

The draft Personal Pension Schemes (Transfer Payments) Regulations 2000

The Commissioners of Inland Revenue, in exercise of the powers conferred on them by section 638(2) and (7A) of the Income and Corporation Taxes Act 1988^(a), hereby make the following Regulations:

PART I INTRODUCTORY

Citation and commencement

1. These Regulations may be cited as the Personal Pension Schemes (Transfer Payments) Regulations 2000 and shall come into force on 2000.

Interpretation

2. In these Regulations, unless the context otherwise requires -

“administrator” -

(a) in relation to a retirement benefits scheme has the meaning given by section 611AA of the Taxes Act^(b) and, in relation to a scheme which secures relevant benefits falling within section 591(2A) of the Taxes Act^(c) by means of an annuity contract, includes the insurance company with which the contract is made; and

(b) in relation to a personal pension scheme means the person referred to in section 638(1) of the Taxes Act;

“approved retirement benefits scheme” means a retirement benefits scheme approved by the Board for the purposes of Chapter I of Part XIV;

“the Board” means the Commissioners of Inland Revenue;

^(a) 1988 c.1.

^(b) Section 611AA was inserted by section 103 of the Finance Act 1994 (c.9).

^(c) Section 591(2A) was inserted by section 107(3) of the Finance Act 1994.

“Chapter I” means Chapter I of Part XIV;

“controlling director” means a director within the meaning of section 612(1) of the Taxes Act to whom subsection (5)(b) of section 417 of that Act (read with subsections (3), (4) and (6) of that section^(a)) applies;

“dependant” and “surviving spouse” have the respective meanings, and shall be determined at the time, given by section 636(2) of the Taxes Act;

“Part XIV” means Part XIV of the Taxes Act;

“pension credit” means a credit under section 29(1)(b) of the 1999 Act or Article 26(1)(b) of the 1999 Order, “transferee” means the person who becomes entitled to the pension credit under either of those provisions, and “pension debit” means a debit under section 29(1)(a) of that Act or Article 26(1)(a) of that Order;

“pension date” has the meaning given by section 630(1) of the Taxes Act;

“pension sharing order or provision” means any such order or provision as is mentioned in section 28(1) of the 1999 Act or Article 25(1) of the 1999 Order;

“personal pension scheme” means a personal pension scheme approved by the Board for the purposes of Chapter IV of Part XIV;

“personal pension protected rights premium” means a premium payable under section 55(1) of the Pension Schemes Act 1993 or section 51(6)(d) of the Pension Schemes (Northern Ireland) Act 1993;

“protected rights” shall be construed in accordance with section 10 of the Pension Schemes Act 1993 and section 6 of the Pension Schemes (Northern Ireland) Act 1993;

“relevant statutory scheme” has the meaning given by Section 611A(1) of the Taxes Act;

“remuneration” shall be construed in accordance with section 612(1) of the Taxes Act;

“retirement annuity contract” means a retirement annuity contract approved by the Board under Chapter III of Part XIV, and “trust scheme” means a trust scheme approved by the Board under that Chapter;

“the 1999 Act” means the Welfare Reform and Pensions Act 1999;

“the 1999 Order” means the Welfare Reform and Pensions (Northern Ireland) Order 1999;

“the certificating requirements” means any requirement to give a lump sum certificate -

^(a) Subsection (3) was amended by Schedule 17 to the Finance Act 1995 (c.4).

- (a) under regulation 4, 5 or 12,
- (b) under the Personal Pension Schemes (Transfer Payments) Regulations 1988, or
- (c) under the rules of a scheme, fund or retirement annuity contract making a transfer payment to a personal pension scheme.

“the Taxes Act” means the Income and Corporation Taxes Act 1988;

“transfer payment” in regulations 4 to 6 and 11 includes a payment under paragraph 1(3) of Schedule 5 to the 1999 Act or under paragraph 1(3) of Schedule 5 to the 1999 Order;

“transfer request” means a request in writing in accordance with regulation 3(1).

PART II REQUIREMENTS AS TO THE MAKING OF TRANSFER PAYMENTS

Basic requirements

3. (1) Subject to paragraph (2), where the administrator of a personal pension scheme is requested so to do in writing by an individual who is a member of the scheme, he shall make a transfer payment from the scheme to -

- (a) another personal pension scheme; or
- (b) an approved retirement benefits scheme of which the individual is an existing scheme member (otherwise than in relation to the transfer payment); or
- (c) a relevant statutory scheme of which the individual is an existing scheme member (otherwise than in relation to the transfer payment).

