

2005 No. 992

PENSIONS

The Occupational and Personal Pension Schemes (Pension Liberation) Regulations 2005

<i>Made</i> - - - -	<i>30th March 2005</i>
<i>Laid before Parliament</i>	<i>6th April 2005</i>
<i>Coming into force</i> - -	<i>27th April 2005</i>

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 19(7), 21(4), 315(2) and (5) and 318(1) of the Pensions Act 2004(a), and of all other powers enabling him in that behalf, by this instrument, which is made before the end of the period of six months beginning with the coming into force of the provisions of that Act by virtue of which it is made(b), makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational and Personal Pension Schemes (Pension Liberation) Regulations 2005 and shall come into force on 27th April 2005.

(2) In these Regulations—

“the 1993 Act” means the Pension Schemes Act 1993(c); and

“the 2004 Act” means the Pensions Act 2004.

(3) In these Regulations, unless otherwise specified, any reference to a numbered section is a reference to the section bearing that number in the 1993 Act.

Modification of references to “transfer” in the 1993 Act

2.—(1) In their application to cases where an order is made under section 19(6) or 21(2)(b) of the 2004 Act (pension liberation: court’s power to order restitution and restraining orders), the provisions referred to in this regulation and in regulation 3 shall have effect with the modifications there specified.

(2) The reference to “a transfer payment” in the relevant provisions shall be modified so as to have effect as though that reference included a reference to—

(a) property or money transferred by virtue of an order made by a court under section 19(4) of the 2004 Act and applied in accordance with directions contained in an order made by virtue of section 19(6) of that Act; or

(a) 2004 c.35; section 318(1) is cited because of the meaning there given to “modifications”, “prescribed”, and “regulations”.
(b) See section 317 of the Pensions Act 2004 which provides that the Secretary of State must consult such persons as he considers appropriate before making regulations by virtue of the provisions of that Act (other than Part 8). This duty does not apply where regulations are made before the end of six months beginning with the coming into force of the provisions of that Act by virtue of which the regulations are made.
(c) 1993 c.48.

(b) money paid by virtue of an order made by the Regulator under section 21(2)(a) of the 2004 Act and applied in accordance with directions contained in an order made by virtue of section 21(2)(b) of that Act.

(3) The “relevant provisions” referred to in paragraph (2) are sections 10, 68A(a) and 71 (protected rights and money purchase benefits; safeguarded rights; basic principle as to short service benefit), and any regulations made under any of those sections.

(4) Paragraph (6) shall cease to have effect when paragraph 31 of Schedule 12 to the 2004 Act (consequential amendment to the 1993 Act) comes into force.

(5) Paragraph (7) shall have effect from the coming into force of paragraph 31 of Schedule 12 to the 2004 Act.

(6) In relation to the reference to “transfer credits” in sections 56, 73(b) and 75 (provisions supplementary to section 55; form of short service benefit and its alternatives; credits), and any regulations made under any of those sections, the definition of “transfer credits” in section 181(1) shall be modified so as to apply as if there were added at the end—

“or by reference to a transfer or payment made by virtue of an order under section 19(4) or 21(2)(a) of the Pensions Act 2004 (c.35) which the trustees or managers have been directed to apply, pro rata, as though it were a transfer of his accrued rights from another scheme;”.

(7) In relation to the reference to “transfer credits” in sections 56, 73 and 75, and any regulations made under any of those sections, the definition of “transfer credits” in section 181(1) shall be modified so as to apply as if there were added at the end—

“or

(c) a transfer or payment made by virtue of an order under section 19(4) or 21(2)(a) of the Pensions Act 2004 (c.35) which the trustees or managers have been directed to apply, pro rata, as though it were a transfer of his accrued rights from another scheme;”.

(8) The references in subsections (1)(a)(i) and (b) and (3) of section 179 (linked qualifying service), and any regulations made under that section, to a transfer of rights accrued under one scheme to a second scheme shall be modified so as to have effect as if they included a transfer or payment made by virtue of an order under section 19(4) or 21(2)(a) of the 2004 Act which the trustees or managers of the second scheme have been directed to apply, pro rata, as though it were a transfer of accrued rights from the first scheme.

