
STATUTORY INSTRUMENTS

2000 No. 1054

PENSIONS

The Pension Sharing (Pension Credit Benefit) Regulations 2000

Made - - - - *13th April 2000*
Laid before Parliament *19th April 2000*
Coming into force - - *1st December 2000*

The Secretary of State for Social Security, in exercise of the powers conferred upon him by sections 68D, 101C(2), 101D(1)(b), (2)(b) and (4)(b), 101E(2), 101F(2)(b), (c), (3)(b), and (6)(b), 101H(2)(a) and (b), and (3), 101I, 101J(2), 101L(1), (2)(a) and (b), and (3), 101P(2)(b), 101Q, 181(1)(1) and 182(2) and (3) of the Pension Schemes Act 1993(2), sections 10(2)(b), 124(1)(3) and 174(2) and (3) of the Pensions Act 1995(4), and sections 40(1) and (3) and 83(4) and (6) of the Welfare Reform and Pensions Act 1999(5) and of all other powers enabling him in that behalf, after consulting such persons as he considered appropriate(6), hereby makes the following Regulations:

PART I
GENERAL

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Pension Sharing (Pension Credit Benefit) Regulations 2000 and shall come into force on 1st December 2000.

(2) In these Regulations—

“the 1993 Act” means the Pension Schemes Act 1993;

“the 1995 Act” means the Pensions Act 1995;

“the 1999 Act” means the Welfare Reform and Pensions Act 1999;

“the Taxes Act” means the Income and Corporation Taxes Act 1988(7);

-
- (1) Section 181(1) is cited because of the meaning there given to “prescribed” and “regulations”.
- (2) 1993 c. 48. Sections 101C, 101D, 101E, 101F, 101H, 101I, 101J, 101L, 101P and 101Q are inserted by section 37 of the Welfare Reform and Pensions Act 1999 (c. 30).
- (3) Section 124(1) is cited because of the meaning there given to “prescribed” and “regulations”.
- (4) 1995 c. 26.
- (5) 1999 c. 30.
- (6) See section 120(1) of the Pensions Act 1995 and section 83(11) of the Welfare Reform and Pensions Act 1999.
- (7) 1988 c. 1.

“active member”, in relation to an occupational pension scheme, means a person who is in pensionable service under the scheme;

“appropriate scheme” shall be construed in accordance with section 9(5) of the 1993 Act;

“base rate” means the base rate for the time being quoted by the reference banks or, where there is for the time being more than one such base rate, the base rate which, when the base rate quoted by each bank is ranked in a descending sequence of seven, is fourth in the sequence;

“contracted-out rights” has the meaning given by section 68A(5) of the 1993 Act**(8)**;

“eligible member” has the meaning given by section 101P(1) of the 1993 Act**(9)**;

“employer” has the meaning given by section 181(1) of the 1993 Act;

“incapacity” means physical or mental deterioration which is sufficiently serious to prevent a person from following his normal employment or which seriously impairs his earning capacity;

“the Inland Revenue” means the Commissioners of Inland Revenue;

“member” means a member of an occupational pension scheme or a personal pension scheme and includes an eligible member;

“money purchase benefits” has the meaning given by section 181(1) of the 1993 Act**(10)**

“money purchase contracted-out scheme” has the meaning given by section 8(1)(a)(ii) of the 1993 Act;

“money purchase scheme” has the meaning given by section 181(1) of the 1993 Act;

“normal benefit age” has the meaning given by section 101B of the 1993 Act**(11)**;

“occupational pension scheme” has the meaning given by section 1 of the 1993 Act;

“overseas arrangement” has the meaning given by regulation 1(2) of the Contracting-out (Transfer and Transfer Payment) Regulations 1996**(12)**;

“overseas scheme” has the meaning given by regulation 1(2) of the Contracting-out (Transfer and Transfer Payment) Regulations 1996**(13)**;

“pension credit benefit” has the meaning given by—

- (a) section 101B of the 1993 Act insofar as that expression is used in Part II of these Regulations; and
- (b) section 101P of the 1993 Act insofar as that expression is used in Part III of these Regulations;

“pension credit rights” has the meaning given by—

- (a) section 101B of the 1993 Act insofar as that expression is used in Part II of these Regulations; and
- (b) section 101P of the 1993 Act insofar as that expression is used in Part III of these Regulations;

“pensionable service” has the meaning given by section 124(1) of the Pensions Act 1995**(14)**;

“personal pension scheme” has the meaning given by section 1 of the 1993 Act**(15)**;

(8) Section 68A is inserted by section 36 of the Welfare Reform and Pensions Act 1999.

(9) Section 101P is inserted by section 37 of the Welfare Reform and Pensions Act 1999.

(10) Section 181 was amended by the 1995 Act, the Industrial Tribunals Act 1996 (c. 17) and is amended by the Welfare Reform and Pensions Act 1999.

(11) Section 101B is inserted by section 37 of the Welfare Reform and Pensions Act 1999.

(12) S.I.1996/1462 as amended by S.I. 1997/786.

(13) The definition of “overseas scheme” was amended by S.I. 1997/786.

(14) Section 124 is amended by paragraph 61 of Schedule 12 to the Welfare Reform and Pensions Act 1999.

(15) The definition of “personal pension scheme” is amended by paragraph 3(1)(a) of Schedule 2 to the Welfare Reform and Pensions Act 1999.

“principal appointed day” has the meaning given by section 7(2B) of the 1993 Act⁽¹⁶⁾;

“qualifying occupational pension scheme” has the meaning given by section 40(3) of the 1999 Act;

“qualifying scheme” has the meaning given by section 101P(1) of the 1993 Act;

“the reference banks” means the seven largest institutions for the time being which—

- (a) are authorised by the Bank of England under the Banking Act 1987⁽¹⁷⁾;
- (b) are incorporated in and carrying on within the United Kingdom a deposit-taking business (as defined in section 6, but subject to any order under section 7 of that Act⁽¹⁸⁾); and
- (c) quote a base rate in sterling;

and for the purpose of this definition the size of an institution at any time is to be determined by reference to the gross assets denominated in sterling of that institution, together with any subsidiary (as defined in section 736 of the Companies Act 1985⁽¹⁹⁾), as shown in the audited end of year accounts last published before that time;

“Regulatory Authority” means the Occupational Pensions Regulatory Authority;

“relevant pension” means a pension to which section 40(2) of the 1999 Act applies;

“safeguarded rights” has the meaning given by section 68A of the 1993 Act⁽²⁰⁾;

“salary related contracted-out scheme” has the meaning given by section 8(1)(a)(i) of the 1993 Act⁽²¹⁾

“scheme” has the meaning given by section 101B of the 1993 Act⁽²²⁾;

“statement of entitlement” means the statement of the amount of the cash equivalent of an eligible member’s pension credit benefit under a qualifying scheme referred to in section 101H(1) of the 1993 Act;

“transfer credits” means rights allowed to a person under the rules of an occupational or personal pension scheme by reference to a transfer to that scheme of his accrued rights from another scheme (including any transfer credits allowed by that scheme);

“transfer notice” has the meaning given by section 101F(7) of the 1993 Act;

“trustees or managers” has the meaning given by section 46(1) of the 1999 Act;

“valuation date” has the meaning given by section 101J(7) of the 1993 Act.