(2) The transfer payment shall, in respect of arrangements made by the individual in accordance with the scheme which are (wholly or partly) the subject of the transfer request, comprise the whole of the accumulated funds held in connection with those arrangements except that, where the fund -

- (a) includes protected rights, or
- (b) has been, or will be, used to pay a personal pension protected rights premium,

the amount of the funds which represents those rights or has been, or will be, so used may be excluded from the transfer payment.

(3) Before making a transfer payment the administrator shall take all reasonable steps to ensure that the payment is being made to a scheme referred to in paragraph (1)(a) to (c).

Transfer payments from one personal pension scheme to another – additional requirement to hand over a lump sum certificate where any of the payments originated from certain schemes mentioned in Chapter I

4. (1) Subject to paragraph (2), the administrator of a personal pension scheme (“the paying scheme”) from which a transfer payment is made in the circumstances described in paragraph (3) shall, on the making of the payment, give the certificate referred to in paragraph (3)(b) to the administrator of the personal pension scheme to which the payment is made (“the receiving scheme”).

(2) Where, in accordance with regulation 3(2) –

- (a) an amount representing or in respect of protected rights has been excluded from the transfer payment, or
- (b) only one (or some) of the arrangements made by the individual in accordance with the scheme is being transferred,

the administrator of the paying scheme shall apportion any amount shown on the certificate on a proportionate basis, and shall prepare and sign replacement certificates in respect of each part of the funds (including in a case where the amount is nil), and shall give the replacement certificate relating to the funds transferred to the administrator of the receiving scheme.

(3) The circumstances described in this paragraph are where the transfer payment is made from the paying scheme to another personal pension scheme and -

- (a) the payment or part of the payment had its origin in a transfer payment (“the original payment”) from an approved retirement benefits scheme or a relevant statutory scheme, and
- (b) the administrator of the paying scheme holds a certificate which was given in relation to the original payment or any other event showing either -
 - (i) that an amount is payable out of that payment by way of lump sum to the individual in respect of whom the transfer payment will be made, on his pension date, or
 - (ii) that no amount is payable out of that payment by way of lump sum to that individual on his pension date.

Transfer payments from a personal pension scheme to certain schemes mentioned in Chapter I – additional requirement to hand over a “nil” lump sum certificate where any of the payments originated from such schemes

5. (1) Subject to paragraph (2), the administrator of a personal pension scheme (“the paying scheme”) from which a transfer payment is made in the circumstances described in paragraph (3) shall, on the making of the payment, give the certificate referred to in paragraph (3)(b) to the administrator of the approved retirement benefits scheme or relevant statutory scheme to which the payment is made (“the receiving scheme”).

(2) Where, in accordance with regulation 3(2) –

- (a) an amount representing or in respect of protected rights has been excluded from the transfer payment, or
- (b) only one (or some) of the arrangements made by the individual in accordance with the scheme is being transferred,

the administrator of the paying scheme shall prepare and sign replacement certificates, each in the amount of nil, in respect of each part of the funds, and shall give the replacement certificate relating to the funds transferred to the administrator of the receiving scheme.

(3) The circumstances described in this paragraph are where the transfer payment is made from the paying scheme to an approved retirement benefits scheme or a relevant statutory scheme and -

- (a) the payment or part of the payment had its origin in a transfer payment (“the original payment”) from an approved retirement benefits scheme or relevant statutory scheme, and
- (b) the administrator of the paying scheme holds a certificate which was given in relation to the original payment or any other event showing that no amount may be paid out of that payment by way of lump sum to the individual in respect of whom the transfer payment will be made.

PART III REQUIREMENTS AS TO THE ACCEPTANCE OF TRANSFER PAYMENTS

Basic requirement

6. Subject to regulations 3 and 7, a personal pension scheme shall accept a transfer payment from -

- (a) another personal pension scheme;
- (b) an approved retirement benefits scheme;
- (c) a relevant statutory scheme;
- (d) a retirement annuity contract or trust scheme;
- (e) a fund to which section 608 of the Taxes Act applies.

