STATUTORY INSTRUMENTS

1996 No. 775

PENSIONS

The Occupational Pension Schemes (Discharge of Protected Rights on Winding Up) Regulations 1996

Made - - - -	*13th March 1996*
Laid before Parliament	*15th March 1996*
Coming into force - -	*6th April 1996*

The Secretary of State for Social Security, in exercise of powers conferred on him by sections 32A, 181(1) and 182(2) and (3) of the Pension Schemes Act 1993[M1], and all other powers enabling him in that behalf, by this instrument, which contains only regulations which are consequential upon section 146 of the Pensions Act 1995[M2] and is made before the end of the period of six months beginning with the coming into force of that enactment, hereby makes the following Regulations[M3]:

Marginal Citations

M1 1993 c.48. Section 32A was inserted into the Pension Schemes Act 1993 by section 146 of the Pensions Act 1995 c.26. Section 181(1) is cited because of the meaning ascribed to “prescribed" and “regulations".

M2 1995 c.26.

M3 *See* section 185(6) of the Pension Schemes Act 1993 and section 173(5) of the Social Security Administration Act 1992 (c.5) under which the requirement to consult does not apply where regulations are consequential upon a specific enactment and are made before the end of the period of six months beginning with the coming into force of that enactment.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Discharge of Protected Rights on Winding Up) Regulations 1996 and shall come into force on 6th April 1996.

(2) In these Regulations—

“the Act" means the Pension Schemes Act 1993;

“administrative charges" means any charges or costs incurred as a result of taking out or entering into an appropriate policy of insurance but excluding any new commission costs; and

[[F1]“income withdrawal” has the meaning given by paragraph 7 of Schedule 28 to the Finance Act 2004 (income withdrawal);**]**

[F1"lifetime annuity" has the meaning given by paragraph 3 of Schedule 28 to the Finance Act 2004 (lifetime annuity);**]**

"normal pension age" has the same meaning as in section 180 of the Act.

[F1"scheme pension" has the meaning given by paragraph 2 of Schedule 28 to the Finance Act 2004 (scheme pension); and**]**

[F1"the scheme pension purchase price" has the meaning given by paragraph 3(7B) of Schedule 29 to the Finance Act 2004 (the scheme pension purchase price);**]**

(3) A reference to a numbered regulation is to the regulation in these Regulations bearing that number and, unless the context otherwise requires, a reference in a regulation to a numbered paragraph is to the paragraph bearing that number in that regulation.

Textual Amendments

F1 Words in reg. 1(2) inserted (6.4.2007) by Taxation of Pension Schemes (Protected Rights and Pension Commencement Lump Sums) (Amendment) Order 2007 (S.I. 2007/829), arts. 1, **2(a)**

Conditions subject to which effect may be given to protected rights of a member of a scheme on winding up by insurance policies

2.—(1) For the purposes of section 32A(1) of the Act (effect may be given to protected rights where a scheme is being wound up and such conditions as may be prescribed are satisfied) the prescribed conditions are that the trustees or managers give written notice to the member, in accordance with paragraph (3), of the proposal to give effect to his protected rights by means of an appropriate policy of insurance under section 32A(l)(a) or (b) of the Act and either—

(a) the member agrees in writing within 3 months from the date of the written notice;

(b) where the condition in sub-paragraph (a) is not satisfied—

(i) no application for a cash equivalent under section 95 of the Act (ways of taking right to cash equivalent) is received by the trustees or managers within 3 months from the date of the written notice; or

(ii) an application for a cash equivalent under section 95 of the Act is received by the trustees or managers within 3 months of the date of the written notice and any of the conditions referred to in paragraph (2) are satisfied.

(2) The conditions referred to in paragraph (l)(b)(ii) are—

(a) the member withdraws his application for a cash equivalent in accordance with section 100 of the Act;

(b) the member loses his right to the cash equivalent under section 98(7) of the Act (variation and loss of rights); or

(c) it is not possible for the trustees or managers within the period specified in section 99(2) of the Act (trustees' duties after exercise of option) to do what is needed to carry out what the member requires.

(3) The written notice referred to in paragraph (1) shall—

(a) be sent by post to the member's last known address; and

(b) include the information specified in the Schedule to these Regulations.

[F2Requirements applying to insurers

3.—(1) The requirements referred to in section 32A(2)(a)(ii) of the Act (policy of insurance appropriate if the insurer satisfies prescribed requirements) are that the insurer—

(a) is a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to effect and carry out contracts of long-term insurance; or

(b) is an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of long-term insurance in the United Kingdom.

