

STATUTORY INSTRUMENTS

1997 No. 784

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

PART III

**DISCHARGE OF LIABILITY TO PROVIDE
PENSIONS UNDER A RELEVANT SCHEME**

Prohibition and restriction of the discharge of liability to provide pensions under a relevant scheme

8. The trustees of a relevant scheme are prohibited or restricted from discharging any liability to provide pensions under a relevant scheme except—

- (a) in the circumstances and on the conditions prescribed in this Part; or
- (b) where the requirements imposed by the Occupational Pension Schemes (Winding Up) Regulations 1996^{M1} [F1, regulations 45 or 46 (as they had effect at the time of approval of arrangements for the scheme ceasing to be contracted-out) of the Occupational Pension Schemes (Contracting-out) Regulations 1996, or regulations 6, 17 or 20 of the Occupational Pension Schemes (Schemes that were Contracted-out) (No.2) Regulations 2015 apply.]

F1 Words in reg. 8(b) 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), **12(3)**

Marginal Citations

M1 [S.I. 1996/3126](#).

Circumstances in which liability to provide pensions under a relevant scheme may be discharged

9.—(1) The trustees of a relevant scheme may discharge any liability to provide pensions under a relevant scheme where the circumstances specified [F2 in paragraph (2)] apply.

(2) The member or, if the member has died, [F3 the member's widow, widower or surviving civil partner or, if there is no such person], any person who may be entitled to payment of the pension under the scheme, consents in writing to the discharge of liability and the transaction to discharge the liability—

- (a) is to be carried out not earlier than the time when the member's pensionable service terminates; and
- (b) satisfies all the conditions specified in regulation 11.

^{F4}(3)

- F2** Words in reg. 9(1) substituted (6.4.2021) 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(5), **35(2)(a)**
- F3** Words in reg. 9(2) substituted (5.12.2005) by The Civil Partnership (Contracted-out Occupational and Appropriate Personal Pension Schemes) (Surviving Civil Partners) Order 2005 (S.I. 2005/2050), art. 1(3), **Sch. 2 para. 42**
- F4** Reg. 9(3) omitted (6.4.2021) by virtue of 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(5), **35(2)(b)**

Meaning of “transaction”

- 10.** For the purposes of regulation 9 “transaction” means—
- (a) the taking out of a policy of insurance or a number of such policies;
 - (b) the entry into an annuity contract or a number of such contracts; or
 - (c) the transfer of pensions and accrued rights to such a policy or policies or such a contract or contracts.

Conditions on which liability to provide pensions under a relevant scheme may be discharged

11.—(1) The conditions referred to in regulation 9(2)(b) ^{F5}... which must be satisfied are specified in paragraphs (2) and (3).

(2) The policy of insurance or annuity contract must be taken out or entered into with an insurance company such as is described in section 19(4)(a) of the 1993 Act.

(3) The policy of insurance or annuity contract contains provision to the effect that, or is endorsed so as to provide that—

- (a) except in the circumstances specified in paragraph (4), where a pension or annuity is in payment at the date of the beneficiary’s death at least 50 per cent. of the annual rate attributable to pensions and accrued rights under the relevant scheme which was in payment at the date of death shall be payable to the beneficiary’s [^{F6}widow, widower or surviving civil partner];
- (b) except in the circumstances referred to in paragraph (4)(b) ^{F7}..., where a pension or annuity is not in payment at the date of the beneficiary’s death at least 50 per cent of the accumulated value of the policy of insurance or annuity contract at the date of death attributable to pension and accrued rights under the relevant scheme shall be applied so as to provide a pension or annuity for the beneficiary’s [^{F6}widow, widower or surviving civil partner];
- ^{F8}(c) payments to a beneficiary, or to his [^{F9}widow, widower or surviving civil partner], 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);]
- (d) the benefits secured under the policy or contract shall become payable with the beneficiary’s consent, and the beneficiary—
 - (i) ^{F10}...is under the age of 75, or
 - (ii) is suffering from an incapacity or serious ill-health prior to normal pension age;
- (e) any rights of a beneficiary to a payment under the policy or contract which derive from a pension or accrued rights under the relevant scheme shall be treated as if—

^{F11}(i)

(ii) [^{F12}section 37A(1)] of the 1993 Act and regulations made under that section, were applicable to them.

[^{F13}(4) Subject to paragraph (7), the circumstances referred to in paragraph (3) are—

- (a) the beneficiary marries or forms a civil partnership after having received benefits under the policy or contract;
- (b) the widow, widower or surviving civil partner of the beneficiary—
 - (i) remarries or, as the case may be, marries;
 - (ii) forms a civil partnership or, as the case may be, forms a subsequent civil partnership;
 - (iii) [^{F15}[^{F14}lives together]] [^{F16}with another person, whom he or she is not married to or in a civil partnership with, as if they were a married couple or civil partners; or]
 - (iv) [^{F14}[^{F15}lives together with a person of the same sex as if they were civil partners [^{F15}lives together as a married couple with another person whom he or she is not married to or in a civil partnership with; or]]]; or]
 - (v) at the time of the beneficiary's death [^{F17}—
 - (v) at the time of the beneficiary's death [^{F17}is living together as a married couple with another person whom he or she is not married to or in a civil partnership with.]]

[^{F19}(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.]

[^{F20}(5) For the purposes of paragraph 3(d)—

“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; “serious ill-health” has the same meaning as in regulation 4(4).]

(6) [^{F21}For the purposes of paragraphs (3)(e) and (4A)] the provisions in the 1993 Act and the 1995 Act shall be construed as if—

- (a) the policy of insurance or annuity contract is a relevant scheme;
- (b) the insurance company is the trustee of the relevant scheme;
- (c) the beneficiary is the member of the relevant scheme; and
- (d) the terms of the policy or contract are the rules of the relevant scheme.

