



Statutory Document No. 16/06

THE PENSION SCHEMES ACT 1995

THE PENSION SCHEMES LEGISLATION (APPLICATION) (No. 2) ORDER 2006

Approved by Tynwald

22nd February 2006

Coming into operation in accordance with Article 1

In exercise of the powers conferred on the Department of Health and Social Security by section 1 of the Pension Schemes Act 1995(a), and of all other enabling powers, the following Order is hereby made:-

Citation and commencement

1. (1) This Order may be cited as the Pension Schemes Legislation (Application) (No. 2) Order 2006 and shall, subject to section 1(4) of the Pension Schemes Act 1995, come into force as provided in paragraph (2).

(2) This Article and Articles 2 and 3 shall come into force forthwith and each provision of the applied legislation, as modified, shall be deemed to have come into force on the same day as that provision came into force in Great Britain.

Interpretation

2. (1) In this Order “the applied legislation” means the Protected Rights (Transfer Payment) (Amendment) Regulations 2005(b).

(2) Unless the context otherwise requires -

- (a) any reference in any of the applied legislation to any provision in an instrument of a legislative character which is not itself a provision of any of the applied legislation shall be construed as if the provision so referred to had been in force in the Island from the date on which that instrument of a legislative character had effect in Great Britain;

(a) 1995 c.11; (b) S.I. 2005/2906.

- (b) reference in any legislation applied by this Order to any provision of any such legislation or of any other legislation applied to the Island by an order under section 1 of the Pension Schemes Act 1995 or section 1 of the Social Security Act 2000(a) shall be construed as a reference to that legislation as it has effect in the Island.

Application to the Island of the applied legislation

3. The applied legislation, as modified and shown in the Schedule to this Order, shall apply to the Island as part of the law of the Island.

(a) 2000 c.5.

SCHEDULE

This Schedule sets out the text of the Protected Rights (Transfer Payment) (Amendment) Regulations 2005 (S.I. 2005/2906) with such exceptions, adaptations and modifications made where necessary.

Note: Modifications subject to which the legislation is applied to the Island are in *bold italic* type.

STATUTORY INSTRUMENTS

2005 No. 2906

PENSIONS

The Protected Rights (Transfer Payment) (Amendment) Regulations 2005

Citation, commencement and interpretation

1. (1) These Regulations may be cited as the Protected Rights (Transfer Payment) (Amendment) Regulations 2005 and shall *be deemed to have* come into force on 28th November 2005.

(2) In these Regulations, "the principal Regulations" means the Protected Rights (Transfer Payment) Regulations 1996(a).

Amendment of regulation 1 of the principal Regulations

2. In regulation 1(2) of the principal Regulations (citation, commencement and interpretation) there shall be inserted in the appropriate alphabetical place the following definition—

"mixed benefit contracted-out scheme" means an occupational pension scheme to which section 149(1) of the Pensions Act 1995 (hybrid occupational pension schemes) applies and which is contracted-out;"

Amendment of regulation 2 of the principal Regulations

3. For regulation 2 of the principal Regulations (general) there shall be substituted the following regulation—

"2. (1) Effect may be given to a member's protected rights by making a transfer payment from—

- (a) an appropriate personal pension scheme;
- (b) a money purchase contracted-out scheme;
- (c) the money purchase part of a mixed benefit contracted-out scheme; or

(a) S.I. 1996/1461 (see S.D. 23/98).

- (d) a scheme mentioned in sub-paragraph (a), (b) or (c) which has ceased to be a contracted-out scheme,

to a scheme specified in paragraph (2) below.

(2) A transfer payment in respect of protected rights may be made to either an—

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

in accordance with regulations 3 to 5.

(3) In these Regulations a "transfer payment" means a transfer payment such as is described in this regulation."

Amendment of regulation 3 of the principal Regulations

4. For regulation 3 of the principal Regulations (transfer payments to money purchase contracted-out schemes and appropriate personal pension schemes) there shall be substituted the following regulation—

"Transfer payments to appropriate personal pension schemes

3. A transfer payment may be made to an appropriate personal pension scheme if—

- (a) the member consents in writing;
- (b) the transfer payment (or, if it forms part of a larger payment giving effect to both protected rights and other rights, that part of it which gives effect to protected rights) is of an amount at least equal to the cash equivalent of the protected rights to which effect is being given, as calculated and verified in a manner consistent with regulations made under section 97 of the 1993 Act (calculation of cash equivalents); and
- (c) the transfer payment in respect of the member's protected rights is applied so as to provide money purchase benefits under the receiving scheme for or in respect of the member."

Insertion of regulations 3B and 3C into the principal Regulations

5. After regulation 3 of the principal Regulations (*as substituted above*) there shall be inserted the following regulations—

"Transfer payment to a money purchase contracted-out scheme or the money purchase part of a mixed benefit contracted-out scheme with the member's consent

3B. (1) A transfer payment may be made to either—

- (a) a money purchase contracted-out scheme; or
- (b) the money purchase part of a mixed benefit contracted-out scheme,

if the conditions specified in paragraph (2) are satisfied.

