
STATUTORY INSTRUMENTS

2000 No. 1403

PENSIONS

The Stakeholder Pension Schemes Regulations 2000

<i>Made</i>	- - - -	<i>24th May 2000</i>
<i>Laid before Parliament</i>		<i>25th May 2000</i>
<i>Coming into force</i>		
<i>Parts I to III and V</i>		<i>1st October 2000</i>
<i>Part IV</i>		<i>8th October 2001</i>

The Secretary of State for Social Security, in exercise of the powers conferred upon him by the provisions set out in Schedule 1 and of all other powers enabling him in that behalf, after consultation with such persons as he considers appropriate⁽¹⁾, hereby makes the following Regulations:—

PART I
GENERAL

Citation, commencement and interpretation

- 1.—(1) These Regulations may be cited as the Stakeholder Pension Schemes Regulations 2000.
- (2) Parts I to III and V of these Regulations shall come into force on 1st October 2000 and Part IV shall come into force on 8th October 2001.
- (3) In these Regulations—
- “the Act” means the Welfare Reform and Pensions Act 1999⁽²⁾;
 - “the 1993 Act” means the Pension Schemes Act 1993;
 - “the 1995 Act” means the Pensions Act 1995;
 - “beneficiary”, in relation to a stakeholder pension scheme, means any person who has rights under the scheme which have arisen as a result of the death of a member of the scheme;

(1) See section 185(1) of the Pension Schemes Act 1993 (c. 48) and section 120(1) of the Pensions Act 1995 (c. 26).
(2) 1999 c. 30.

“the Income and Corporation Taxes Act” means the Income and Corporation Taxes Act 1988(3);

“insurance company” means a company which is authorised under sections 3 or 4 of the Insurance Companies Act 1982(4);

“investment trust” means a company which is approved for the purposes of section 842 of the Income and Corporation Taxes Act(5);

“minimum contributions” means amounts paid by the Inland Revenue in accordance with section 43 of the 1993 Act (payment of minimum contributions to personal pension schemes)(6);

“minimum payments” means payments made to an occupational pension scheme in respect of a person’s employment by virtue of which (subject to there being in force a contracting-out certificate issued by the Inland Revenue in accordance with Chapter I of Part III of the 1993 Act) that employment is contracted-out employment by reference to the scheme under section 8(1) of the 1993 Act (meaning of “contracted-out employment” and “minimum payment”)(7);

“pension arrangement” means—

- (a) an annuity contract;
- (b) an insurance policy; or
- (c) a scheme or arrangement which is administered wholly or primarily outside the United Kingdom,

which has effect, or is capable of having effect, so as to provide benefits on termination of employment or on death or retirement, to or in respect of earners;

“property” includes land;

“qualifying scheme” shall, in respect of an employer, include any stakeholder pension scheme which has at any time been designated by the employer under section 3(2);

“reporting accountant” has the meaning given to it by regulation 11(3);

“securities” means investments falling within paragraphs 1 to 5 of Schedule 1 to the Financial Services Act 1986 (investments and investment business)(8) but does not include shares in an investment trust;

“tax relief” means amounts which may be deducted from contributions, retained by members and recovered from the Inland Revenue by a scheme administrator under section 639 of the Income and Corporation Taxes Act;

“transfer payment” means a payment in respect of a person’s accrued rights under a pension scheme or pension arrangement made with a view to acquiring rights under another pension scheme or pension arrangement for that person; and

(3) 1988 c. 1.

(4) 1982 c. 50.

(5) Section 842 was amended by section 117(1) and (4) of the Finance Act 1998 (c. 39), section 55 of the Finance Act 1990 (c. 29), paragraphs 14(1) and 55 of Schedule 10 to the Taxation of Chargeable Gains Act 1992 (c. 12), paragraph 8 of Schedule 17 to the Finance Act 1994 (c. 9), paragraphs 2 and 3 of Schedule 30 to the Finance Act 1996 (c. 8) and paragraph 7 of Schedule 38 to that Act.

(6) Section 43(1) was amended by paragraph 42 of Schedule 5 to the Pensions Act 1995 and paragraph 47(2) of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2). Section 43(4) to (6) was amended by paragraph 47(2) of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999.

(7) Section 8(1) was amended by section 136(2) of the Pensions Act 1995 and paragraph 21 of Schedule 5 to that Act and by paragraph 33 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999.

(8) 1986 c. 60. Investments falling within paragraphs 1 to 5 of Schedule 1 to the Financial Services Act 1986 comprise shares and stock in the share capital of a company, debentures and other instruments creating or acknowledging indebtedness, government and public securities, instruments entitling the holder to subscribe for any of the above, and certificates representing securities. These are further defined in those paragraphs.

“with-profits fund” means a fund, maintained by an insurance company in respect of a particular part of its long-term business for which—

- (a) separate accounting records are maintained by the insurance company in respect of all income and expenditure relating to that part of its business; and
- (b) the benefits payable in respect of policies allocated to that fund are determined partly by reference to a discretion exercisable by any person.

(4) In these Regulations references to notice in writing include using electronic communications for sending a notice to an address notified by the member for that purpose.

(5) Sections 249 and 435 of the Insolvency Act 1986 (connected and associated persons)⁽⁹⁾ and section 74 of the Bankruptcy (Scotland) Act 1985 (associated persons), apply for the purposes of regulations 4(3) and 11(4) as they apply for the purposes of those Acts respectively.

(6) For the purposes of these Regulations and section 1(8) and (9) (which provide that stakeholder pension schemes must have tax-exemption or tax-approval and must not refuse to accept transfer payments except in so far as necessary to ensure that the scheme has such exemption or approval) “tax-exemption” and “tax-approval” mean tax-exemption and tax-approval under Chapter IV of Part XIV of the Income and Corporation Taxes Act.

(7) In these Regulations, unless the context otherwise requires, references to a section are to a section of the Act.

PART II

CONDITIONS APPLYING TO STAKEHOLDER PENSION SCHEMES

Manner of establishment

2.—(1) A stakeholder pension scheme may (where not established under a trust) be established by means of one or more instruments in writing which provide for one or more contracts to be entered into between the manager of the scheme and each member of the scheme, or a person acting on his behalf.

(2) The manager of the scheme must be a person who is mentioned in section 632(1) of the Income and Corporation Taxes Act (establishment of schemes approved as personal pension schemes under Chapter IV of Part XIV of that Act)⁽¹⁰⁾.

Requirements applying to all stakeholder pension schemes as regards instruments establishing such schemes

3.—(1) Subject to paragraph (2), the instruments establishing a stakeholder pension scheme (the “scheme instruments”) must prohibit the acceptance of contributions, transfer payments and pension credits to the scheme before 6th April 2001.

(2) Paragraph (1) shall not apply to a scheme in respect of which an application for registration under section 2 (registration of stakeholder pension schemes) is first made on or after 6th April 2001.

(3) The scheme instruments must require that no member is required to make any choice as regards the investment under the scheme of any payment made to it by him or on his behalf, any amount credited to the member’s account in respect of a credit within the meaning of section 29

⁽⁹⁾ 1986 c. 45. Section 249 was amended by section 90, Schedule 15 to the Building Societies Act 1986 (c. 53) and section 23, Schedule 102 to the Friendly Societies Act 1992 (c. 40).

⁽¹⁰⁾ Section 632(1) was amended by the Personal Pension Schemes (Establishment of Schemes) Order 1988 (S.I.1988/993) and the Personal Pension Schemes (Establishment of Schemes) Order 1997 (S.I. 1997/2388).

(pension sharing: creation of pension debits and credits), or any income or capital gain arising from the investment of such a payment or credit.

(4) The scheme instruments must, except to the extent permitted under regulations 13 or 14, prohibit the use of—

- (a) any payment made to the scheme by or on behalf of a member;
- (b) any amount credited to a member's account in respect of a credit within the meaning of section 29 (pension sharing: creation of pension debits and credits);
- (c) any income or capital gain arising from the investment of such a payment or credit; or
- (d) the value of his rights under the scheme,

in any way which does not result in the provision of benefits for or in respect of the member.

