

Pensions Update

No 139

17th March 2003

Please pass a copy of this Update to everyone in your organisation who needs to see it. The category of schemes covered by this Update is shown below. Italicised terms are explained in the glossary at the end.

Category:	Personal Pension Schemes (including Stakeholder Pension Schemes)
Action:	Please note that the revisions to <i>IR76</i> mentioned below have been incorporated into the website version of the guidance from the date of this Update. Subscribers to the paper version should replace the appropriate pages with the relevant new pages attached.
Current Position:	A revised edition of the Guidance Notes reflecting the changes to the personal pension tax regime from 6 April 2001 was published on the Internet on 8 September 2000 (<i>IR76</i> (2000)). Paper versions were issued with PSO Update 75 on 20 November 2000. Amendments were issued with PSO Update 81 on 18 December 2000, with PSO Update 89 on 23/30 March 2001, with Pensions Update 96 on 14 May 2001, and with Pensions Update 116 on 18 February 2002.
Summary:	Further changes have been made to the Guidance Notes, to clarify and in some cases change the guidance.
Enquiries:	0115 974 1777 - Personal Pensions Helpline Printing/mailling issues for paper versions of this Update: see footer*.

U 139: IR76 Clarifications and Updating Revisions

1. In response to questions raised by practitioners, we have revised or expanded some parts of the guidance (*IR76* (2000)) to make the position clearer. There have been some legislative changes which had not been reflected in the guidance. We have also altered our practice in a small number of areas. A new Appendix is included on mis-selling issues. In addition, we have taken the opportunity to correct some minor errors throughout the guidance. The changes are explained individually below.

(Please note that changes in consequence of the Financial Services and Markets Act 2000 are not included with this Update, as we will be issuing a separate Pensions Update later this year covering the necessary changes to both *IR76* and *IR12*).

2. Practice changes

- Part 3.16 We have now obtained advice that s632B(1)(d) eligibility through "concurrency" was intended to apply to individuals who **had** held an office or an employment on 5 April in one of the relevant earlier tax years. This has now been

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reflected in the guidance. Those who did **not** hold an office or an employment on 5 April in any of the relevant earlier tax years are therefore not eligible to contribute through "concurrency".

- We have also incorporated two other points regarding "concurrency" about which we frequently receive queries, i.e. that self-employment does not count as an employment, and that it is only necessary to satisfy the "remuneration limit" in one out of the last 5 tax years in order to be eligible to contribute.
- Part 4.34 Our practice has been relaxed to allow a scheme to accept contributions on behalf of a member from the payroll of the member's spouse's employer. This was agreed at the specific request of certain personal pension providers.
- Part 6.36 and 6.37 Relaxation of the way in which a scheme may accept an election.
- Part 9.4 The condition that the annuity must be issued in the name of the grantee named in the contract has been withdrawn, to bring our practice into line with that for other schemes, for example small self administered schemes, as announced in Pensions Update 126.
- Part 14.37 The employer's name and address must be requested as part of the member's application process.
- Part 14.46 Two further categories of documents which are acceptable as evidence of earnings have been included in the list.
- Part 14.47 The example of Mr Davies has been amended to illustrate the point that evidence of earnings from tax years before 2000/01 which was held at 6/4/01 can be treated as if it related to 2000/01 and can validate contributions above the earnings threshold made until the end of 2005/06.
- Part 16.32 and 16.33 New guidance is included on the Simplified Recovery system introduced by our Audit team last year. The inclusion of these new paragraphs has meant that the existing paragraphs 16.32, 16.33 and 16.34 have been renumbered 16.34, 16.35 and 16.36 respectively.
- Part 23.19 Change following Pensions Update 121 (re-allocating funds on transfer to a personal pension scheme from an occupational pension scheme where the member's fund is in surplus).

3. Legislative changes

- Part 2.3 Guidance amended to take account of changes in legislation. Section 652 *ICTA* was repealed by *FA98* with effect from 1 October 2000 (see SI 2000/2319) and was replaced by section 651A *ICTA* and the Personal Pension Schemes (Information Powers) Regulations 2000 (SI 2000/2316).
- Part 10.5 and 10.6 There is no longer any distinction between a qualifying and non-qualifying survivor, following a change in *DWP* legislation. Any legal widow or widower of the member qualifies for benefits from the member's protected rights fund.
- Appendix 1 The "Allowable Maximum" for 2002/03 is £97,200.
- Appendix 1 Definition of "Qualifying survivor" no longer needed (see Part 10.5 and 10.6 above).

4. Clarifications

- Part 3.28 A change has been made to the wording of this paragraph. The

contributions must be made to an arrangement which was made at a time when the member **was** resident and ordinarily resident in the UK (section 632A(7)(b) *ICTA*). The paragraph relates to a person without actual net relevant earnings (i.e. net relevant earnings in an earlier basis year does not preclude eligibility under this paragraph).