Prohibition of acceptance of certain transfer payments from certain schemes mentioned in Chapter I unless the administrator has obtained a certificate as to the value of the proposed transfer payment

7. (1) A personal pension scheme shall not accept a transfer payment from -

- (a) an approved retirement benefits scheme, or

- (b) a relevant statutory scheme,

(“the paying scheme”) in the circumstances described in paragraph (2) unless the administrator of the personal pension scheme has obtained the certificate referred to in paragraph (3) from the administrator of the paying scheme.

(2) The circumstances described in this paragraph are circumstances where, in relation to any employment to which the proposed transfer payment, or any part of it, relates -

- (a) the individual is, or has been at any time during the period of ten years prior to the date on which the transfer request is made, a controlling director, or
- (b) the individual’s annual remuneration is, or was, for any year of assessment falling (wholly or partly) during the period of six years prior to the date on which the transfer request is made, more than one half of the allowable maximum (within the meaning of section 640A(2)^(a) of the Taxes Act) for that year of assessment.

(3) The certificate referred to in this paragraph is a certificate, signed by the administrator of the paying scheme, which shows that the proposed transfer payment does not exceed the maximum amount which may be transferred from an approved retirement benefits scheme or relevant statutory scheme to a personal pension scheme calculated in accordance with Appendix [] of “Occupational Pension Schemes Practice Notes (IR 12)” published by the Pension Schemes Office on behalf of the Board [on date].

PART IV REQUIREMENTS AS TO THE APPLICATION OF TRANSFER PAYMENTS

Basic requirements

8. Subject to regulations 9 to 13, any transfer payment accepted by a personal pension scheme in accordance with these Regulations shall only be used for providing benefits listed in section 633(1) of the Taxes Act^(b) or for making a further transfer payment subject to the provisions of these Regulations.

Application of transfer payments to a personal pension scheme from or originating from certain schemes mentioned in Chapter I for the provision of “death benefits”

9. (1) Where a personal pension scheme has in the circumstances described in regulation 7(2) (omitting the word “proposed”) accepted a transfer payment from -

- (a) an approved retirement benefits scheme, or
- (b) a relevant statutory scheme, or

^(a) Section 640A was inserted by paragraph 4 of Schedule 7 to the Finance Act 1989.

^(b) Section 633(1) was amended by Schedule 11 of the Finance Act 1995 and section 172 of the Finance Act 1996 (c.8).

- (c) another personal pension scheme in circumstances where the transfer payment, or part of it, had its origin in a transfer from an approved retirement benefits scheme or a relevant statutory scheme,

the accumulated value arising from that transfer payment or, as the case may be, that part shall be applied after the death of the individual in accordance with paragraph (2) or (3), in the events therein described.

(2) Where, in relation to an arrangement under which the transfer payment falls to be held, the individual has died before any benefits have been paid to him under that arrangement, leaving a surviving spouse or a dependant, the accumulated value from that arrangement shall be applied -

- (a) wholly to secure the payment to the surviving spouse or dependant of an annuity which satisfies the conditions contained in section 636 of the Taxes Act^(a), or
- (b) to secure the payment of income withdrawals by the surviving spouse or dependant with respect to which the conditions in section 636A^(b) of the Taxes Act are satisfied and, as to any amount not used for that purpose, to secure the payment to the surviving spouse or dependant of such an annuity as is referred to in sub-paragraph (a), or
- (c) as to not more than 25 per cent. to secure the payment of a lump sum to the surviving spouse or dependant and as to the balance to secure the payment to the surviving spouse or dependant of such an annuity as is referred to in sub-paragraph (a), or of such income withdrawals and annuity as are referred to in sub-paragraph (b).

(3) Where the administrator of a personal pension scheme, having taking all reasonable steps, is satisfied that there is no surviving spouse or dependant to whom an annuity referred to in paragraph (2)(a) or income withdrawals referred to in paragraph (2)(b) can be paid, the whole of the accumulated value may be applied to secure the payment of a lump sum.

