



Pensions Act 2004

2004 CHAPTER 35

PART 5

OCCUPATIONAL AND PERSONAL PENSION SCHEMES: MISCELLANEOUS PROVISIONS

Early leavers

264 Early leavers: cash transfer sums and contribution refunds

After section 101 of the Pension Schemes Act 1993 insert—

“CHAPTER 5

EARLY LEAVERS: CASH TRANSFER SUMS AND CONTRIBUTION REFUNDS

101AA Scope of Chapter 5

- (1) This Chapter applies to any member of an occupational pension scheme to which Chapter 1 applies (see section 69(3)) if—
 - (a) his pensionable service terminates before he attains normal pension age, and
 - (b) on the date on which his pensionable service terminates—
 - (i) the three month condition is satisfied, but
 - (ii) he does not have relevant accrued rights to benefit under the scheme.
- (2) For the purposes of subsection (1), the three month condition is that the period of the member's pensionable service under the scheme, taken together with—
 - (a) any previous period of his pensionable service under the scheme, and
 - (b) any period throughout which he was employed in linked qualifying service under another scheme,

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amounts to at least three months.

- (3) A period counts for the purposes of paragraph (a) or (b) of subsection (2) only so far as it counts towards qualification for long service benefit within the meaning of Chapter 1.
- (4) For the purposes of subsection (1), “relevant accrued rights to benefit under the scheme”, in relation to a member of a scheme, means rights which—
 - (a) have accrued to or in respect of him under the scheme, and
 - (b) entitle him to the relevant benefits which would have accrued to or in respect of him under the applicable rules if paragraphs (a) and (b) of section 71(1) (and the word “and” immediately preceding them) did not have effect.
- (5) References in the following provisions of this Chapter to a member, in relation to an occupational pension scheme, are to a member of the scheme to whom this Chapter applies.

101AB Right to cash transfer sum and contribution refund

- (1) On the termination of his pensionable service, a member of an occupational pension scheme acquires a right to whichever one he elects of the following options—
 - (a) a cash transfer sum;
 - (b) a contribution refund.
- (2) Subsection (1) is subject to the following provisions of this Chapter.
- (3) In this Chapter “cash transfer sum” means, in relation to a member of an occupational pension scheme, the cash equivalent, at the date on which his pensionable service terminates, of the benefits mentioned in section 101AA(4)(b).
- (4) In this Chapter, “contribution refund” means, in relation to a member of an occupational pension scheme, a sum representing the aggregate of—
 - (a) the member’s employee contributions to the scheme, and
 - (b) where transfer credits have been allowed to the member under the scheme by virtue of a payment (“the transfer payment”) made by the trustees or managers of another occupational pension scheme, the member’s employee contributions to that other scheme, so far as they—
 - (i) relate to the transfer payment, and
 - (ii) do not, in aggregate, exceed the amount of the transfer payment.
- (5) In subsection (4), “employee contributions” means, in relation to a member of an occupational pension scheme, contributions made to the scheme by or on behalf of the member on his own account, but does not include—
 - (a) a transfer payment by virtue of which transfer credits have been allowed to the member under the scheme, or
 - (b) any pension credit or amount paid to the scheme which is attributable (directly or indirectly) to a pension credit.

101AC Notification of right to cash transfer sum or contribution refund

- (1) This section applies where the pensionable service of a member of an occupational pension scheme has terminated.
- (2) The trustees or managers of the scheme must—
 - (a) within a reasonable period after the termination give the member a statement in writing containing information adequate to explain—
 - (i) the nature of the right acquired by him under section 101AB, and
 - (ii) how he may exercise the right, and such other information as may be prescribed, and
 - (b) afford the member a reasonable period after giving him that statement within which to exercise the right.
- (3) The statement given under subsection (2)(a) must specify, in particular—
 - (a) in relation to the cash transfer sum to which the member acquires a right under section 101AB, its amount and the permitted ways in which the member can use it,
 - (b) the amount of the contribution refund to which the member so acquires a right, and
 - (c) the last day on which the member may, disregarding section 101AI(2), exercise the right (“the reply date”).
- (4) Information which may be prescribed under subsection (2)(a) includes, in particular—
 - (a) information about any tax liability in respect of, or deduction required or permitted to be made from, the cash transfer sum or contribution refund, and
 - (b) information about the effect on other rights of the member (whether under the applicable rules or otherwise) of exercising the right.
- (5) The trustees or managers may notify the member that, if he does not exercise the right mentioned in subsection (2)(a)(i) on or before the reply date, the trustees or managers will be entitled to pay the contribution refund to him.
- (6) Where the trustees or managers of the scheme fail to comply with subsection (2), section 10 of the Pensions Act 1995 (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

101AD Exercise of right under section 101AB

- (1) This section applies where a member of an occupational pension scheme acquires a right under section 101AB.
- (2) The member may exercise the right by giving a notice in writing to that effect to the trustees or managers stating—
 - (a) which of the options under section 101AB(1) he elects, and
 - (b) if he elects for the cash transfer sum, the permitted way in which he requires that sum to be used.

