
STATUTORY INSTRUMENTS

2005 No. 706

**The Occupational Pension Schemes
(Winding up etc.) Regulations 2005**

Pension sharing

Amendments of the Pension Sharing (Valuation) Regulations 2000 **E+W+S**

16.—(1) The Pension Sharing (Valuation) Regulations 2000^{M1} are amended as follows.

(2) In regulation 4(3)(b)(iii) (occupational pension schemes: manner of calculation and verification of cash equivalents) for the words from “the liabilities” to “up” substitute “liabilities for the benefits in respect of which the cash equivalent is being calculated”.

(3) In regulation 5 (occupational pension schemes: further provisions as to calculation of cash equivalents and increases and reductions of cash equivalents) for paragraphs (3) and (3A) substitute—

“(3) In the case of a scheme to which section 56 of the 1995 Act applies, the cash equivalent may be reduced by the trustees or managers if the GN11 insufficiency conditions are met.

(3A) The GN11 insufficiency conditions are that the actuary's last relevant GN11 report (see paragraph (3J)) shows that at the effective date of the report—

- (a) the scheme had assets that were insufficient to pay the full amount of the cash equivalent in respect of all the members, and
- (b) the assets were insufficient to pay in full any category of liabilities that is a category of liabilities for the benefits in respect of which the cash equivalent is being calculated.

(3B) If the GN11 insufficiency conditions are met then, subject to paragraph (3D), the trustees or managers may reduce any part of the cash equivalent that relates to such a category of liabilities as are mentioned in paragraph (3A)(b) by a percentage not exceeding the GN11 deficiency percentage.

(3C) The GN11 deficiency percentage for any such part of the cash equivalent is the percentage by which the actuary's last relevant GN11 report shows that the assets were insufficient to pay that category of liabilities.

(3D) The total reduction made in the cash equivalent under paragraph (3) must not reduce the cash equivalent below the MFR basis minimum for the transferor.

(3E) For the purposes of this regulation, the MFR basis minimum for the transferor is the minimum amount required in accordance with regulation 4(3)(b)(iii) to pay in full the liabilities for the benefits in respect of which the cash equivalent is being calculated, but this is subject to paragraph (3F).

(3F) If the GN11 insufficiency conditions and the MFR insufficiency conditions are both met, the MFR basis minimum for the transferor for the purposes of paragraph (3D) may be reduced by the trustees or managers in accordance with paragraph (3H).

(3G) The MFR insufficiency conditions are that the last relevant MFR valuation statement (see paragraph (3K)) shows that at the effective date of the valuation—

- (a) the scheme had assets that were insufficient to pay in full the liabilities of the scheme in respect of pensions and other benefits towards which the assets would be required by section 73 of the 1995 Act to be applied in the order determined under that section, and
- (b) the assets were insufficient to pay in full any category of liabilities to which that order applies that are liabilities for benefits in respect of which the cash equivalent is being calculated.

(3H) The reduction that may be made under paragraph (3F) is that any part of the MFR basis minimum for the transferor that relates to that category of liabilities may be reduced by a percentage not exceeding the MFR deficiency percentage.

(3I) The MFR deficiency percentage for any such part of the MFR basis minimum for the transferor is the percentage by which the last relevant MFR valuation statement shows that the assets were insufficient to pay that category of liabilities.

(3J) The references in this regulation to the actuary's last relevant GN11 report are to his last report before the valuation day in accordance with “Retirement Benefit Schemes – Transfer Values (GN11)” published by the Faculty of Actuaries and the Institute of Actuaries and current at the valuation day.

(3K) The references in this regulation to the last relevant MFR valuation statement are to the statement made by the actuary in accordance with Schedule 1 to the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996 and contained in the last actuarial valuation under section 57 of the 1995 Act before the valuation day.

(3L) If the last relevant MFR valuation statement refers to an order for applying assets determined under section 73 of the 1995 Act that is an order modified by regulations made under that section, then the reduction under paragraph (3F) is to be made by reference to the order as so modified.”