[^{F22}(7) The following provisions do not apply where the beneficiary died before 5th December 2005—

- (a) paragraph (4)(b)(i) so far as it relates to a marriage or remarriage involving two people of the same sex;
- (b) paragraph (4)(b)(ii); and
- (c) paragraphs (iii) and (v) of paragraph (4)(b) so far as they relate to the living together of two people of the same sex.]

- F5** Words in reg. 11(1) omitted (6.4.2021) by virtue of 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(5), **35(3)**
- F6** Words in reg. 11(3)(a)(b) substituted (5.12.2005) by The Civil Partnership (Contracted-out Occupational and Appropriate Personal Pension Schemes) (Surviving Civil Partners) Order 2005 (S.I. 2005/2050), art. 1(3), **Sch. 2 para. 43(a)(i)**
- F7** Words in reg. 11(3)(b) omitted (5.12.2005) by virtue of The Civil Partnership (Contracted-out Occupational and Appropriate Personal Pension Schemes) (Surviving Civil Partners) Order 2005 (S.I. 2005/2050), art. 1(3), **Sch. 2 para. 43(a)(ii)**
- F8** Reg. 11(3)(c) substituted (6.4.2005) by Personal and Occupational Pension Schemes (Indexation and Disclosure of Information) (Miscellaneous Amendments) Regulations 2005 (S.I. 2005/704), regs. 1(2), **13(2)(a)**
- F9** Words in reg. 11(3)(c) substituted (5.12.2005) by The Occupational and Personal Pension Schemes (Civil Partnership) (Miscellaneous Amendments) Regulations 2005 (S.I. 2005/3164), regs. 1(1), **4(b)**
- F10** Words in reg. 11(3)(d)(i) omitted (6.4.2006) by virtue of The Taxation of Pension Schemes (Consequential Amendments of Occupational and Personal Pension Schemes Legislation) Order 2006 (S.I. 2006/744), arts. 1, **13(3)**
- F11** Reg. 11(3)(e)(i) omitted (6.4.2005) by virtue of Personal and Occupational Pension Schemes (Indexation and Disclosure of Information) (Miscellaneous Amendments) Regulations 2005 (S.I. 2005/704), regs. 1(2), **13(2)(b)**
- F12** Words in reg. 11(3)(e)(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), **12(5)**
- F13** Reg. 11(4) substituted (5.12.2005) by The Civil Partnership (Contracted-out Occupational and Appropriate Personal Pension Schemes) (Surviving Civil Partners) Order 2005 (S.I. 2005/2050), art. 1(3), **Sch. 2 para. 43(b)**
- F14** Reg. 11(4)(b)(iii) substituted for reg. 11(4)(b)(iii)(iv) (E.W.) (13.3.2014) by The Marriage (Same Sex Couples) Act 2013 (Consequential Provisions) Order 2014 (S.I. 2014/107), art. 1(2), **Sch. 1 para. 24(3)(a)(i)**
- F15** Reg. 11(4)(b)(iii)(iv) substituted for reg. 11(4)(b)(iii)(iv) (E.W.) (13.3.2014) by The Marriage (Same Sex Couples) Act 2013 (Consequential Provisions) Order 2014 (S.I. 2014/107), art. 1(2), **Sch. 1 para. 24(3)(a)(i)** and (S.) (16.12.2014) by The Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014 (S.I. 2014/3229), art. 1(2), **Sch. 6 para. 16(3)(a)(i)**
- F16** Words in reg. 11(4)(b)(iii) substituted (2.12.2019) by The Civil Partnership (Opposite-sex Couples) Regulations 2019 (S.I. 2019/1458), reg. 1(2), **Sch. 3 para. 52**
- F17** Words in reg. 11(4)(b)(v) substituted for reg. 11(4)(b)(v)(a)(b) (E.W.) (13.3.2014) by The Marriage (Same Sex Couples) Act 2013 (Consequential Provisions) Order 2014 (S.I. 2014/107), art. 1(2), **Sch. 1 para. 24(3)(a)(ii)**
- F18** Words in reg. 11(4)(b)(v) substituted for reg. 11(4)(a)(b) (E.W.) (13.3.2014) by The Marriage (Same Sex Couples) Act 2013 (Consequential Provisions) Order 2014 (S.I. 2014/107), art. 1(2), **Sch. 1 para. 24(3)(a)(ii)** and (S.) (16.12.2014) by The Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014 (S.I. 2014/3229), art. 1(2), **Sch. 6 para. 16(3)(a)(ii)**
- F19** Reg. 11(4A) inserted (6.4.2005) by Personal and Occupational Pension Schemes (Indexation and Disclosure of Information) (Miscellaneous Amendments) Regulations 2005 (S.I. 2005/704), regs. 1(2), **13(3)**
- F20** Reg. 11(5) substituted (30.12.1999) by The Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1999 (S.I. 1999/3198), regs. 1(1), **14(4)**
- F21** Words in reg. 11(6) substituted (6.4.2005) by Personal and Occupational Pension Schemes (Indexation and Disclosure of Information) (Miscellaneous Amendments) Regulations 2005 (S.I. 2005/704), regs. 1(2), **13(4)**

F22 Reg. 11(7) substituted (E.W.) (13.3.2014) by The Marriage (Same Sex Couples) Act 2013 (Consequential Provisions) Order 2014 (S.I. 2014/107), art. 1(2), Sch. 1 para. 24(3)(b) and (S.) (16.12.2014) by The Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014 (S.I. 2014/3229), art. 1(2), **Sch. 6 para. 16(3)(b)**

Changes to legislation:

There are currently no known outstanding effects for the The Occupational Pension Schemes (Discharge of Liability) Regulations 1997, PART III.