

SCHEDULES

SCHEDULE 17

Section 32.

AUTOMATIC TRANSFER OF PENSION BENEFITS ETC.

PART 1

AUTOMATIC TRANSFER OF PENSION BENEFITS

Regulations providing for transfer of cash equivalent of transferable benefits

1.—(1) The Department must make regulations with a view to ensuring that, where a qualifying member of an automatic transfer scheme has transferable benefits under another pension scheme, the cash equivalent of the transferable benefits—

- (a) is transferred to the automatic transfer scheme, and
- (b) is used to provide rights for the member under it.

(2) In this Schedule “automatic transfer scheme” means—

- (a) a work-based pension scheme, other than a scheme of a prescribed description, which is registered under Chapter 2 of Part 4 of the Finance Act 2004 and is a money purchase scheme, or
- (b) a pension scheme of a prescribed description.

(3) In this Schedule “qualifying member”, in relation to an automatic transfer scheme, means an active member of the scheme of a prescribed description.

(4) For the purposes of this Schedule a person has transferable benefits under a pension scheme if—

- (a) the scheme is a transferable benefits scheme,
- (b) the person is a member of the scheme,
- (c) contributions to the scheme by, or on behalf or in respect of, the member have ceased,
- (d) the member has accrued rights to benefits under the scheme rules,
- (e) all of those rights accrued on or after the prescribed date (which may be a date before the coming into operation of this paragraph),
- (f) the cash equivalent of those benefits is less than the prescribed amount (but not nil), and

- (g) any other prescribed conditions are met.
- (5) In this Schedule “transferable benefits scheme” means—
 - (a) a work-based pension scheme, other than a scheme of a prescribed description, which is registered under Chapter 2 of Part 4 of the Finance Act 2004 and is a money purchase scheme, or
 - (b) a pension scheme of a prescribed description.
- (6) In sub-paragraph (4)—
 - (a) the reference to “scheme rules” is to be read in accordance with section 96B of the Pension Schemes Act;
 - (b) “benefits” means—
 - (i) money purchase benefits other than money purchase benefits of a prescribed description, or
 - (ii) benefits of a prescribed description.

*Automatic transfer scheme to find out
whether members have transferable benefits*

- 2.—(1) The regulations must require the trustees or managers of an automatic transfer scheme to take steps to find out whether a qualifying member of the scheme has transferable benefits under another pension scheme.
- (2) The regulations may make provision—
- (a) about when a step is to be taken (for example, within a prescribed period after a person becomes a qualifying member or at prescribed intervals);
 - (b) for the steps to be taken at any particular time to relate to a particular qualifying member, or to some or all qualifying members.

Automatic transfer scheme to request transfer of cash equivalent

- 3.—(1) The regulations must require the trustees or managers of an automatic transfer scheme to give a transfer notice if—
- (a) they find out that a qualifying member of the scheme has transferable benefits under another pension scheme, and
 - (b) any other prescribed conditions are met.
- (2) A “transfer notice” is a notice given to the trustees or managers of the other pension scheme requesting the transfer of the cash equivalent of the transferable benefits to the automatic transfer scheme.
- (3) The conditions that may be prescribed because of sub-paragraph (1)(b) include a condition that the trustees or managers must not give a transfer notice unless the qualifying member consents in accordance with the regulations.

Right to opt out of automatic transfer

4.—(1) If the regulations do not include the condition mentioned in paragraph 3(3), they must ensure that where the duty to give a transfer notice has arisen in relation to transferable benefits of a qualifying member of an automatic transfer scheme, the member can opt out of the transfer in accordance with the regulations.

(2) The regulations must provide that, where the member does opt out—

- (a) the duty to give the transfer notice is not to be complied with, and
- (b) the cash equivalent of the member's transferable benefits is not to be transferred.

Information to be given to qualifying members of automatic transfer schemes

5.—(1) The regulations must require a prescribed person to give information to a qualifying member of an automatic transfer scheme who has transferable benefits under another scheme for the purpose of helping the member to decide whether (as applicable)—

- (a) to consent to the giving of a transfer notice in relation to the transferable benefits, or
- (b) to opt out of the transfer of the cash equivalent of the transferable benefits.

(2) The information to be given—

- (a) must include information about the effect of the regulations, and in particular the member's power to consent or right to opt out (as applicable);
- (b) may include other information, for example information about the schemes.

Transferable benefits scheme to comply with request

6.—(1) The regulations must require the trustees or managers of a pension scheme who receive a transfer notice requesting the transfer of the cash equivalent of a person's transferable benefits to do what is needed to carry out the request.

(2) The regulations may in particular—

- (a) require the trustees or managers of the scheme to take particular steps to carry out the request;
- (b) provide for the discharge, in prescribed circumstances, of any obligation to provide the transferable benefits.

(3) The regulations may provide for circumstances in which the duty to carry out the request does not apply.

*Automatic transfer scheme to use cash
equivalent to provide rights under the scheme*

7.—(1) The regulations must require the trustees or managers of an automatic transfer scheme to whom the cash equivalent of a person's transferable benefits is transferred to use the cash equivalent to provide rights for the person under the scheme.

