
STATUTORY INSTRUMENTS

1991 No. 167

**The Occupational Pension Schemes
(Preservation of Benefit) Regulations 1991**

Transfer of member's accrued rights without consent

12.—(1) [^{F1}Subject to paragraph (3A), for] the purposes of [^{F2}section 73(4) of the Act], a scheme may provide for the member's accrued rights [^{F3}which are not relevant money purchase rights] to be transferred to another occupational pension scheme (as described in [^{F2}[^{F4}section 73(2)(a)(i)] of the Act]) without the member's consent where—

- (a) the scheme is being wound up and the transfer is to another scheme that applies to employment with the same employer; or
- (b) the conditions set out in paragraphs (2) and (3) of this regulation are satisfied.

[^{F5}(1A) For the purposes of section 73(4) of the Act, a scheme may provide for a transfer payment to be made to another occupational or personal pension scheme (as described in [^{F6}section 73(2)(a)] of the Act) without the member's consent where the conditions set out in paragraph (6) of this regulation are satisfied.]

[^{F7}(1B) For the purposes of section 73(2)(b) and (4)(b) of the Act, a scheme may provide for the member's relevant money purchase rights to be transferred to another occupational pension scheme without the member's consent where the conditions set out in one of paragraphs (7) to (9) are satisfied.]

[^{F8}(2) The condition set out in this paragraph is that the rights of a member are being transferred from the transferring scheme to the receiving scheme and either—

- (a) the transferring scheme and the receiving scheme [^{F9}relate to persons who are or have been in] employment with the same employer; or
- (b) the transferring scheme and the receiving scheme [^{F10}relate to persons who are or have been in] employment with different employers, the member concerned is one of a group in respect of whom transfers are being made from the transferring scheme to the receiving scheme, and either—
 - (i) the transfer is a consequence of a financial transaction between the employers; or
 - (ii) [^{F11}the employers are companies or partnerships bearing a relationship to each other in one of the ways described in paragraph (2A).]]

[^{F12}(2A) The relationships between the employers referred to in paragraph (2)(b)(ii) are—

- (a) the employers are members of a group of companies consisting of a holding company and one or more subsidiaries within the meaning of section 1159(1) of the Companies Act 2006 (meaning of “subsidiary” etc.);
- (b) the employers are—
 - [^{F13}(i) the scheme's principal employer or controlling employer; and]
 - (ii) an employer subject to the rules of the scheme; or

(c) the employers are partnerships having at least half of their partners in common.]

[^{F14}(3) The condition set out in this paragraph is that—

- (a) the relevant actuary gives a certification, by completing the certificate in Schedule 3, in relation to the members' rights in the receiving scheme;
- (b) the relevant actuary sends that certificate to the trustees or managers of the transferring scheme;
- (c) the transfer takes place within 3 months of the date of the relevant actuary's signature in the certificate; and
- (d) there are no significant changes to the benefits, data and documents used in making the certificate (see the benefits, data and documents specified in the certificate) by the date on which the transfer takes place.]

[^{F15}(3A) A scheme may not provide for the member's accrued rights which are not relevant money purchase rights to be transferred to a collective money purchase scheme without the member's consent.]

[^{F16}(4) For the purposes of [^{F17}making the certification in paragraph 1 of the certificate in Schedule 3], where long service benefit in the transferring scheme is related to a member's earnings at, or in a specified period before, the time when he attains normal pension age then, in the case of a member in pensionable service at the date of transfer, the value of the rights to be transferred shall be based on pensionable service (including any transfer credits) in the transferring scheme up to that date and projected final pensionable earnings.

(4A) For the purposes of [^{F18}making the certification in paragraph 2 of the certificate in Schedule 3], the [^{F19}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.]

[^{F20}(4B) Where it is proposed that a member's accrued rights are to be transferred in accordance with this regulation, information about the proposed transfer and details of the value of the rights to be transferred (including rights in respect of death in service benefits and survivors' benefits) shall be furnished to the member not less than one month before the proposed transfer is due to take place.]

[^{F21}(5) In this regulation "the relevant actuary" means—

- (a) where the transferring scheme is a scheme for which an actuary is required under section 47 of the Pensions Act 1995 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 [^{F22}Institute and Faculty of Actuaries] 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.]

[^{F23}(6) The conditions set out in this paragraph are that—

- (a) the transferring scheme is or has been a stakeholder pension scheme, within the meaning of section 1 of the Welfare Reform and Pensions Act 1999 or Article 3 of the Welfare Reform and Pensions (Northern Ireland) Order 1999, and the receiving scheme is such a scheme;
- (b) the transferring scheme has commenced winding-up; and

- (c) the transfer payment is of an amount at least equal to the cash equivalent of the member's rights under the scheme, as calculated and verified in a manner consistent with regulations made under section 97 of the 1993 Act (calculation of cash equivalents).]

[^{F24}(7) The condition set out in this paragraph is that the receiving scheme is authorised under the Pension Schemes Act 2017.