(5) The scheme instruments must require that—

- (a) if the scheme ceases to be registered under section 2 the winding-up of the scheme be commenced on the date on which it is notified in writing by the Occupational Pensions Regulatory Authority that it is no longer so registered;
- (b) if the trustees or manager fix a time for winding-up a scheme for any reason other than because the scheme ceases to be registered under section 2, the winding-up of the scheme be commenced at the earliest time fixed by the trustees or manager as the time from which steps for the purposes of winding-up are to be taken;
- (c) within 2 weeks of the date of commencement of any winding-up, the trustees or manager notify in writing any employers whom they know to have designated the scheme for the purposes of section 3 (duty of employers to facilitate access to stakeholder pension schemes) of the fact of, and the reason for, the winding-up including, where the scheme has ceased to be registered under section 2, the reason for the cessation of registration;
- (d) any contributions made to a scheme after the date of commencement of any winding-up must be repaid—
 - (i) to the member, to the extent of his contributions; and
 - (ii) as to any remainder, to his employer;
- (e) subject to paragraphs (8) and (9) below, on any winding-up all rights under the scheme shall be discharged by the trustees or managers of the scheme within 12 months of the commencement of winding-up, or as soon thereafter as is practicable, by the making of transfer payments—
 - (i) to other stakeholder pension schemes, or schemes registered under Article 4 of the Welfare Reform and Pensions (Northern Ireland) Order 1999(11); or
 - (ii) in accordance with requests by one or more members or beneficiaries in respect of their rights, to the trustees or managers of pension schemes or pension arrangements which are not schemes mentioned in head (i) above,
 in accordance with paragraphs (6) and (7) below and regulation 6 or, where regulation 7 applies, with regulation 7; and
- (f) if the scheme fails to complete winding-up within 12 months of commencing winding-up proceedings, the trustees or manager notify the Occupational Pensions Regulatory Authority of that fact within one month of so failing to complete the winding-up.

(6) A transfer payment referred to in paragraph (5)(e) must be of an amount not less than the cash equivalent of the member's rights under the scheme, as calculated and verified in a manner consistent

(11) S.I. 1999/3147 (N.I. 11).

with regulations made under section 97 of the 1993 Act (calculation of cash equivalents)(12) on the date on which the payment is made.

(7) Where the member's rights include any protected rights within the meaning of section 10 of the 1993 Act (protected rights and money purchase benefits)(13), the scheme must provide for any transfer payments to be made subject to the requirements of section 28 of that Act (ways of giving effect to protected rights)(14).

(8) Paragraph (5)(e) does not apply to rights to which effect is given under the scheme by the payment of an annuity (not being a deferred annuity) or a lump sum either to the member or, on or after his death, to another person.

(9) For the purposes of paragraph (8), a deferred annuity is an annuity under the terms of which payment does not commence immediately but at a time in the future.

Additional requirements as regards instruments establishing a stakeholder pension scheme established under a trust

4.—(1) Subject to paragraph (2) and to regulation 17(1), except in so far as is necessary to ensure that the scheme has tax-exemption or tax-approval, the instruments establishing a stakeholder pension scheme established under a trust (“the trust instruments”) must preclude any restriction on membership of the scheme by reference to financial status, the amount of contributions to be made to the scheme or the manner in which contributions may be made to the scheme.

(2) Paragraph (1) shall not preclude any restrictions on—

- (a) membership by reference to employment with a particular employer or in a particular trade or profession or by reference to membership of a particular organisation; or
- (b) the payment of contributions by means of cash or a credit card.

(3) The trust instruments must require that—

- (a) unless sub-paragraph (b) applies, at least one trustee and at least one-third of the total number of trustees is neither connected with nor an associate of any person providing services to or otherwise managing the scheme (other than as a trustee);
- (b) where a company is trustee of the scheme and there is no trustee of the scheme who is not a company, at least one of the directors of the company and at least one-third of the total number of its directors is neither connected with nor an associate of any person providing services to or otherwise managing the scheme (other than as a trustee).

(4) The trust instruments must not—

- (a) enable any of the provisions required by regulation 3 or by this regulation to be modified or disapplied;
- (b) have a condition that the trustees must obtain the consent of any person before making any decision about investments for the purposes of the scheme; or
- (c) except in so far as otherwise required by or under any enactment, preclude the trustees from amending the trust instruments to provide for different investments to be held for the purposes of the scheme.

(12) Section 97 was amended by paragraph 4(a) to (c) of Schedule 6 to the Pensions Act 1995.

(13) Section 10 was amended by paragraph 25 of Schedule 5 to the Pensions Act 1995 and paragraph 36 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999.

(14) Section 28 was amended by sections 142 and 146 of the Pensions Act 1995 and paragraph 34 of Schedule 5, and Part III of Schedule 7, to that Act.

Additional requirements as regards instruments establishing a stakeholder pension scheme not established under a trust

5.—(1) Subject to paragraph (2) and to regulation 17(1), except in so far as is necessary to ensure that the scheme has tax-exemption or tax-approval, the instruments establishing a stakeholder pension scheme established otherwise than under a trust must preclude any restriction on membership of the scheme by reference to—

- (a) employment with a particular employer, or in a particular trade or profession or by reference to membership of a particular organisation; or
- (b) financial status, the amount of contributions to be made to the scheme or the manner in which contributions may be made to the scheme.

(2) Paragraph (1) shall not preclude any restrictions on the payment of contributions by means of cash or a credit card.

Procedure for discharging rights on winding-up

6.—(1) The scheme instruments must require that, where the winding-up of a stakeholder pension scheme has commenced, the trustees or manager must, except in cases where regulation 7 applies, make transfer payments in respect of members' rights in accordance with the procedure set out in paragraphs (2) to (9) of this regulation.

(2) The trustees or manager shall no later than 4 months after the commencement of winding-up give notice to each member stating—

- (a) that they propose to make a transfer payment in respect of his rights under the scheme to their choice of a stakeholder pension scheme or a scheme registered under Article 4 of the Welfare Reform and Pensions (Northern Ireland) Order 1999, that scheme to be named in the notice, unless the member applies for the transfer payment to be made to a pension scheme or pension arrangement of his choice;
- (b) the value of the member's rights at the date that the scheme commenced winding-up, being an amount not less than the cash equivalent of those rights on that date, as calculated and verified in a manner consistent with regulations made under section 97 of the 1993 Act (calculation of cash equivalents); and
- (c) that, unless the member applies within 4 months of the date of the notice for a transfer payment to be made to a pension scheme or pension arrangement of his choice, a transfer payment may be made without his consent to the scheme named in the notice as the scheme of the trustees' or manager's choice.

(3) If any member makes an application for a transfer payment to be made to a pension scheme or pension arrangement of his choice (whether or not the application is made under section 95 of the 1993 Act (ways of taking right to cash equivalent)(15)) the trustees or manager shall, unless paragraph (4) of this regulation applies, do what is needed to carry out what the member requires within one month of receiving the member's application.

(4) This paragraph applies where—

- (a) it is not possible for the trustees or manager to do what is needed to carry out what the member requires within 12 months of the date of commencement of winding-up;
- (b) it would contravene the terms of the scheme's tax-approval or tax-exemption, or any provision of the scheme required to be included as a condition of any such approval or exemption, for the trustees or manager to do what is needed to carry out what the member requires; or

(15) Section 95 was amended by paragraph 3 of Schedule 6 to the Pensions Act 1995.

- (c) the member withdraws his application before the trustees have or the manager has done what is needed to carry out what he requires.
- (5) Where paragraph (4)(a) or (b) applies in relation to the first such application made by the member as is mentioned in paragraph (3), the trustees or manager shall as soon as practicable give notice to the member stating—
- (a) that they cannot carry out what he requires and the reasons why not;
 - (b) that if he does not make a further application such as is mentioned in paragraph (3) they propose to make a transfer payment in respect of his rights as set out in the notice given in accordance with paragraph (2); and
 - (c) that, unless he makes such further application within one month of the date of the notice given in accordance with this paragraph, such a transfer payment may be made without his consent.
- (6) In any case where—
- (a) the trustees do not or the manager does not receive any such application as is mentioned in paragraph (3) within 4 months of the date of the notice given in accordance with paragraph (2);
 - (b) the member withdraws his application and no further such application by him is received by the trustees or manager within one month of that date; or
 - (c) paragraph (4)(a) or (b) applied in respect of the first such application made by the member and—
 - (i) the trustees or manager, having given notice to the member in the terms set out in paragraph (5), do not receive any such further application as is mentioned in that paragraph within one month of the date of the notice; or
 - (ii) the trustees or manager, having given such notice, have received a further application such as is mentioned in paragraph (5) within one month of that date but paragraph (4) applies in respect of that further application,the trustees or manager may make a transfer payment in respect of the member's rights to the pension scheme named in the notice mentioned in paragraph (2) as the scheme of their choice.
- (7) The trustees or manager shall, within one month of making a transfer payment under paragraph (3) or (6), give notice to the member stating the amount of the payment, the name and address of the scheme to which it has been made and the date on which it was made.
- (8) A notice given under this regulation shall be in writing and may be sent to the member's last known address.
- (9) For the purposes of this regulation "member" includes "beneficiary".

Procedure for discharging on winding-up rights of members with whom the trustees or manager have lost contact

7.—(1) This regulation applies in respect of any member whose address for the time being is not known to the trustees or manager and in respect of whom—

- (a) correspondence sent by them to the member at his last address known to them has been returned undelivered; and
- (b) no contribution has been made to the scheme by him or on his behalf during the 2 years preceding the commencement of winding-up of the scheme.