(2) The regulations may make provision about how that is to be done and in particular about—

- (a) the nature and value of the rights to be provided;
- (b) calculating and verifying the value of the rights to be provided.

Cash equivalents: calculation and verification

8.—(1) The regulations may provide for the manner in which cash equivalents are to be calculated and verified.

(2) The regulations may in particular—

- (a) provide that a cash equivalent is to be increased or reduced in prescribed circumstances;
- (b) make provision about the time by reference to which a cash equivalent is to be calculated for the purposes of a provision of the regulations.

(3) Regulations made because of sub-paragraph (2)(a) may provide for a cash equivalent to be reduced to nil.

Disclosure of information and establishment of database

9.—(1) The regulations must make provision about disclosure of information.

(2) The regulations may in particular require a person to disclose information to another person—

- (a) for the purposes of helping a person to comply with a duty imposed on the person by the regulations or by corresponding regulations made by the Secretary of State under paragraph 9 of Schedule 17 to the Pensions Act 2014, or
- (b) otherwise for the purposes of a provision of the regulations or of corresponding regulations made by the Secretary of State under paragraph 9 of Schedule 17 to the Pensions Act 2014.

(3) The regulations may require the Department or the Regulator to establish and operate a database containing information relating to people who have or had transferable benefits for the purposes of helping the trustees or managers of an automatic transfer scheme to comply with their duties under the regulations.

Compliance

10.—(1) The regulations may make provision with a view to ensuring compliance with any provision of the regulations.

(2) For this purpose the regulations may in particular—

- (a) provide for the Regulator to issue a notice (a “compliance notice”) to a person with a view to ensuring the person’s compliance with a provision of the regulations;
- (b) provide for the Regulator to issue a notice (a “third party compliance notice”) to a person with a view to ensuring another person’s compliance with a provision of the regulations;
- (c) provide for the Regulator to issue a notice (a “penalty notice”) imposing a penalty on a person where the Regulator is of the opinion that the person has failed to comply with a compliance notice or third party compliance notice or has contravened a provision of the regulations;
- (d) provide for the making of a reference to the First-tier Tribunal or Upper Tribunal in respect of the issue of a penalty notice or the amount of a penalty;
- (e) confer other functions on the Regulator.

(3) The regulations may make provision for determining the amount, or the maximum amount, of a penalty in respect of a failure or contravention.

(4) But the amount of a penalty imposed under the regulations in respect of a failure or contravention must not exceed—

- (a) £5,000, in the case of an individual, and
- (b) £50,000, in any other case.

Record keeping

11.—(1) The regulations may require any person—

- (a) to make records;
- (b) to preserve records for a prescribed period;
- (c) to provide records to the Regulator on request.

(2) The regulations may provide that Article 10 of the 1995 Order (civil penalties) applies to a person who fails to comply with those requirements.

Further provision about the regulations

12. The regulations may—

- (a) impose or confer other functions on the trustees or managers of an automatic transfer scheme or transferable benefits scheme;

- (b) confer a discretion on a person.

PART 2

MERGER OF PENSION ACCOUNTS

13.—(1) The Department may by regulations make provision for the purposes of requiring dormant pension accounts of a qualifying member of an automatic transfer scheme to be merged into a current pension account of the member.

(2) The regulations may not require a dormant pension account to be merged unless the accrued rights to benefits to which the account relates would be transferable benefits of the member if—

- (a) all other accrued rights to benefits of the member, and any relevant contributions, were ignored, and
- (b) any other prescribed matter were ignored.

(3) The regulations may in particular—

- (a) make provision for determining into which current pension account (if the member has more than one) a dormant pension account is to be merged;
- (b) provide that the rules of the scheme that are to apply to a merged pension account are those that apply to the current pension account into which a dormant pension account is being merged;
- (c) require the trustees or managers of the scheme to make a transfer of assets representing the accrued rights to benefits to which a dormant pension account relates;
- (d) include provision corresponding or similar to any provision which may be made by regulations under Part 1.

(4) In this paragraph “pension account”, in relation to a member of a scheme, means an account relating to the member’s accrued rights to benefits in respect of a particular period of employment; and a pension account—

- (a) is “dormant” if relevant contributions in relation to the period of employment to which the account relates have ceased; and
- (b) is “current” if such contributions have not ceased.

(5) In this paragraph—

- (a) references to “accrued rights to benefits”, in relation to a member of a scheme, are to accrued rights to benefits under the applicable rules (within the meaning given by paragraph 1(6));
- (b) “employment” has the prescribed meaning;
- (c) “relevant contributions”, in relation to a member of a scheme, means contributions to the scheme by, or on behalf or in respect of, the member.

PART 3
INTERPRETATION ETC.

Interpretation etc.

