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STATUTORY INSTRUMENTS

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**2000 No. 1053**

**The Pension Sharing (Implementation and  
Discharge of Liability) Regulations 2000**

**PART IV**

**DISCHARGE OF LIABILITY IN RESPECT OF A PENSION CREDIT**

**Funded pension schemes**

7.—(1) The circumstances in which the trustees or managers of a scheme, to which paragraph 1 of Schedule 5 to the 1999 Act applies, may discharge their liability in respect of a pension credit in accordance with sub-paragraph (2)(b) of that paragraph are where—

- (a) the person entitled to the credit has failed to provide his consent in accordance with paragraph 1(2)(a) and (4) of that Schedule; and
- (b) the circumstances set out in paragraph 1(3) of that Schedule do not apply.

(2) The circumstances in which the trustees or managers of a scheme, to which paragraph 1 of Schedule 5 to the 1999 Act applies, may discharge their liability in respect of a pension credit in accordance with sub-paragraph (3)(c) of that paragraph are where—

- (a) the person entitled to the credit has failed to provide his consent in accordance with paragraph 1(2)(a) of that Schedule; and
- (b) the trustees or managers of the scheme have not discharged their liability in accordance with paragraph (1) above.

**Unfunded occupational pension schemes other than public service pension schemes**

8.—(1) The circumstances in which the trustees or managers of a scheme, to which paragraph 3 of Schedule 5 to the 1999 Act applies, may discharge their liability in respect of a pension credit in accordance with sub-paragraph (3)(c) of that paragraph are those specified in—

- (a) sub-paragraphs (a) and (b) of paragraph (2), in the case of an approved scheme; and
- (b) sub-paragraphs (a), (b) and (c) of paragraph (2), in the case of an unapproved scheme.

(2) The circumstances specified in this paragraph are—

- (a) the liability of the trustees or managers has not been discharged in accordance with the provisions of paragraph 3(2) of that Schedule;
- (b) the person entitled to the pension credit has not consented to the discharge of liability in accordance with paragraph 3(3) of that Schedule; and
- (c) the employer who is associated with the scheme from which the pension credit derives—
  - (i) consents to the trustees or managers discharging their liability for the credit in accordance with paragraph 3(3) of that Schedule; and

- (ii) agrees to compensate the person entitled to the credit fully for any tax liability which he may incur as a result of the trustees or managers of the scheme discharging their liability for the credit in accordance with paragraph 3(3) of that Schedule.

(3) In this regulation “approved scheme” means an occupational pension scheme which is approved for the purposes of Part XIV of the Income and Corporation Taxes Act 1988<sup>(1)</sup> and an “unapproved scheme” means an occupational pension scheme which is not approved for those purposes.

### **Other pension arrangements**

9.—(1) The circumstances in which the person responsible for a pension arrangement, to which paragraph 4 of Schedule 5 to the 1999 Act applies, may discharge his liability in respect of a pension credit in accordance with sub-paragraph (2)(c) of that paragraph are where his liability has not been discharged in accordance with the provisions of paragraph 4(3) or (4) of that Schedule.

(2) The circumstances in which the person responsible for the pension arrangement may discharge his liability in respect of the pension credit under paragraph 4(4) of Schedule 5 to the 1999 Act are where the person responsible for the pension arrangement has not discharged his liability in accordance with the provisions of—

- (a) paragraph (1) above;
- (b) paragraph 4(2) of that Schedule; or
- (c) paragraph 4(3) of that Schedule.

### **Calculation of the value of appropriate rights**

10.—(1) Except in a case to which paragraph (4) applies, the value of the rights conferred on a person entitled to a pension credit shall be calculated by adopting methods and making assumptions which the scheme actuary or, in relation to a scheme to which section 47(1)(b) of the 1995 Act (professional advisers) does not apply, by a person referred to in paragraph (2), has certified to the person responsible for the pension arrangement as being consistent with—

- (a) the methods adopted and assumptions made when transfers of other pension rights are received by the person responsible for the pension arrangement; and
- (b) the Guidance Note 11 “Retirement Benefit Schemes—Transfer Values” published by the Institute of Actuaries and the Faculty of Actuaries<sup>(2)</sup> and which is current on the valuation day.

(2) A person referred to in this paragraph is—

- (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 person responsible for the pension arrangement in question, as being a proper person to act for the purposes of these Regulations in connection with that scheme.

(3) Where the person entitled to a pension credit in respect of whom a cash equivalent is to be calculated and verified is a member of a scheme having particulars from time to time set out in regulations made under section 7 of the Superannuation Act 1972<sup>(3)</sup> (superannuation of persons employed in local government service, etc.), that cash equivalent shall be calculated and verified in

(1) 1988 c. 1.

