

SCHEDULE 5

Regulation 20

CONTINUITY OPTION 1: TRANSFER OUT AND WINDING UP

Interpretation

1.—(1) In this Schedule—

“applicable scheme” means whichever of the employer default scheme or the trustee default scheme was included in the notice sent to members under paragraph 6;

“employer default scheme” means the alternative scheme nominated by an employer in accordance with paragraph 5(1)(b);

“receiving scheme” means the trustee default scheme, the employer default scheme or an alternative scheme to which member benefits are to be transferred;

“transfer date” means the date on which the accrued rights and benefits of members of the transferring scheme are transferred to a receiving scheme;

“transferring scheme” means the Master Trust scheme referred to in regulation 20;

“trustee default scheme” means the pension scheme identified by the trustees under section 24(1)(a) of the Act (continuity option 1: transfer out and winding up).

(2) Notices given under this Schedule must be sent—

- (a) in writing, by post or email,
- (b) to the addressee’s last known address, and
- (c) in accordance with any further requirements set out in a Code.

(3) For the purposes of sub-paragraph (2), a person’s email address is—

- (a) any email address provided for the time being by that person as an address for contacting that person; or
- (b) if no such address has been provided, any email address by means of which the sender reasonably believes that the notice will come to the attention of that person or (where that person is a body corporate) any director or other officer of that body corporate.

(4) A notice under this Schedule sent to a person by email is taken to have been received by that person 48 hours after it is sent.

(5) This Schedule overrides any provision of the Master Trust scheme to the extent that there is a conflict.

Calculation of cash equivalent

2.—(1) In this Schedule, a “cash equivalent” of any rights and benefits to which a member is entitled is the realisable value of those rights and benefits.

(2) A cash equivalent must be calculated—

- (a) in accordance with these Regulations and with the rules of the scheme to which it relates;
- (b) in a manner which is approved by the trustees;
- (c) as an estimate as at the date when the employers are informed of the transfer date under paragraph 9; and
- (d) as a final figure as at the transfer date.

(3) In calculating a cash equivalent, account must be taken of any surrender, commutation or forfeiture of the whole or part of a member’s pension.

Trustees' powers

3.—(1) The trustees of a scheme that is pursuing continuity option 1 may, without members' consent, provide—

(a) for either—

(i) a member's accrued rights and benefits (including any transfer credits allowed under the scheme) to be transferred, or

(ii) a transfer payment in respect of a member's rights to be made, to a trustee default scheme or an employer default scheme in accordance with this Schedule, with a view to acquiring transfer credits for the member under that scheme; or

(b) for arrangements to be made in accordance with paragraph 12 (trustees' power to transfer otherwise than to a scheme).

(2) A transfer payment made under sub-paragraph (1)(a)(ii) must be of an amount at least equal to the cash equivalent of the member's rights under the scheme, calculated in accordance with paragraph 2.

(3) The trustees of a scheme that is pursuing continuity option 1 may, where appropriate, decline a member's request for a drawdown pension (as defined in paragraph 4 of Schedule 28 to the Finance Act 2004⁽¹⁾) (drawdown pension) in the transferring scheme.

(4) A transfer, transfer payment or alternative arrangement under this paragraph is prescribed for the purposes of section 73(4)(b) of the 1993 Act (form of short service benefit and its alternatives).

Trustees' first notice to employers and members

4.—(1) When the trustees have identified the trustee default scheme, they must send a notice to each participating employer, each member and the trustees of the trustee default scheme.

(2) A notice under this paragraph must be sent within 14 days beginning with—

(a) the date on which the trustees identify the trustee default scheme, or

(b) if later, the date on which the Regulator notifies the trustees that the implementation strategy has been approved.

(3) A notice sent to a member under this paragraph must include information about—

(a) where the member can obtain guidance about the proposed transfer;

(b) the member's right to choose whether his or her accrued rights and benefits in the transferring scheme are transferred to—

(i) a scheme selected by the trustees or, where applicable, the member's employer, or

(ii) an alternative scheme selected by the member;

(c) the member's right to require the cash equivalent of his or her accrued rights and benefits to be used to buy one or more policies as set out in paragraph 7(1)(b); and

(d) the timetable for future communication with the member.

(4) A notice sent to an employer under this paragraph must include information about—

(a) the trustee default scheme, including its name;

(b) the expected date on which the transferring scheme will stop accepting contributions;

(c) the employer's options for complying with its automatic enrolment duties when the transferring scheme has stopped accepting contributions;

(1) 2004 c. 12.

- (d) where the employer can obtain guidance about the proposed transfer;
- (e) the employer's option to nominate an employer default scheme in respect of its workers who are active members of the transferring scheme;
- (f) the fact that if the employer does not nominate an employer default scheme, active members will be transferred to the trustee default scheme; and
- (g) the timetable for future communication with the employer.

(5) A notice sent to the trustees of the trustee default scheme under this paragraph must state that the trustee default scheme has been selected under section 24(1)(a) of the Act (continuity option 1: transfer out and winding up).