Salary related schemes

2. For the purposes of Chapter II of Part IVA of the 1993 Act⁽²³⁾ (requirements relating to pension credit benefit—transfer values) and these Regulations, an occupational pension scheme is salary related if it is not a money purchase scheme and it is not a scheme—

- (a) the only benefit provided by which (other than money purchase benefits) are death benefits; and
- (b) under the provisions of which no member has accrued rights (other than rights to money purchase benefits).

⁽¹⁶⁾ Section 7(2B) was inserted by section 136(1) of the Pensions Act 1995.

⁽¹⁷⁾ 1987 c. 22.

⁽¹⁸⁾ Section 7 was amended by section 23(1) of, and paragraphs 1 and 4 of Schedule 5 to, the Bank of England Act 1998

⁽¹⁹⁾ 1985 c. 6. Section 736 was substituted by section 144(1) of the Companies Act 1989 (c. 40).

⁽²⁰⁾ Section 68A is inserted by section 36 of the Welfare Reform and Pensions Act 1999.

⁽²¹⁾ Section 8(1)(a)(i) was substituted by section 136(2) of the Pensions Act 1995.

⁽²²⁾ Section 101B is inserted by section 37 of the Welfare Reform and Pensions Act 1999.

⁽²³⁾ Part IVA is inserted by section 37 of the Welfare Reform and Pensions Act 1999.

PART II

PENSION CREDIT BENEFIT UNDER OCCUPATIONAL PENSION SCHEMES

Commutation of the whole of pension credit benefit

3.—(1) Subject to paragraphs (3) and (4) and regulation 9 of the Pension Sharing (Safeguarded Rights) Regulations 2000⁽²⁴⁾ (ways of giving effect to safeguarded rights—salary related schemes), the circumstances in which the whole of the pension credit benefit may be commuted for the purposes of section 101C(2) of the 1993 Act (payment of pension credit benefit in the form of a lump sum before normal benefit age) are those described in paragraph (2).

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

- (a) the person entitled to the pension credit benefit is suffering from serious ill health prior to normal benefit age; or
- (b) the aggregate of total benefits payable to the person under an occupational pension scheme, including any pension credit benefit, does not exceed £260 per annum.

(3) This regulation does not apply to an occupational pension scheme which is approved under section 590 of the Taxes Act⁽²⁵⁾ (mandatory approval).

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

Commutation of part of pension credit benefit

4.—(1) Subject to paragraphs (2) and (3) and regulation 9 of the Pension Sharing (Safeguarded Rights) Regulations 2000, the circumstances in which part of the pension credit benefit may be commuted for the purposes of section 101C(2) of the 1993 Act (payment of pension credit benefit in the form of a lump sum before normal benefit age) are—

- (a) that the person entitled to the pension credit benefit—
 - (i) subject to paragraph (2), is suffering from an incapacity prior to normal benefit age; or
 - (ii) has reached the age of 50; and
- (b) that the commutation would not prevent approval or continuing approval of the scheme under section 591 of the Taxes Act⁽²⁶⁾ (discretionary approval).

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

- (a) is an active member of the occupational pension scheme in which his pension credit rights are held; and
- (b) has become entitled to the early payment of benefits derived from his accrued rights, other than his pension credit rights, in that scheme as a result of his incapacity prior to normal benefit age.

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

⁽²⁴⁾ S.I. 2000/1055.

⁽²⁵⁾ Section 590 was amended by section 35 of, and paragraphs 1, and 18(1), (2) of Part I of Schedule 3 to, the Finance Act 1988 (c. 39), sections 75 and 187(1) of, and paragraphs 1, 3(1) to (4), and 18(2) and (3) of Part I of Schedule 6, and Part IV of Schedule 17 to, the Finance Act 1989 (c. 26), and by sections 34, 36(2), (3), and 123 of, and Part V of Schedule 19 to, the Finance Act 1991 (c. 31).

⁽²⁶⁾ Section 591 was amended by section 146 and paragraphs 1 and 6 of Part I of Schedule 13 to, the Finance Act 1988, sections 107 and 258 of, and paragraph 12 of Part V of Schedule 26 to, the Finance Act 1994 (c. 9), and sections 59(1), (2), and 60(1) of the Finance Act 1995 (c. 4).

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

Means of assuring pension credit benefit

5.—(1) The prescribed means by which a person's pension credit benefit under a scheme must be assured for the purposes of section 101D(1)(b) of the 1993 Act (form of pension credit benefit and its alternatives) is by means of a transaction to which section 19 of the 1993 Act (discharge of liability where guaranteed minimum pensions are secured by insurance policies or annuity contracts) applies.

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

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

- (a) authorised under section 3 or 4 of the Insurance Companies Act 1982(27) (authorisation of insurance business) to carry on long term business (within the meaning of section 1 of that Act(28) (classification));
 - (b) in the case of a friendly society, authorised under section 32 of the Friendly Societies Act 1992(29) (grant of authorisation by Commission: general) to carry out long term business under any of the Classes specified in Head A of Schedule 2 to that Act (the activities of a friendly society: long term business); or
 - (c) an EC company as defined in section 2(6) of the Insurance Companies Act 1982(30) (restriction on carrying on insurance business), and which falls within paragraph (4).
- (4) An EC company falls within this paragraph if it—
- (a) carries on ordinary long-term insurance business (within the meaning of section 96(1) of the Insurance Companies Act 1982(31)) in the United Kingdom through a branch in respect of which such of the requirements of Part I of Schedule 2F to that Act(32) (recognition in the United Kingdom of EC and EFTA companies: EC companies carrying on business etc. in the United Kingdom) as are applicable have been complied with; or
 - (b) provides ordinary long term insurance in the United Kingdom and such of the requirements of Part I of Schedule 2F to that Act as are applicable have been complied with in respect of insurance.

