STATUTORY INSTRUMENTS

1997 No. 784

The Occupational Pension Schemes (Discharge of Liability) Regulations 1997

PART II

DISCHARGE OF LIABILITY WHERE GUARANTEED MINIMUM PENSIONS, SHORT SERVICE BENEFITS AND ALTERNATIVES TO SHORT SERVICE BENEFITS ARE SECURED BY INSURANCE POLICIES OR ANNUITY CONTRACTS

Requirements applying to policies of insurance and annuity contracts

2.—(1) The requirements referred to in section 19(4)(a)(ii) of the 1993 Act (requirements applying to policies of insurance or annuity contracts for the purposes of discharging liabilities for guaranteed minimum pensions) are that the insurance policy is taken out or the annuity contract is entered into with an insurance company which is—

(a) authorised under section 3 or 4 of the Insurance Companies Act 1982(**1**) (authorization of insurance business); or

(b) in the case of a Friendly Society, authorised under section 32 of the Friendly Societies Act 1992(**2**) (activities of Friendly Societies: long-term business) to carry out long-term business under any of the Classes specified in Head A of Schedule 2 of that Act; or

(c) an EC company as defined in section 2 of the Insurance Companies Act 1982(**3**) falling within paragraph (2) below.

(2) An EC company falls within this paragraph if it—

(a) carries on ordinary long-term insurance business in the United Kingdom through a branch in respect of which such of the requirements of Part I of Schedule 2F to the Insurance Companies Act 1982 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 the Insurance Companies Act 1982 as are applicable have been complied with in respect of the insurance.

Conditions on which policies of insurance and annuity contracts may be assigned or surrendered

3. The conditions referred to in section 19(4)(b) of the 1993 Act (policy of insurance or annuity contract appropriate for the purposes if it may not be assigned or surrendered except on conditions which satisfy prescribed requirements) are—

(**1**) 1982 c. 52.
(**2**) 1992 c. 40.
(**3**) Section 2 was amended by regulation 4(2) of S.I.1994/1698 and 3132.

(a) that the written consent of the earner or, if the earner has died, the earner's widow or widower to the assignment or surrender is obtained; and

(b) that in consideration of the assignment or surrender the benefits previously secured by the policy of insurance or annuity contract become secured, or are replaced by benefits which are secured, by one or more of the following means—

(i) another policy of insurance or annuity contract which is appropriate within the meaning of section 19(4) of the 1993 Act,

(ii) subject to regulations 3, 5 and 6 of the Contracting-out (Transfer and Transfer Payment) Regulations 1996(**4**) in the case of benefits which include guaranteed minimum pensions, the award of supplementary credits under an occupational pension scheme which applies to the employment of the earner at the time of the assignment or surrender or the granting of rights to money purchase benefits under a personal pension scheme, or

(iii) in the case only of benefits which are not, and do not include guaranteed minimum pensions, the award of rights to money purchase benefits under a self-employed pension arrangement within the meaning of regulation 12(6)(a) of the Occupational Pension Schemes (Transfer Values) Regulations 1996(**5**) or regulation 2A of the Personal Pension Schemes (Transfer Values) Regulations 1987(**6**).

Conditions on which policies of insurance and annuity contracts may be commuted

4.—(1) The conditions referred to in section 19(4)(c) of the 1993 Act (policy of insurance or annuity contract appropriate where commutation conditional on satisfying prescribed require ments) are—

(a) that—

(i) the benefits secured by the policy of insurance or annuity contract have become payable, and the aggregate of those benefits and all other benefits currently payable or prospectively payable to the earner or, as the case may be, to his widow or her widower under all occupational pension schemes relating to employment with the same employer as the employment in respect of which the benefits secured by the policy of insurance or annuity contract are payable, does not exceed £260 per annum,

(ii) 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, and

(iii) all of the earner's interest under the policy of insurance or annuity contract is discharged upon payment of a lump sum; or

(b) subject to paragraph (2), the benefits secured by the policy of insurance or annuity contract have become payable and the earner requests or consents to the commutation, and either the earner—

(i) has attained the age of 50, or

(ii) is suffering from an incapacity or serious ill-health prior to normal pension age.

(2) The commutation referred to in paragraph (1)(b) does not apply to that part of the benefits which consist of the earner's and the earner's widow or widower's guaranteed minimum pensions.

