

---

STATUTORY INSTRUMENTS

---

**2005 No. 704**

The Personal and Occupational Pension Schemes  
(Indexation and Disclosure of Information)  
(Miscellaneous Amendments) Regulations 2005

PART 2

AMENDMENTS RELATING TO INDEXATION

*Modification of section 51 of Pensions Act 1995*

**Removal of indexation: money purchase benefits provided under a hybrid scheme**

2.—(1) This regulation applies to any pension under a hybrid scheme which becomes a pension in payment on or after 6th April 2005.

(2) No increase under section 51 of the Pensions Act 1995(1) (annual increase in rate of pension) is required to be made of so much of any pension within paragraph (1) as is money purchase benefit.

(3) In this regulation—

“hybrid scheme” means an occupational pension scheme—

(a) which is not a money purchase scheme, but

(b) where some of the benefits that may be provided are money purchase benefits;

“money purchase benefits” and “money purchase scheme” have the meaning given by section 181(1) of the Pension Schemes Act 1993.

*Personal and Occupational Pension Schemes (Protected Rights) Regulations 1996*

**Meaning of “specified pension or annuity”**

3. In regulation 1(2) of the Protected Rights Regulations (interpretation)—

(a) omit the word “and” at the end of the definition of “scheme”; and

(b) after the definition of “section 9(2B) rights”(2) insert—

“and

“specified pension or annuity” means any pension or annuity which became a pension or annuity in payment before 6th April 2005.”.

---

(1) Section 51 was amended by section 84(1) of, and paragraphs 43 and 51 of Part 1 of Schedule 12 to, the Welfare Reform and Pensions Act 1999, section 51(1) of the Child Support, Pensions and Social Security Act 2000 and section 278 of the Pensions Act 2004.

(2) The definition of “section 9(2B) rights” was substituted [S.I. 1997/786](#) and amended by [S.I. 1999/3198](#).

### **Indexation requirement limited to specified pensions or annuities**

4.—(1) Regulation 4 of the Protected Rights Regulations<sup>(3)</sup> (conditions applying to pensions and annuities which give effect to protected rights) is amended as follows.

(2) In paragraph (1)(b), for paragraph (i) substitute—

“(i) is necessary to establish what the initial rate and the method of payment of the pension or annuity are to be;

(ia) is necessary to establish that, throughout the lifetime of the member, the pension or annuity shall continue to be paid at a rate which is at least equal to (but may be more than) the initial rate and which, in the case of a specified pension or annuity falling within paragraph (3) or (6) or within section 51 or 162 of the Pensions Act 1995, is the rate determined in accordance with that paragraph or section.”.

(3) In paragraph (3), after the words “In the case of” insert “a specified pension or annuity which gives effect to”.

(4) In paragraph (6), after the words “In the case of” insert “a specified pension or annuity which gives effect to”.

### **Removal of indexation: interim arrangements**

5. For paragraphs (2) and (3) of regulation 7 of the Protected Rights Regulations<sup>(4)</sup> (payments made under interim arrangements) substitute—

“(2) For the purposes of section 28A(5)(a) of the 1993 Act (calculating the annual amount of annuity which would have been purchasable by a person), the prescribed manner is by reference to the current published tables prepared by the Government Actuary in accordance with paragraph (3).

(3) For the purposes of section 28A(5)(a)(ii) of the 1993 Act (preparation of current published tables of rates of annuities), the prescribed manner is on the same basis as that on which the Government Actuary prepares tables of rates of annuities for the purposes of Chapter 4 of Part 14 of the Income and Corporation Taxes Act 1988<sup>(5)</sup> (personal pension schemes).”.

### **Removal of indexation: death of member before payment**

6.—(1) Regulation 12 of the Protected Rights Regulations<sup>(6)</sup> (death of member before effect given to his protected rights) is amended as follows.

(2) In paragraph (4)(b), for paragraph (i) substitute—

“(i) is necessary to establish what the initial rate and the method of payment of the pension or annuity are to be,

(ia) is necessary to establish that, throughout the period described in paragraph (5), the pension or annuity shall continue to be paid to the widow or widower at a rate which is at least equal to (but may be more than) the initial rate and which, in the case of a specified pension or annuity falling within paragraph (6) or (8) or within section 51 or 162 of the Pensions Act 1995, is the rate determined in accordance with that paragraph or section.”.

(3) In paragraph (6), after the words “In the case of” insert “a specified pension or annuity which gives effect to”.

---

(3) Regulation 4 was amended by [S.I. 2002/681](#).

(4) Paragraphs (2) and (3) of regulation 7 were substituted by [S.I. 2002/681](#).

(5) [1988 c. 1](#).

(6) Regulation 12 was amended by [S.I. 2002/681](#).