Alternatives to pension credit benefit

6.—(1) The prescribed alternatives to pension credit benefit which a scheme may provide for the purposes of section 101D(2) of the 1993 Act are described in regulations 7 to 9.

(2) For the purposes of section 101D(4)(b) of the 1993 Act, the cases in which the alternatives described in regulations 7 to 9 may be provided without the consent of the person entitled to the benefit are described in regulations 7(4) and 8(4).

(27) 1982 c. 50, as amended by the European Economic Area Act 1993 (c. 51).

(28) Section 1 was amended by S.I. 1990/1159.

(29) 1992 c. 40. Section 32 was amended by S.I. 1994/1984.

(30) Section 2 was amended by regulation 2(a) of S.I. 1987/2130, section 300(2) of, and paragraph 31 of Schedule 2 to, the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), regulation 4(2) of S.I. 1994/1696 and regulation 3(1) of S.I. 1994/3132.

(31) There are amendments to section 96(1) which are not relevant to these Regulations.

(32) Schedule 2F was inserted by S.I. 1996/1696.

Early retirement or deferred retirement

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

- (a) amount;
- (b) recipient; and
- (c) time at which the benefits are payable.

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

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

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

- (a) that person's earning capacity is destroyed or seriously impaired by incapacity or serious ill health; and
- (b) in the opinion of the trustees or managers of the scheme, the person entitled to the benefit is incapable of deciding whether it is in his interests to consent.

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

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

Bought out benefits

8.—(1) The scheme may provide for benefits different from those required to constitute pension credit benefit to be appropriately secured by a transaction to which section 19 of the 1993 Act applies (discharge of liability where guaranteed minimum pensions are secured by insurance policies or annuity contracts).

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

(3) The exception to paragraph (2) is where the person entitled to the benefit is requiring the trustees or managers to provide the alternative by exercising his right to give a transfer notice under section 101F of the 1993 Act (power to give transfer notice).

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

- (a) the person entitled to the pension credit will be able to assign or surrender the insurance policy or annuity contract on the conditions set out in regulation 3 of the Occupational Pension Schemes (Discharge of Liability) Regulations 1997(**33**) (conditions on which policies of insurance and annuity contracts may be assigned or surrendered); and
- (b) the requirements of paragraph (5) are satisfied.

(33) S.I. 1997/784.

- (5) The requirements of this paragraph are that—
- (a) the scheme is being wound up; or
 - (b) the trustees or managers of the scheme consider that, in the circumstances, it is reasonable for the scheme to provide the alternative without the consent of the person entitled to the benefit and the requirements of paragraph (6) are satisfied.
- (6) The requirements of this paragraph are that all the conditions set out in sub-paragraphs (a) and (b) are satisfied, namely—
- (a) the trustees or managers of the scheme give the person entitled to the benefit at least 30 days' written notice of their intention to take out the insurance policy or enter into the annuity contract unless the person entitled to the benefit exercises a right to give a transfer notice under section 101F of the 1993 Act (the first mentioned notice being sent to that person at his last known address or delivered to that person personally); and
 - (b) when the trustees or managers of the scheme agree with the insurance company to take out the insurance policy or enter into the annuity contract, there is no outstanding transfer notice by the person entitled to the benefit under section 101F of the 1993 Act.
- (7) For the purposes of this regulation “appropriately secured” means secured by an insurance policy or annuity contract to which regulation 5 applies.

Money purchase benefits

- 9.—(1) The scheme may, with the consent of the person entitled to the benefit, provide money purchase benefits instead of all or any of the benefits that constitute pension credit benefit.
- (2) Any scheme rule which allows this alternative must require the trustees or managers of the scheme to be reasonably satisfied that the amount allocated to provide money purchase benefits in respect of the person entitled to the benefit is at least equal to the amount described in regulation 11.

Transfer of a person’s pension credit rights without consent

- 10.—(1) For the purposes of section 101D(4) of the 1993 Act (form of pension credit benefit and its alternatives), the trustees or managers of an occupational pension scheme may provide for a person’s pension credit rights under that scheme to be transferred to another occupational pension scheme without that person’s consent where the conditions set out in paragraphs (2) and either (3) or (7), as the case may be, are satisfied.
- (2) The condition set out in this paragraph is that the trustees or managers of the transferring scheme consider that, in the circumstances, it is reasonable for the transfer to be made without the person’s consent and the requirements of paragraph (5) are satisfied.
- (3) The condition set out in this paragraph is that, subject to paragraph (6)(a), relevant actuary certifies to the trustees or managers of the transferring scheme that—
- (a) the transfer credits to be acquired for each person with pension credit rights under the receiving scheme are, broadly, no less favourable than the rights to be transferred; and
 - (b) where it is the established custom for discretionary benefits or increases in benefits to be awarded under the transferring scheme, there is good cause to believe that the award of discretionary benefits or increases in benefits under the receiving scheme will (making allowance for any amount by which transfer credits under the receiving scheme are more favourable than the rights to be transferred) be broadly no less favourable.
- (4) For the purpose of paragraph (3)(b), the relevant actuary shall, in considering whether there is good cause, have regard to all the circumstances of the case and in particular—
- (a) to any established custom of the receiving scheme with regard to the provision of discretionary benefits or increases in benefits; and

- (b) to any announcements made with regard to the provision of such benefits under the receiving scheme.
- (5) The requirements of this paragraph are that all the conditions set out in sub-paragraphs (a) and (b) are satisfied, namely—
- (a) the trustees or managers of the scheme give the person with pension credit rights at least 30 days' written notice of their intention to transfer those rights to another occupational pension scheme unless the person with those rights exercises a right to give a transfer notice under section 101F of the 1993 Act (the first mentioned notice being sent to that person at his last known address or delivered to that person personally); and
 - (b) when the trustees or managers of the scheme agree with the trustees or managers of the receiving scheme to transfer those rights, there is no outstanding transfer notice by the person with pension credit rights under section 101F of the 1993 Act.
- (6) Paragraph (3) does not apply where the whole of the pension credit rights to be transferred are derived from rights accrued in a money purchase scheme.
- (7) The condition set out in this paragraph is that any scheme rule which allows the transfer of a person's pension credit rights derived from rights accrued in a money purchase scheme without the consent of the person with those rights must require the trustees or managers of the scheme to be reasonably satisfied that the amount transferred is at least equal to the amount described in regulation 11.
- (8) In this regulation—
- “relevant actuary” means—
- (a) where the transferring scheme is a scheme for which an actuary is required under section 47 of the 1995 Act (professional advisers) 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 Institute of Actuaries, a Fellow of the Faculty of Actuaries⁽³⁴⁾, 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.