(4) In regulation 5(4) for “paragraph (3)”, “the reference” and “a reference” substitute “ paragraphs (3), (3A) and (3G) ”, “ the references ” and “ references ” respectively.

(5) In regulation 5(5) for “paragraph (3)” substitute “ paragraphs (3) and (3F) ”.

(6) In regulation 5(6) for the words from “sections 73” onwards substitute “ the winding up provisions (as defined in section 73B(10)(a) of the 1995 Act) and regulations made under those provisions ”.

(7) In regulation 5(7) for the words from “the Occupational” to “applies” substitute “ regulations made under section 73B(4)(b)(i) of the 1995 Act by virtue of section 73B(5) of that Act, the winding up provisions (as so defined) apply ”.

(8) Paragraphs (2) to (5) only apply if the relevant proceedings commenced on or after 6th April 2005 and the scheme has not begun to be wound up before that date.

(9) In paragraph (8) “the relevant proceedings” means the proceedings for the dissolution or annulment of marriage in connection with which the relevant order or provision was made; and in this paragraph “the relevant order or provision” means the order or provision mentioned in section 28(1) of the 1999 Act (activation of pension sharing) for the purposes of which the valuation is made.

(10) Paragraphs (6) and (7) only apply where the scheme begins to be wound up on or after 6th April 2005.

Marginal Citations

M1 S.I. 2000/1052 as amended by S.I. 2000/2691 and 2003/1727.

Amendments of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 **E+W+S**

17.—(1) The Pension Sharing (Implementation and Discharge of Liability) Regulations 2000^{M2} are amended as follows.

(2) In regulation 16 (adjustments to the amount of the pension credit: occupational pension schemes which are underfunded on the valuation day) for paragraphs (2) and (2A) substitute—

“(2) In the case of a scheme to which section 56 of the 1995 Act applies, the lesser amount referred to in paragraph 8(1) of Schedule 5 to the 1999 Act (adjustments to amount of pension credit) may be determined for the purposes of that paragraph by reducing the pension credit if the GN11 insufficiency conditions are met.

(2A) The GN11 insufficiency conditions are that the actuary's last relevant GN11 report (see paragraph (2J)) shows that at the effective date of the report—

- (a) the scheme had assets that were insufficient to pay the full amount of the cash equivalent in respect of all the members, and
- (b) the assets were insufficient to pay in full any category of liabilities for benefits to which the pension credit relates.

(2B) If the GN11 insufficiency conditions are met then, subject to paragraph (2D), the trustees or managers may reduce any part of the pension credit that relates to benefits the liabilities for which fall within such a category as is mentioned in paragraph (2A)(b) by a percentage not exceeding the GN11 deficiency percentage.

(2C) The GN11 deficiency percentage for any such part of the pension credit is the percentage by which the actuary's last relevant GN11 report shows that the assets were insufficient to pay the category of liabilities into which the liabilities for those benefits falls.

(2D) The total reduction made in a pension credit under paragraph (2) must not reduce the cash equivalent in respect of the pension credit below the MFR basis minimum for the person entitled to the credit.

(2E) For the purposes of this regulation, the MFR basis minimum for such a person is the minimum amount required in accordance with regulation 4(3)(b)(iii) of the Pension Sharing (Valuation) Regulations 2000 to pay in full the liabilities for the benefits in respect of which the cash equivalent is being calculated, but this is subject to paragraph (2F).

(2F) If the GN11 insufficiency conditions and the MFR insufficiency conditions are both met, the MFR basis minimum for the person for the purposes of paragraph (2D) may be reduced in accordance with paragraph (2H).

(2G) The MFR insufficiency conditions are that the last relevant MFR valuation statement (see paragraph (2K)) shows that at the effective date of the valuation—

- (a) the scheme had assets that were insufficient to pay in full the liabilities of the scheme in respect of pensions and other benefits towards which the assets would be required by section 73 of the 1995 Act to be applied in the order determined under that section, and
- (b) the assets were insufficient to pay in full any category of liabilities to which that order applies that are liabilities for benefits to which the pension credit relates.

