

# WELFARE REFORM AND PENSIONS ACT 1999

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## EXPLANATORY NOTES

### COMMENTARY

#### *Supplementary*

#### *Chapter II – Sharing of State Scheme Rights*

#### *Schedule 5: Pension credits: mode of discharge*

#### **Other pension arrangements**

**Paragraph 4** sets out how liability in respect of a pension credit derived from a policy of insurance or annuity contract is to be discharged.

*Sub-paragraph (1)* sets out the pension arrangements to which this paragraph applies.

*Sub-paragraph (2)* mirrors the provisions in paragraph 1(3). As in paragraph 1(3), we intend to use the regulation-making power in paragraph (c) where the former spouse does not provide details of an alternative scheme or arrangement to which the arrangement can make a payment for the purpose of discharging its liability for the pension credit. A qualifying arrangement is defined in paragraph 6 and disqualified destinations are dealt with in paragraph 7.

*Sub-paragraph (3)* provides that the pension arrangement may discharge its liability for a pension credit with the consent of the former spouse, by entering into a policy of insurance or an annuity contract with the former spouse, provided that it is not disqualified as a destination under paragraph 7.

*Sub-paragraph (4)* enables a pension arrangement to discharge its liability for a pension credit by providing an annuity for the former spouse in prescribed circumstances. We intend to use this regulation-making power to deal with the situation where the pension credit is derived from an annuity in payment to the member.

**Paragraph 5:** a pension scheme or arrangement will not be taken to have conferred appropriate rights within the scheme (an internal transfer) unless the conditions set out in (a) and (b) are satisfied. We intend to use the regulation-making power in (b) to ensure that in calculating benefits in respect of a pension credit, the actuary should use methods and assumptions which are consistent with the methods and assumptions used for calculating outgoing cash equivalents from that scheme. Appropriate adjustment would be permitted, in respect of incoming transfers, to take account of expected salary increases in cases where “added years” are to be credited for a former spouse who is an active member of the scheme.

**Paragraph 6:** we intend to use the regulation-making power in sub-paragraph (2)(b) to prescribe requirements with which insurance companies must comply that are broadly consistent with those in Part II of the Occupational Pension Schemes (Discharge of Liability) Regulations 1997.

**Paragraph 7** sets out the circumstances in which a pension arrangement will be disqualified as a destination for a pension credit.

*Sub-paragraph (1)*: the effect of this sub-paragraph is that where a pension credit is derived from a tax-approved scheme or arrangement, then the scheme receiving the pension credit must also be tax-approved to qualify as a destination for it.

*Sub-paragraph (2)*: we intend to use the regulation-making power to provide that only contracted-out occupational schemes, appropriate personal pension schemes and appropriate policies of insurance or annuity contracts will be permitted as destinations for pension credit rights derived from contracted-out employment.

*Sub-paragraph (3)*: we intend to use the regulation-making power to ensure that in calculating benefits in respect of a pension credit, the scheme actuary should use methods and assumptions which are consistent with the methods and assumptions used for calculating outgoing cash equivalents from that scheme.

*Sub-paragraph (4)*: we intend to use the regulation-making power to determine the terms of the annuity contract or insurance policy which will establish it as a suitable destination for a pension credit.

**Paragraph 8** provides for the amount of pension credit to be reduced in relation to the discharge of liability for a pension credit by means of an external transfer where a scheme subject to the minimum funding requirement is underfunded on the valuation day.

*Sub-paragraphs (1) and (2)*: we intend to use the regulation-making power in sub-paragraph (1)(d) to enable the scheme to offer the former spouse a reduced pension credit in circumstances where the former spouse has elected to take a transfer to another scheme or arrangement, having refused the offer of pension credit benefit (without reduction) in the member's scheme. We intend to use the power in sub-paragraph (2) to prescribe that a scheme will be treated as underfunded on the valuation day if the latest actuarial valuation obtained in accordance with section 57 of the Pensions Act 1995 (which relates to the valuation of assets and liabilities for the purposes of the minimum funding requirement) shows the scheme as having insufficient assets to fully meet its liabilities.

The intention is that the provisions will broadly reflect those set out in regulation 8(4) of the Occupational Pension Schemes (Transfer Values) Regulations 1996. For example, if the latest actuarial valuation shows that the scheme was 20% underfunded, then the amount of the pension credit as calculated on the valuation day may be reduced by the same percentage.

*Sub-paragraph (3)* defines the valuation day.

**Paragraph 9** is designed to protect the pension arrangement where there is a time lag between the date on which the member's shareable rights under the arrangement become subject to a pension debit and the date on which the arrangement learns about it. We intend to use the regulation-making power to enable an arrangement to reduce the pension debit by the amount necessary to ensure that it does not suffer a financial loss in respect of a bona fide payment made in ignorance of the pension credit.

**Paragraph 10** provides a regulation-making power for increasing the amount of a pension credit where there has been a delay in discharging liability in respect of a pension credit in a case where liability falls to be discharged by means of a transfer payment.

occupational schemes: if a scheme fails without reasonable excuse to make the transfer payment on time then we intend that it should be required to recalculate the cash equivalent as at the date it actually makes the payment and pay that amount or, if higher, the original cash equivalent increased by interest at an annual rate of 1% above base rate between the valuation date and the implementation date.

*These notes refer to the Welfare Reform and Pensions Act 1999  
(c.30) which received Royal Assent on 11 November 1999*

personal pension schemes: if the scheme fails without reasonable excuse to make the transfer payment on time, we intend that the member's cash equivalent should be increased by the interest payable on it, at the same rate as that payable for the time being on judgement debts by virtue of section 17 of the Judgement Act 1838, between the date the order or agreement took effect and the date the scheme actually makes the payment, or if it is greater, the cash equivalent recalculated as at the date it actually makes the payment.

**Paragraph 13:** we intend to use this regulation-making power to refer to guidance published by the Institute of Actuaries and Faculty of Actuaries.