(2) References to contracts of long-term insurance in paragraph (1) must be read with—

(a) section 22 of the Financial Services and Markets Act 2000;

(b) any relevant order under that section; or

(c) Schedule 2 to that Act.]

Textual Amendments

F2 Reg. 3 substituted (1.12.2001) by The Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 (S.I. 2001/3649), arts. 1, **521**

Conditions on which policies of insurance may be surrendered

4. The conditions referred to in section 32A(2)(b) of the Act (policy of insurance appropriate for the purposes if it may not be surrendered except on conditions which satisfy prescribed requirements) are—

(a) that the consent of the beneficiary to the surrender is given in writing to the insurance company; and

(b) that, in consideration of the surrender, the benefits previously secured by the policy of insurance are replaced by benefits which are secured by means of one of the following, namely—

(i) another policy of insurance which is appropriate within the meaning of section 32A(2) of the Act; or

(ii) the acquisition of transfer credits under the rules of a contracted-out occupational pension scheme; or

(iii) the acquisition of rights under the rules of an appropriate personal pension scheme.

[F3Conditions upon which appropriate policies of insurance may be commuted

5.—(1) The requirements referred to in section 32A(2)(c) of the Act (policy of insurance appropriate where commutation conditional on satisfying prescribed requirements) are that the amount secured by the policy of insurance may only be commuted if the amount payable is authorised by section 164 of the Finance Act 2004 (authorised member payments) and satisfies the requirements of [F4paragraph (2), (2A)] or (3), together with—

(a) paragraphs (4) to (6) if the lump sum payment qualifies as a pension commencement lump sum; or

(b) paragraph (7) if the lump sum payment qualifies as a serious ill-health lump sum.

(2) This paragraph is satisfied if the lump sum payment is permitted by the lump sum rule in section 166 of the Finance Act 2004 and qualifies as—

(a) a pension commencement lump sum for the purposes of paragraph 1 of Part 1 of Schedule 29 to that Act;

(b) a serious ill-health lump sum for the purposes of paragraph 4 of that Part; or

(c) a trivial commutation lump sum for the purposes of paragraph 7 of that Part.

[F5(2A) This paragraph is satisfied if the lump sum payment is—

(a) made by a registered pension scheme (within the meaning given in section 150(2) of the Finance Act 2004 (meaning of "pension scheme"));

(b) a payment that is described in Part 2 of the Registered Pension Schemes (Authorised Payments) Regulations 2009; and

(c) made to or in respect of a member.]

(3) This paragraph is satisfied if the lump sum payment is permitted by the lump sum death benefit rule in section 168 of the Finance Act 2004 and qualifies as a trivial commutation lump sum death benefit for the purposes of paragraph 20 of Part 2 of Schedule 29 to that Act.

(4) This paragraph is satisfied if the rules of the scheme impose a limit on the maximum payment which may be taken by way of a pension commencement lump sum from funds available for a member's protected rights.

(5) [F6The limit referred to in paragraph (4) must not exceed—

(a) in respect of a scheme pension, the lesser of—

(i) one third of the value of the protected rights included in the scheme pension purchase price; or

(ii) the amount which represents the proportion (expressed in percentage terms) of the value of the protected rights which is equal to the percentage that the pension commencement lump sum bears to the scheme pension purchase price and the pension commencement lump sum; or

(b) in respect of a lifetime annuity or income withdrawal, the lesser of—

(i) 25 per cent. of the member's protected rights which are crystallised by the member's benefit crystallisation event 6 and the relevant pension benefit crystallisation event connected with event 6 ("the member's benefit crystallisation events"); or

(ii) the amount which represents the proportion (expressed in percentage terms) of the value of the protected rights which is equal to the percentage that the pension commencement lump sum bears to the amount crystallised by the member's benefit crystallisation events.]

(6) For the purpose of this regulation, section 216 of the Finance Act 2004 sets out the events which are benefit crystallisation events and the amount which is crystallised by such an event.

(7) Where—

(a) under the scheme, a member qualifies for a lump sum payment on the ground of serious ill-health;

(b) on the date he qualifies for the payment, the member has a spouse or civil partner; and

(c) the scheme also provides for the payment of a pension to a member's widow, widower or surviving civil partner,

then this paragraph is satisfied if the scheme retains a sum equal to at least one half of the value on that date of the funds required to provide for a member's protected rights.]

