

2005 No. 2906

PENSIONS

**The Protected Rights (Transfer Payment) (Amendment)
Regulations 2005**

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| <i>Made</i> - - - - | <i>18th October 2005</i> |
| <i>Laid before Parliament</i> | <i>25th October 2005</i> |
| <i>Coming into force</i> - - | <i>28th November 2005</i> |

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred upon him by sections 28(2)(b), 181(1) and 182(2) and (3) of the Pension Schemes Act 1993(a).

In accordance with section 185(1) of that Act(b) he has consulted with representatives of those whom he considers to be likely to be affected by the Regulations.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Protected Rights (Transfer Payment) (Amendment) Regulations 2005 and shall come into force on 28th November 2005.

(2) In these Regulations, “the principal Regulations” means the Protected Rights (Transfer Payment) Regulations 1996(c).

Amendment of regulation 1 of the principal Regulations

2. In regulation 1(2) of the principal Regulations(d) (citation, commencement and interpretation) there shall be inserted in the appropriate alphabetical place the following definition—

““mixed benefit contracted-out scheme” means an occupational pension scheme to which section 149(1) of the Pensions Act 1995 (hybrid occupational pension schemes) applies and which is contracted-out;”.

Amendment of regulation 2 of the principal Regulations

3. For regulation 2 of the principal Regulations (general) there shall be substituted the following regulation—

“2.—(1) Effect may be given to a member’s protected rights by making a transfer payment from—

(a) 1993 c.48. Section 28(2)(b) was amended by paragraph 2(2) of Schedule 5 to the Child Support, Pensions and Social Security Act 2000 (c.19). Section 181(1) is cited for the meaning there given to “prescribe” and “regulations”.
(b) Section 185(1) of the Pension Schemes Act 1993, as amended by paragraph 46 of Schedule 3, paragraph 80 of Schedule 5 and Part 1 of Schedule 7 to the Pensions Act 1995 (c.26).
(c) S.I. 1996/1461; relevant amending instruments are S.I. 1997/786, 1999/3198, 2000/1403 and 2005/555.
(d) Regulation 1(2) was amended by S.I. 1997/786, 1999/3198 and 2005/555.

- (a) an appropriate personal pension scheme;
- (b) a money purchase contracted-out scheme;
- (c) the money purchase part of a mixed benefit contracted-out scheme; or
- (d) a scheme mentioned in sub-paragraph (a), (b) or (c) which has ceased to be a contracted-out scheme,

to a scheme specified in paragraph (2) below.

(2) A transfer payment in respect of protected rights may be made to either an—

- (a) appropriate personal pension scheme; or
- (b) occupational pension scheme,

in accordance with regulations 3 to 5.

(3) In these Regulations a “transfer payment” means a transfer payment such as is described in this regulation.”.

Amendment of regulation 3 of the principal Regulations

4. For regulation 3 of the principal Regulations(a) (transfer payments to money purchase contracted-out schemes and appropriate personal pension schemes) there shall be substituted the following regulation—

“Transfer payments to appropriate personal pension schemes

3. A transfer payment may be made to an appropriate personal pension scheme if—

- (a) the member consents in writing or regulation 3A applies;
- (b) the transfer payment (or, if it forms part of a larger payment giving effect to both protected rights and other rights, that part of it which gives effect to protected rights) is of an amount at least equal to the cash equivalent of the protected rights to which effect is being given, as calculated and verified in a manner consistent with regulations made under section 97 of the 1993 Act(b) (calculation of cash equivalents); and
- (c) the transfer payment in respect of the member’s protected rights is applied so as to provide money purchase benefits under the receiving scheme for or in respect of the member.”.

Insertion of regulations 3B and 3C into the principal Regulations

5. After regulation 3A of the principal Regulations(c) (transfer payments from stakeholder pension schemes without the member’s consent) there shall be inserted the following regulations—

“Transfer payment to a money purchase contracted-out scheme or the money purchase part of a mixed benefit contracted-out scheme with the member’s consent

3B.—(1) A transfer payment may be made to either—

- (a) a money purchase contracted-out scheme; or
- (b) the money purchase part of a mixed benefit contracted-out scheme,

if the conditions specified in paragraph (2) are satisfied.

(2) The conditions specified in this paragraph are—

(a) Regulation 3 was amended by S.I. 2000/1403.

(b) Section 97 was amended by paragraph 4 of Schedule 6 to the Pensions Act 1995 and paragraph 8(1) of Schedule 5 to the Child Support, Pensions and Social Security Act 2000.

(c) Regulation 3A was inserted by S.I. 2000/1403.

- (a) the member consents in writing;
- (b) the transfer payment (or, if it forms part of a larger payment giving effect to both protected rights and other rights, that part of it which gives effect to protected rights) is of an amount at least equal to the cash equivalent of the protected rights to which effect is being given, as calculated and verified in a manner consistent with regulations made under section 97 of the 1993 Act;
- (c) the transfer payment in respect of the member's protected rights is applied so as to provide money purchase benefits under the receiving scheme for or in respect of the member; and
- (d) either the member—
 - (i) is employed by an employer who is a contributor to the receiving scheme; or
 - (ii) has previously been a member of the receiving scheme.

Transfer payment to a money purchase contracted-out scheme or the money purchase part of a mixed benefit contracted-out scheme without the member's consent

3C.—(1) A transfer payment may be made to either—

- (a) a money purchase contracted-out scheme; or
- (b) the money purchase part of a mixed benefit contracted-out scheme,

without the member's consent if the requirements of paragraph (2) are satisfied.

(2) The requirements of this paragraph are that the conditions specified in either—

- (a) paragraphs (3) and (4); or
- (b) paragraph (8),

are satisfied.