- (8) The conditions set out in this paragraph are that—
 - (a) the transferring scheme employer and the receiving scheme employer are undertakings;
 - (b) the transferring scheme employer is a group undertaking in relation to the receiving scheme employer; and
 - (c) the member whose rights are to be transferred is a current or former employee of an undertaking which is a group undertaking in relation to the transferring scheme employer or the receiving scheme employer.
- (9) The conditions set out in this paragraph are that—
 - (a) within the year ending with the date of the transfer, the trustees of the transferring scheme have obtained and considered written advice in relation to the transfer from a person whom they reasonably believe to be qualified to give that advice by reason of that person's ability in, and practical experience and knowledge of, pension scheme management ("the appropriate adviser"); and
 - (b) the trustees of the transferring scheme have determined that the appropriate adviser is independent of the receiving scheme after considering whether, during the year ending with the date on which the advice was provided, the appropriate adviser (or, where the appropriate adviser is an undertaking, a group undertaking in relation to the appropriate adviser) has—
 - (i) received payment for services from the receiving scheme;
 - (ii) received payment from a service provider or a group undertaking in relation to a service provider; or
 - (iii) received payment from the receiving scheme employer or a group undertaking in relation to the receiving scheme employer.
- (10) Where an employer has the sole power to effect a transfer of a member's accrued rights—
 - (a) paragraph (9) has effect as if "member's employer has" were substituted for "trustees of the transferring scheme have"; and
 - (b) the employer must confirm to the trustees of the transferring scheme that it has complied with paragraph (9) as so modified.

(11) In this regulation—

[^{F25}"collective money purchase scheme" means a scheme or a section of a scheme which is a collective money purchase scheme for the purposes of Part 1 of the Pension Schemes Act 2021;]

"controlling employer", in relation to a scheme, is the employer that has the power to act on behalf of all employers in the scheme in relation to the scheme rules;

"group undertaking" has the meaning given by section 1161(5) of the Companies Act 2006 (meaning of "undertaking" and related expressions);

"principal employer", in relation to a scheme, is the principal employer for the purposes of the scheme in accordance with the scheme rules;

"receiving scheme employer" means the principal employer or controlling employer of the receiving scheme;

“relevant money purchase rights” are rights to money purchase benefits, where the assets held for the purpose of providing those benefits do not include any guarantee or promise in relation to the amount of the benefits to be provided, or the amount available for the provision of the benefits;

“services” means advisory, administration or investment services provided to the receiving scheme, and a “service provider” is a provider of such services to the scheme;

“transferring scheme employer” means the principal employer or controlling employer of the transferring scheme;

“undertaking” has the meaning given by section 1161(1) of the Companies Act 2006.]