(2) In cases where this regulation applies, the trustees or manager shall on the winding-up of the scheme make a transfer payment in respect of the member's rights to their choice of a stakeholder

pension scheme, or to a scheme registered under Article 4 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 and need give no notice of the transfer payment to the member either before or after it is made.

Requirement applying to all stakeholder pension schemes as regards investments

8.—(1) For the purposes of section 1(1)(b), it shall be a condition of a scheme being a stakeholder pension scheme that the requirements of this regulation are complied with.

(2) Except where monies are held temporarily on deposit in the course of dealing in assets for the purposes of the scheme, the trustees or manager must ensure that there is derived, from any part of the funds of the scheme that are held on deposit, a return accruing on a daily basis that is, net of any fees or charges, not less than the base rate minus 2 per cent. per annum.

(3) Where the base rate is increased, paragraph (2) shall apply as if the reference to the base rate in that paragraph were—

- (a) within one calendar month of the date of the increase, a reference to the base rate immediately before the increase; and
- (b) after that calendar month has elapsed, a reference to the base rate as increased.

(4) The trustees or manager shall not have scheme assets that are represented by units or shares in a collective investment scheme (within the meaning of section 75 of the Financial Services Act 1986 (interpretation: definition of ‘collective investment scheme’)(**16**)) unless it is a requirement of the collective investment scheme that the purchase and sale price of those units or shares shall, at any given time, not differ from each other.

(5) The trustees or manager shall not have scheme assets that are represented by rights under a contract of insurance which are expressed as units or shares in funds held by the insurance company unless it is a requirement of the contract of insurance that the purchase and sale price of those units or shares shall, at any given time, not differ from each other.

(6) In this regulation—

“base rate” means the rate for the time being quoted by the reference banks as applicable to sterling deposits or, where there is for the time being more than one such base rate, the rate which, when the base rate quoted by each bank is ranked in a descending sequence of seven, is fourth in the sequence;

“contract of insurance” means a pension fund management contract within Part VII of Schedule 1 to the Insurance Companies Act 1982(**17**) (classes of long term business) carried out by a person authorised to do so under that Act;

“deposit” has the meaning given to it in section 5 of the Banking Act 1987(**18**);

“reference banks” means the seven largest institutions for the time being which—

- (a) are authorised by the Financial Services Authority under the Banking Act 1987(**19**);
- (b) are incorporated in the United Kingdom and carrying on within it a deposit-taking business (as defined in section 6, but subject to any order under section 7, of that Act)(**20**); and

(c) quote a base rate applicable to sterling deposits,

and for the purpose of this definition the size of an institution at any time is to be determined by reference to the gross assets denominated in sterling of that institution, together with any

(16) 1986 c. 60. Relevant amending instruments are S.I. 1988/803, 1990/349, 1995/3275, 1996/2996 and 1997/32.

(17) 1982 c. 50.

(18) 1987 c. 22.

(19) 1987 c. 22, as amended by the Bank of England Act 1998 (c. 11).

(20) Section 7 was amended by section 23(1) of, and paragraphs 1 and 4 of Schedule 5 to, the Bank of England Act 1998 (c. 11).

subsidiary (as defined in section 736 of the Companies Act 1985)(21), as shown in the audited end of year accounts last published before that time.

Requirement for statement of investment principles for schemes not established under trust

9.—(1) Subject to paragraph (2), for the purposes of section 1(1)(b), it shall be a condition of a scheme being a stakeholder pension scheme that the requirements of this regulation are complied with.

(2) This regulation does not apply to a scheme established under a trust.

(3) The manager of the scheme must secure that there is prepared, maintained and from time to time revised a written statement of the principles governing decisions about investments for the purposes of the scheme.

(4) The statement must cover the manager's policy about the following matters—

- (a) the kinds of investments to be held;
- (b) the balance between different kinds of investments;
- (c) risk;
- (d) the expected return on investments;
- (e) the realisation of investments;
- (f) the extent (if at all) to which social, environmental or ethical considerations are taken into account in the selection, retention and realisation of investments; and
- (g) the exercise of the rights (including voting rights) attaching to investments.

(5) Subject to paragraph (6), where a copy of the latest statement mentioned in paragraph (3) is requested by a member, the statement shall, within 2 months of the request, be furnished to that member either—

- (a) free of charge; or
- (b) where a charge is made, at an amount that does not exceed the expense incurred in copying, posting and packing the statement.

(6) A copy of the statement mentioned in paragraph (3) need not be furnished to the same person within 12 months of the person last being given such a copy unless the statement has changed during that 12 month period.

(7) In this regulation “member” includes “beneficiary”.

Requirement for manager of schemes not established under a trust to have regard to certain matters, and to take advice, relating to investment

10.—(1) Subject to paragraph (2), for the purposes of section 1(1)(b), it shall be a condition of a scheme being a stakeholder pension scheme that the requirements of this regulation are complied with.

(2) This regulation does not apply to a scheme established under a trust.

(3) The manager of the scheme, and any person managing funds held for the purposes of the scheme, must, in investing such funds or in selecting investment options offered to members of the scheme, have regard to—

- (a) the need for diversification of investments, in so far as appropriate to the circumstances of the scheme; and

(21) 1985 c. 6. Section 736 was substituted by section 144(1) of the Companies Act 1989 (c. 40).

(b) the suitability for the purposes of the scheme of any investment or investment option proposed.

(4) The manager of the scheme, and any person managing funds held for the purposes of the scheme, must, before making any investment or selecting any investment option for the purposes of the scheme, obtain and consider proper advice as to whether the investment is satisfactory having regard to the matters mentioned in paragraph (3) and the principles contained in the statement under regulation 9.

(5) For the purposes of paragraph (4), “proper advice” means—

(a) where giving the advice constitutes carrying on investment business in the United Kingdom within the meaning of the Financial Services Act 1986(22), advice—

(i) given by a person authorised under Chapter III of Part I of that Act,

(ii) given by a person exempted under Chapter IV of that Part who, in giving the advice, is acting in the course of the business in respect of which he is exempt,

(iii) given by a person where, by virtue of paragraph 27 of Schedule 1 to that Act(23), paragraph 15 of that Schedule does not apply to the giving of the advice, or

(iv) given by a person who, by virtue of regulation 5 of the Banking Coordination (Second Council Directive) Regulations 1992(24), may give the advice though not authorised as mentioned in head (i) above;

(b) in any other case, the advice of a person whom the manager or person managing funds held for the purposes of the scheme reasonably believes to be qualified by his ability in and practical experience of financial matters and to have the appropriate knowledge and experience of the management of the investments of pension schemes.

(6) Paragraph (4) does not apply to the extent that the manager or the person managing the scheme’s funds is a person who may themselves give proper advice.

(7) To the extent that paragraph (4) is disapplied by virtue of paragraph (6), the manager or person managing the scheme’s funds, being persons who may themselves give proper advice, must, before making any investment or selecting any investment option for the purposes of the scheme, consider whether the investment is satisfactory having regard to the matters mentioned in paragraph (3) and the principles contained in the statement under regulation 9, and must record in writing the reasons why they consider that any investment made or investment option chosen is satisfactory having regard to those matters.

(8) No person shall be regarded as having complied with paragraph (4) unless the advice mentioned in that paragraph is given or confirmed in writing.

Requirement for manager of schemes not established under trust to appoint a reporting accountant

11.—(1) Subject to paragraph (2), for the purposes of section 1(1)(b), it shall be a condition of a scheme being a stakeholder pension scheme that the requirements of this regulation are complied with.

(2) This regulation does not apply to a scheme established under a trust.

(3) There shall be a person appointed by the manager of the scheme as reporting accountant for the scheme (“the reporting accountant”).

(22) 1986 c. 60. Section 1 defines “investment business” as the business of engaging in one or more of the activities falling within Part II of Schedule 1 to that Act if that business is not excluded by Part III to Schedule 1 of that Act.

(23) Paragraph 27 was amended by article 10 of S.I. 1996/2958 and article 2(4) of S.I. 1996/1322.

(24) S.I. 1992/3218. Regulation 5 was amended by regulation 2(e) and 2(f) of S.I. 1993/3225 and regulation 55 of, and Schedule 9 paragraph (3) to, S.I. 1195/3275.