Value of alternatives to pension credit benefit

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

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

12. The requirements which must be met for the purposes of section 101E(1)(c) of the 1993 Act (discharge of liability where pension credit or alternative benefits are secured by insurance policies or annuity contracts) are those described in regulations 13 and 14.

⁽³⁴⁾ The Institute of Actuaries is at Staple Inn Hall, High Holborn, London WC1V 7QJ. The Faculty of Actuaries is at Maclaurin House, 18 Dublin Street, Edinburgh EH1 3PP.

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

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

Other requirements applying to insurance policies and annuity contracts

14. The requirements described in this regulation are—

- (a) that the insurance company with which the insurance policy is taken out or the annuity contract is entered into assumes an obligation to the person entitled to the benefit or to the trustees of a trust for the benefit of the person entitled to the benefit and, if appropriate, dependants of his, to pay the benefits secured by that policy or contract to him or, as the case may be, to dependants of his, or to the trustees of such a trust; and
- (b) that the insurance policy or annuity contract contains, or is endorsed with, terms so as to provide for any increase, which would have been applicable as a consequence of section 40 of the 1999 Act (indexation: other pension schemes) had the discharge of liability of the pension credit benefit, or its alternative, not taken place, to apply to the benefits which have become secured or been replaced by that policy or contract.

Further conditions on which liability may be discharged

15.—(1) Subsection (1)(b) of section 101E of the 1993 Act (transactions with the consent of the person entitled to the benefit which discharge liability where pension credit or alternative benefits secured by insurance policies or annuity contracts) shall not apply in the circumstances described in paragraph (2), (3), (4) or (5).

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

- (a) the person entitled to the benefit is dead and the benefit is payable to a person other than his widow or widower; and
- (b) the arrangement for securing the pension credit benefit or its alternative was made at the request of the person entitled to it.

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

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

- (a) the scheme is being wound up;
- (b) sections 73 and 74 of the 1995 Act⁽³⁵⁾ (preferential liabilities on winding up, and discharge of liabilities by insurance, etc.) and the Occupational Pension Schemes (Winding Up) Regulations 1996⁽³⁶⁾ do not apply;
- (c) the person entitled to the benefit is able to assign or surrender the insurance policy or the annuity contract; and
- (d) the condition set out in section 101E(1)(a) of the 1993 Act is satisfied.

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

⁽³⁵⁾ Section 73 was modified by regulation 3 of S.I. 1996/3126, as amended by S.I. 1999/3198. Section 73 is amended by section 38(1) of, and paragraph 55 of Schedule 12 to, the Welfare Reform and Pensions Act 1999. Section 74 is amended by paragraph 56 of Schedule 12 to that Act.

⁽³⁶⁾ S.I. 1996/3126, amended by S.I. 1997/786, and S.I. 1999/3198.

- (a) the trustees or managers of the scheme consider that, in the circumstances, it is reasonable for the scheme to provide the alternative without the consent of the person entitled to the benefit;
 - (b) the trustees or managers of the scheme give the person entitled to the benefit at least 30 days' written notice of their intention to take out the insurance policy or enter into the annuity contract, unless the person entitled to the benefit exercises a right to give a transfer notice under section 101F of the 1993 Act (power to give transfer notice) (the first mentioned notice being sent to that person at his last known address or delivered to that person personally); and
 - (c) when the trustees or managers of the scheme agree with the insurance company to take out the insurance policy or enter into the annuity contract, there is no outstanding transfer notice given by the person entitled to the benefit under section 101F of the 1993 Act.
- (6) The payment made to the insurance company in the circumstances described in paragraph (5) must be at least an amount equal to the value of the pension credit benefit which has accrued to the person entitled to the benefit at the date the payment is made.

PART III

TRANSFER VALUES

Transfer payments in respect of safeguarded rights—general

16.—(1) A transfer of liability from—

- (a) a salary related contracted-out scheme (or a scheme which has ceased to be a salary related contracted-out scheme); or
- (b) a money purchase contracted-out scheme or an appropriate scheme (or a scheme which has ceased to be a money purchase contracted-out scheme or an appropriate scheme),

may give effect to the safeguarded rights of a person entitled to a pension credit by the making of a transfer payment to a scheme referred to in paragraph (2).

(2) A transfer payment in respect of safeguarded rights may be made to—

- (a) an appropriate scheme;
- (b) a money purchase contracted-out scheme;
- (c) a salary related contracted-out scheme;
- (d) a personal pension scheme which has ceased to be an appropriate scheme; or
- (e) an occupational pension scheme which has ceased to be contracted-out,

in accordance with regulations 17 to 19 and no such transfer may be made otherwise.

(3) In this regulation and in regulations 17 to 19 a “transfer payment” means a transfer payment such as is described in this regulation.

Transfer payments to money purchase contracted-out schemes and appropriate schemes

17. A transfer of any liability in respect of safeguarded rights may be made to a money purchase contracted-out scheme or an appropriate scheme if—

- (a) the person with pension credit rights consents;
- (b) the transfer payment (or, if it forms part of a larger payment giving effect to both safeguarded and other rights, that part of it which gives effect to safeguarded rights) is of an amount at least equal to the cash equivalent of the safeguarded rights to which effect is

being given, as calculated and verified in a manner consistent with regulations 3 to 7 of the Pension Sharing (Valuation) Regulations 2000⁽³⁷⁾ (calculation, verification and reduction of cash equivalents);

- (c) in the case of a transfer payment to a money purchase contracted-out scheme, the person with pension credit rights is employed by an employer who is a contributor to the receiving scheme; and
- (d) the transfer payment is applied so as to provide money purchase benefits under the receiving scheme for or in respect of the person with pension credit rights in respect of safeguarded rights.

Transfer payments to salary related contracted-out schemes

18. A transfer of any liability in respect of safeguarded rights may be made to a salary related contracted-out scheme if—

- (a) the person with pension credit rights consents;
- (b) the transfer payment (or, if it forms part of a larger payment giving effect to both safeguarded and other rights, that part of it which gives effect to safeguarded rights) is of an amount at least equal to the cash equivalent of the safeguarded rights to which effect is being given, as calculated and verified in a manner consistent with regulations 3 to 7 of the Pension Sharing (Valuation) Regulations 2000;
- (c) the person with pension credit rights is employed by an employer who is a contributor to the receiving scheme; and
- (d) the transfer payment is applied to provide rights for the person with pension credit rights which, had they accrued in the receiving scheme, would be provided in accordance with the rules of the receiving scheme relating to earners who are in employment which is contracted-out in relation to the receiving scheme or have been in employment which was so contracted-out on or after the principal appointed day.