Textual Amendments

- F1** Words in [reg. 12\(1\)](#) substituted (1.8.2022) by [The Occupational Pension Schemes \(Collective Money Purchase Schemes\) \(Modifications and Consequential and Miscellaneous Amendments\) Regulations 2022 \(S.I. 2022/337\)](#), [regs. 1\(3\)](#), **2(2)(a)**
- F2** Words in [reg. 12\(1\)](#) substituted (12.5.1994) by [The Occupational and Personal Pension Schemes \(Consequential Amendments\) Regulations 1994 \(S.I. 1994/1062\)](#), [reg. 1\(2\)](#), **Sch. 2 para. 30(15)**
- F3** Words in [reg. 12\(1\)](#) inserted (1.10.2019) by [The Occupational Pension Schemes \(Preservation of Benefit and Charges and Governance\) \(Amendment\) Regulations 2018 \(S.I. 2018/240\)](#), [regs. 1\(2\)](#), **2(2)**
- F4** Words in [reg. 12\(1\)](#) substituted (1.2.96) by [S.I. 1995/3067](#), **reg. 2(4)**
- F5** [Reg. 12\(1A\)](#) added (1.2.2000) by [The Stakeholder Pension Schemes Regulations 2000 \(S.I. 2000/1403\)](#), [regs. 1\(2\)](#), **27(a)**
- F6** Words in [reg. 12\(1A\)](#) substituted (1.4.2018) by [The Occupational Pension Schemes \(Preservation of Benefit and Charges and Governance\) \(Amendment\) Regulations 2018 \(S.I. 2018/240\)](#), [regs. 1\(3\)](#), **2(3)**
- F7** [Reg. 12\(1B\)](#) inserted (1.4.2018) by [The Occupational Pension Schemes \(Preservation of Benefit and Charges and Governance\) \(Amendment\) Regulations 2018 \(S.I. 2018/240\)](#), [regs. 1\(3\)](#), **2(4)**
- F8** [Reg. 12\(2\)](#) substituted (28.9.92) by [S.I. 1992/1531](#), **reg. 35**
- F9** Words in [reg. 12\(2\)\(a\)](#) substituted (6.4.2013) by [The Occupational and Stakeholder Pension Schemes \(Miscellaneous Amendments\) Regulations 2013 \(S.I. 2013/459\)](#), [regs. 1](#), **2(4)**
- F10** Words in [reg. 12\(2\)\(b\)](#) substituted (6.4.2013) by [The Occupational and Stakeholder Pension Schemes \(Miscellaneous Amendments\) Regulations 2013 \(S.I. 2013/459\)](#), [regs. 1](#), **2(4)**
- F11** [Reg. 12\(2\)\(b\)\(ii\)](#) substituted (6.4.2016) by [The Pensions Act 2014 \(Abolition of Contracting-out for Salary Related Pension Schemes\) \(Consequential Amendments and Savings\) Order 2016 \(S.I. 2016/200\)](#), [arts. 1\(2\)](#), **2(2)(a)**
- F12** [Reg. 12\(2A\)](#) inserted (6.4.2016) by [The Pensions Act 2014 \(Abolition of Contracting-out for Salary Related Pension Schemes\) \(Consequential Amendments and Savings\) Order 2016 \(S.I. 2016/200\)](#), [arts. 1\(2\)](#), **2(2)(b)**
- F13** [Reg. 12\(2A\)\(b\)\(i\)](#) substituted (1.4.2018) by [The Occupational Pension Schemes \(Preservation of Benefit and Charges and Governance\) \(Amendment\) Regulations 2018 \(S.I. 2018/240\)](#), [regs. 1\(3\)](#), **2(5)**
- F14** [Reg. 12\(3\)](#) substituted (6.4.2011) by [The Occupational and Personal Pension Schemes \(Miscellaneous Amendments\) Regulations 2011 \(S.I. 2011/672\)](#), [regs. 1\(2\)\(b\)](#), **3(2)(a)**
- F15** [Reg. 12\(3A\)](#) inserted (1.8.2022) by [The Occupational Pension Schemes \(Collective Money Purchase Schemes\) \(Modifications and Consequential and Miscellaneous Amendments\) Regulations 2022 \(S.I. 2022/337\)](#), [regs. 1\(3\)](#), **2(2)(b)**
- F16** [Reg. 12\(4\)](#) and [Reg. 12\(4A\)](#) substituted (1.9.93) for [reg. 4](#) by [S.I. 1993/1822](#), **reg. 2(a)**
- F17** Words in [reg. 12\(4\)](#) substituted (6.4.2011) by [The Occupational and Personal Pension Schemes \(Miscellaneous Amendments\) Regulations 2011 \(S.I. 2011/672\)](#), [regs. 1\(2\)\(b\)](#), **3(2)(b)**
- F18** Words in [reg. 12\(4A\)](#) substituted (6.4.2011) by [The Occupational and Personal Pension Schemes \(Miscellaneous Amendments\) Regulations 2011 \(S.I. 2011/672\)](#), [regs. 1\(2\)\(b\)](#), **3(2)(c)**
- F19** Words in [reg. 12\(4A\)](#) substituted (1.10.1999) by [The Occupational Pension Schemes \(Preservation of Benefit\) Amendment Regulations 1999 \(S.I. 1999/2543\)](#), [regs. 1](#), **2(b)**
- F20** [Reg. 12\(4B\)](#) inserted (6.4.97) by [S.I. 1996/2131](#), **reg. 2(7)(b)**

- F21** Reg. 12(5) substituted (1.10.1999) by The Occupational Pension Schemes (Preservation of Benefit) Amendment Regulations 1999 (S.I. 1999/2543), regs. 1, **2(c)**
- F22** Words in reg. 12(5)(b) substituted (6.4.2012) by The Pensions (Institute and Faculty of Actuaries and Consultation by Employers – Amendment) Regulations 2012 (S.I. 2012/692), regs. 1(2), **3**
- F23** Reg. 12(6) added (1.2.2000) by The Stakeholder Pension Schemes Regulations 2000 (S.I. 2000/1403), regs. 1(2), **27(b)**
- F24** Reg. 12(7)-(11) inserted (1.4.2018) by The Occupational Pension Schemes (Preservation of Benefit and Charges and Governance) (Amendment) Regulations 2018 (S.I. 2018/240), regs. 1(3), **2(6)**
- F25** Words in reg. 12(11) inserted (1.8.2022) by The Occupational Pension Schemes (Collective Money Purchase Schemes) (Modifications and Consequential and Miscellaneous Amendments) Regulations 2022 (S.I. 2022/337), regs. 1(3), **2(2)(c)**

Modifications etc. (not altering text)

- C1** Reg. 12(3) modified by S.I. 2005/3381, reg. 21(2) (as inserted (13.1.2019) by The Occupational Pension Schemes (Cross-border Activities)(Amendment) Regulations 2018 (S.I. 2018/1102), regs. 1(2), **3(7)**)

Changes to legislation:

There are currently no known outstanding effects for the The Occupational Pension Schemes (Preservation of Benefit) Regulations 1991, Section 12.