Textual Amendments

F3 Reg. 5 substituted (6.4.2006) by The Taxation of Pension Schemes (Consequential Amendments of Occupational and Personal Pension Schemes Legislation) Order 2006 (S.I. 2006/744), arts. 1, **7(2)**

F4 Words in reg. 5(1) substituted (1.12.2009) by Occupational and Personal Pension Schemes (Authorised Payments) Amendment Regulations 2009 (S.I. 2009/2930), regs. 1, **3(a)**

F5 Reg. 5(2A) inserted (1.12.2009) by Occupational and Personal Pension Schemes (Authorised Payments) Amendment Regulations 2009 (S.I. 2009/2930), regs. 1, **3(b)**

F6 Reg. 5(5) substituted (6.4.2007) by Taxation of Pension Schemes (Protected Rights and Pension Commencement Lump Sums) (Amendment) Order 2007 (S.I. 2007/829), arts. 1, **2(b)**

Other requirements applying to policies of insurance

6.—(1) For the purposes of section 32A(2)(d) of the Act (policy of insurance appropriate if it satisfies such other requirements as may be prescribed) the prescribed requirements are—

(a) where the appropriate policy of insurance is to be taken out or entered into with the same insurance company which issued the original insurance policy, no new costs except administrative charges in respect of the proposed policy of insurance are to be attributed to the beneficiary;

(b) that the age at which the beneficiary is to be entitled to receive benefits ("the normal retirement age") is to be the same age as the normal pension age under the scheme being wound up or such other age ("the agreed retirement age")[F7]... as agreed by the beneficiary;

(c) that the policy contains provision to the effect that, or is endorsed so as to provide that—

(i) any rights under the insurance policy ("the insured rights") which derive from the protected rights of the member of the scheme which is being wound up, are to be treated as if they were protected rights under an occupational pension scheme and, subject to paragraph (2), as if sections 27, 28, 29 and 32 and Chapter IV of Part IV of the Act and regulations made under those sections and under section 145 of the Pensions Act 1995 were applicable to them;

(ii) an annual statement is to be sent to the beneficiary stating the value of that beneficiary's insured rights under the policy; and

(iii) information is to be sent to the beneficiary in respect of the rights and options (if any) available to him not less than 4 months and not more than 6 months before the agreed retirement age or, if there is no such agreed retirement age, the normal retirement age.

(2) For the purposes of paragraph (1)(c)(i) the provisions in the Act referred to in that sub-paragraph shall be construed as if—

(a) the policy of insurance is an occupational pension scheme;

(b) the insurance company is the trustee or manager of the scheme;

(c) the beneficiary is the member of the scheme; and

(d) the terms of the policy are the scheme rules.

Textual Amendments

F7 Words in reg. 6(1)(b) 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, **7(3)**

Signed by authority of the Secretary of State for Social Security.

Oliver Heald
Parliamentary Under-Secretary of State,
Department of Social Security

13th March 1996

SCHEDULE

Regulation 2(3)

INFORMATION TO BE SPECIFIED IN THE WRITTEN NOTICE

1. Details of the proposal to—

(i) wind-up the scheme;

(ii) give effect to protected rights by means of an appropriate policy of insurance on or after 3 months from the date of the written notice.

2. An explanation of the effect of winding-up a scheme.

3. Details of the cash equivalent of the member's protected rights at a date not earlier than 3 months prior to the date of the written notice.

4. A statement that if the member does not wish his protected rights to be secured by an appropriate policy of insurance, notification of where those protected rights are to be transferred to must be given to the trustees or managers within 3 months from the date of the written notice.

5. The options available to the member in respect of his protected rights.

6. The name and address of the insurance company providing the appropriate policy of insurance and where appropriate a statement confirming that the insurance company is the same company which manages the scheme and issues the insurance policy or policies securing the benefits under that scheme.

7. Where appropriate, details of any administrative charges or other costs or charges which will be incurred and on whom they fall in respect of the proposed appropriate policy of insurance.

8. The rights and options available under the appropriate policy of insurance in respect of assignment, surrender and commutation.

9. The availability of independent financial advice.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are the first regulations to be made under section 32A of the Pension Schemes Act 1993 as inserted by section 146 of the Pensions Act 1995. They are made before the end of the period of six months beginning with the coming into force of section 146 of the Pensions Act 1995 and therefore the requirement to consult does not apply.

Regulation 2 and the Schedule provide for the conditions on which effect may be given to protected rights of a member of a scheme on winding up by means of an appropriate policy of insurance.

Regulation 3 prescribes the requirements which an insurance company must satisfy.

Regulations 4 and 5 prescribe the conditions which the policies of insurance must satisfy before they can be surrendered or commuted.

Regulation 6 prescribes other requirements which the policies of insurance must satisfy.

An assessment of the compliance cost for employers of the measures arising from the Pensions Act 1995, including regulations, has been placed in the libraries of both Houses of Parliament. Copies can be obtained by post from the Department of Social Security, 11th Floor, Adelphi, 1-11 John Adam Street, London WC2N 6HT.