Application of transfer payments to a personal pension scheme from or originating from certain schemes mentioned in Chapter I for the provision of lump sums to the member

10. (1) Where in the circumstances described in regulation 7(2) (omitting the word “proposed”) a personal pension scheme (“the receiving scheme”) accepts a transfer payment from -

- (a) an approved retirement benefits scheme, or
- (b) a relevant statutory scheme, or

^(a) Section 636 was amended by Schedule 11 to the Finance Act 1995.
^(b)

- (c) another personal pension scheme in circumstances where the transfer payment or part of it had its origin in a transfer payment from an approved retirement benefits scheme or a relevant statutory scheme,

(“the paying scheme”) the provisions of paragraph (2) shall apply.

(2) Where the provisions of this paragraph apply -

- (a) no amount may be paid to the individual in respect of whom the transfer payment is made by way of lump sum on his pension date, out of the transfer payment or, as the case may be, the part of that payment unless the administrator of the receiving scheme has obtained from the administrator of the paying scheme the certificate required by the certificating requirements; and
- (b) the amount which may be so paid by way of lump sum may not exceed the aggregate of the amount shown in any such certificate (“the basic amount”) and any amount by which the basic amount has been enhanced at the date of payment.

(3) For the purposes of paragraph (2) the amount by which the basic amount may be enhanced is the result of applying to the basic amount the percentage increase in the retail prices index between -

- (a) the month in which the transfer payment was received in connection with which the certificate referred to in that paragraph was given, and
- (b) the last month for which that index had been published at the date of the payment by way of lump sum.

(4) The reference in paragraph (3) to the retail prices index shall be construed in accordance with section 833(2) of the Taxes Act^(a) as if it were a reference in the Income Tax Acts.

Application of transfer payments to a personal pension scheme where a “nil” lump sum certificate is held

11. Where -

- (a) a personal pension scheme has accepted a transfer payment in accordance with regulation 6, and
- (b) the administrator of the scheme holds a certificate given under any of the certificating requirements with regard to the transfer payment or any other event, showing that no amount is payable out of that payment by way of lump sum to the individual in respect of whom the transfer payment was made on his pension date,

no such lump sum may be paid out of the accumulated value arising from that transfer payment.

^(a) Section 833(2) was amended by S.I. 1989/992.

Requirements where there is a pension sharing order or provision

12. (1) Where –

- (a) a transfer payment has been accepted by a personal pension scheme in the circumstances described in regulation 4(3) (omitting sub-paragraph (b)(ii) and the word “either” preceding sub-paragraph (b)(i)), and
- (b) a pension sharing order or provision is subsequently made against the individual in respect of whom the payment was made,

the administrator of the receiving scheme shall recalculate the amount shown on the certificate referred to in regulation 4(2) or (3)(b), according to any debit to which the individual’s rights under the scheme become subject by virtue of that order or provision, and shall prepare and sign a replacement certificate in respect of the individual’s rights remaining after the reduction referred to in section 29 of the 1999 Act or Article 26 of the 1999 Order has taken place.

(2) Where –

- (a) a transfer payment has been accepted by a personal pension scheme in the circumstances described in regulation 4(3) (omitting sub-paragraph (b)(i) and the word “either” which precedes it), and
- (b) a pension sharing order or provision is subsequently made against the individual in respect of whom the payment was made,

the administrator of the receiving scheme shall prepare and sign a certificate in respect of the pension credit to which the transferee becomes entitled, showing that no amount may be paid out of the original payment by way of lump sum to the transferee.

(3) Where, after the date which is a member’s pension date in relation to the arrangements in question, a pension sharing order or provision is made against that member, the administrator of the scheme shall prepare and sign a certificate in respect of the pension credit to which the transferee becomes entitled, showing that no amount may be paid out of the pension credit by way of lump sum to the transferee.

PART V EXCEPTIONS TO SECTION 638(7A) OF THE TAXES ACT AND SUPPLEMENTAL

Exceptions to section 638(7A) of the Taxes Act

13. (1) Paragraphs (2) and (3) prescribe situations which fall within the exception in section 638(7A) of the Taxes Act with regard to the making of transfer payments.

