

## STATUTORY INSTRUMENTS

# 1996 No. 3126

## The Occupational Pension Schemes(Winding Up) Regulations 1996

### Discharge of liabilities by insurance etc.

#### Arrangements for discharge of liabilities under s. 74 **E+W+S**

6.—(1) For the purposes of section 74(2), the arrangements with which the trustees or managers of a scheme must comply in providing for the discharge of a liability under that section are as follows.

(2) Where the trustees or managers of a scheme propose to discharge a liability of the scheme to or in respect of a member—

- (a) they must give him or, if he has died, each beneficiary who is entitled to benefits in respect of him, notice in writing of that fact;
- (b) if they propose to discharge the liability wholly or partly—
  - (ai) [<sup>F1</sup>in the way mentioned in regulation 8(6)(b)(i)(aa) in a case where the proposed lump sum is an uncrystallised funds pension lump sum for the purposes of Part 1 of Schedule 29 to the Finance Act 2004,]
  - (i) in the way mentioned in section 74(3)(a) or (b), or
  - (ii) in the way mentioned in regulation 8(5) in a case where sub-paragraph (a) of that regulation applies, then, subject to paragraph (4), they must obtain the written consent of the member or, as the case may be, the beneficiary to discharging the liability in that way; and
- (c) in the case of discharge in the way mentioned in regulation 8(5), any other requirements which apply to the making of a payment so mentioned must have been met.

(3) A notice under paragraph (2)(a) must comply with the requirements of regulation 7.

(4) In a case where regulation [<sup>F2</sup>11B or] 12 of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 <sup>M1</sup> (transfer of member's accrued rights without consent) applies, no consent need be obtained to a discharge of liability in the way mentioned in section 74(3)(a).

(5) Where—

- (a) the trustees or managers have complied with paragraphs (2) and (3); and
- (b) an election has been made under regulation 7(3)(a),

they may discharge the liability in pursuance of the election without complying with those paragraphs again.

#### Textual Amendments

- F1** Reg. 6(2)(ai)(b) inserted (6.4.2016) by [The Pension Protection Fund and Occupational and Personal Pension Schemes \(Miscellaneous Amendments\) Regulations 2016 \(S.I. 2016/294\)](#), regs. 1, **2(2)**
- F2** Words in reg. 6(4) inserted (6.4.2013) by [The Occupational and Stakeholder Pension Schemes \(Miscellaneous Amendments\) Regulations 2013 \(S.I. 2013/459\)](#), regs. 1, **5**

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### Marginal Citations

**M1** S.I. 1991/167. Regulation 12 has been amended by S.I. 1992/1531, **regulation 35**; S.I. 1993/1822, **regulation 2**; S.I. 1994/1062, **paragraph 30(15)** of Schedule 2; S.I. 1995/3067, **regulation 2(4)**; S.I. 1996/2131, **regulation 2(7)**.

### Requirements applicable to notices of discharge under regulation 6 **E+W+S**

- 7.—(1) A notice under regulation 6(2)(a) (“a discharge notice”) must specify—
- (a) the sum which is available to be used to discharge the liability of the scheme to the member or, as the case may be, the beneficiary in respect of his rights under the scheme; and
  - (b) if the full amount of that liability, as calculated in accordance with regulation 4, is greater than that sum, that amount and the reason for the difference.
- (2) A discharge notice must—
- (a) specify the way or ways in which it is proposed to discharge the liability;
  - (b) if the proposed way or any of the proposed ways requires the consent of the member or, as the case may be, the beneficiary, state—
    - (i) that his consent is so required,
    - (ii) the period within which his consent must be given, being at least three months beginning with the date on which the notice is given, and
    - (iii) the way or ways in which it is proposed to discharge the liability if he does not give his consent; and
  - (c) if the proposed way is that mentioned in regulation 8(5), state any further requirements which must be met before discharge may be made in that way.
- (3) If there are any options available to the member or beneficiary, the discharge notice must specify them and state—
- (a) that if he wishes to elect that, instead of the liability being discharged in the proposed way, it should be discharged in one or more of the other ways mentioned in section 74(3) which are available in his case (or partly in the proposed way and partly in another such way), then he must give notice to that effect in writing to the trustees or managers, specifying—
    - (i) the way or ways in which he wishes the liability to be discharged, and
    - (ii) the name of the relevant provider;
  - (b) that such a notice must be given by him before the expiry of the period of three months beginning with the date on which the discharge notice is given to him; and
  - (c) that it would be advisable for him to obtain independent financial advice before deciding whether to make such an election.
- (4) The statement mentioned in paragraph (3)(c) must also be included in any case where the consent of the member or the beneficiary is required.
- (5) Where it is proposed to discharge the liability in the way mentioned in section 74(3)(a), the discharge notice must specify the name of the relevant provider and the scheme address.
- (6) Where it is proposed to discharge the liability in the way mentioned in section 74(3)(b), the discharge notice must specify the name of the relevant provider and (if different) of the person who is the scheme administrator and the scheme address.
- (7) Where it is proposed to discharge the liability in the way mentioned in section 74(3)(c) or in regulation 8(4), the discharge notice must specify—
- (a) the name and address of the relevant provider;

- (b) if different, the name and address of the person from whom information about the terms of the contract for the provision of the annuity which is to be purchased or, as the case may be, the benefit of which is to be transferred can be obtained; and
- (c) in a case where the contract for the provision of the annuity has not been made at the time the notice is given, whether information about its terms will be given on the assumption that they will coincide with the terms of a quotation.