(3) For the purposes of paragraph (1)(a)—

(a) any benefit in a lump sum shall be treated as an annual amount of benefit in pension;

(**4**) S.I. 1996/1462.
(**5**) S.I. 1996/1847.
(**6**) S.I. 1987/1112; relevant amending instrument is S.I. 1988/1016.

(b) any benefit secured by means of another policy of insurance or annuity contract which is appropriate for the purposes of section 19(4) of the 1993 Act shall be treated as payable or prospectively payable under the occupational pension scheme which was liable to provide it before it was so secured; and

(c) any guaranteed minimum pension which is prospectively payable shall be reckoned as having the value that it will have (in accordance with the provisions of the occupational pension scheme in question) when the earner reaches pensionable age.

(4) For the purposes of paragraph (1)(b)(ii)—

"incapacity" means physical or mental deterioration which seriously impairs his earning capacity;

"serious ill-health" means ill-health which is such as to give rise to a life expectancy of less than one year.

Other requirements applying to policies of insurance and annuity contracts

5. The requirements referred to in section 19(4)(d) of the 1993 Act (policy of insurance or annuity contract appropriate if it satisfies such other requirements as may be prescribed) are—

(a) that the insurance company with which the policy is taken out or the contract entered into assumes an obligation to the earner in question or to trustees of a trust for the benefit of the earner and, if appropriate, dependants of his, to pay the benefits secured by the policy or contract to him or, as the case may be, to dependants of his, or to the trustees of such a trust;

(b) that, the policy or contract contains, or is endorsed with, terms so as to provide for any increase, which would have been applicable as a consequence of section 51 (annual increase in rate of pension) and section 52 (restriction on increase where member is under 55) of the 1995 Act had the discharge of liability not taken place, to apply to the benefits which have become secured or been replaced by that policy or contract;

(c) that, if any guaranteed minimum pension is due or prospectively due to the earner in question, the policy or contract contains, or is endorsed with, terms so as to provide—

(i) that the annuity to be paid thereunder to or for his benefit will be at least equal to the guaranteed minimum pension due to him, or, as the case may be, prospectively due to him, at pensionable age, subject to section 15 (increase of guaranteed minimum pension) or section 16 (revaluation of earnings factors) of the 1993 Act, and

(ii) in the case where the earner dies leaving a widow or widower, that the annuity payable for the widow's or widower's benefit will be at least equal to the guaranteed minimum pension due or prospectively due to the widow or widower, and

(iii) in each case mentioned in sub-paragraphs (i) and (ii), that any increase of guaranteed minimum pension under Chapter II of Part V of the 1993 Act(**7**) results in a similar increase in the annuity.

Further conditions on which liability may be discharged

6.—(1) The conditions referred to in section 19(5)(c)(ii) of the 1993 Act (further conditions on which liability may be discharged) are that the requirements of one or more of paragraphs (2) to (5) are satisfied.

(2) The requirements of this paragraph are satisfied if—

(a) the earner is dead and benefit is payable to a person other than his widow or her widower; and

(**7**) Chapter II Part V was amended by sections 53(4) and 55 of the Pensions Act 1995.

(b) the arrangement for securing the benefit by means of the policy or contract was made at the written request of the person entitled to it, or with the consent of that person given in writing in the form set out in Schedule 1 to these Regulations.

(3) The requirements of this paragraph are satisfied if the benefit is provided as an alternative to short service benefit by virtue of a provision that conforms with the requirements of regulation 9(4) of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 (bought out benefits without consent)(**8**).

(4) In a case where an occupational pension scheme is being wound up and sections 73 and 74 of the 1995 Act and regulations made under those sections do not apply, the requirements of this paragraph are satisfied if the earner is able to assign or surrender the policy of insurance or annuity contract and the conditions specified in regulation 3 are satisfied.

(5) The requirements of this paragraph are satisfied if the conditions set out in sub-paragraphs (a) and (b) are satisfied, namely—

(a) the benefit concerned includes a guaranteed minimum pension that is payable to the earner's widow or widower;

(b) the trustees—

(i) give the widow or widower at least 30 days written notice ("the notice") of their intention to take out the insurance policy or enter into the annuity contract, and

(ii) send the notice to the widow or widower at her or his last known address or deliver the notice to the widow or widower personally.

Form of consent

7. For the purpose of section 19(5)(a)(ii) of the 1993 Act (form of consent to arrangements for securing benefits) the prescribed form is the form set out in Schedule 1 to these Regulations.

(**8**) S.I. 1991/167; relevant amending instruments are 1994/1062, 1995/3067 and 1996/2131.