(9) From the coming into force of paragraph 30 of Schedule 12 to the 2004 Act (consequential amendment to the 1993 Act), the modification of section 179, and any regulations made under that section, made in paragraph (8) above shall also apply to references in subsection (1)(a)(i) and (iii) and (b) of that section, and in any such regulations, to a transfer payment made in respect of accrued rights to the second scheme or to the trustees or managers of that scheme, and to a cash equivalent or cash transfer sum paid in respect of the member to the trustees or managers of the second scheme.

Modification of statutory discharges in the 1993 Act

3.—(1) Section 99(1) (trustees’ duties after exercise of option - discharge) shall be modified so as to have effect as if there were inserted after paragraph (b)—

(a) Section 10 was amended by section 151 of, and Schedule 5 to, the Pensions Act 1995 (c.26), section 1(1) of, and paragraph 36 of Schedule 1 to, the Social Security Contributions (Transfer of Functions, etc) Act 1999 (c.2), section 32(1) and (2) of the Welfare Reform and Pensions Act 1999 (c.30), and by section 456 of, and paragraphs 1 and 22(1) and (2) of Schedule 11 to, the Proceeds of Crime Act 2002 (c.29); section 68A was inserted by section 36 of the Welfare Reform and Pensions Act 1999.

(b) Section 56 was amended by sections 151 and 177 of, and paragraph 51 of Schedule 5 and Part 3 of Schedule 7 to, the Pensions Act 1995, section 1(1) of, and paragraph 54 of Schedule 1 to, the Social Security Contributions (Transfer of Functions, etc) Act 1999, and section 85 of, and Part 3(11) of Schedule 9 to, the Child Support, Pensions and Social Security Act 2000 (c.19); section 73 was amended by sections 18 and 88 of, and paragraph 3(2)(a) of Schedule 2 and Part 1 of Schedule 13 to, the Welfare Reform and Pensions Act 1999.

“and

- (c) the trustees or managers of the scheme have taken all reasonable steps to ensure that, where the member requires them to use the cash equivalent in one of the ways specified in section 95(2)(a) or (b) or, as the case may be, section 95(3)(a) or (b) (ways of taking right to cash equivalent), the occupational pension scheme or, as the case may be, the personal pension scheme to which the payment is to be made is a scheme whose trustees or managers are acting in good faith in relation to the scheme.”

(2) Section 101M(a) (effect of transfer on trustees’ duties) shall be modified so as to have effect as if the reference to compliance with a transfer notice included a duty to take all reasonable steps to ensure that where such compliance involved making a payment to an eligible scheme as defined in section 101F(6) (power to give transfer notice – meaning of “eligible scheme”), that scheme is a scheme whose trustees or managers are acting in good faith in relation to the scheme.

(3) From the coming into force of section 264 of the 2004 Act(b) (early leavers: cash transfer sums and contribution refunds), section 101AG(3) (duties of trustees or managers following exercise of right) shall be modified so as to have effect as if after the words “carry out that requirement” there were inserted the words “and have taken all reasonable steps to ensure that where the member has opted for one of the permitted ways of using the cash transfer sum set out in section 101AE(2)(a) or (b) (permitted ways of using cash transfer sum), that scheme to whose trustees or managers the payment is made is a scheme whose trustees or managers are acting in good faith in relation to the scheme”.

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

Malcolm Wicks
Minister of State,
Department for Work and Pensions

30th March 2005

(a) Sections 101F and 101M were inserted by section 37 of the Welfare Reform and Pensions Act 1999.
(b) Section 264 inserts sections 101AA to 101AI into the Pension Schemes Act 1993.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to payments made into an occupational or personal pension scheme by reason of a restitution order made by a court under section 19 of the Pensions Act 2004 (c.35) (“the Act”) or of a repatriation order made by the Pensions Regulator under section 21 of the Act.

Regulation 2 modifies certain references in the Pension Schemes Act 1993 (c.48) (“the 1993 Act”) (and in regulations made under powers in that Act) to “a transfer payment” and to “transfer credits” so that those terms apply appropriately to payments made to schemes under orders made under section 19 or 21 of the Act.

Regulation 3 modifies the statutory discharges given to trustees or managers of schemes in the 1993 Act so that when an order under section 19 or 21 is made, then the trustees or managers shall have the benefit of those discharges if they have met the duty specified.

As these Regulations are made before the expiry of the period of six months beginning with the coming into force of the provisions of the Act by virtue of which they are made, the requirement for the Secretary of State to consult such persons as he considers appropriate does not apply.

A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

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