(2) 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>.

(3) 1972 c. 11.

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.

(4) Where the rights conferred on a person entitled to a pension credit are derived from money purchase rights in whole or in part, the value of those rights shall be calculated by the person responsible for the pension arrangement in a manner consistent with the methods adopted and assumptions made when transfers of other pension rights are received by the person responsible for the pension arrangement.

### **Qualifying arrangements**

**11.**—(1) The requirements referred to in paragraph 6(2)(b) of Schedule 5 to the 1999 Act (requirements applying to annuity contracts or policies of insurance for the purpose of subparagraph (1) of that paragraph) are that the annuity contract is entered into or the insurance policy is taken out with an insurance company which is—

- (a) authorised under section 3 or 4 of the Insurance Companies Act 1982(4) (authorisation of insurance business) to carry on long term business (within the meaning of section 1 of that Act(5) (classification));
- (b) in the case of a friendly society authorised under section 32 of the Friendly Societies Act 1992(6) (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 of the Insurance Companies Act 1982(7) (restriction on carrying on insurance business), and which falls within paragraph (2).

(2) 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(8)) in the United Kingdom through a branch in respect of which such of the requirements of Part I of Schedule 2F to that Act(9) (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.

### **Disqualification as a destination for pension credit—general**

**12.** The requirements referred to in paragraph 7(1)(b) of Schedule 5 to the 1999 Act (requirements to be satisfied to qualify pension arrangements as destinations for pension credits) are that the pension arrangement—

- (a) is an arrangement which carries on pension business as defined by section 431B of the Income and Corporation Taxes Act 1988(10) (meaning of “pension business”);
- (b) is an overseas arrangement within the meaning given by regulation 1(2) of the Contracting-out (Transfer and Transfer Payment) Regulations 1996(11) (citation, commencement and interpretation); and

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(4) 1982 c. 50, as amended by the European Economic Area Act 1993 (c. 51).

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

(6) 1992 c. 40. Section 32 was amended by S.I. 1994/1984.

(7) Section 2 was amended by regulation 4(2) of S.I. 1994/1696 and 1994/3132.

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

(9) Schedule 2F was inserted by S.I. 1994/1696.

(10) Section 431B was inserted by paragraph 2 of Schedule 8 to the Finance Act 1995 (c. 4).

(11) S.I. 1996/1462.

- (c) is an overseas scheme within the meaning given by regulation 1(2)(12) of the Contracting-out (Transfer and Transfer Payment) Regulations 1996.

### **Disqualification as a destination for pension credit—contracted-out or safeguarded rights**

**13.**—(1) The descriptions of pension arrangements referred to in paragraph 7(2)(a) of Schedule 5 to the 1999 Act (pension arrangements which qualify as destinations for pension credits, where the rights by reference to which the amount of the credits are determined are or include contracted-out rights or safeguarded rights) are—

- (a) a contracted-out salary related occupational pension scheme which satisfies the requirements of section 9(2)(13) of the 1993 Act (requirements for certification of occupational salary related schemes);
- (b) a contracted-out money purchase occupational pension scheme which satisfies the requirements of section 9(3)(14) of the 1993 Act (requirements for certification of occupational money purchase schemes);
  - (i) a contracted-out occupational pension scheme to which section 149 of the 1995 Act (hybrid occupational pension schemes) applies;
- (c) an appropriate personal pension scheme within the meaning of section 7(4)(15) of the 1993 Act (issue of appropriate scheme certificates);
- (d) an annuity contract or an insurance policy which satisfies the requirements of paragraph 6 of Schedule 5 to the 1999 Act (qualifying arrangements);
- (e) an overseas arrangement within the meaning given by regulation 1(2) of the Contracting-out (Transfer and Transfer Payment) Regulations 1996; or
- (f) an overseas scheme within the meaning given by regulation 1(2) of the Contracting-out (Transfer and Transfer Payment) Regulations 1996.