(3) The conditions specified in this paragraph are—

- (a) the transfer payment (or, if it forms part of a larger payment giving effect to both protected rights and other rights, that part of it which gives effect to protected rights) is of an amount at least equal to the cash equivalent of the protected rights to which effect is being given, as calculated and verified in a manner consistent with regulations made under section 97 of the 1993 Act;
- (b) the transfer payment in respect of the member's protected rights is applied so as to provide money purchase benefits under the receiving scheme for or in respect of the member; and
- (c) the transferring scheme is either—
 - (i) a money purchase contracted-out scheme;
 - (ii) the money purchase part of a mixed benefit contracted-out scheme; or
 - (iii) a scheme mentioned in head (i) or (ii) of this sub-paragraph which has ceased to be a contracted-out scheme.

(4) The conditions specified in this paragraph are—

- (a) subject to paragraph (7), the trustees have sent a notice to the member at his last known postal address or electronic mail address in relation to the proposed transfer;
- (b) a period of at least three months has elapsed from the date of the notice;
- (c) the trustees have not received written notification within that period that the member objects to the transfer; and
- (d) the transferring scheme and the receiving scheme bear a relationship to each other such as is described in regulation 12(2) of the Occupational Pension Schemes

(Preservation of Benefit) Regulations 1991^(a) (transfer of member's accrued rights without consent).

(5) In paragraph (4)(a), “notice” means a notice in writing stating—

- (a) the names and addresses of the—
 - (i) transferring scheme; and
 - (ii) receiving scheme;
- (b) the name of the person in the—
 - (i) transferring scheme; and
 - (ii) receiving scheme,that a member may contact for further information;
- (c) the value of the rights which are to be transferred;
- (d) the nature of the rights which are to be transferred; and
- (e) that—
 - (i) the member has the right to object to the proposed transfer of his protected rights by sending a written notice to that effect to the trustees of the transferring scheme; and
 - (ii) the trustees of the transferring scheme may transfer that member's protected rights unless they receive that written notification of his objection to the proposed transfer within three months from the date of the notice.

(6) For the purposes of paragraph (4)—

- (a) where the trustees of the transferring scheme are notified of a delivery failure of a notice sent by electronic mail to a member for the purposes of paragraph (4)(a), the trustees shall send a further notice to the member's last known postal address unless he is an excluded person; and
- (b) the date of the notice for the purposes of paragraph (4)(b) shall be the date of the second notice.

(7) The trustees of a transferring scheme may transfer the protected rights of an excluded person without sending a notice to him.

(8) The conditions specified in this paragraph are—

- (a) the requirements of paragraphs (3)(a) to (c) and (4)(d) of this regulation are complied with;
- (b) the relevant actuary certifies to the trustees of the transferring scheme that the transfer credits to be acquired for each member under the receiving scheme in respect of his protected rights are, broadly, no less favourable than the rights to be transferred;
- (c) where it is proposed that a member's protected rights are to be transferred in accordance with this paragraph, information about the proposed transfer and details of the value of the rights to be transferred shall be furnished to the member at least one month before the proposed transfer is due to take place, unless the member is an excluded person.

(9) Where in response to either a notice issued under paragraph (4) or information furnished under paragraph (8)(c) a member consents in writing to the transfer of his protected rights under the scheme, the trustees of the scheme may give effect to the protected rights of that member by making a transfer payment in accordance with this regulation. However, the trustees shall not give effect to the protected rights of that member by making a transfer payment in accordance with regulation 3B.

(10) In this regulation—

(a) S.I.1991/167; relevant amending instruments are S.I. 1992/1531 and 1996/2131.

“the relevant actuary” has the meaning given by regulation 12(5) of the Occupational Pension Schemes (Preservation of Benefits) Regulations 1991;

“excluded person” means a member whose present address is not known to the trustees and in respect of whom correspondence sent by the trustees to his last address known to the trustees has been returned;

“transfer credits” means rights allowed to a member under the rules of a receiving scheme by reference to a transfer payment to that scheme of his protected rights from a transferring scheme.”.

Signed by authority of the Secretary of State for Work and Pensions.

18th October 2005

Stephen C. Timms
Minister of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Protected Rights (Transfer Payment) Regulations 1996 (S.I. 1996/1461) (“the principal Regulations”).

Regulation 1(2) of the principal Regulations is amended to insert a new definition (regulation 2). Regulation 2 of the principal Regulations is amended to include among the schemes that may give effect to a member’s protected rights by making a transfer payment to an appropriate personal pension scheme or an occupational pension scheme, the money purchase part of a mixed benefit contracted-out scheme and a scheme which has ceased to be the money purchase part of a mixed benefit contracted-out scheme (regulation 3). Regulation 3 of the principal Regulations is also amended so that it no longer applies to transfer payments to money purchase contracted-out schemes. The effect of regulation 3 as amended is that it applies to transfer payments to appropriate personal pension schemes only (regulation 4).

New regulations 3B and 3C are inserted into the principal Regulations in order to provide for transfer payments to be made to a money purchase contracted-out scheme or the money purchase part of a mixed benefit contracted-out scheme. New regulation 3B provides for transfers with a member’s consent. New regulation 3C provides for transfers without a member’s consent (regulation 5).

A full regulatory impact assessment of the effect that these Regulations will have on the costs of business has been prepared and a copy placed in the libraries of both Houses of Parliament. Copies may be obtained from the Department for Work and Pensions, Better Regulation Unit, 4th Floor, Adelphi, 1-11 John Adam Street, London WC2N 6HT.

STATUTORY INSTRUMENTS

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