- (4) A person shall not be appointed as the reporting accountant where—
 - (a) he is a member of the scheme; or
 - (b) he is connected with or an associate of the manager of the scheme.
- (5) The reporting accountant shall be appointed in writing and the notice of appointment shall specify—
 - (a) the date on which the appointment is due to take effect;
 - (b) to whom the reporting accountant is to report; and
 - (c) from whom the reporting accountant is to take instructions.
- (6) The manager shall procure from the reporting accountant within one month of his receiving his notice of appointment a statement—
 - (a) acknowledging in writing his receipt of his notice of appointment; and
 - (b) confirming in writing that he will notify the manager of any conflict of interest to which he is subject in relation to the scheme immediately he becomes aware of its existence.
- (7) It shall be a condition of the appointment of the reporting accountant that he agrees, in the event of his resignation, to serve on the manager a written notice of resignation containing—
 - (a) a statement specifying any circumstances connected with the resignation which in his opinion significantly affect the interests of the members or prospective members of, or of beneficiaries under, the scheme, or
 - (b) a declaration that he knows of no such circumstances.
- (8) Where the reporting accountant is removed by the manager or resigns or dies, the manager shall appoint another reporting accountant within 3 months from the date of the removal, resignation or death.

Requirement for annual declaration

12.—(1) For the purposes of section 1(1)(b), it shall be a condition of a scheme being a stakeholder pension scheme that the requirements of this regulation are complied with.

(2) The trustees or manager of the scheme shall, at least once a year, make a declaration in writing signed by the trustees or manager containing the following statements in relation to the period of 12 months ending on a date not earlier than 3 months prior to the date of the declaration—

- (a) that regulations 13 and 14 of these Regulations have been complied with in relation to the scheme;
 - (b) that the scheme's systems and controls are designed and used in a way that ensures that transactions in securities, property or other assets occur at a fair market value;
 - (c) that the scheme's system of determining the value of members' rights is designed and used in a way that ensures that the value of members' rights has been determined in accordance with the provisions in the instruments establishing the scheme; and
 - (d) that adequate accounts and records have been maintained for the purposes of providing to members the statement required by regulation 18(2) of these Regulations.
- (3) The declaration mentioned in paragraph (2) shall also contain a statement which—
- (a) explains that regulations 13 and 14 of these Regulations impose limits on the amount of charges which may be made by a stakeholder pension scheme and on the manner in which charges may be made by such a scheme; and
 - (b) explains that regulation 18(2) of these Regulations requires a stakeholder pension scheme to provide an annual benefit statement to each member.

(4) In the case of a scheme established under a trust, the trustees shall, within 3 months of the date of the declaration, obtain from the scheme auditor appointed by virtue of section 47(1) of the 1995 Act (professional advisers) or from the reporting accountant—

- (a) a statement whether, in the auditor's or reporting accountant's opinion, it was or was not unreasonable for the trustees to make the statements contained in the declaration, or
- (b) to the extent that the auditor or reporting accountant is unable to express such an opinion, an explanation of why he is unable to do so.

(5) In the case of a scheme not established under a trust, the manager shall, within 3 months of the date of the declaration, obtain from the reporting accountant appointed by virtue of regulation 11—

- (a) a statement whether, in the opinion of the reporting accountant, it was or was not unreasonable for the manager to make the statements contained in the declaration, or
- (b) to the extent that the reporting accountant is unable to express such an opinion, an explanation of why he is unable to do so.

(6) The trustees or manager shall annex to the declaration mentioned in paragraph (2) the statement obtained in accordance with paragraph (4) or (5).

(7) The trustees or manager shall make available to members and beneficiaries of the scheme on request the declaration mentioned in paragraph (2) annexing the statement obtained in accordance with paragraph (4) or (5).

Expenses, commission etc.—principles

13.—(1) Except to the extent permitted by regulation 14—

- (a) no payment made to a stakeholder pension scheme by or on behalf of any member;
- (b) no income or capital gain arising from the investment of such a payment;
- (c) no amount credited to a member's account in respect of a credit within the meaning of section 29 (pension sharing: creation of pension debits and credits); and
- (d) no amount representing the value of any rights of a member under the scheme,

shall be used in any way which does not result in the provision of benefits for or in respect of members.

(2) Paragraph (1) does not apply—

- (a) to the extent that section 31 (pension sharing: pension debits), or any enactment in force in Northern Ireland corresponding to that section, applies to reduce the benefits or future benefits to which a member may be entitled under the scheme; or
- (b) to prevent the trustees or manager of a scheme from complying with their obligations under an order made by a court—
 - (i) under section 23 of the Matrimonial Causes Act 1973⁽²⁵⁾ (financial provision in connection with divorce proceedings, etc.) by virtue of section 25B or 25C of that Act (powers to include provision about pensions),
 - (ii) under Article 25 of the Matrimonial Causes (Northern Ireland) Order 1978⁽²⁶⁾ by virtue of Article 27B or 27C of that Order (Northern Ireland powers corresponding to section 25B and 25C of the Matrimonial Causes Act 1973), or

⁽²⁵⁾ 1973 c. 18. Section 23(6) was inserted by section 16 of the Administration of Justice Act 1982 (c. 53) and sections 25B and 25C were inserted with savings by the Pensions Act 1995.

⁽²⁶⁾ S.I. 1978/1045 (N.I. 15). Articles 27B and 27C were inserted by Article 162(1) of the Pensions (Northern Ireland) Order 1995 and are amended by paragraphs 1 and 2 respectively of Schedule 4 to the Welfare Reform and Pensions (Northern Ireland) Order 1995.

(iii) under section 12A(2) or (3) of the Family Law (Scotland) Act 1985⁽²⁷⁾ (powers in relation to pensions lump sums when making a capital sum order).

(3) In this regulation and in regulation 14 below “member” includes “beneficiary”.

Charges etc.—permitted reductions in members' rights

14.—(1) The value of a member’s rights under the scheme may be reduced in the circumstances, and to the extent, set out in paragraphs (2) to (5) of this regulation.

(2) To the extent that a member’s rights are represented by a fund allocated to him to the exclusion of other members, the value of those rights may be reduced by the making of deductions from that fund no greater than 1/365 per cent. of its value for each day on which it is held for the purposes of the scheme.

(3) To the extent that a member’s rights are represented by a share of funds held for the purposes of the scheme, the amount of that share not being determined by reference to a discretion exercisable by any person, the value of those rights may be reduced by the making of deductions from that share no greater than 1/365 per cent. of its value for each day on which it is so held.

(4) To the extent that a member’s rights are represented by rights in a with-profits fund, the value of those rights may be reduced by the making of deductions from the with-profits fund no greater than 1/365 per cent. of the value of the member’s rights in the fund for each day on which it is held for the purposes of the scheme.

(5) The value of a member’s rights under the scheme may be reduced—

(a) where administrative expenses are incurred by the trustees or manager in—

(i) the purchase or provision of an annuity for the member in accordance with the scheme, or

(ii) the making of payments of income (otherwise than by way of an annuity) to a member under arrangements made in accordance with the scheme,

by the amount of those expenses;

(b) by such amount, and in such manner, as is permitted by regulations under section 24 or 41 (charges in respect of pension sharing costs);

(c) where any stamp duty or other charges are incurred directly in the sale or purchase of securities or property held for the purposes of the scheme, by the amount of such of those charges as are attributable to the member’s rights;

(d) where the member is the transferor for the purposes of section 29 (pension sharing: creation of pension debits and credits), by the amount of any payment made to discharge the liability of the trustees or manager in respect of a credit within the meaning of that section;

(e) by the amount of any payment made for the purpose of returning excessive contributions made in relation to the member, in accordance with the arrangements that the scheme must have in order to be approved under Chapter IV of Part XIV of the Income and Corporation Taxes Act 1988 (pension schemes, social security benefits, life annuities etc.); and

(f) by the amount required to discharge any monetary obligation due from the member to the scheme which—

(i) arises out of a criminal, negligent or fraudulent act or omission by him; or

(ii) in the case of a trust scheme of which the person in question is a trustee, arises out of breach of trust by him,

⁽²⁷⁾ 1985 c. 37. Section 12A was inserted by section 167 of the Pensions Act 1995 and is amended by paragraph 6 of Schedule 12 to the Act.

and which is either not in dispute or, if there is a dispute, where the obligation in question has become enforceable under an order of a competent court or in consequence of an award of an arbitrator or, in Scotland, an arbiter appointed (failing agreement between the parties) by the sheriff.

(6) When calculating the value of a member's rights for the purposes of paragraphs (2) to (4) above, where the trustees or manager have specified under paragraph (7) below that such rights are to be valued weekly or monthly—

- (a) where the rights are to be valued weekly, they are to be valued on such day of the week ("the specified day") as has been so specified by the trustees or manager (except that, where that day is not a working day, the rights are to be valued on the next working day), and the value of the rights on each subsequent day prior to the next specified day is to be taken to be the value of the rights on the previous specified day; and
- (b) where the rights are to be valued monthly, they are to be valued on such date in each month ("the specified date") as has been so specified by the trustees or manager (except that, where that date is not a working day, the rights are to be valued on the next working day), and the value of the rights on each subsequent day prior to the next specified date is to be taken to be the value of the rights on the previous specified date.