(8) In this regulation—

“the relevant provider” means—

- (a) in the case of the acquisition of transfer credits under another occupational pension scheme, the trustees or managers of the scheme;
- (b) in the case of the acquisition of rights under a personal pension scheme, the person who is responsible for the provision of pensions and other benefits under the scheme; and
- (c) in the case of the purchase or transfer of the benefit of an annuity, the insurance company or companies from which the annuity is to be or, as the case may be, has been purchased;

“the scheme address”, in relation to a scheme, means the place in the United Kingdom where the management of the scheme is conducted or, if there is more than one such place, the principal place;

“scheme administrator” has the meaning given in <sup>[F3]</sup>section 270 of the Finance Act 2004.] .

(9) A discharge notice and any notice under paragraph (3) shall be treated as having been given to a person if it has been sent to him by post at the address at which he was last known by the trustees or managers of the scheme to be living.

(10) Discharge notices and notices under paragraph (3) are not required to be given to a person if—

- (a) the trustees or managers know no such address as is mentioned in paragraph (9) for him, or
- (b) correspondence sent to the address at which he was last known by them to be living has been returned.

<sup>[F4]</sup>(11) A discharge notice and any notice under paragraph (3) may be given in accordance with regulations 26 to 28 (giving information and documents) of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013.]

#### Textual Amendments

- F3** Words in reg. 7(8) substituted (6.4.2006) by [Occupational Pension Schemes \(Winding Up etc.\) Regulations 2005 \(S.I. 2005/706\)](#), reg. 1(2), **Sch. para. 4**
- F4** [Reg. 7\(11\)](#) inserted (6.4.2014) by [The Occupational and Personal Pension Schemes \(Disclosure of Information\) Regulations 2013 \(S.I. 2013/2734\)](#), reg. 1(1), **Sch. 9 para. 5(2)**

#### Requirements to be satisfied by transferee schemes, annuities etc. **E+W+S**

**8.**—<sup>[F5]</sup>(1) For the purpose of section 74(3)(a) (discharge of liability to or in respect of a member by the acquisition of transfer credits under another occupational pension scheme), the requirements to be satisfied by the other occupational pension scheme are the same as those which would apply by virtue of—

(a) section 95(2)(a) of the Pension Schemes Act 1993 (ways of taking right to cash equivalent) if—

- (i) the member were entitled to a cash equivalent under Chapter IV of Part IV of that Act in respect of the rights liability in respect of which is being discharged, and

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(ii) he required his cash equivalent to be used to acquire transfer credits allowed under the rules of the scheme; or

(b) section 101F(2)(a) of that Act (power to give transfer notice).

(2) For the purpose of section 74(3)(b) (discharge of liability to or in respect of a member by the acquisition of rights under a personal pension scheme), the requirements to be satisfied by the personal pension scheme are the same as those which would apply by virtue of—

(a) section 95(2)(b) of the Pension Schemes Act 1993 if the member were so entitled and he required his cash equivalent to be used to acquire rights allowed under the rules of the scheme; or

(b) section 101F(2)(a) of that Act.

(3) For the purpose of section 74(3)(c) (discharge of liability to or in respect of a member by the purchase of one or more annuities) the requirements to be satisfied by the annuities are the same as those which would apply by virtue of—

(a) section 95(2)(c) of the Pension Schemes Act 1993 if the member were so entitled and he required his cash equivalent to be used to purchase annuities from such insurance companies as are mentioned in that section; or

(b) section 101F(2)(b) of that Act, other than the requirement that an insurance company must be chosen by the member.]

(4) For the purpose of section 74(3)(d) (discharge of liability to or in respect of a member by subscribing to other pension arrangements satisfying prescribed requirements) the discharge of a liability to or in respect of a member may be provided for by transferring to him, or to any person who is entitled to benefits in respect of him, the benefit—

(a) of one or more contracts to provide annuities which—

(i) satisfy the requirements mentioned in paragraph (3); and

(ii) are provided by insurance companies which consent to the transfer; or

(b) of one or more policies of insurance which satisfy the requirements mentioned in section 19(4) of the Pension Schemes Act 1993 <sup>M2</sup> (appropriate policies and annuity contracts).

(5) For the purpose of section 74(3)(d), the discharge of a liability to or in respect of a member of a [<sup>F6</sup>scheme that was a] contracted-out scheme may also be provided for in a case where sub-paragraph (3B) of paragraph 5 of Schedule 2 to the Pension Schemes Act 1993 <sup>M3</sup> applies by a payment to the Secretary of State of the amount mentioned in paragraph (b) of that sub-paragraph (amount required for restoring the member's State scheme rights) if—

(a) the member has duly made such an application as is required for the restoration of his State scheme rights in accordance with that provision, or

(b) in a case where such an application may be made by the trustees or managers, they have duly made such an application;

and in this paragraph "State scheme rights" has the same meaning as in that sub-paragraph.