Transfer payments to overseas schemes or overseas arrangements

19. A transfer of any liability in respect of safeguarded rights may be made to an overseas scheme or an overseas arrangement if—

- (a) the person with pension credit rights consents;
- (b) the trustees or managers of the transferring scheme have taken reasonable steps to satisfy themselves that the person with pension credit rights has emigrated on a permanent basis and, where the receiving scheme is an occupational pension scheme, that he has entered employment to which the receiving scheme applies;
- (c) the transfer payment (or, if it forms part of a larger payment giving effect to both safeguarded and other rights, that part which gives effect to safeguarded rights) is of an amount at least equal to the cash equivalent of the safeguarded rights to which effect is being given, as calculated and verified in a manner consistent with regulations 3 to 7 of the Pension Sharing (Valuation) Regulations 2000;
- (d) the person with pension credit rights has acknowledged that he accepts that the scheme or arrangement to which the transfer payment is to be made may not be regulated in any way by the law of the United Kingdom and that as a consequence there may be no obligation under that law on the receiving scheme or arrangement or its trustees or managers to provide any particular value or benefit in return for the transfer payment; and

(37) S.I. 2000/1052.

- (e) the trustees or managers of the transferring scheme have taken reasonable steps to satisfy themselves that the person with pension credit rights has received a statement from the receiving scheme or arrangement showing the benefits to be awarded in respect of the transfer payment and the conditions (if any) on which these could be forfeited or withheld.

Requirements to be met by annuities

20. Subject to regulation 19, the prescribed requirements referred to in section 101F(2)(b) of the 1993 Act (cash equivalent to be used for purchasing annuities) are those specified in regulation 15(2) to (7) of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000⁽³⁸⁾ (disqualification as a destination for pension credit—annuity contracts and insurance policies).

Requirements of other pension arrangements

21.—(1) The prescribed requirements referred to in section 101F(2)(c) and (3)(b) of the 1993 Act (cash equivalent of pension credit benefit to be used to subscribe to other pension arrangements which satisfy prescribed requirements) are that the pension arrangement to which it is proposed to subscribe—

- (a) is an overseas arrangement;
 - (b) if it is an overseas arrangement and the cash equivalent is or includes the cash equivalent of safeguarded rights, the arrangement is one to which a transfer payment in respect of such rights may be made in accordance with regulation 6 or 9 of the Pension Sharing (Safeguarded Rights) Regulations 2000 (ways of giving effect to safeguarded rights—money purchase schemes, and ways of giving effect to safeguarded rights—salary related schemes); or
 - (c) if the scheme from which rights are transferred is of a kind described in any of subparagraphs (a) to (e) of paragraph (2), satisfies the requirements of the Inland Revenue.
- (2) The kinds of scheme mentioned in paragraph (1)(c) are—
- (a) a scheme which is approved by the Inland Revenue for the purposes of Chapter I of Part XIV of the Taxes Act (pension schemes, social security benefits, life annuities etc: retirement benefit schemes);
 - (b) a scheme which is being considered for approval by the Inland Revenue for the purposes of Chapter I of Part XIV of the Taxes Act;
 - (c) a relevant statutory scheme as defined in section 611A(1)⁽³⁹⁾ (definition of relevant statutory scheme) of the Taxes Act;
 - (d) a fund to which section 608 of the Taxes Act (superannuation funds approved before 6th April 1980) applies; and
 - (e) a scheme which is approved by the Inland Revenue under Chapter IV of Part XIV of the Taxes Act.

(3) The prescribed circumstances referred to in section 101F(2)(c) and (3)(b) of the 1993 Act are those referred to in paragraph (1)(b) and (c).

Requirements to be met by an eligible scheme

22.—(1) The prescribed requirements referred to in section 101F(6)(b) of the 1993 Act (references to an eligible scheme which satisfies the prescribed requirements) are that—

⁽³⁸⁾ S.I. 2000/1053.

⁽³⁹⁾ Section 611A(1) was inserted by section 75 of, and paragraphs 1, 15 and 18(1) of Part I of Schedule 6 to, the Finance Act 1989.

- (a) if the eligible member's cash equivalent (or any portion of it to be used under section 101F(2) or (3) of the 1993 Act) is or includes the cash equivalent of safeguarded rights, then the eligible scheme under whose rules rights are acquired is one—
 - (i) to which those safeguarded rights may be transferred; or
 - (ii) to which a transfer payment in respect of those safeguarded rights may be made, in accordance with regulations 16 to 19 of these Regulations (transfers of safeguarded rights) and regulation 9(3)(c) of the Pension Sharing (Safeguarded Rights) Regulations 2000(40); and
- (b) if the scheme from which pension credit rights are transferred or from which a transfer payment of such rights is made is of a kind described in any of sub-paragraphs (a) to (e) of paragraph (2) of regulation 21, the eligible scheme to which pension credit rights are transferred or to which a transfer payment in respect of those rights is made is of a kind described in paragraph (2)(a), (c) or (e) of regulation 21.

(2) In this regulation “eligible scheme” means a scheme described in section 101F(6) of the 1993 Act.

Statements of entitlement

23.—(1) Subject to paragraph (2), for the purposes of subsection (2)(a) of section 101H of the 1993 Act (salary related schemes: statements of entitlement), the prescribed period beginning with the date of the eligible member's application under that section for a statement of entitlement is a period of 3 months.

(2) Where the trustees or managers of the scheme are for reasons beyond their control unable within the period referred to in paragraph (1) to obtain the information required to calculate the cash equivalent, the prescribed period is such longer period as they may reasonably require as a result of that inability, provided that such longer period does not exceed 6 months beginning with the date of the eligible member's application.

(3) For the purposes of subsection (2)(b) of section 101H of the 1993 Act, the prescribed period is the period of 10 days (excluding Saturdays, Sundays, Christmas Day, New Year's Day and Good Friday) ending with the date on which the statement of entitlement is provided to the eligible member.

(4) For the purposes of subsection (3) of section 101H of the 1993 Act, an eligible member who has made an application under section 101H(1) of the 1993 Act for a statement of entitlement may not, within a period of 12 months beginning on the date of that application, make any further such application unless the rules of the scheme provide otherwise or the trustees or managers allow him to do so.