(7) For the purposes of paragraph (6) above—

- (a) the frequency, which must be daily, weekly or monthly, with which rights are to be valued; and
- (b) where valuation is to take place weekly or monthly, the day of the week or, as the case may be, the date in the month on which it is to take place,

must be specified in writing by the trustees or manager of the scheme; and the specification may not be amended during the period of 12 months after the date on which it is made.

(8) Where the value of any member's rights is reduced by reference to an amount of costs or charges referred to in paragraph (5)(c) above, then, for the purposes of calculating any reduction under paragraph (2), (3) or (4) above, the funds held by the scheme are to be calculated after the deduction of any such amount.

Requirement for trustees or manager to satisfy certain conditions in relation to with-profit funds

15.—(1) Where all or any of a stakeholder pension scheme's assets are invested in a with-profits fund it shall, for the purposes of section 1(1)(b), be a condition of the scheme being a stakeholder pension scheme that the requirements of this regulation are complied with.

(2) A stakeholder pension scheme shall not invest any assets in a with-profits fund that includes non-stakeholder pension scheme assets.

(3) Prior to entering into any agreement whereby any assets of the scheme will be invested in a with-profits fund, the trustees or manager of that scheme shall take such steps as are necessary to ensure that they obtain a written contract from the insurance company maintaining the with-profits fund which provides that the insurance company will, in respect of any period that the stakeholder pension scheme has assets invested in the with-profits fund—

- (a) provide such information to the trustees or manager of the stakeholder pension scheme as is necessary to allow the trustees or manager to operate in compliance with the requirements of regulations 13 or 14;
- (b) ensure that members of the stakeholder pension scheme will not be treated less favourably than any other members of stakeholder pension schemes who may have assets invested in the with-profits fund;

- (c) provide to the trustees or manager of the stakeholder pension scheme any certificates from the auditor and actuary to the company that are necessary to allow the stakeholder pension scheme's auditor or reporting accountant to certify that the requirements of regulations 13 and 14 have been complied with;
 - (d) ensure that no investments are made in the fund other than the investment of stakeholder pension scheme assets; and
 - (e) take such steps as are necessary to comply with paragraph (4).
- (4) The insurance company must, at least annually, provide the trustees or manager of the stakeholder pension scheme with a certificate from the auditor to the insurance company or the appointed actuary to the insurance company certifying that the insurance company has systems and controls that are designed and used so that—
- (a) proper accounting records are maintained in respect of all income and expenditure relevant to regulations 13 and 14 and the terms of the contract referred to in paragraph (3);
 - (b) the records referred to in sub-paragraph (a) are provided at least annually to the auditor or reporting accountant, as the case may be, of the scheme;
 - (c) no expenditure is charged to the with-profits fund where that expenditure would be contrary to the requirements of regulation 13 or 14; and
 - (d) the terms of the contract referred to in paragraph (3) have been complied with.
- (5) Where the insurance company does not comply with the agreement referred to in paragraph (3), the trustees or manager must take such steps as are necessary to ensure that the insurance company does so comply.
- (6) In this regulation “appointed actuary” means a person appointed as actuary to the person responsible for managing the with-profits fund in which assets of the stakeholder pension scheme are invested.

Requirements as regards the provision of other services

16. For the purposes of section 1(1)(b), it shall be a condition of a scheme being a stakeholder pension scheme that—

- (a) the scheme does not provide any service other than the management of the scheme and its funds unless—
 - (i) any such service is provided under a contract separate from any contract of membership of the scheme, is provided free of charge or is consistent with regulations 13 and 14; and
 - (ii) any contract for such service is in writing and sets out the amount of any charge for the service and the terms on which it is to be paid; and
- (b) it is not a condition of membership of the scheme that any person enter into any contract, whether with the trustees or manager of the scheme or any other person, other than the contract of membership of the scheme.

Restrictions on contributions

17.—(1) Subject to paragraph (2), the rules of a stakeholder pension scheme may permit the trustees or manager to refuse to accept a payment to the scheme of less than £20.

(2) Paragraph (1) does not permit the trustees or manager to refuse to accept any payment made to the scheme by the Inland Revenue by way of tax relief, minimum contributions, minimum payments or any payment under section 42A(3) of the 1993 Act (reduced rate of Class 1 contributions, and rebates).

(3) For the purposes of paragraph (1), amounts in respect of income tax deducted and retained by a member as permitted by section 639 of the Income and Corporation Taxes Act (tax reliefs: member's contributions) shall not be treated as payments to the scheme.

(4) The trustees or manager of a stakeholder pension scheme may refuse to accept any contribution if its acceptance would contravene the terms of the scheme's tax-exemption or tax-approval under Chapter IV of Part XIV of the Income and Corporation Taxes Act.

Disclosure of information to members

18.—(1) For the purposes of section 1(1)(b), it shall be a condition of a scheme being a stakeholder pension scheme that the trustees or manager of the scheme comply with the requirements set out in this regulation in addition to such requirements of regulations under section 113 of the 1993 Act (disclosure of information about schemes to members) as are applicable to the scheme.

(2) Where a person is a member for all or part of a statement year, there shall be provided to the person within 3 months of the end of the statement year to which it relates, a statement which contains the information mentioned in paragraph (5), in so far as the information relates to that statement year.

(3) For the purposes of this regulation "statement year" means the period of 12 months beginning on a date chosen by the trustees or manager which falls on or before the day that the scheme is registered under section 2 (such date to be chosen on or before the scheme is so registered) and, subject to paragraph (4), each subsequent period ending on the anniversary of the ending of the first statement year.

(4) For the purposes of paragraph (3) the trustees or manager may choose a new date for the ending of the statement year if—

- (a) the date chosen—
 - (i) is specified in writing; and
 - (ii) falls before the end of the statement year during which the trustees or manager specify the new date; and
- (b) no other date has been chosen by the trustees or manager under this paragraph during the previous period of 12 months;

and, if a new date is chosen under this paragraph, "statement year" shall mean the period of 12 months ending on the date chosen and each subsequent period ending on the anniversary of that date.

(5) The information to be provided under paragraph (2) is—

- (a) the value of the member's rights under the scheme on the day before the first day of the statement year, being an amount which is not less than the cash equivalent of those rights on that date, as calculated and verified in a manner consistent with regulations made under section 97 of the 1993 Act (calculation of cash equivalents)**(28)**;
- (b) the value of the member's rights on the last day of the statement year, being an amount which is not less than the cash equivalent of those rights on that date, as calculated and verified in a manner consistent with regulations made under section 97 of the 1993 Act (calculation of cash equivalents);
- (c) the amount of the value mentioned in sub-paragraph (b) that is attributable to investment gains or losses made or sustained by the scheme during that statement year;
- (d) the amount of each contribution made by the member and the date on which it was received;
- (e) the amount of each contribution made by any employer on behalf of the member and the date on which it was received;

(28) Section 97 was amended by paragraph 4(a) to 4(c) of Schedule 6 to the Pensions Act 1995.

- (f) except where contributions referred to in sub-paragraphs (d) and (e) are increased by the trustees or manager in anticipation of a payment to the scheme by the Inland Revenue by way of tax relief in respect of the member, the amount of each such payment by the Inland Revenue and the date on which it was received;
 - (g) the amount of each payment to the scheme by way of minimum contributions in respect of the member and the date on which it was received;
 - (h) the amount of each payment made to the scheme by way of minimum payments in respect of the member and the date on which it was received;
 - (i) the amount of each payment made to the scheme under section 42A(3) of the 1993 Act (reduced rates of Class 1 contributions, and rebates) in respect of the member and the date on which it was received;
 - (j) the amount of any transfer payment made to the scheme in respect of the member, the name of the scheme or arrangement from which the payment was made and the date on which it was made;
 - (k) any amount credited to the member's account in respect of a credit within the meaning of section 29 (pension sharing: creation of pension debits and credits);
 - (l) any reduction under section 31 (pension sharing: reduction of benefit), or any enactment in force in Northern Ireland corresponding to that section, in the benefits or future benefits to which the member is entitled under the scheme;
 - (m) any contributions refunded under the provisions of Chapter IV of Part XIV of the Income and Corporation Taxes Act (pension schemes, social security benefits, life annuities etc.);
 - (n) any amount paid to the member in accordance with section 634A of the Income and Corporation Taxes Act (income withdrawals by member) or section 636A of that Act (income withdrawal after death of member)(29);
 - (o) any other amount deducted from the member's account, the nature of the deduction and the date on which it was made;
 - (p) the total amount of any part of any of the contributions and payments mentioned in sub-paragraphs (d) to (k) which has not been credited to the member's account and the manner in which that amount has been used;
 - (q) the member's date of birth used in determining the appropriate age-related percentage for the purposes of section 42A of the 1993 Act and the name and address of whom to contact should that date be incorrect; and
 - (r) where the whole or any part of the member's rights under the scheme is represented by rights in a with-profits fund—
 - (i) the principles adopted in allocating rights under that fund, including the extent of any smoothing of investment returns and the levels of any guarantees; and
 - (ii) the principles which will be adopted in allocating such rights if the member's rights under the scheme cease to be represented by rights in that fund.
- (6) Each member must be provided with a statement setting out any change in the scheme's rules or practice as regards the extent to which or the circumstances in which—
- (a) any payment made to the scheme by or on behalf of a member,
 - (b) any amount credited to the member's account in respect of a credit within the meaning of section 29 (pension sharing: creation of pension debits and credits),
 - (c) any income or capital gain arising from the investment of such a payment, or

(29) Section 634A was inserted by paragraphs 1 and 4 of Schedule 11 to the Finance Act 1995 (c. 4) and section 636A was inserted by paragraphs 1 and 7 of that Schedule.