[<sup>F7</sup>(6) For the purposes of section 74(3)(e) (liabilities treated as discharged where the trustees have provided for them to be discharged by the payment of a cash sum in circumstances where prescribed requirements are met), the circumstances which are prescribed are—

(a) where the payment is a contribution refund under [<sup>F8</sup>Chapter 2 of Part 4ZA] of the 1993 Act; or

(b) where the payment—

[<sup>F9</sup>(i) of a lump sum—

- (aa) that is a trivial commutation lump sum [<sup>F10</sup>, an uncrystallised funds pension lump sum] or a winding up lump sum for the purposes of Part 1 of Schedule 29 to the Finance Act 2004 is made to a member; or
  - (bb) is made by a registered pension scheme (within the meaning given in section 150(2) of the Finance Act 2004 (meaning of “pension scheme”)), is a payment that is described in Part 2 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 and is made to or in respect of a member; and]
  - (ii) does not contravene any trivial commutation restriction that applies in the circumstances in question.
- (7) In this regulation “trivial commutation restriction” means a restriction imposed by—
- [<sup>F11</sup>(a) regulation 18 or 25 of the Occupational Pension Schemes (Schemes that were Contracted-out) (No.2) Regulations 2015 (payment of a lump sum instead of a pension);]
  - (b) regulation 2 of the Occupational Pension Scheme (Assignment, Forfeiture, Bankruptcy etc. ) Regulations 1997 (commutation of a pension under an occupational pension scheme);  
<sup>F12</sup> ...
  - (c) <sup>F12</sup> .....
- (8) Before 6th April 2006 this regulation applies with the modification in paragraph (9).
- (9) For paragraph (6)(b)(i) substitute—
- “(i) extinguishes the whole or part of the person’s entitlement to benefits under the scheme;
- (ia) does not contravene Revenue restrictions; and”.
- (10) For the purposes of this regulation a payment does not contravene Revenue restrictions if—
- (a) in the case of a scheme that is an approved scheme for the purposes of Chapter 1 of Part 14 of the Income and Corporation Taxes Act 1988 (see section 612(1) of that Act), it is permitted under the scheme rules in accordance with its approval for those purposes; and
  - (b) in the case of a scheme that is a relevant statutory scheme for those purposes (see section 611A of that Act), it is permitted under the regulations or rules governing the scheme as such a scheme.]

**Textual Amendments**

- F5** Regs. 8(1)-(3) substituted (1.12.2000) by [The Pension Sharing \(Consequential and Miscellaneous Amendments\) Regulations 2000 \(S.I. 2000/2691\)](#), regs. 1, **3(4)**
- F6** Words in reg. 8(5) 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), **9(2)(a)**
- F7** Reg. 8(6) to (10) added (6.4.2005) by [Occupational Pension Schemes \(Winding Up etc.\) Regulations 2005 \(S.I. 2005/706\)](#), regs. 1(2), **11** (with reg. 1(3))
- F8** Words in reg. 8(6)(a) substituted (6.4.2016) by [The Pension Protection Fund and Occupational and Personal Pension Schemes \(Miscellaneous Amendments\) Regulations 2016 \(S.I. 2016/294\)](#), regs. 1, **2(3)(a)**
- F9** Reg. 8(6)(b)(i) substituted (1.12.2009) by [Occupational and Personal Pension Schemes \(Authorised Payments\) Amendment Regulations 2009 \(S.I. 2009/2930\)](#), regs. 1, **6**
- F10** Words in reg. 8(6)(aa)(b)(i) inserted (6.4.2016) by [The Pension Protection Fund and Occupational and Personal Pension Schemes \(Miscellaneous Amendments\) Regulations 2016 \(S.I. 2016/294\)](#), regs. 1, **2(3)(b)**

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- F11** Reg. 8(7)(a) 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), **9(2)(b)**
- F12** Reg. 8(7)(c) and preceding word omitted (6.4.2009) by virtue of [Occupational, Personal and Stakeholder Pensions \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/615\)](#), regs. 1(2), **9(2)(b)**

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**Marginal Citations**

- M2** 1993 c. 48.
- M3** Sub-paragraphs (3A) to (3E) were inserted in paragraph 5 of Schedule 2 by section 141(2) of the [Pensions Act 1995 \(c. 26\)](#).

**Relationship of these Regulations and requirements under s. 32A of the Pension Schemes Act 1993** **E+W+S**

<sup>F13</sup>9. ....

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**Textual Amendments**

- F13** Reg. 9 omitted (6.4.2012) by virtue of [The Pensions Act 2008 \(Abolition of Protected Rights\) \(Consequential Amendments\) Order 2011 \(S.I. 2011/1246\)](#), arts. 1(2)(a), **16**

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- Instrument saved by [S.I. 1997/784 reg.8](#)