Employer's response to trustees

5.—(1) Each employer which receives a notice under paragraph 4 must give notice to the trustees of whether—

- (a) it accepts the choice of trustee default scheme in relation to members then employed by it, or
- (b) it opts to nominate an alternative scheme (the trustees of which are able and willing to accept the transfer) as the employer default scheme for those members, in which case it must state the name of that scheme and inform the trustees of that scheme that it has been so nominated.

(2) Each employer that has opted to nominate an alternative scheme as the employer default scheme must give notice of that nomination to those of its workers who are active members of the transferring scheme.

(3) A notice to trustees or workers under this paragraph must be sent within eight weeks beginning with the date when the employer received the notice under paragraph 4.

(4) If the trustees receive no notice from an employer under this paragraph, the employer is deemed to have accepted the trustee default scheme as the default scheme for members then employed by it.

Trustees' second notice to members

6.—(1) After the period allowed for employers to send notice to the trustees under paragraph 5, the trustees must send a second notice to each member of the transferring scheme.

(2) A notice under this paragraph must be sent within three months beginning with the day on which the trustees sent notice to members and employers under paragraph 4.

(3) A notice under this paragraph must state—

- (a) the proposed transfer date;
- (b) if the member's employer has not nominated an employer default scheme—
 - (i) the fact that the member will be transferred to the trustee default scheme unless the member specifies otherwise; and
 - (ii) the name of, and information about—
 - (aa) the trustee default scheme, and
 - (bb) the default arrangement in that scheme;
- (c) if the member's employer has nominated an employer default scheme—

- (i) the fact that the member will be transferred to the employer default scheme unless the member specifies otherwise; and
- (ii) the name of, and information about—
 - (aa) the employer default scheme, and
 - (bb) the default arrangement in that scheme;
- (d) the member’s ability to obtain information about arrangements from the applicable scheme;
- (e) the fact that the member’s funds will be allocated to the default arrangement unless the member specifies otherwise;
- (f) where the member can obtain guidance about the proposed transfer;
- (g) the member’s right to choose whether the member’s accrued rights and benefits in the transferring scheme are transferred to—
 - (i) the applicable scheme, or
 - (ii) an alternative scheme selected by the member;
- (h) the requirement for a member who has selected an alternative scheme to send the trustees of the transferring scheme a notice that meets the requirements of paragraph 7(2);
- (i) the member’s rights under Part 4ZA of the 1993 Act (transfers and contribution refunds);
- (j) the member’s right to require the cash equivalent of the member’s accrued rights and benefits to be used to buy one or more policies as set out in paragraph 7(1)(b);
- (k) the consequences for the member of his or her choice of receiving scheme, with particular reference to its effect on payment of contributions by the member’s employer;
- (l) the timetable for future communication with members.

Member’s response to trustees

- 7.—(1) A member who has received notice from the trustees under paragraph 6 may give notice to the trustees requiring them—
- (a) to transfer the member’s accrued rights and benefits in the transferring scheme to—
 - (i) the applicable scheme, or
 - (ii) an alternative scheme selected by the member, the trustees of which are able and willing to accept the transfer; or
 - (b) to use the cash equivalent of the member’s accrued rights and benefits to purchase one or more policies from one or more insurers authorised by the Financial Conduct Authority⁽²⁾ for carrying on long-term insurance business in the United Kingdom.
- (2) A notice under this paragraph—
- (a) must be sent within three months beginning with the day when the member received notice from the trustees under paragraph 6 (“the option period”); and
 - (b) must contain sufficient information about the alternative scheme referred to in subparagraph (1)(a)(ii) or the destination of the cash equivalent referred to in subparagraph (1)(b), including bank account details, necessary for the trustees to comply with paragraph 8(1).
- (3) An alternative scheme selected by the member must be—

⁽²⁾ The Financial Conduct Authority is described in section 1A of the Financial Services and Markets Act 2000 (c. 8) (“FSMA”), substituted by the Financial Services Act 2012 (c. 21), section 6(1); Part 3 of FSMA contains provisions on authorisation.

- (a) a Master Trust scheme authorised under the Act, or
- (b) a personal pension scheme as defined in section 1 of the 1993 Act (categories of pension schemes).

Trustees' duty to transfer

8.—(1) If the trustees receive notice from a member in accordance with paragraph 7, they must—

- (a) arrange for the member's accrued rights and benefits to be transferred, or the member's cash equivalent applied, as specified in the notice;
- (b) notify the member of the value of the cash equivalent of his or her accrued rights if the member is not yet receiving benefits under the transferring scheme; and
- (c) notify the member of the value of his or her remaining benefits if the member is receiving benefits under the transferring scheme.

(2) If the trustees do not receive notice from a member under paragraph 7, the member's accrued rights and benefits must be transferred to the applicable scheme.