Manner of calculation and verification of cash equivalents

24.—(1) Except in a case to which, or to the extent to which, paragraph (2) or (5) applies, cash equivalents are to be calculated and verified in such manner as may be approved in particular cases by the scheme actuary or, in relation to a scheme to which section 47(1)(b) of the 1995 Act does not apply, by—

- (a) a Fellow of the Institute of Actuaries;
- (b) a Fellow of the Faculty of Actuaries; or
- (c) 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 in question, as being a proper person to act for the purposes of these Regulations in connection with that scheme,

and, subject to paragraph (2), in this regulation, “actuary” means the scheme actuary or, in relation to a scheme to which section 47(1)(b) of the 1995 Act does not apply, the actuary referred to in subparagraph (a), (b) or (c) of this paragraph.

(2) Where the eligible member in respect of whom a cash equivalent is to be calculated and verified is an eligible member of an occupational pension scheme having particulars from time to time set out in regulations made under section 7 of the Superannuation Act 1972⁽⁴¹⁾ (superannuation of persons employed in local government service, etc.), that cash equivalent shall be calculated and verified in such manner as may be approved by the Government Actuary or by an actuary authorised by the Government Actuary to act on his behalf for that purpose and in such a case “actuary” in this regulation means the Government Actuary or the actuary so authorised.

(3) Except in a case to which paragraph (5) applies, cash equivalents are to be calculated and verified by adopting methods and making assumptions which—

- (a) if not determined by the trustees or managers of the scheme in question, are notified to them by the actuary; and
- (b) are certified by the actuary to the trustees or managers of the scheme—
 - (i) as being consistent with the requirements of Chapter II of Part IVA of the 1993 Act;
 - (ii) as being consistent with “Retirement Benefit Schemes—Transfer Values (GN11)” published by the Institute of Actuaries and the Faculty of Actuaries⁽⁴²⁾ and current on the valuation date;
 - (iii) as being consistent with the methods adopted and assumptions made, on the valuation date, in calculating the benefits to which entitlement arises under the rules of the scheme in question for a person who is acquiring transfer credits including transfer credits in respect of pension credit rights under those rules; and
 - (iv) in the case of a scheme to which section 56 of the 1995 Act (minimum funding requirement) applies, as providing as a minimum an amount consistent with the methods and assumptions adopted in calculating, for the purposes of section 57 of that Act (valuation and certification of assets and liabilities), the liabilities mentioned in paragraphs (a), (c)(i) and (d) of section 73(3) of that Act, subject, in any case where the cash equivalent calculation is made on an individual and not a collective basis, to any adjustments which are appropriate to take account of that fact.

(4) If, by virtue of Schedule 5 of the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996⁽⁴³⁾ (modifications), section 56 of the 1995 Act applies to a section of a scheme as if that section were a separate scheme, paragraph (3)(b)(iv) shall apply as if that section were a separate scheme and as if the reference therein to a scheme were accordingly a reference to that section.

(5) Where a cash equivalent or any portion of a cash equivalent relates to money purchase benefits which do not fall to be valued in a manner which involves making estimates of the value of benefits, then that cash equivalent or that portion shall be calculated and verified in such manner as may be approved in a particular case by the trustees or managers of the scheme and in accordance with methods consistent with the requirements of Chapter II of Part IVA of the 1993 Act.

⁽⁴¹⁾ 1972 c. 11.

⁽⁴²⁾ The publication “Retirement Benefit Schemes—Transfer Values (GN11)” may be obtained from the Institute of Actuaries, Staple Inn Hall, High Holborn, London WC1V 7QJ and from the Faculty of Actuaries, Maclaurin House, 18 Dublin Street, Edinburgh EH1 3PP. The publication is also available on the following internet web-site: <http://www.actuaries.org.uk>.

⁽⁴³⁾ S.I. 1996/1536. Schedule 5 was amended by S.I. 1997/786 and S.I. 1997/3038.

Time period for notification to the Regulatory Authority of failure by the trustees or managers of an occupational pension scheme to comply with a transfer notice

25. The period prescribed for the purpose of section 101J(4)(a) of the 1993 Act (time for compliance with transfer notice) is the period of 21 days beginning with the day immediately following the end of the period for compliance specified in section 101J(1) of that Act.

Extension of time limits for payment of cash equivalents

26. The Regulatory Authority may grant an extension of the period mentioned in section 101J(1)(a) of the 1993 Act to the trustees or managers of an occupational pension scheme if the trustees or managers have within that period applied to the Regulatory Authority for an extension and—

- (a) the Regulatory Authority is satisfied that—
 - (i) the scheme is being wound up or is about to be wound up;
 - (ii) the scheme is ceasing to be a contracted-out scheme;
 - (iii) the interests of the members of the scheme generally will be prejudiced if the trustees or managers do what is needed to carry out what is required within that period;
 - (iv) the eligible member has not taken all such steps as the trustees or managers can reasonably expect in order to satisfy them of any matter which falls to be established before they can properly carry out what the eligible member requires;
 - (v) the trustees or managers have not been provided with such information as they reasonably require properly to carry out what the eligible member requires; or
 - (vi) the eligible member's statement of entitlement has been reduced or increased under regulation 27 or 28 or the eligible member has disputed the amount of the cash equivalent;
- (b) the provisions of section 53 of the 1993 Act(44) (supervision: former contracted-out schemes) apply; or
- (c) an application has been made for an extension on one or more of the grounds specified in paragraph (a) or (b) and the Regulatory Authority's consideration of the application cannot be completed before the end of the period mentioned in section 101J(1)(a) of the 1993 Act.

Increases and reductions of cash equivalents before a statement of entitlement has been sent to the eligible member

27.—(1) A cash equivalent referred to in section 101H of the 1993 Act shall not be reduced under this regulation once that cash equivalent has been sent to the eligible member and a direction referred to in paragraph (2) shall not affect such a cash equivalent unless that direction is made before that cash equivalent.

(2) Where it is the established custom for additional benefits to be awarded from the scheme at the discretion of the trustees or managers or the employer, the cash equivalent shall, unless the trustees or managers have given a direction that cash equivalents shall not take account of such benefits, take account of any such additional benefits as will accrue to the eligible member in question if the custom continues unaltered.

(3) The trustees or managers shall not make a direction such as is mentioned in paragraph (2) unless, within 3 months before making the direction, they have consulted the actuary and have obtained the actuary's written report on the implications for the state of funding of the scheme of making such a direction, including the actuary's advice as to whether or not in the actuary's

(44) Section 53 was amended by paragraph 48 of Schedule 5 to the Pensions Act 1995 and by paragraphs 52 and 53 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999.

opinion there would be any adverse implications for the funding of the scheme should the trustees or managers not make such a direction.