- Part 4.8 This paragraph has been expanded, reflecting paragraph 4.14, to explain how the 5% of net relevant earnings test is to be applied in the post-6 April 2001 period, where a member has a term assurance element to their personal pension on the pre-6 April 2001 basis (see also Part 4.14a).
- Part 4.10 Following more queries, to put the matter beyond doubt, it is made clear in the first bullet that the net relevant earnings figure in an earlier year used as a basis year is not to be restricted to the earnings cap in that year.
- Part 4.14 Old guidance deleted, as cross reference to revised 4.8 (see above) explains the position.
- Part 4.14a In the example about Mrs Smith, the figures in brackets have been deleted, in line with the principle at 4.8 (see above) that the actual net relevant earnings for the year and not the basis year net relevant earnings are the ones to which the 5% limit must be applied.
- Part 6.36 and 6.37 Clarification of how the election process works.
- Part 8.7 Benefits must not be taken earlier than the agreed early pension age unless the conditions in paragraph 8.6 apply.
- Part 8.8 The member must have some net relevant earnings from the occupation with the agreed early pension age in the tax year in order to contribute that tax year.
- Part 9.27 Guidance clarified. Where arrangements have been aligned for drawdown purposes, it does not follow that all subsequent arrangements must be similarly aligned if going into drawdown – they do not have to be aligned, but can instead have the date of going into drawdown as their review date.
- If the decision is made to take drawdown from subsequent arrangements, the two available options are therefore **either** not to align the review dates for those arrangements at all, **or** to align them with that of the earliest arrangement still in drawdown.
- Part 9.43 *DWP* have confirmed that where a lump sum is taken from an arrangement set up on or after 27 July 1989, protected rights may be included in the calculation at step two. The lump sum payable is still subject to the overriding limit of 25% of the total non protected rights under the arrangement.
- Part 10.5 The guidance on who the protected rights lump sum is payable to has been reworded, for clarity.
- Parts 10.5 and 10.7 The headings have been changed, removing the reference to "no transfer received for designated individual". This is because paragraphs 10.5, 10.6 and 10.7 do contain guidance on designated individuals for whom transfers have been received.
- Part 10.11 Each survivor must choose one and only one of the options listed, and not a mixture. Also, where income withdrawals are chosen, the survivor may later choose to take a taxed lump sum instead, providing this is within 2 years.
- Part 10.16 Extra sentence to clarify that the restriction on survivors' annuities imposed by s636(3) *ICTA* does not include any payments due under any guarantee on the

member's annuity.

- Part 10.18 Extra sentence clarifying that paragraph 10.18 does not over-ride paragraph 10.17.
- Part 12.28a Extra paragraph included which specifically relates to lump sum restrictions on individuals transferring to a personal pension from an occupational pension scheme in which they have agreed a normal retirement age of less than 45, and where a lump sum is also provided under another occupational pension scheme for that individual which is aggregable.
- Part 14.31 Inland Revenue SPSS (Bootle) have revised the guidance regarding the provision of a National Insurance number (NINO) in every membership application. A NINO must be given.
- Part 14.37a to 14.37d The guidance concerning those without a NINO has been revised and reorganised. The previous paragraph 14.37a still applies, but has been renumbered as 14.37c. The previous 14.37d has been deleted, and the guidance therein and in the previous 14.37b and 14.37c revised and republished as new 14.37a and 14.37b. The revised version should now cover all cases.
- Part 14.40 A slight change to wording to clarify the meaning.
- Part 14.44 A clarification of the second bullet.
- Part 15.80 Clarification of what is required on the information return in respect of members whose contracts lapsed or were discontinued during the tax year.
- Part 18.21 Cross references to Part 14B have been amended (see above, Part 14.37a). The opportunity has been taken to clarify what should happen if contributions above the earnings threshold are received, but the scheme administrator does not hold any evidence of earnings.
- Appendix 26 We are still receiving enquiries about mis-selling issues. The guidance previously contained in PSO Update 21, but revised to incorporate additional frequently raised issues, now forms an Appendix to IR76.

5. Other amendments

- Contents the contents page has been updated.
- Part 1.3 New telephone and fax numbers are now in use at Inland Revenue SPSS (Bootle).
- Part 9.2 The legislative cross-reference to section 634 *ICTA* has been restored.
- Part 9.8 The phrase "for the years 1995-96 onwards" is no longer relevant so has been deleted.
- Part 9.17 The word "instalments" has been changed to "payments".
- Part 10.17 There was an error in the guidance, which should have referred to "payment" of the survivor's annuity rather than "purchase" (the annuity would of course have been purchased earlier, during the member's lifetime).
- Part 11.24 Guidance corrected to refer specifically to "purchasing" rather than "acquiring".
- Part 12.50 Guidance re-phrased as "pension date" is not a relevant concept in relation

to a survivor.

- Part 14.48 Change to tense, as date is now in the past.
- Part 17.63 Form PPCOM100(Z) is available from Inland Revenue SPSS (Bootle) – not Nottingham.
- Part 18.27 The penultimate paragraph has been withdrawn, as it was contradictory to the final paragraph. Inland Revenue SPSS (Bootle) would like to see all cases where the scheme administrator discovers an excess, including those cases arising from the member's Self Assessment income tax return.
- Appendix 1 "PN": now refers to the more recent (2001) version of the IR12 Practice Notes.
- Appendix 1 Regulated individuals: the past tense should have been used.
- Appendix 1 Relevant percentage: the text should have been in bold.
- Appendix 11 The impact of the earnings threshold has now been reflected in the guidance.
- Appendix 19 Following the re-numbering of paragraphs, one cross reference no longer worked. This has been corrected.
- Appendix 25 "Personal chattels" should have been a separate bullet point. There was also a formatting error to "Unlisted shares" in the list in the paper version, which has been corrected.
- Index The entries to pre 6 April 2001 guidance have been removed from the index. Other index changes have been made but not highlighted.

Glossary

DWP : means the Department for Work and Pensions, formerly the Department of Social Security.

FA98 : means the Finance Act 1998.

ICTA : means the Income and Corporation Taxes Act 1988 (as amended).

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The text of this Pensions Update may be freely reproduced provided the source is acknowledged. Pensions Updates amplify or amend Occupational Pension Schemes Practice Notes IR12 and Personal Pension Schemes Guidance Notes IR 76 and should be read in conjunction with those publications as appropriate.