(2) The requirements referred to in paragraph 7(2)(b) of Schedule 5 to the 1999 Act (requirements to be satisfied by a pension arrangement which qualifies as a destination for a pension credit, where the rights by reference to which the amount of the credit are determined are or include contracted-out rights or safeguarded rights) are—

- (a) in relation to the descriptions of pension arrangement referred to in paragraph (1)(a) to (d), the requirements specified in the Pension Sharing (Safeguarded Rights) Regulations 2000(16) to be met by an occupational pension scheme or a personal pension scheme;
- (b) in relation to the descriptions of pension arrangement referred to in paragraph (1)(e), the requirements specified in regulation 15 (disqualification as a destination for pension credit—annuity contracts and insurance policies) and regulation 7(3) and (4) of the Pension Sharing (Safeguarded Rights) Regulations 2000(17) (the pension and annuity requirements—money purchase schemes);
- (c) in relation to the descriptions of pension arrangement referred to in paragraph (1)(f) and (g), the requirements specified in regulation 11 of the Contracting-out (Transfer and Transfer Payment) Regulations 1996 (transfer payments to overseas schemes or arrangements in respect of section 9(2B) rights), as if the references in that regulation to—
  - (i) “earner” were to “the person entitled to a pension credit”; and

(12) The definition of “overseas scheme” was amended by paragraph 7(2) of Schedule 1 to S.I. [1997/786](#).

(13) Section 9(2) was substituted by section 136(3) of the Pensions Act 1995.

(14) Section 9(3) was amended by section 136(4) of, and paragraph 24 of Schedule 5, Part III of Schedule 7 to, the Pensions Act 1995, and by paragraph 35(3) of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999.

(15) Section 7(4) was amended by paragraph 22(b) of Schedule 5, and by Part III of Schedule 7 to the Pensions Act 1995.

(16) S.I. [2000/1055](#).

(17) S.I. [2000/1055](#).

(ii) “accrued section 9(2B) rights” were to “safeguarded rights”.

(3) The rights for the purposes of paragraph 7(6) of Schedule 5 to the 1999 Act (meaning of “contracted-out” rights under or derived from an occupational pension scheme or a personal pension scheme) are those which fall within the categories specified in regulation 2 of the Pension Sharing (Safeguarded Rights) Regulations 2000 (definition of contracted-out rights).

#### **Disqualification as a destination for pension credit—occupational pension schemes**

14. The calculation of the value of the rights of the person entitled to the pension credit for the purposes of paragraph 7(3) of Schedule 5 to the 1999 Act shall be made in accordance with the methods adopted and assumptions made by the scheme which are consistent with the methods adopted and assumptions made by that scheme when transfers of other pension rights are received by the scheme.

#### **Disqualification as a destination for pension credit—annuity contracts and insurance policies**

15.—(1) The circumstances referred to in paragraph 7(4) of Schedule 5 to the 1999 Act (circumstances in which an annuity contract or insurance policy is disqualified as a destination for a pension credit) are where the requirements specified in paragraphs (2) to (7) are not satisfied.

(2) The annuity contract or insurance policy must provide that that contract or policy, as the case may be, may not be assigned or surrendered unless—

- (a) the person entitled to the pension credit; or
- (b) if the person entitled to the pension credit has died, his widow or widower,

has consented to the assignment or surrender.

(3) The benefits previously secured by the annuity contract or insurance policy become secured, or are replaced by benefits which are secured by another qualifying arrangement.

(4) The annuity contract or insurance policy, as the case may be, must provide that the benefits secured by that contract or policy may be commuted if either—

- (a) the conditions set out in paragraph (5) are satisfied; or
- (b) the conditions set out in paragraph (6) are satisfied.

(5) The conditions referred to in paragraph (4)(a) are—

- (a) the benefits secured by the annuity contract or insurance policy have become payable, and the aggregate of those benefits does not exceed £260 per annum;
- (b) an actuary certifies that the methods and assumptions to be used to calculate any benefit in a lump sum form will result in the benefit being broadly equivalent to the annual amount of benefits which would have been payable in pension benefits; and
- (c) all of the interest of the person entitled to the pension credit under the annuity contract or insurance policy is discharged upon payment of a lump sum.

(6) The conditions referred to in paragraph (4)(b) are—

- (a) the benefits secured by the annuity contract or insurance policy have become payable and the person entitled to the pension credit requests or consents to the commutation;
- (b) the person entitled to the pension credit is suffering from serious ill health prior to normal benefit age; and
- (c) the insurance company with which the annuity contract is entered into, or with which the insurance policy is taken out, assumes an obligation to pay the benefits secured by the annuity contract or insurance policy to—

- (i) the person entitled to the pension credit;
- (ii) the trustees of a trust for the benefit of the person entitled to the pension credit; or
- (iii) the trustees of a trust for the benefit of the dependants of the person entitled to the pension credit.

(7) The annuity contract or insurance policy must contain, or be endorsed with, terms so as to provide for any increase in accordance with regulation 32 of the Pension Sharing (Pension Credit Benefit) Regulations 2000<sup>(18)</sup> (increase of relevant pension) which would have been applied to the benefits which have become secured or been replaced by the annuity contract or insurance policy had the discharge of liability not taken place.

(8) 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 benefits secured by the annuity contract or insurance policy is applied for.