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- (3) The notice under subsection (2) must be given on or before—
- (a) the reply date, or
 - (b) such later date as the trustees or managers may allow in his case under section 101AI(2).

101AE Permitted ways of using cash transfer sum

- (1) This section applies in relation to a cash transfer sum to which a member of an occupational pension scheme acquires a right under section 101AB.
- (2) The ways in which the cash transfer sum may be used are—
- (a) for acquiring transfer credits allowed under the rules of another occupational pension scheme—
 - (i) whose trustees or managers are able and willing to accept the cash transfer sum, and
 - (ii) which satisfies prescribed requirements,
 - (b) for acquiring rights allowed under the rules of a personal pension scheme—
 - (i) whose trustees or managers are able and willing to accept the cash transfer sum, and
 - (ii) which satisfies prescribed requirements,
 - (c) for purchasing one or more appropriate annuities,
 - (d) in such circumstances as may be prescribed, for subscribing to other pension arrangements which satisfy prescribed requirements.
- (3) For the purposes of subsection (2), “appropriate annuity” means an annuity which satisfies prescribed requirements and is purchased from an insurer who—
- (a) falls within section 19(4)(a),
 - (b) is chosen by the member, and
 - (c) is willing to accept payment on account of the member from the trustees or managers of the scheme.

101AF Calculation of cash transfer sum and contribution refund

- (1) Cash transfer sums are to be calculated and verified in the prescribed manner.
- (2) Any calculation of a contribution refund must conform with such requirements as may be prescribed.
- (3) Regulations may provide—
- (a) for amounts to be deducted in respect of administrative costs in calculating cash transfer sums;
 - (b) for a cash transfer sum or contribution refund to be increased or reduced in prescribed circumstances.
- (4) The circumstances that may be prescribed under subsection (3)(b) include in particular—
- (a) a failure by the trustees or managers of the scheme to comply with section 101AG(2) or (4) in relation to the cash transfer sum or contribution refund, and

- (b) the state of funding of the scheme.
- (5) Regulations under subsection (3)(b) may provide—
- (a) for a cash transfer sum to be reduced so that the member has no right to have any amount paid by way of cash transfer sum in respect of him;
 - (b) for a contribution refund to be reduced so that the member has no right to receive any amount by way of contribution refund under this Chapter.

101AG Duties of trustees or managers following exercise of right

- (1) This section applies where a member of an occupational pension scheme has exercised a right under section 101AB in accordance with section 101AD.
- (2) Where the member has elected for the cash transfer sum, the trustees or managers of the scheme must, within a reasonable period beginning with the date on which the right was exercised, do what is needed to carry out the requirement specified in the member's notice under section 101AD(2)(b).
- (3) When the trustees or managers have done what is needed to carry out that requirement, they are discharged from any obligation—
- (a) in respect of any rights (including conditional rights) of, or in respect of, the member to relevant benefits under the applicable rules, and
 - (b) to make any other payment by way of refund to or in respect of the member of, or in respect of—
 - (i) the contributions, or any payment, mentioned in section 101AB(4), or
 - (ii) any other contributions made to the scheme, or any other scheme, in respect of the member (other than any pension credit or amount attributable (directly or indirectly) to a pension credit).
- (4) Where the member has elected for the contribution refund, the trustees or managers of the scheme must, within a reasonable period beginning with the date on which the right was exercised, do what is needed to secure that the amount of the contribution refund is paid to the member or as he directs.
- (5) When the trustees or managers have done what is needed to secure the payment of the contribution refund as mentioned in subsection (4)—
- (a) they are discharged from any obligation in respect of any rights (including conditional rights) of, or in respect of, the member to relevant benefits under the applicable rules, and
 - (b) if they are required under the applicable rules, or determine in accordance with those rules, to make any payment (“the refund payment”) by way of refund to or in respect of the member of, or in respect of—
 - (i) the contributions, or any payment, mentioned in section 101AB(4), or
 - (ii) any other contributions made to the scheme, or any other scheme, in respect of the member (other than any pension credit or amount attributable (directly or indirectly) to a pension credit),

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the amount of the contribution refund may be set off against the refund payment.

