
STATUTORY INSTRUMENTS

2000 No. 1054

The Pension Sharing (Pension Credit Benefit) Regulations 2000

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⁽¹⁾ (calculation, verification and reduction of cash equivalents);

⁽¹⁾ S.I.2000/1052.

- (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
- (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(2) (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)(3) (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—

- (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,

(2) S.I. 2000/1053.

(3) 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.

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(4); 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 sub-paragraph (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⁽⁵⁾ (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⁽⁶⁾ 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⁽⁷⁾ (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.

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.

(5) 1972 c. 11.

(6) 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>.

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

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⁽⁸⁾ (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 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

⁽⁸⁾ 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.

- (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⁽⁹⁾.

(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.

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.

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

(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⁽¹⁰⁾; 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⁽¹¹⁾ (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.

⁽¹⁰⁾ 1 & 2 Vic. c. 110; the rate of interest was amended by S.I. 1993/564.

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