(3) Any transfer of a member's rights and benefits, and any application of a member's cash equivalent, under this paragraph must be made within three months beginning with the end of the option period referred to in paragraph 7(2)(a).

Notice of expected transfer date

9. Not less than one month before the expected transfer date, the trustees must notify each participating employer of the expected transfer date.

Transfer requirements: choice of arrangements

10.—(1) The trustees of the applicable scheme must, as soon as reasonably practicable, contact each member whose accrued rights or benefits are to be transferred to that scheme and must invite them to select an arrangement of the applicable scheme into which those rights or benefits are to be transferred.

(2) The accrued rights of members who do not respond to the applicable scheme within eight weeks after the date on which they received the invitation referred to in sub-paragraph (1) must remain in an arrangement which—

- (a) meets the conditions for use as the default arrangement of the applicable scheme, and
- (b) complies with Chapter 1 of Part 2 of the Charges and Governance Regulations (restrictions on charges: default arrangements).

Requirements to be met by default schemes

11. The trustee default scheme and any employer default scheme must each be—

- (a) a Master Trust scheme authorised under the Act, and
- (b) an automatic enrolment scheme in relation to the members being transferred, as defined in section 17 of the Pensions Act 2008(3) (automatic enrolment schemes), or a scheme which would be an automatic enrolment scheme if the members being transferred were jobholders as defined in section 16(1) of that Act.

Trustees' power to transfer otherwise than to a scheme

12.—(1) Where the trustees cannot identify a scheme which they consider appropriate for use as a default scheme in respect of a member of the transferring scheme, the trustees may make arrangements to transfer that member's accrued rights and benefits to a vehicle which will secure suitable benefits for the member that are comparable to those in the transferring scheme.

(2) Before making arrangements under sub-paragraph (1), the trustees must notify the members to whom the arrangements relate of their intention to do so.

(3) The arrangements permitted by sub-paragraph (1) are the purchase of one or more policies from one or more insurers authorised by the Financial Conduct Authority for carrying on long-term insurance business in the United Kingdom.

(4) A transfer under sub-paragraph (1) is prescribed for the purposes of section 73(4)(b) of the 1993 Act (form of short service benefit and its alternatives).

Administration charges

13.—(1) For the purposes of section 24(5)(i) of the Act (continuity option 1: transfer out and winding up), the trustees of an applicable scheme must provide to the Regulator a document setting out the administration charges in accordance with the following provisions.

(2) The document must be provided within 28 days beginning with—

- (a) in the case of the trustee default scheme, the date on which the trustees received notice from the trustees of the transferring scheme under paragraph 4(1), or
- (b) in the case of an employer default scheme, the date on which the trustees received notice from the employer under paragraph 5(1)(b).

(3) The document must set out all levels of administration charges for each charge structure, including any discounted levels—

- (a) for each arrangement, including a default arrangement, and any different levels in relation to any one arrangement;
- (b) for any additional charges, including the reason for imposing them;
- (c) for any third-party charges, including the reason for imposing them; and
- (d) for any other type of administration charge in the scheme, including the reason for imposing it.

(4) The charges must be set out as at the most recent date, not falling within a triggering event period in relation to the transferring scheme, on which the applicable scheme submitted a continuity strategy to the Regulator.

(5) The levels must be set out on an annualised basis.

(6) Where there is a discounted level, the reason for charging the lower level must also be set out.

(7) The document must include a statement explaining—

- (a) how the applicable scheme has complied with section 33(2) of the Act (prohibition on increasing charges during triggering event period);
- (b) whether the applicable scheme is liable for the costs mentioned in section 33(3) of the Act; and
- (c) if the applicable scheme is liable for those costs, how it is to meet them.

Future contributions

- 14.** The trustees of a scheme that is pursuing continuity option 1 may—
- (a) arrange for the future contributions of employers and active members to be paid to the trustee default scheme from a date to be decided by the trustees, and
 - (b) arrange for any contributions received from employers and active members after the date referred to in sub-paragraph (a) to be forwarded to the trustees of the applicable scheme.

Cessation of accruals

15.—(1) On the transfer date, the trustees of the transferring scheme are discharged from any obligation to receive contributions from members or maintain arrangements for the accrual of rights to benefits in respect of them.

(2) When the accrued rights and benefits of members of the transferring scheme have been transferred to a receiving scheme, the trustees of the transferring scheme are discharged from any obligation to provide benefits to those members.

(3) This paragraph does not apply in respect of members who are transferring out of the scheme in accordance with Part 4ZA of the 1993 Act (transfers and contribution refunds).

Winding up

16. The Regulator may direct the trustees of the transferring scheme to wind up the scheme where continuity option 1 is being pursued.

Regulator's power to direct

17. The trustees of a Master Trust scheme must comply with a direction issued by the Regulator requiring them to do anything permitted or required by this Schedule.

Civil penalties

18. Section 10 of the 1995 Act (civil penalties) applies to a person who fails to comply with a requirement imposed by this Schedule, including where the requirement is contained in a direction made under it.