(4) In the case of a scheme to which section 56 of the 1995 Act applies, each respective part of the cash equivalent which relates to liabilities referred to in paragraph (a), (c)(i) or (d) of section 73(3) of the 1995 Act may be reduced by the percentage which is the difference between—

(a) 100 per cent; and

(b) the percentage of the liabilities mentioned in the relevant paragraph of section 73(3) which the actuarial valuation shows the scheme assets as being sufficient to satisfy,

where the actuarial valuation is the latest actuarial valuation obtained in accordance with section 57 of the 1995 Act prior to the date by reference to which the cash equivalent is determined under section 101F(4) of the 1993 Act (power to give transfer notice).

(5) If, by virtue of Schedule 5 to the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996, section 56 of the 1995 Act applies to a section of a scheme as if that section were a separate scheme, paragraph (4) shall apply as if that section were a separate scheme and as if the reference therein to a scheme were accordingly a reference to that section.

(6) Where an eligible member's cash equivalent is to be used for acquiring transfer credits under the rules of another scheme or for acquiring rights under the rules of a personal pension scheme and the receiving scheme has undertaken to provide benefits at least equal in value to the benefits represented by that cash equivalent on payment of a lesser sum, including nil, then that cash equivalent shall be reduced to that lesser sum.

(7) Where all or any of an eligible member's benefits have been appropriately secured by a transaction to which section 19 of the 1993 Act (discharge of liability of guaranteed minimum pensions secured by insurance policies or annuity contracts) applies, the cash equivalent in respect of those benefits shall be reduced to nil.

(8) For the purposes of paragraph (7), "appropriately secured" means the same as in section 19 of the 1993 Act except that an insurance policy or annuity contract which is taken out or entered into with an authorised friendly society (referred to in regulation 5(3)(b) of these Regulations), but which otherwise satisfies the conditions for being appropriate for the purposes of section 19, is to be treated as if it were appropriate for the purposes of that section provided the terms of such policy or contract are not capable of being amended, revoked or rescinded.

(9) Where a scheme has (in the case of a cash equivalent mentioned in section 101H of the 1993 Act, before the valuation date) begun to be wound up, a cash equivalent may be reduced to the extent necessary for the scheme to comply with section 73 of the 1995 Act and the Occupational Pension Schemes (Winding Up) Regulations 1996⁽⁴⁵⁾.

(10) If, by virtue of regulations made under section 73 of the 1995 Act, section 73 of that Act applies to a section of a scheme as if that section were a separate scheme, paragraph (9) shall apply as if that section were a separate scheme and as if the references therein to a scheme were accordingly references to that section.

(11) Where all or any of the benefits to which a cash equivalent relates have been surrendered, commuted or forfeited before the date on which the trustees or managers do what is needed to carry out what the eligible member requires, the cash equivalent of the benefits so surrendered, commuted or forfeited shall be reduced to nil.

(12) In a case where two or more of the paragraphs of this regulation fall to be applied to a calculation, they shall be applied in the order in which they occur in this regulation.

(13) In this regulation "actuary" has the meaning given by regulation 24.

(45) S.I. 1996/3126, amended by S.I. 1997/786, and S.I. 1999/3198.

Increases and reductions of cash equivalents once the statement of entitlement has been sent to the eligible member

28.—(1) This regulation applies to a cash equivalent when a statement of entitlement has been sent to an eligible member of a salary related scheme by the trustees or managers of that scheme.

(2) Where all or any of the benefits to which the cash equivalent relates have been surrendered, commuted or forfeited before the date on which the trustees or managers do what is needed to carry out what the eligible member requires, that part of the cash equivalent which relates to the benefits so surrendered, commuted or forfeited shall be reduced to nil.

(3) Where a scheme has on or after the valuation date begun to be wound up, a cash equivalent may be reduced to the extent necessary for the scheme to comply with sections 73 and 74 of the 1995 Act and the Occupational Pension Schemes (Winding Up) Regulations 1996.

(4) If, by virtue of the Occupational Pension Schemes (Winding Up) Regulations 1996, section 73 of the 1995 Act applies to a section of a scheme as if that section were a separate scheme, paragraph (3) shall apply as if that section were a separate scheme and as if the references therein to a scheme were accordingly references to that section.

(5) If an eligible member's cash equivalent falls short of or exceeds the amount which it would have been had it been calculated in accordance with Chapter II of Part IVA of the 1993 Act and these Regulations it shall be increased or reduced to that amount.

(6) In a case where two or more of the paragraphs of this regulation fall to be applied to a calculation, they shall be applied in the order in which they occur in this regulation except that where paragraph (5) falls to be applied it shall be applied as at the date on which it is established that the cash equivalent falls short of or exceeds the proper amount.

Increases of cash equivalents on late payment

29.—(1) Subject to paragraph (2), if the trustees or managers of a scheme, having received an application under section 101F(1) of the 1993 Act (power to give transfer notice), fail to comply with the transfer notice within 6 months of the valuation date, the eligible member's cash equivalent, as calculated in accordance with regulations 24, 27 and 28, shall be increased by the amount, if any, by which that cash equivalent falls short of what it would have been if the valuation date had been the date on which the trustees or managers carry out what the eligible member requires.

(2) If the trustees or managers of a scheme, having received an application under section 101H of the 1993 Act, fail without reasonable excuse to do what is needed to carry out what the eligible member requires within 6 months of the valuation date, the eligible member's cash equivalent, as calculated in accordance with regulations 24, 27 and 28, shall be increased by—

- (a) the interest on that cash equivalent calculated on a daily basis over the period from the valuation date to the date on which the trustees or managers carry out what the eligible member requires, at an annual rate of one per cent. above base rate; or, if it is greater,
- (b) the amount, if any, by which that cash equivalent falls short of what it would have been if the valuation date had been the date on which the trustees or managers carry out what the eligible member requires.

Personal pension schemes: increases and reductions of cash equivalents

30.—(1) If the whole or any part of the cash equivalent of the pension credit benefit under section 101F of the 1993 Act has been surrendered, commuted or forfeited before the date on which the trustees or managers comply with the transfer notice, the cash equivalent shall be reduced in proportion to the reduction in the total value of the benefits.

(2) If the trustees or managers of a personal pension scheme, having received a transfer notice under section 101F(1) of the 1993 Act, fail without reasonable excuse to comply with the transfer

notice within 6 months of the valuation date, the eligible member's cash equivalent shall be increased by—

- (a) the interest on that cash equivalent, calculated on a daily basis over the period from the date the notice is given until the date on which the trustees or managers carry out what the eligible member requires, at the same rate as that payable for the time being on judgment debts by virtue of section 17 of the Judgments Act 1838⁽⁴⁶⁾; or, if it is greater,
- (b) the amount, if any, by which that cash equivalent falls short of what it would have been if the date on which the transfer notice is given had been the date on which the trustees or managers comply with it.