## *Occupational Pension Schemes (Indexation) Regulations 1996*

### **Interpretation**

- 7.—(1) Regulation 1 of the Indexation Regulations (interpretation) is amended as follows.
- (2) In paragraph (2), after the definition of “pension scheme” insert—
- ““section 9(2B) rights” means—
- (a) rights to the payment of pensions and accrued rights to pensions (other than rights attributable to voluntary contributions) under a pension scheme contracted-out by virtue of section 9(2B) of the Pension Schemes Act 1993, so far as attributable to an earner’s service in contracted-out employment on or after the principal appointed day (including service of an earner who is not in employment at the time of the transfer or transfer payment);
  - (b) where a transfer payment has been made to such a scheme, any rights arising under the scheme as a consequence of that payment which are derived directly or indirectly from—
    - (i) such rights as are referred to in sub-paragraph (a) under another pension scheme contracted-out by virtue of section 9(2B) of that Act; or
    - (ii) protected rights under another occupational pension scheme or under a personal pension scheme attributable to payments or contributions in respect of employment on or after the principal appointed day.”.
- (3) After paragraph (2) add—
- “(3) For the purposes of the definition of “section 9(2B) rights” in paragraph (2) of this regulation, references to the principal appointed day are to the day designated as the principal appointed day for the purposes of Part 3 of the Pensions Act 1995 (certification of pension schemes and effects on member’s state scheme rights and duties).”.

### **Indexation: treatment of transfers made before 6th April 2005 from pension schemes**

- 8.—(1) Regulation 2 of the Indexation Regulations (indexation of occupational pensions derived from the acceptance of transfer payments from pension schemes) is amended as follows.
- (2) For the heading substitute “Indexation of occupational pensions derived from the acceptance of transfers from pension schemes: transfers made before 6th April 2005”.
- (3) In paragraph (1), for the words “Subject to paragraph (2)” substitute “Subject to the following provisions”.
- (4) After paragraph (2) add—
- “(3) Paragraph (1) of this regulation shall not apply in any case where the transfer credit referred to in that paragraph is allowed by reference to a transfer which is made on or after 6th April 2005.”.

### **Indexation: treatment of transfers made on or after 6th April 2005 from pension schemes**

9. After regulation 2 of the Indexation Regulations insert—

#### **“Indexation of occupational pensions derived from the acceptance of transfers from pension schemes: transfers made on or after 6th April 2005**

- 2A.—(1) This regulation applies where—
- (a) a person’s accrued rights to a pension payable under an occupational pension scheme (“scheme A”) to which section 51 of the Act applies, or any part of them,

derive from the allowance by the scheme of a transfer credit in respect of rights in any pension scheme (“scheme B”) of which that person has previously been a member; and

- (b) the transfer credit is allowed by reference to a transfer which is made on or after 6th April 2005.

(2) Subsections (2) and (3) of section 51 of the Act shall apply to such part of the pension payable by scheme A as is attributable to any accrued rights deriving from the allowance of the transfer credit—

- (a) only to the extent that those accrued rights are—
- (i) section 9(2B) rights; or
  - (ii) rights (other than section 9(2B) rights) which are allowed by reference to rights in scheme B that were subject to the indexation requirement at the time of the transfer; and
- (b) as if those accrued rights were attributable to pensionable service on or after the appointed day.”.

**Indexation: treatment of payments made before 6th April 2005 from insurance policies or annuity contracts**

**10.**—(1) Regulation 3 (indexation of occupational pensions derived from the acceptance of payments from insurance policies or annuity contracts) of the Indexation Regulations is amended as follows.

(2) For the heading substitute “Indexation of occupational pensions derived from the acceptance of payments from insurance policies and annuity contracts: transfers made before 6th April 2005”.

(3) Renumber the existing text as paragraph (1).

(4) In paragraph (1), at the beginning insert the words “Subject to paragraph (2) of this regulation”.

(5) After paragraph (1) add—

“(2) Paragraph (1) of this regulation shall not apply in any case where the payment from the policy of insurance or annuity contract referred to in that paragraph is made on or after 6th April 2005.”.

**Indexation: treatment of payments made on or after 6th April 2005 from insurance policies or annuity contracts**

**11.** After regulation 3 of the Indexation Regulations add—

**“Indexation of occupational pensions derived from the acceptance of payments from insurance policies and annuity contracts: transfers made on or after 6th April 2005**

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

- (a) a person’s accrued rights to a pension payable under an occupational pension scheme (“scheme A”) to which section 51 of the Act applies, or any part of them, derive from the acceptance by the scheme of a payment from a policy of insurance or annuity contract in respect of rights in any pension scheme of which that person has previously been a member; and
- (b) the payment was made on or after 6th April 2005.

(2) Subsections (2) and (3) of section 51 of the Act shall apply to such part of the pension payable by scheme A as is attributable to any accrued rights deriving from the acceptance of the payment from the policy of insurance or annuity contract—

(a) only to the extent that those accrued rights are—

(i) section 9(2B) rights; or

(ii) rights (other than section 9(2B) rights) which are allowed by reference to rights specified in paragraph (3) of this regulation; and

(b) as if those accrued rights were attributable to pensionable service on or after the appointed day.

(3) The rights specified in this paragraph are rights to payment under the policy of insurance or annuity contract which—

(a) were subject to provision contained in (or endorsed on) the policy or contract requiring an increase in the annual rate of payment; and

(b) in any case where the policy or contract was entered into before 6th April 2005, would have been subject to such provision if the policy or contract had been entered into on or after that date.”.