- (6) Where the trustees or managers fail to comply with subsection (2) or (4), section 10 of the Pensions Act 1995 (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

101AH Powers of trustees or managers where right not exercised

- (1) This section applies where—
- (a) a member of an occupational pension scheme does not exercise a right acquired by him under section 101AB on or before the reply date or such later date as the trustees or managers of the scheme allow in his case under section 101AI(2), and
 - (b) the trustees or managers of the scheme have notified the member as mentioned in section 101AC(5).
- (2) The trustees or managers may within a reasonable period beginning with—
- (a) the reply date, or
 - (b) if a later date has been allowed as mentioned in subsection (1), that later date,
- pay the contribution refund to the member.
- (3) When the trustees or managers have paid the contribution refund to the member—
- (a) they are discharged from any obligation in respect of any rights (including conditional rights) of, or in respect of, the member to relevant benefits under the applicable rules, and
 - (b) if they are required under the applicable rules, or determine in accordance with those rules, to make any payment (“the refund payment”) by way of refund to or in respect of the member of, or in respect of—
 - (i) the contributions, or any payment, mentioned in section 101AB(4), or
 - (ii) any other contributions made to the scheme, or any other scheme, in respect of the member (other than any pension credit or amount attributable (directly or indirectly) to a pension credit),
 the amount of the contribution refund may be set off against the refund payment.

101AI Rights under section 101AB: further provisions

- (1) A member of an occupational pension scheme loses any right acquired by him under section 101AB—
- (a) if the scheme is wound up, or
 - (b) subject to subsection (2), if he fails to exercise the right on or before the reply date.

- (2) If the member has failed to exercise any such right on or before the reply date, the trustees or managers of the scheme may allow him to exercise it on or before such later date as they may determine on the application of the member.
- (3) Where the trustees or managers determine a later date under subsection (2)—
 - (a) they must give a notice in writing to that effect to the member, and
 - (b) subsection (1)(b) applies in relation to the member as if the reference to the reply date were a reference to the later date.
- (4) For the purposes of subsection (3) and sections 101AC(2) and 101AD(2), a document or notice may be given to a person—
 - (a) by delivering it to him,
 - (b) by leaving it at his proper address, or
 - (c) by sending it by post to him at that address.
- (5) For the purposes of subsection (4), and section 7 of the Interpretation Act 1978 (service of documents by post) in its application to that subsection, the proper address of a person is—
 - (a) in the case of a body corporate, the address of the registered or principal office of the body, and
 - (b) in any other case, the last known address of the person.
- (6) This Chapter is subject to any provision made by or under section 61 (deduction of contributions equivalent premium from refund of scheme contributions)—
 - (a) permitting any amount to be deducted from any payment of a contribution refund, or
 - (b) requiring the payment of a contribution refund to be delayed.
- (7) In this Chapter, except where the context otherwise requires, the following expressions have the following meanings—
 - “the applicable rules” means—
 - (a) the rules of the scheme, except so far as overridden by a relevant legislative provision,
 - (b) the relevant legislative provisions, to the extent that they have effect in relation to the scheme and are not reflected in the rules of the scheme, and
 - (c) any provision which the rules of the scheme do not contain but which the scheme must contain if it is to conform with the requirements of Chapter 1 of this Part;
 - “member” has the meaning given in section 101AA(5);
 - “permitted way”, in relation to a cash transfer sum, means any of the ways specified in section 101AE(2) in which the sum may be used;
 - “relevant benefits” means benefits which are not attributable (directly or indirectly) to a pension credit;
 - “reply date”, in relation to a member whose pensionable service has terminated, has the meaning given in section 101AC(3)(c).
- (8) For the purposes of subsection (7)—
 - (a) “relevant legislative provision” means any provision contained in any of the following provisions—

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- (i) Schedule 5 to the Social Security Act 1989 (equal treatment for men and women);
 - (ii) this Chapter or Chapter 2, 3 or 4 of this Part of this Act or regulations made under this Chapter or any of those Chapters;
 - (iii) Part 4A of this Act or regulations made under that Part;
 - (iv) section 110(1) of this Act;
 - (v) Part 1 of the Pensions Act 1995 (occupational pensions) or subordinate legislation made or having effect as if made under that Part;
 - (vi) section 31 of the Welfare Reform and Pensions Act 1999 (pension debits: reduction of benefit);
 - (vii) any provision mentioned in section 306(2) of the Pensions Act 2004;
- (b) a relevant legislative provision is to be taken to override any of the provisions of the scheme if, and only if, it does so by virtue of any of the following provisions—
- (i) paragraph 3 of Schedule 5 to the Social Security Act 1989;
 - (ii) section 129(1) of this Act;
 - (iii) section 117(1) of the Pensions Act 1995;
 - (iv) section 31(4) of the Welfare Reform and Pensions Act 1999;
 - (v) section 306(1) of the Pensions Act 2004.”