#### **Adjustments to the amount of the pension credit—occupational pension schemes which are underfunded on the valuation day**

**16.—**(1) The circumstances referred to in paragraph 8(1)(d) of Schedule 5 to the 1999 Act (adjustments to amount of pension credit) are—

- (a) the discharge of liability in respect of the pension credit in accordance with paragraph 1(3) of Schedule 5 to the 1999 Act is at the request, or with the consent, of the person entitled to the pension credit;
- (b) the person entitled to the pension credit has refused an offer by the trustees or managers of the occupational pension scheme from which the pension credit is derived to discharge their liability in respect of the pension credit, without any reduction in the amount of the credit, in accordance with the provisions of paragraph 1(2) of Schedule 5 to the 1999 Act (conferring appropriate rights in that scheme on the person entitled to the pension credit); and
- (c) prior to making his request or giving his consent in accordance with sub-paragraph (a) the person entitled to the pension credit has received from the trustees or managers of the occupational pension scheme from which the pension credit is derived, a written statement which provides the following information—
  - (i) the reasons why the amount of the pension credit has been reduced;
  - (ii) the amount by which the pension credit has been reduced; and
  - (iii) where possible, an estimate of the date by which it will be possible to pay the full, unadjusted amount of the pension credit.

(2) The lesser amount referred to in paragraph 8(1) of Schedule 5 to the 1999 Act may be determined for the purposes of that paragraph by reducing the amount of the pension credit which relates to liabilities referred to in section 73(3)(a), (aa), (b), (c)(i) or (d) of the 1995 Act<sup>(19)</sup> (preferential liabilities on winding-up) by the percentage which is the difference between—

- (a) 100 per cent.; and
- (b) the percentage of the pension credit which the actuarial valuation shows the scheme assets as being sufficient to satisfy,

<sup>(18)</sup> S.I. 2000/1054.

<sup>(19)</sup> Section 73(3) was modified by regulation 3 of S.I. 1996/3126 and is amended by section 38(1) of the Welfare Reform and Pensions Act 1999.

where the actuarial valuation is the latest actuarial valuation obtained in accordance with section 57 of the 1995 Act (valuation and certification of assets and liabilities) before the valuation day.

(3) If, by virtue of Schedule 5 to the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996<sup>(20)</sup>, section 56 of the 1995 Act (minimum funding requirement) applies to a section of a scheme as if that section were a separate scheme, paragraph (2) 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.

#### **Adjustments to the amount of the pension credit—payments made without knowledge of the pension debit**

17. For the purposes of paragraph 9 of Schedule 5 to the 1999 Act (adjustments to amount of pension credit), where the cash equivalent of the member's shareable rights after deduction of the payment referred to in sub-paragraph (b) of that paragraph, is less than the amount of the pension debit, the pension credit shall be reduced to that lesser amount.

#### **Adjustments to the amount of the pension credit—increasing the amount of the pension credit**

18.—(1) For the purposes of paragraph 10 of Schedule 5 to the 1999 Act (adjustments to amount of pension credit) the trustees or managers of an occupational pension scheme to which paragraph 1(3) or 3(3) of Schedule 5 to the 1999 Act applies shall increase the amount of the pension credit by—

- (a) the amount, if any, by which the amount of that pension credit falls short of what it would have been if the valuation day had been the day on which the trustees or managers make the payment; or
- (b) if it is greater, interest on the amount of that pension credit calculated on a daily basis over the period from the valuation day to the day on which the trustees or managers make the payment, at an annual rate of one per cent. above the base rate.

(2) For the purposes of paragraph 10 of Schedule 5 to the 1999 Act the trustees or managers of a personal pension scheme to which paragraph 1(3) of Schedule 5 to the 1999 Act applies, or a person responsible for a pension arrangement to which paragraph 4(2) of Schedule 5 to the 1999 Act applies, shall increase the amount of the pension credit by—

- (a) the interest on the amount of that pension credit, calculated on daily basis over the period from the valuation day to the day on which the trustees or managers or the person responsible for the pension arrangement make the payment, at the same rate as that payable for the time being on judgment debts by virtue of section 17 of the Judgments Act 1838<sup>(21)</sup>; or
- (b) if it is greater, the amount, if any, by which the amount of that pension credit falls short of what it would have been if the valuation day had been the day on which the trustees or managers or the person responsible for the pension arrangement make the payment.

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<sup>(20)</sup> S.I. 1996/1536. Schedule 5 was amended by S.I. 1997/786 and S.I. 1997/3038.

<sup>(21)</sup> 1 & 2 Vic. c. 110; the rate of interest was amended by S.I. 1993/564.