(2H) The reduction that may be made under paragraph (2F) is that any part of the MFR basis minimum for the person that relates to that category of liabilities may be reduced by a percentage not exceeding the MFR deficiency percentage.

(2I) The MFR deficiency percentage for any such part of the MFR basis minimum for the person is the percentage by which the last relevant MFR valuation statement shows that the assets were insufficient to pay that category of liabilities.

(2J) The references in this regulation to the actuary's last relevant GN11 report are to his last report before the valuation day in accordance with "Retirement Benefit Schemes – Transfer Values (GN11)" published by the Faculty of Actuaries and the Institute of Actuaries and current at the valuation day.

(2K) The references in this regulation to the last relevant MFR valuation statement are to the statement made by the actuary in accordance with Schedule 1 to the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996 and contained in the last actuarial valuation under section 57 of the 1995 Act before the valuation day.

(2L) If the last relevant MFR valuation statement refers to an order for applying assets determined under section 73 of the 1995 Act that is an order modified by regulations made under that section, then the reduction under paragraph (2F) is to be made by reference to the order as so modified."

(3) In regulation 16(3) for "paragraph (2)", "the reference" and "a reference" substitute "paragraphs (2), (2A) and (2G)", "the references" and "references" respectively.

(4) This regulation only applies if the relevant proceedings commenced on or after 6th April 2005 and the scheme has not begun to be wound up before that date.

(5) In paragraph (4) "the relevant proceedings" means the proceedings for the dissolution or annulment of marriage in connection with which the order or provision mentioned in section 28(1) of the 1999 Act that resulted in entitlement to the pension credit in question was made.

Marginal Citations

M2 [S.I. 2000/1053](#); the relevant amending instrument is [S.I. 2003/1727](#).

Amendments of the Pension Sharing (Pension Credit Benefit) Regulations 2000 **E+W+S**

18.—(1) The Pension Sharing (Pension Credit Benefit) Regulations 2000 ^{M3} are amended as follows.

(2) In regulation 15(4) (further conditions on which liability for pension credit benefit may be discharged) for sub-paragraph (b) substitute—

“(b) the winding up provisions (as defined in section 73B(10)(a) of the 1995 Act) and regulations made under those provisions do not apply;”.

(3) In regulation 24(3)(b)(iv) (manner of calculation and verification of cash equivalents) for the words from “the liabilities” to “that Act” substitute “liabilities for the benefits in respect of which the cash equivalent is being calculated”.

(4) In regulation 27 (increases and reductions of cash equivalents before a statement of entitlement has been sent to the eligible member) for paragraphs (4) and (4A) substitute—

“(4) In the case of a scheme to which section 56 of the 1995 Act applies, the cash equivalent in respect of an eligible member may be reduced by the trustees or managers of the scheme if the GN11 insufficiency conditions are met.

(4A) The GN11 insufficiency conditions are that the actuary's last relevant GN11 report (see paragraph (4J)) shows that at the effective date of the report—

- (a) the scheme had assets that were insufficient to pay the full amount of the cash equivalent in respect of all the members, and
- (b) the assets were insufficient to pay in full any category of liabilities that is a category of liabilities for benefits in respect of which the eligible member's cash equivalent is being calculated.

(4B) If the GN11 insufficiency conditions are met then, subject to paragraph (4D), the trustees or managers may reduce any part of the eligible member's cash equivalent that is payable in respect of such a category of liabilities as are mentioned in paragraph (4A)(b) by a percentage not exceeding the GN11 deficiency percentage.

(4C) The GN11 deficiency percentage for any such part of an eligible member's cash equivalent is the percentage by which the actuary's last relevant GN11 report shows that the assets were insufficient to pay that category of liabilities.

(4D) The total reduction made in an eligible member's cash equivalent under paragraph (4) must not reduce the member's cash equivalent below the MFR basis minimum for the member.

(4E) For the purposes of this regulation, the MFR basis minimum for the eligible member is the minimum amount required in accordance with regulation 24(3)(b)(iv) to pay in full the liabilities for the benefits in respect of which the member's cash equivalent is being calculated, but this is subject to paragraph (4F).