14.—(1) In this Schedule—

“active member”—

- (a) in relation to an occupational pension scheme, has the meaning given by Article 121(1) of the 1995 Order, and
- (b) in relation to a personal pension scheme, means a member of the scheme in respect of whom contributions are being paid into the scheme;

“automatic transfer scheme” has the meaning given by paragraph 1(2);

“managers”, in relation to a pension scheme (other than a scheme established under a trust), means the persons responsible for the management of the scheme;

“money purchase benefits” has the meaning given by section 176(1) of the Pension Schemes Act;

“money purchase scheme” has the meaning given by section 176(1) of the Pension Schemes Act;

“occupational pension scheme” has the meaning given by section 1 of the Pension Schemes Act;

“pension scheme” means—

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

“personal pension scheme” has the meaning given by section 1 of the Pension Schemes Act;

“prescribed” means prescribed by regulations made by the Department;

“qualifying member” has the meaning given by paragraph 1(3);

“the Regulator” means the Pensions Regulator;

“transferable benefits”, and references to a person having transferable benefits, are to be read in accordance with paragraph 1(4);

“transferable benefits scheme” has the meaning given by paragraph 1(5);

“transfer notice” means a notice given under regulations made because of paragraph 3;

“work-based pension scheme” means—

- (a) an occupational pension scheme,

- (b) a personal pension scheme where direct payment arrangements (within the meaning of section 107A of the Pension Schemes Act) exist in respect of one or more members of the scheme who are workers, or
- (c) a personal pension scheme which is or has been registered under Article 4 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (stakeholder pension schemes);

“worker” means a person—

- (a) who is a worker for the purposes of Part 1 of the Pensions (No. 2) Act, or
- (b) to whom a provision of Part 1 of that Act applies as if the person were a worker because of a provision of Chapter 7 of that Part;

but for the purposes of paragraph (b), ignore section 74 of that Act.

(2) The Department may by regulations make provision about when contributions to a pension scheme are to be regarded as having ceased for the purposes of paragraph 1(4)(c) or 13(4).

Crown application

15.—(1) This Schedule applies to a pension scheme managed by or on behalf of the Crown as it applies to other pension schemes.

(2) Accordingly, references in this Schedule to a person in the person’s capacity as a trustee or manager of a pension scheme include the Crown, or a person acting on behalf of the Crown, in that capacity.

(3) This Schedule applies to persons employed by or under the Crown as it applies to persons employed by a private person.

Overriding provision

16.—(1) Regulations under this Schedule may provide that specified provisions override any provision of an automatic transfer scheme or transferable benefits scheme to the extent that it conflicts with them.

(2) A “specified provision” is a provision of regulations under this Schedule specified in the regulations for the purposes of this paragraph.

Other provision relating to regulations under this Schedule

17.—(1) Regulations under this Schedule may amend or otherwise modify any statutory provision (whenever passed or made).

(2) Regulations made because of sub-paragraph (1) may in particular amend section 170(1) of the Pension Schemes Act (levies towards certain expenditure) so as to include expenditure of the Department or the Commissioners for Her Majesty’s

Revenue and Customs under the regulations or expenditure of the Secretary of State or the Commissioners for Her Majesty's Revenue and Customs under regulations under paragraph 9(3) of Schedule 17 to the Pensions Act 2014.

18. Before making any regulations under this Schedule, the Department must consult such persons as it considers appropriate, but that duty to consult does not apply to regulations making only provision corresponding to provision contained in regulations made by the Secretary of State in relation to Great Britain.

Amendments

- 19.**—(1) The Pension Schemes Act is amended as follows.
- (2) In section 90(2A) (right to cash equivalent)—
- (a) in paragraph (a), after sub-paragraph (vii) insert—
- “(viii) regulations made under Schedule 17 to the Pensions Act (Northern Ireland) 2015.”;
- (b) in paragraph (b), after sub-paragraph (v) insert—
- “(vi) regulations made under paragraph 17 of Schedule 17 to the Pensions Act (Northern Ireland) 2015.”.
- (3) In section 96B(2) (meaning of “scheme rules”: occupational pension schemes)—
- (a) in paragraph (a), after sub-paragraph (x) insert—
- “(xi) regulations made under Schedule 17 to the Pensions Act (Northern Ireland) 2015.”;
- (b) in paragraph (b), after sub-paragraph (vii) insert—
- “(viii) regulations made under paragraph 16 of Schedule 17 to the Pensions Act (Northern Ireland) 2015.”.
- (4) In section 97AI(7) (rights to cash transfer sum and contribution refund: further provisions)—
- (a) in paragraph (a), after sub-paragraph (ix) insert—
- “(x) regulations made under Schedule 17 to the Pensions Act (Northern Ireland) 2015.”;
- (b) in paragraph (b), after sub-paragraph (vii) insert—
- “(viii) regulations made under paragraph 17 of Schedule 17 to the Pensions Act (Northern Ireland) 2015.”.
- 20.** In Article 233 of the 2005 Order (no indemnification for fines or civil penalties), in paragraph (1)(b)—
- (a) for “or section” substitute “, section”;

- (b) after “2008” insert “or paragraph 10 of Schedule 17 to the Pensions Act (Northern Ireland) 2015”.