(d) the value of any rights under the scheme, may, in accordance with regulations 13 and 14, be used otherwise than to provide benefits for or in respect of that member.

(7) The statement mentioned in paragraph (6) must be provided within one month of the change.

(8) The statements mentioned in paragraphs (2) and (6) may be provided by sending them by post to the member at his last address known to the trustees or manager.

(9) For the purposes of this regulation “member” shall not include any member whose present address is not known to the trustees or manager and in respect of whom—

- (a) correspondence sent by them to the member at his last address known to them has been returned undelivered; and
- (b) no contribution has been made to the scheme by him or on his behalf during the 2 years preceding the most recent date on which they would, apart from this paragraph, be required to provide him with a statement under this regulation.

(10) For the purposes of this regulation “member” shall include a beneficiary making income withdrawals from the scheme in accordance with section 636A of the Income and Corporation Taxes Act 1988 (income withdrawals after death of member).

Requirement for trustees of a stakeholder pension scheme established under a trust

19. For the purposes of section 1(1)(b), it shall be a condition of a scheme which is established under a trust being a stakeholder pension scheme that the scheme comply with sections 35 and 36 (functions of trustees) of the 1995 Act except the reference to section 56 in section 35(2) and 35(5) (b) of that Act.

PART III

REGISTRATION OF STAKEHOLDER PENSION SCHEMES

Persons who may apply for registration of stakeholder pension schemes not established under trust

20. For the purposes of subsections (2) and (4) of section 2 (prescribed persons may apply for registration of stakeholder pension schemes and will be liable to penalties in certain circumstances connected with such application) the prescribed person in relation to a scheme not established under a trust is the manager of the scheme.

Access to the register

21.—(1) The Occupational Pensions Regulatory Authority shall supply the most recent copy of the register to any person on request either—

- (a) free of charge; or
 - (b) where a charge is made, at an amount that does not exceed the expense incurred in copying, posting and packing the statement.
- (2) The Authority may publish the register in any way.

PART IV

EMPLOYER REQUIREMENTS

Exemptions from employer access and consultation requirements

22.—(1) An employer need not comply with the requirements set out in section 3 (duty of employers to facilitate access to stakeholder pension schemes) and this Part of these Regulations if he has fewer than 5 employees.

(2) An employer need not comply with the requirements set out in section 3 and this Part of these Regulations if—

(a) it is a term of the contract of every relevant employee (other than any employee who has not attained the age of 18) that—

(i) the employer will make contributions to a personal pension scheme in respect of the employee, in accordance with paragraph (3) and subject to paragraph (4), for any period for which that employee, while in his employment, is a member of that scheme; and

(ii) the employer will, if he is requested to do so by the employee, deduct the employee's contributions to that scheme from his remuneration and pay them to the trustees or manager of the scheme; and

(b) subject to paragraph (7), no charge or penalty is imposed by the personal pension scheme in question on any member in respect of whom the employer has made any contributions to the scheme for transferring all or any of his funds out of that scheme or for ceasing to contribute to the scheme.

(3) Contributions are made in accordance with this paragraph if they are made on each occasion on which the employee is paid remuneration by the employer (or, if the employer and employee agree longer intervals, at such longer intervals as are agreed) and at a rate of at least 3 per cent. of the amount of remuneration paid.

(4) Contributions made by the employer in accordance with paragraph (3) may be conditional on the employee making contributions to the same scheme at a specified rate on each occasion on which he is paid (or, if the employer and employee agree longer intervals, at such longer intervals as are agreed) while—

(a) if the arrangement is in place as at 8th October 2001, the employer is making contributions equal to or exceeding that of the employee; and

(b) if the condition is first imposed on or after 8th October 2001 or if sub-paragraph (a) ceases to apply after that date, the employee is not required to make contributions exceeding 3 per cent. of the amount of remuneration paid to him on any such occasion or for each such interval.

(5) For the purposes of paragraphs (3) and (4) only payments made in respect of basic pay shall be taken into account and payments in respect of bonuses, commission, overtime or similar payments shall be disregarded.

(6) In calculating the amount paid to an employee for the purposes of paragraphs (3) and (4) no account shall be taken of any deductions from the employee's remuneration which are made in respect of tax, national insurance contributions or pension contributions.

(7) For the purposes of paragraph (2)(b) deductions in the member's accrued rights to take account of—

(a) costs or charges that have not previously been taken into account and which would otherwise have been deductible under the terms and conditions of the scheme by the trustees or manager of the scheme in question, had contributions continued or a transfer

not occurred, in respect of the member's rights under the scheme on or before the day the cessation takes effect or the day that member's rights are transferred from that scheme; or

- (b) market value adjustments which occur in relation to a with-profits fund,

shall not be taken to be charges or penalties for transferring those funds or for ceasing to contribute to that scheme.

(8) An employer need not comply with the requirements set out in section 3 and this Part of these Regulations if the employer can provide written evidence to show that contributions are being made, and have continuously been made from a date prior to 8th October 2001, as if each relevant employee had a term in his contract that would satisfy the requirements set out in paragraph (2)(a) above.

(9) An employer need not comply with the requirements set out in section 3 and this Part of these Regulations to the extent that it is not practicable for him to do so because—

- (a) on section 3 first applying to him (unless, subject to sub-paragraph (b), that section first applied to him on 8th October 2001), he has not had sufficient time to select a scheme which he wishes to designate for the purposes of that section and to complete the designation process, provided that the exemption under this sub-paragraph shall not apply for more than 3 months from the date on which that section first applies,
- (b) on employing a fifth employee in the period from 8th July 2001 to 8th October 2001 after a period when he had fewer than 5 employees, he has not had sufficient time to select a scheme which he wishes to designate and to complete the designation process, provided that the exemption under this sub-paragraph shall not apply for more than 3 months from the date on which he employed that fifth employee,
- (c) on section 3 applying to him after a period when it did not so apply, he has not had sufficient time to select a scheme which he wishes to designate and to complete the designation process, provided that the exemption under this sub-paragraph shall not apply for more than 3 months from the date on which that section begins to apply after such a period, or
- (d) on having withdrawn his designation of a scheme due to reasons beyond his control he has not had sufficient time to select another scheme which he wishes to designate and to complete the designation process, provided that the exemption under this sub-paragraph shall not apply for more than 4 months from the withdrawal of designation.

(10) Where a stakeholder pension scheme commences winding-up, the employer need not comply with the consultation requirements in section 3(2) if, within 4 months of the scheme commencing to wind up, he designates for the purposes of that section the stakeholder pension scheme named in the notice mentioned in regulation 6(2) as the scheme of the trustees' or manager's choice.

Definition of relevant employees

23.—(1) The following persons shall not be an employer's relevant employee for the purposes of section 3—

- (a) any employee whose employment would qualify him for membership of an occupational pension scheme of the employer had he been employed by that employer for more than 12 months;
- (b) any employee whose employment would qualify him for membership of an occupational pension scheme of the employer if he were over the age of 18, or was more than 5 years younger than the age which would be his normal pension age were he a member of the scheme;
- (c) any employee who—
 - (i) had he wished to join an occupational pension scheme of the employer at some time in the past, would have qualified for membership of the scheme; and

- (ii) is now excluded from membership of that scheme because he did not join the scheme at an earlier time;
- (d) any employee who has been employed by the employer for a continuous period of less than 3 months;
- (e) any employee whose earnings have fallen below the lower earnings limit for one or more weeks within the last 3 months; and
- (f) any employee who is ineligible, by virtue of any enactment relating to tax or any restriction imposed by the Inland Revenue, to make contributions to a stakeholder pension scheme.

(2) For the purposes of paragraph (1)(b) “normal pension age” means the earliest age at which the employee in question would, if he were a member of the scheme in question, be entitled to receive benefits (other than a guaranteed minimum pension) on retirement from employment to which the scheme applies, disregarding any rule of the scheme which makes special provision as to early retirement on grounds of ill-health or otherwise.