Civil Penalties

31. Where section 10 of the 1995 Act⁽⁴⁷⁾ (civil penalties) applies by virtue of section 101H(4) or section 101J(4)(b) of the 1993 Act, the maximum amount for the purposes of section 10(1) of the 1995 Act shall be £1,000 in the case of an individual, and £10,000 in any other case.

PART IV INDEXATION

Increase of relevant pension

32.—(1) Subject to regulations 33 and 34, a relevant pension shall be increased each year by whichever is the lesser of—

- (a) either—
 - (i) the appropriate percentage; or
 - (ii) where the rules of an occupational pension scheme require the relevant pension to be increased at intervals of not more than 12 months, the relevant percentage; or
 - (b) 5 per cent.
- (2) In this regulation—

“appropriate percentage” means the revaluation percentage for the latest revaluation period specified in the order under paragraph 2 of Schedule 3 to the 1993 Act (revaluation of accrued pension benefits) which is in force at the time of the increase (expressions used in this definition having the same meaning as in that paragraph);

“relevant percentage” means the lesser of—

- (a) the percentage increase in the retail prices index for the reference period, being a period determined, in relation to each periodic increase, under the rules of the scheme; or
- (b) the percentage for that period which corresponds to 5 per cent. per annum.

Annual increase in rate of pension: qualifying occupational and personal pension schemes

33.—(1) The first increase required by regulation 32 in the rate of a relevant pension must take effect not later than the first anniversary of the date on which the pension is first paid; and subsequent increases must take effect at intervals of not more than 12 months.

(2) Where the first such increase takes effect on a date when the pension has been in payment for a period of less than 12 months, the increase must be of an amount at least equal to one twelfth

⁽⁴⁶⁾ 1 & 2 Vic. c. 110; the rate of interest was amended by S.I. 1993/564.

⁽⁴⁷⁾ Section 10 is amended by paragraph 11 of Schedule 2 to the Welfare Reform and Pensions Act 1999.

of the amount of the increase so required (apart from this paragraph) for each complete month in that period.

Effect of increase above the statutory requirement: qualifying occupational pension schemes

34.—(1) Where in any tax year the trustees or managers of a qualifying occupational pension scheme make an increase in a member's pension which is a relevant pension, not being an increase required by regulation 32, they may deduct the amount of the increase from any increase which but for this paragraph, they would be required to make under that regulation in the next tax year.

(2) Where in any tax year the trustees or managers of such a scheme make an increase in a member's pension which is a relevant pension, and part of the increase is not required by regulation 32, they may deduct that part of the increase from any increase which, but for this paragraph, they would be required to make under that regulation in the next tax year.

(3) Where by virtue of paragraph (1) or (2) any such pension is not required to be increased in pursuance of regulation 32, or not by the full amount that it otherwise would be, its amount shall be calculated for any purposes as if it had been increased in pursuance of regulation 32 or, as the case may be, by that full amount.

Definition of eligible pension credit rights

35. For the purposes of section 40(3) of the 1999 Act, pension credit rights are eligible if they fall within the descriptions in paragraph (a) or (b)—

(a) rights which are derived from—

(i) rights attributable to pensionable service on or after 6th April 1997 (excluding rights derived from additional voluntary contributions); or

(ii) in the case of money purchase benefits, rights attributable to payments in respect of employment on or after 6th April 1997 (excluding rights derived from additional voluntary contributions),

of the member whose pension rights were the subject of a pension sharing order or provision; or

(b) safeguarded rights.

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

13th April 2000

Jeff Rooker
Minister of State,
Department of Social Security

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the requirements relating to, and the indexation of, pension credit benefit.

Part I and regulation 1 provide for citation, commencement and interpretation of the Regulations.

Regulation 2 specifies the classes of occupational pension scheme which are not salary related.

Part II sets out requirements relating to pension credit benefit under occupational pension schemes.

Regulations 3 and 4 specify the circumstances in which pension credit benefit may be commuted.

Regulation 5 sets out how pension credit benefit may be secured.

Regulations 6 to 9 set out the alternatives to pension credit benefit which a scheme may provide.

Regulation 10 provides for the circumstances in which a person's pension credit rights may be transferred from one occupational pension scheme to another without that person's consent.

Regulation 11 specifies what the value of the alternatives to pension credit benefit must be.

Regulations 12 to 14 set out the requirements to be met where pension credit benefit or alternatives to pension credit benefit are secured by insurance policies or annuity contracts.

Regulation 15 describes further conditions on which liability for pension credit benefit or alternatives to pension credit benefit may be discharged.

Part III contains regulations 16 to 31 which deal with transfer values in respect of pension credit benefit.

Regulations 16 to 19 specify the circumstances in which transfer payments may be made in respect of safeguarded rights.

Regulations 20 to 22 describe requirements to be met by annuities, other pension arrangements, and eligible schemes in respect of transfer values.

Regulation 23 sets out the provisions relating to statements of entitlement.

Regulations 24 and 27 to 30 provide how cash equivalents are to be calculated and the circumstances in which they can be increased or reduced.

Regulation 25 specifies the period within which the trustees or managers of an occupational pension scheme are to notify the Occupational Pensions Regulatory Authority (OPRA) should they fail to comply with a transfer notice within the period prescribed by section 101J(1) of the Pension Schemes Act 1993.

Regulation 26 provides for OPRA to extend the statutory time limits for payment of cash equivalents on the application of the trustees or managers of an occupational pension scheme.

Regulation 31 specifies the maximum penalties which OPRA may impose in any case where OPRA is satisfied that a trustee or manager has not taken all reasonable steps to ensure that the obligation to provide the member with a statement of entitlement, or where OPRA is informed that the trustees or managers have failed to comply with a transfer notice within the period specified in section 101J(1) of the Pension Schemes Act 1993, is fulfilled.

Part IV contains regulations 32 to 35. Regulations 32 to 34 provide for how a pension, to which section 40(2) of the Welfare Reform and Pensions Act 1999 applies, is to be increased. Regulation 35 defines eligible pension credit rights.

An assessment of the cost to business of the provisions of the Welfare Reform and Pensions Act 1999, including these Regulations, is detailed in the Regulatory Impact Assessment for that Act. A copy of this Assessment has been placed in the libraries of both Houses of Parliament. Copies can be obtained by post from the Department of Social Security, Pensions on Divorce, 3rd Floor, The Adelphi, 1-11 John Adam Street, London WC2N 6HT.