*Occupational Pension Schemes (Discharge of Liability) Regulations 1997*

**Discharge of liability: guaranteed minimum pensions, short service benefits etc**

**12.**—(1) Regulation 5 of the Occupational Pension Schemes (Discharge of Liability) Regulations 1997(7) (other requirements applying to policies of insurance and annuity contracts) is amended as follows.

(2) Renumber the existing text as paragraph (1).

(3) For paragraph (1)(b) substitute—

“(b) that the policy or contract contains, or is endorsed with, terms so as to provide for such increase (if any) in the payments under the policy or contract as is required by paragraph (2);”.

(4) After paragraph (1) add—

“(2) For the purposes of paragraph (1)(b)—

(a) an increase is required if sections 51 and 52 of the 1995 Act, and regulations made under those sections, would apply to payments under the policy or contract if those payments were benefits payable under an occupational pension scheme (and for this purpose, the provisions of the 1995 Act shall be construed in accordance with regulation 11(6)(a) to (d)); and

(b) such an increase shall be payable at the same rate, and to the same extent, as would be required under those provisions.”.

**Discharge of liability: pensions under a relevant scheme**

**13.**—(1) Regulation 11 of the Occupational Pension Schemes (Discharge of Liability) Regulations 1997(8) (conditions on which liability to provide pensions under a relevant scheme may be discharged) is amended as follows.

(2) In paragraph (3)—

(a) for sub-paragraph (c) substitute—

---

(7) [S.I. 1997/784](#).

(8) Regulation 11 was amended by [S.I. 1999/3198](#).

- “(c) payments to a beneficiary, or to his widow or widower, under the policy or contract which derive from a pension or accrued rights under the relevant scheme shall be subject to such increase (if any) as is required by paragraph (4A);” and
- (b) in sub-paragraph (e) omit paragraph (i).
- (3) After paragraph (4) insert—
  - “(4A) For the purposes of paragraph (3)(c)—
    - (a) an increase is required if sections 51 and 52 of the 1995 Act, and regulations made under those sections, would apply to payments under the policy or contract if those payments were benefits payable under an occupational pension scheme; and
    - (b) such an increase shall be payable at the same rate, and to the same extent, as would be required under those provisions.”
- (4) In paragraph (6), for the words “For the purposes of paragraph (3)(e)” substitute “For the purposes of paragraphs (3)(e) and (4A)”.

*Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1997*

**Indexation: treatment of salary-related death benefits in certain schemes**

**14.**—(1) Regulation 2 of the Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1997<sup>(9)</sup> (occupational pension schemes providing salary-related death benefits) is amended as follows.

- (2) Renumber the existing text as paragraph (1).
- (3) After that paragraph add—
  - “(2) But paragraph (1) does not apply in relation to the provision by an occupational pension scheme of a pension to which regulation 2 of the Personal and Occupational Pension Schemes (Indexation and Disclosure of Information) (Miscellaneous Amendments) Regulations 2005 applies (removal of indexation: money purchase benefits provided under a hybrid occupational pension scheme).”

*Pension Sharing (Pension Credit Benefit) Regulations 2000*

**Indexation: changes to maximum percentage**

**15.**—(1) Regulation 32 of the Pension Sharing (Pension Credit Benefit) Regulations 2000<sup>(10)</sup> (increase of relevant pension) is amended as follows.

- (2) In paragraph (1), for sub-paragraph (b) substitute—
  - “(b) the maximum percentage.”
- (3) In paragraph (2), after the definition of “appropriate percentage” insert—
  - ““maximum percentage” means—
    - (a) 5 per cent. in a case where—
      - (i) the pension is in payment before 6th April 2005; or
      - (ii) the pension is not in payment before 6th April 2005 but the entitlement to the relevant pension credit arose before that day; and
    - (b) 2.5 per cent. in a case where the entitlement to the relevant pension credit arises on or after 6th April 2005;

---

<sup>(9)</sup> S.I. 1997/786.

<sup>(10)</sup> S.I. 2000/1054.

“relevant pension credit” means the pension credit to which eligible pension credit rights are (directly or indirectly) attributable;”.

### **Eligible pension credit rights**

**16.** For regulation 35 of the Pension Sharing (Pension Credit Benefit) Regulations 2000 (definition of eligible pension credit rights) substitute—

#### **“Definition of eligible pension credit rights**

**35.**—(1) For the purposes of section 40(3) of the 1999 Act, pension credit rights are eligible if they fall within paragraph (2) and are not excluded by paragraph (3).

(2) Pension credit rights are within this paragraph if—

- (a) they are derived from rights attributable to pensionable service on or after 6th April 1997 of the member whose pension rights were the subject of a pension sharing order or provision; or
- (b) they are safeguarded rights.

(3) Excluded pension credit rights are—

- (a) rights to pensions which are money purchase benefits and which become pensions in payment on or after 6th April 2005; or
- (b) rights derived from additional voluntary contributions.”.