Payroll deduction of contributions

24.—(1) Subject to paragraph (2), where an employee requests an employer to make or vary (but not cease) deductions of the employee’s contributions to a qualifying scheme from his remuneration (“the request”), the employer must comply with the request as soon as possible, but no later than the end of the pay period following that in which the request is made.

(2) Where an employee makes the request within 6 months of requesting the same employer to make, vary or cease deductions of the employee’s contributions to a qualifying scheme from the employee’s remuneration, the employer need not comply with the request but, where he does not do so, he must give notice to the employee in writing—

- (a) that he is not complying with the request;
- (b) informing him of the date (which must be no later than 6 months after the date of the employee’s previous request to make, vary or cease such deductions) that the employee can make a new request to make or vary deductions of the employee’s contributions; and
- (c) informing him that—
 - (i) he may require the employer to cease such deductions immediately (if deductions are being made at the time of the request) but, if the employee makes such a request, the employer is not required to comply with any further request to make such deductions if that further request is made within 6 months of the employee requesting that the deductions cease; and
 - (ii) the employee may make payments, at a rate of his choosing, directly to the qualifying scheme.

(3) Where an employee requests an employer to cease to make deductions from the employee’s remuneration on account of contributions to a qualifying scheme, the employer must cease such deductions as soon as possible, but no later than the end of the pay period following that in which the request is made, and must give notice to the employee in writing—

- (a) that the employer is not obliged to make any further such deductions if a request to make those deductions is made by the employee within 6 months of the employee requesting that deductions cease; and
- (b) that the employee may make payments, at a rate of his choosing, directly to the qualifying scheme.

(4) If an employer ceases on an employee’s request to make deductions from the employee’s remuneration of contributions to a qualifying scheme, the employer need not comply with any further

request to make such deductions if that request is made within 6 months from the date when the employee requested the employer to cease deductions.

(5) Where an employer is notified that a stakeholder pension scheme that has been designated by him for the purposes of section 3(2) of the Act has commenced winding-up, the employer must immediately cease making deductions from the employee's remuneration on account of contributions to that scheme and notify the employee in writing as soon as is practicable that those deductions have ceased.

Disclosure of information to relevant employees

25.—(1) Where an employee for the first time requests an employer to make or vary (but not cease) deductions of the employee's contributions to a qualifying scheme from his remuneration, the employer must, within 2 weeks of receiving that request, give notice in writing to the employee containing the information referred to in paragraph (2).

(2) The information to be provided under paragraph (1) is—

- (a) the manner in which the employer will accept requests to make, vary or cease such deductions;
- (b) advice that, where an employee requests an employer to make or vary deductions of the employee's contributions to a qualifying scheme from the employee's remuneration, the employer need not comply with that request—
 - (i) within 6 months of the date of any previous request to make, vary or cease such deductions; or
 - (ii) where the employer is agreeable to complying with the request within a lesser period than 6 months of a previous request, that lesser period;
- (c) advice that the employee may, at any time, require the employer to cease such deductions immediately; and
- (d) advice that, where the employer is required to comply with a request to make, vary or cease such deductions, the request will be complied with as soon as possible but no later than the end of the pay period following that in which the request is made.

PART V

AMENDMENT OF REGULATIONS UNDER THE PENSION SCHEMES ACT 1993 AND THE PENSIONS ACT 1995

Amendment of the Personal Pension Schemes (Disclosure of Information) Regulations 1987

26.—(1) The Personal Pension Schemes (Disclosure of Information) Regulations 1987⁽³⁰⁾ shall be amended as set out in this regulation.

(2) After regulation 2 there shall be inserted:

“Limited exemption for stakeholder pension schemes

2A. In the case of a scheme which is a stakeholder pension scheme within the meaning of section 1 of the Welfare Reform and Pensions Act 1999, regulation 5 shall have effect as if paragraph (2) were omitted.”

(3) In regulation 5—

⁽³⁰⁾ S.I. 1987/1110; to which there are amendments not relevant to this instrument.

- (a) in paragraph (1) for the words “regulation 2” there shall be substituted “regulations 2 and 2A”; and
- (b) the following paragraph shall be inserted after paragraph (7)—
 - “(7A) Where a stakeholder pension scheme within the meaning of section 1 of the Welfare Reform and Pensions Act 1999 (meaning of “stakeholder pension scheme”) is removed from the register of such schemes kept under section 2 of that Act (registration of stakeholder pension schemes) the trustees shall—
 - (a) within 2 weeks of being notified of the removal from the register inform each member of the scheme except an excluded person that the scheme has been removed from the register of stakeholder pension schemes and is no longer a stakeholder pension scheme and that it is required to commence winding-up under the scheme rules;
 - (b) as soon as practicable and in any event not more than 4 months after such removal provide each member of the scheme except an excluded person with the information mentioned in paragraphs 1, 2 and 7 of Schedule 2; and
 - (c) where the scheme is unable to meet in full its liabilities to its members, as soon as is practicable and in any event not more than 4 months after such removal provide each member except an excluded person with the information mentioned in paragraph 8 of Schedule 2.”.

Amendment of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991

27. In regulation 12 of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991⁽³¹⁾—

- (a) after paragraph (1) there shall be added—
 - “(1A) For the purposes of section 73(4) of the Act, a scheme may provide for a transfer payment to be made to another occupational or personal pension scheme (as described in section 73(2)(a)(i) of the Act) without the member’s consent where the conditions set out in paragraph (6) of this regulation are satisfied.”; and
- (b) after paragraph (5) there shall be added—
 - “(6) The conditions set out in this paragraph are that—
 - (a) the transferring scheme is or has been a stakeholder pension scheme, within the meaning of section 1 of the Welfare Reform and Pensions Act 1999 or Article 3 of the Welfare Reform and Pensions (Northern Ireland) Order 1999⁽³²⁾, and the receiving scheme is such a scheme;
 - (b) the transferring scheme has commenced winding-up; and
 - (c) the transfer payment is of an amount at least equal to the cash equivalent of the member’s rights under the scheme, as calculated and verified in a manner consistent with regulations made under section 97 of the 1993 Act (calculation of cash equivalents).”.

⁽³¹⁾ S.I. 1991/167.

⁽³²⁾ S.I. 1999/3147 (N.I. 11).

Amendment of the Occupational Pension Schemes (Disclosure of Information) Regulations 1996

28.—(1) The Occupational Pension Schemes (Disclosure of Information) Regulations 1996⁽³³⁾ shall be amended as set out in this regulation.

(2) In regulation 1—

- (a) in the definition of “prospective member” for “and the scheme rules” there shall be substituted “or the scheme rules or both”; and
- (b) the following paragraph shall be added at the end of the definition of “tax-approved schemes”—
 - “(c) approved by the Commissioners of the Inland Revenue under Chapter IV of Part XIV of that Act;”.

(3) In regulation 2—

- (a) in paragraph (1) for the words “paragraphs (2) and (3)” there shall be substituted “paragraphs (2), (3) and (3A)”; and
- (b) after paragraph (3) there shall be inserted—
 - “(3A) In the case of a scheme which is a stakeholder pension scheme within the meaning of section 1 of the Welfare Reform and Pensions Act 1999, regulation 5 shall have effect as if paragraph (5) were omitted.”

(4) In regulation 5—

- (a) at the beginning of paragraph (5) for “In” there shall be substituted “Subject to paragraph (3A) of regulation 2, in”; and
- (b) the following paragraph shall be inserted after paragraph (10)—
 - “(11) Where a stakeholder pension scheme within the meaning of section 1 of the Welfare Reform and Pensions Act 1999 is removed from the register of such schemes kept under section 2 of that Act the trustees shall within 2 weeks of being notified of that removal inform each member of the scheme except an excluded person that the scheme has been removed from the register of stakeholder pension schemes and is no longer a stakeholder pension scheme, and that it is required to commence winding-up under the scheme rules.”.

Amendment of the Protected Rights (Transfer Payment) Regulations 1996

29.—(1) The Protected Rights (Transfer Payment) Regulations 1996⁽³⁴⁾ shall be amended as set out in this regulation.

- (2) In regulation 3(a) after “consents in writing” there shall be inserted “or regulation 3A applies”.
- (3) After regulation 3 there shall be inserted—

“Transfer payments from stakeholder pension schemes without the member’s consent

3A. This regulation applies where—

- (a) a transfer payment is made to a scheme, which is registered as a stakeholder pension scheme under section 2 of the Welfare Reform and Pensions Act 1999 or under Article 4 of the Welfare Reform and Pensions (Northern Ireland) Order 1999⁽³⁵⁾,

⁽³³⁾ S.I. 1996/1655; to which there are amendments not relevant to this instrument.

⁽³⁴⁾ S.I. 1996/1461; to which there are amendments not relevant to this instrument.