(4F) If the GN11 insufficiency conditions and the MFR insufficiency conditions are both met, the MFR basis minimum for the eligible member for the purposes of paragraph (4D) may be reduced by the trustees or managers in accordance with paragraph (4H).

(4G) The MFR insufficiency conditions are that the last relevant MFR valuation statement (see paragraph (4K)) shows that at the effective date of the valuation—

- (a) the scheme had assets that were insufficient to pay in full the liabilities of the scheme in respect of pensions and other benefits towards which the assets would be required by section 73 of the 1995 Act to be applied in the order determined under that section, and
- (b) the assets were insufficient to pay in full any category of liabilities to which that order applies that are liabilities for benefits in respect of which the eligible member's cash equivalent is being calculated.

(4H) The reduction that may be made under paragraph (4F) is that any part of the MFR basis minimum for the eligible member that relates to that category of liabilities may be reduced by a percentage not exceeding the MFR deficiency percentage.

(4I) The MFR deficiency percentage for any such part of the MFR basis minimum for the eligible member is the percentage by which the last relevant MFR valuation statement shows that the assets were insufficient to pay that category of liabilities.

(4J) The references in this regulation to the actuary's last relevant GN11 report are to his last report before the reference date in accordance with “Retirement Benefit Schemes – Transfer Values (GN11)” published by the Faculty of Actuaries and the Institute of Actuaries and current at the reference date.

(4K) The references in this regulation to the last relevant MFR valuation statement are to the statement made by the actuary in accordance with Schedule 1 to the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996 and contained in the last actuarial valuation under section 57 of the 1995 Act before the reference date.

(4L) If the last relevant MFR valuation statement refers to an order for applying assets determined under section 73 of the 1995 Act that is an order modified by regulations made under that section, then the reduction under paragraph (4F) is to be made by reference to the order as so modified.

(4M) In paragraphs (4J) and (4K) “the reference date” means the date by reference to which the cash equivalent is determined.”.

(5) In regulation 27(5) for “paragraph (4)”, “the reference” and “a reference” substitute “ paragraphs (4), (4A) and (4G) ”, “ the references ” and “ references ” respectively.

(6) In regulation 27(9) for “section 73 of the 1995 Act and the Occupational Pension Schemes (Winding Up) Regulations 1996” substitute “ the winding up provisions and regulations made under those provisions ”.

(7) In regulation 27(10) for “under section 73 of the 1995 Act, section 73 of that Act applies” substitute “ under section 73B(4)(b)(i) of the 1995 Act by virtue of section 73B(5) of that Act, the winding up provisions apply ”.

(8) In regulation 27(13) at the end insert—
“; and

“the winding up provisions” means sections 73 to 74 of the 1995 Act.”.

(9) In regulation 28(3) (increases and reductions of cash equivalents once the statement of entitlement has been sent to the eligible member) for “sections 73 and 74 of the 1995 Act and the Occupational Pension Schemes (Winding Up) Regulations 1996” substitute “ the winding up provisions (as defined in regulation 27(13)) and regulations made under those provisions ”.

(10) In regulation 28(4) for “the Occupational Pension Schemes (Winding Up) Regulations 1996, section 73 of the 1995 Act applies” substitute “ regulations made under section 73B(4)(b)(i) of the 1995 Act by virtue of section 73B(5) of that Act, the winding up provisions (as so defined) apply ”.

(11) This regulation only applies if the relevant proceedings commenced on or after 6th April 2005 and the scheme has not begun to be wound up before that date.

(12) In paragraph (11) “the relevant proceedings” means the proceedings for the dissolution or annulment of marriage in connection with which the order or provision mentioned in section 28(1) of the 1999 Act that resulted in entitlement to the pension credit in question was made.

Marginal Citations

M3 [S.I. 2000/1054](#); the relevant amending instruments are [S.I. 2000/2691](#) and [2003/1727](#).

Changes to legislation:

There are currently no known outstanding effects for the The Occupational Pension Schemes (Winding up etc.) Regulations 2005, Pension sharing.