(2) The first situation is where -

- (a) the transfer payment is from the scheme (“the paying scheme”) to another personal pension scheme (“the receiving scheme”);
- (b) income withdrawals are being made by the member from the paying scheme with respect to which the conditions in section 634A of the Taxes Act are satisfied, and the period of deferral of the purchase of an annuity has not ended;
- (c) the transfer payment comprises the whole of the funds held under any arrangement which is the subject of the transfer payment;
- (d) the arrangements made in accordance with the receiving scheme (“the new arrangements”) were set up by the member for the purpose of accepting the transfer payment, and prohibit the acceptance of -
 - (i) contributions, or
 - (ii) further transfer payments which do not comply with the conditions in sub-paragraphs (b), (c), and (e);
- (e) under the new arrangements the member elects to defer the purchase of such an annuity as is mentioned in section 634 of the Taxes Act, and to make income withdrawals as mentioned in sub-paragraph (b), and that election takes effect simultaneously with the transfer payment; and
- (f) no benefit referred to in section 633(1)(b) or (d) of the Taxes Act is payable under the new arrangements.

(3) The second situation is where -

- (a) the transfer payment is from the paying scheme to another personal pension scheme (“the receiving scheme”);
- (b) the member referred to in section 634 of the Taxes Act (“the original member”) has died;
- (c) a surviving spouse or dependant referred to in section 636 of the Taxes Act is making income withdrawals from the paying scheme with respect to which the conditions in section 636A of the Taxes Act are satisfied, and the period of deferral of the purchase of an annuity has not ended;
- (d) the arrangements made in accordance with the receiving scheme by the surviving spouse or defendant (“the substitute member”) were set up for the purpose of accepting the transfer payment, and prohibit the acceptance of -
 - (i) contributions, or
 - (ii) further transfer payments which do not comply with the conditions in sub-paragraphs (b), (c) and (e) to (i);

- (e) under the arrangements referred to in sub-paragraph (d) (“the new arrangements”) the substitute member elects to defer the purchase of an annuity and to make income withdrawals with respect to which the conditions in section 634A of the Taxes Act are satisfied;
- (f) the income withdrawals referred to in sub-paragraph (e) cannot be made after the original member would have attained the age of 75 or, if earlier, after the substitute member attains that age;
- (g) the election takes effect simultaneously with the transfer payment;
- (h) any benefit under the new arrangements corresponds to a benefit which would have been payable to the same person under the paying scheme (without having regard to the description of that or any other person in the new arrangements); and
- (i) the conditions in paragraph (2)(c) and (f) are satisfied.

Revocations

14. (1) The Personal Pension Schemes (Transfer Payments) Regulations 1988^(b), the Personal Pension Schemes (Transfer Payments (Amendment) Regulations 1989^(c) and the Personal Pension Schemes (Transfer Payments (Amendment) Regulations 1997^(d) are hereby revoked.

(2) Any transfer payment made under, and any certificate supplied or obtained under a provision of, the Personal Pension Schemes (Transfer Payments) Regulations 1988 shall be treated for the purposes of these Regulations as if made, supplied or obtained, as the case may be, under the corresponding provision (if any) of these Regulations.

2000

Two of the Commissioners of Inland Revenue

^(b) S.I. 1988/1014.

^(c) S.I. 1989/1115.

^(d) S.I. 1997/480.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 638(2) of the Income and Corporation Taxes Act 1988 (“the Taxes Act”) provides that the Commissioners of Inland Revenue (“the Board”) shall not approve a personal pension scheme unless it makes such provision for the making, acceptance and application of transfer payments as satisfies any requirements imposed by or under regulations made by the Board. These Regulations, which come into force on 2000, amend and consolidate those requirements.

Regulation 1 provides for citation and commencement and regulation 2 contains definitions.

Regulations 3, 4 and 5 impose requirements as to the making of transfer payments to other personal pension schemes, certain retirement benefits schemes and statutory schemes.

Regulations 6 and 7 impose requirements as to the acceptance by personal pension schemes of transfer payments from other personal pension schemes, retirement benefits schemes, relevant statutory schemes and retirement annuity contract or trust schemes.

The publication “Occupational Pension Schemes Practice Notes” referred to in regulation 7(3) may be obtained from [].

Regulations 8 to 11 impose requirements as to the application of transfer payments made to personal pension schemes.

Regulation 12 imposes requirements relating to the preparation of lump sum certificates where a pension sharing order or provision has been made.

Regulation 13 prescribes exceptions to section 638(7A) of the Taxes Act, allowing the transfer of funds which are subject to income drawdown in the circumstances specified.

Regulation 14 contains revocations and provides for the continuity of transfer payments made, and certificates given, under the revoked Regulations.