⁽³⁵⁾ S.I. 1999/3147 (N.I. 11).

from a scheme which is or was so registered and which has commenced winding-up; and

- (b) regulation 6 of the Stakeholder Pension Schemes Regulations 2000 is complied with.”.

Amendment of the Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations 1996

30.—(1) The Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations 1996⁽³⁶⁾ shall be amended as set out in this regulation.

(2) In regulation 4(1)—

- (a) “or” at the end of sub-paragraph (1) shall be deleted; and
- (b) after sub-paragraph (m) there shall be added—

“or

- (n) which is a stakeholder pension scheme within the meaning of section 1 of the Welfare Reform and Pensions Act 1999.”.

(3) In regulation 6(1)—

- (a) “or” at the end of sub-paragraph (m) shall be deleted; and
- (b) after sub-paragraph (n) there shall be added—

“or

- (o) which is a stakeholder pension scheme within the meaning of section 1 of the Welfare Reform and Pensions Act 1999.”.

Amendment of the Occupational Pension Schemes (Investment) Regulations 1996

31.—(1) The Occupational Pension Schemes (Investment) Regulations 1996⁽³⁷⁾ shall be amended as set out in this regulation.

(2) In regulation 10(3)(a) after “Chapter I” there shall be inserted “or Chapter IV”.

(3) In regulation 10(3)(e) there shall be inserted after “wholly insured scheme” “, other than a stakeholder pension scheme within the meaning of section 1 of the Welfare Reform and Pensions Act 1999,”.

Application of other Regulations to stakeholder pension schemes

32. The regulations listed in Schedule 2 shall apply to a pension scheme established under a trust which—

- (a) is not an occupational pension scheme; but
- (b) is or has been registered under section 2

as if it were an occupational pension scheme.

⁽³⁶⁾ S.I. [1996/1216](#); regulation 6(1) was amended by regulation 5(6)(a) of S.I. [1997/786](#). There are other amendments not relevant to this instrument.

⁽³⁷⁾ S.I. [1996/3127](#); to which there are amendments not relevant to this instrument.

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

24th May 2000

Jeff Rooker
Minister of State,
Department of Social Security

SCHEDULE 1

PROVISIONS CONFERRING POWERS EXERCISED IN MAKING THESE REGULATIONS

<i>Title of Act</i>	<i>Powers</i>
Pension Schemes Act 1993 (38)	section 28(2)(b) section 73(4) section 113 section 181(1)
Pensions Act 1995 (39)	section 3(2) section 10(1) and (2)(b) section 17(4)(b) section 19(4) section 27(3) and (5) section 32(2)(b) and (3) section 35(7) section 41(1)(a) and (b) and (6) section 47(5)(a) and (b), (6) and (9)(b) section 49(1), (2) and (4) section 50(1), (2)(a), (3) and (7) section 81(1)(c) and (2) section 83(2) and (3)(a) section 84(1)(b), (2) and (3) section 86 section 91(5)(c) and (e) section 92(3) and (6) section 94(1) section 124(1) section 174(2) and (3)
Welfare Reform and Pensions Act 1999 (40)	section 1(1)(b), (2), (3), (4), (5) and (7) section 2(2), (4) and (7) section 3(1), (3)(b), (5) and (9) section 8(1) and (2) section 83(4), (5) and (6)(a) and (b)

(38) 1993 c. 48.**(39)** 1995 c. 26.**(40)** 1999 c. 30.

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SCHEDULE 2

Regulation 32

REGULATIONS APPLYING TO SCHEMES WHICH ARE
OR HAVE BEEN REGISTERED UNDER SECTION 2

<i>Statutory Instrument</i>	<i>Regulations applying</i>
The Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997 (41)	The whole of the Regulations except regulations 3, and 8(1) and (1A)
The Occupational Pension Schemes (Disclosure of Information) Regulations 1996 (42)	Regulations 1, 2, 6 and 7 and Schedule 3 (except paragraph 16 of that Schedule)
The Occupational Pension Schemes (Internal Dispute Resolution Procedures) Regulations 1996 (43)	The whole of the Regulations
The Occupational Pension Schemes (Investment) Regulations 1996 (44)	Regulations 1 and 10
The Occupational and Personal Pension Schemes (Levy) Regulations 1997 (45)	Regulations 5 to 8 and regulation 1 so far as relevant to those regulations
The Occupational Pension Schemes (Pensions Compensation Provisions) Regulations 1997 (46)	The whole of the Regulations except regulation 8
The Occupational Pension Schemes (Prohibition of Trustees) Regulations 1997 (47)	The whole of the Regulations
The Occupational Pension Schemes (Requirement to obtain Audited Accounts or a Statement from the Auditor) Regulations 1996 (48)	The whole of the Regulations except paragraph 5 of the Schedule to the Regulations
The Occupational Pension Schemes (Scheme Administration) Regulations 1996 (49)	Regulations 1, 3(2)(a), (3) and (5) to (7), 4(1) and (2)(a) and (b), 5(1) to (10), 6(3), 7 to 11, 12(1) except sub-paragraph (b)(ix), 13(1) and 14

(41) S.I. 1997/785; as amended by S.I. 1999/1849.

(42) S.I. 1996/1655; as amended by S.I. 1997/786.

(43) S.I. 1996/1270.

(44) S.I. 1996/3127.

(45) S.I. 1997/666; as amended by S.I. 1998/600, 1999/682 and 2000/542.

(46) S.I. 1997/665.

(47) S.I. 1997/663.

(48) S.I. 1996/1975; as amended by S.I. 1997/786 and 3038.

(49) S.I. 1996/1715; regulation 3(5) was inserted by S.I. 1998/1494, regulation 5 was amended by S.I. 1997/819 and 1998/3038 and regulation 7 was amended by S.I. 1997/819.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made principally under sections 1 to 8 of the Welfare Reform and Pensions Act 1999 (“the Act”), and other provisions listed in Schedule 1 to the Regulations, to make provision in connection with stakeholder pension schemes introduced by Part I of that Act. Apart from Part IV (which provides for the obligations of employers), the Regulations come into force on 1st October 2000.

Part I of the Regulations is concerned with citation, commencement and interpretation, and Part II with the conditions applying to stakeholder pension schemes. Regulation 2 provides for the establishment as a stakeholder pension scheme of a pension scheme which is not established under a trust. Regulations 3, 4 and 5 specify the requirements with which the instruments establishing a stakeholder pension scheme must comply, especially as respects their provision about membership of the scheme, its assets and the transfer of members' rights on winding-up. Regulation 3 applies in the case of all such schemes, regulation 4 in the case of schemes established under a trust, and regulation 5 in the case of schemes not established under a trust. Regulations 6 and 7 are concerned with the manner in which the rights of members under a stakeholder pension scheme are to be discharged when the scheme winds up.

Regulations 8 to 12, 15, 16, 18 and 19 provide for the requirements which must be complied with by a pension scheme as a condition of its being a stakeholder pension scheme, and are concerned in particular with such matters as the investment of funds, (regulations 8–10 and 15), reporting obligations, including declarations to be made by trustees and managers, and statements by auditors and accountants, in connection with the scheme (regulations 11 and 12), the provision by schemes of services apart from the management of funds (regulation 16), the provision of information to members (regulation 18) and the obligations of trustees (regulation 19).

Regulations 13 and 14 provide for the circumstances in which payments and credits to the scheme, returns on investments and members' rights under the scheme may be used for purposes other than the provision of benefits for members, and in particular for defraying administrative expenses, charges, etc. Regulation 17 makes provision for the minimum level of contributions to stakeholder pension schemes and the circumstances in which trustees or managers may refuse contributions.

Part III of the Regulations is concerned with the registration of stakeholder pension schemes, especially as respects the persons who may apply for registration of schemes not established under trusts, and access to the register (regulations 20 and 21).

Part IV of the Regulations, which comes into force on 8th October 2001, makes provision in connection with the duty of employers to facilitate access to stakeholder pension schemes, and in particular for the circumstances in which employers are exempt from those requirements (regulation 22), for the deduction of contributions to such schemes from employees' remuneration (regulation 24) and for the disclosure of information to employees about such schemes (regulation 25).

Part V of the Regulations makes textual amendments in Regulations made under the Pension Schemes Act 1993 and the Pensions Act 1995 in consequence of the introduction of stakeholder pension schemes, and applies to those schemes which are not occupational pension schemes the provisions of Regulations specified in Schedule 2 as if they were occupational pension schemes.

An assessment of the cost to business of the introduction of stakeholder pension schemes under Part I of the Act and these Regulations is detailed in a Regulatory Impact Assessment, a copy of which

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has been placed in the libraries of both Houses of Parliament. Copies of the Assessment are available from the Department of Social Security, Regulatory Impact Unit, Third Floor, The Adelphi, 1–11 John Adam Street, London WC2N 6HT.