the payment; or

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- (b) if it is greater, interest on the amount of that pension credit calculated on a daily basis over the period from the valuation day to the day on which the trustees or managers make the payment, at an annual rate of one per cent. above the base rate.
- (2) For the purposes of paragraph 10 of Schedule 5 to the 1999 Act the trustees or managers of a personal pension scheme to which paragraph 1(3) of Schedule 5 to the 1999 Act applies, or a person responsible for a pension arrangement to which paragraph 4(2) of Schedule 5 to the 1999 Act applies, shall increase the amount of the pension credit by—
- (a) the interest on the amount of that pension credit, calculated on daily basis over the period from the valuation day to the day on which the trustees or managers or the person responsible for the pension arrangement make the payment, at the same rate as that payable for the time being on judgment debts by virtue of section 17 of the Judgments Act 1838<sup>M5</sup>; or
  - (b) if it is greater, the amount, if any, by which the amount of that pension credit falls short of what it would have been if the valuation day had been the day on which the trustees or managers or the person responsible for the pension arrangement make the payment.

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**Marginal Citations**

**M5** 1 & 2 Vic. c. 110; the rate of interest was amended by [S.I. 1993/564](#).

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- reg. 4(4) omitted by [S.I. 2006/744 reg. 18\(3\)\(b\)](#)
- reg. 5(3J) substituted by [S.I. 2007/60 Sch. para. 10\(c\)](#)
- reg.13 rev.inpt and amended by [S.I. 2000/2691 reg 11\(7\)](#)
- reg. 21(1)(c) words omitted by [S.I. 2006/744 reg. 18\(4\)\(a\)](#)
- reg. 21(2) substituted by [S.I. 2006/744 reg. 18\(4\)\(b\)](#)