(2) The conditions specified in this paragraph are—

- (a) the member consents in writing;

- (b) the transfer payment (or, if it forms part of a larger payment giving effect to both protected rights and other rights, that part of it which gives effect to protected rights) is of an amount at least equal to the cash equivalent of the protected rights to which effect is being given, as calculated and verified in a manner consistent with regulations made under section 97 of the 1993 Act;
- (c) the transfer payment in respect of the member's protected rights is applied so as to provide money purchase benefits under the receiving scheme for or in respect of the member; and
- (d) either the member—
 - (i) is employed by an employer who is a contributor to the receiving scheme; or
 - (ii) has previously been a member of the receiving scheme.

Transfer payment to a money purchase contracted-out scheme or the money purchase part of a mixed benefit contracted-out scheme without the member's consent

3C. (1) A transfer payment may be made to either—

- (a) a money purchase contracted-out scheme; or
- (b) the money purchase part of a mixed benefit contracted-out scheme,

without the member's consent if the requirements of paragraph (2) are satisfied.

(2) The requirements of this paragraph are that the conditions specified in either—

- (a) paragraphs (3) and (4); or
- (b) paragraph (8),

are satisfied.

(3) The conditions specified in this paragraph are—

- (a) the transfer payment (or, if it forms part of a larger payment giving effect to both protected rights and other rights, that part of it which gives effect to protected rights) is of an amount at least equal to the cash equivalent of the protected rights to which effect is being given, as calculated and verified in a manner consistent with regulations made under section 97 of the 1993 Act;
- (b) the transfer payment in respect of the member's protected rights is applied so as to provide money purchase benefits under the receiving scheme for or in respect of the member; and
- (c) the transferring scheme is either—
 - (i) a money purchase contracted-out scheme;
 - (ii) the money purchase part of a mixed benefit contracted-out scheme; or
 - (iii) a scheme mentioned in head (i) or (ii) of this sub-paragraph which has ceased to be a contracted-out scheme.

(4) The conditions specified in this paragraph are—

- (a) subject to paragraph (7), the trustees have sent a notice to the member at his last known postal address or electronic mail address in relation to the proposed transfer;
- (b) a period of at least three months has elapsed from the date of the notice;
- (c) the trustees have not received written notification within that period that the member objects to the transfer; and
- (d) the transferring scheme and the receiving scheme bear a relationship to each other such as is described in regulation 12(2) of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 (transfer of member's accrued rights without consent).

(5) In paragraph (4)(a), "notice" means a notice in writing stating—

- (a) the names and addresses of the—
 - (i) transferring scheme; and
 - (ii) receiving scheme;
- (b) the name of the person in the—
 - (i) transferring scheme; and
 - (ii) receiving scheme,

that a member may contact for further information;

- (c) the value of the rights which are to be transferred;
- (d) the nature of the rights which are to be transferred; and
- (e) that—
 - (i) the member has the right to object to the proposed transfer of his protected rights by sending a written notice to that effect to the trustees of the transferring scheme; and
 - (ii) the trustees of the transferring scheme may transfer that member's protected rights unless they receive that written notification of his objection to the proposed transfer within three months from the date of the notice.

(6) For the purposes of paragraph (4)—

- (a) where the trustees of the transferring scheme are notified of a delivery failure of a notice sent by electronic mail to a member for the purposes of paragraph (4)(a), the trustees shall send a further notice to the member's last known postal address unless he is an excluded person; and
- (b) the date of the notice for the purposes of paragraph (4)(b) shall be the date of the second notice.

(7) The trustees of a transferring scheme may transfer the protected rights of an excluded person without sending a notice to him.

(8) The conditions specified in this paragraph are—

- (a) the requirements of paragraphs (3)(a) to (c) and (4)(d) of this regulation are complied with;
- (b) the relevant actuary certifies to the trustees of the transferring scheme that the transfer credits to be acquired for each member under the receiving scheme in respect of his protected rights are, broadly, no less favourable than the rights to be transferred;
- (c) where it is proposed that a member's protected rights are to be transferred in accordance with this paragraph, information about the proposed transfer and details of the value of the rights to be transferred shall be furnished to the member at least one month before the proposed transfer is due to take place, unless the member is an excluded person.

(9) Where in response to either a notice issued under paragraph (4) or information furnished under paragraph (8)(c) a member consents in writing to the transfer of his protected rights under the scheme, the trustees of the scheme may give effect to the protected rights of that member by making a transfer payment in accordance with this regulation. However, the trustees shall not give effect to the protected rights of that member by making a transfer payment in accordance with regulation 3B.

(10) In this regulation—

"the relevant actuary" *means the individual appointed in accordance with section 17(1)(b) of the Retirement Benefits Schemes Act 2000 (an Act of Tynwald) as actuary for the transferring scheme;*

"excluded person" means a member whose present address is not known to the trustees and in respect of whom correspondence sent by the trustees to his last address known to the trustees has been returned;

"transfer credits" means rights allowed to a member under the rules of a receiving scheme by reference to a transfer payment to that scheme of his protected rights from a transferring scheme."

Made 29th December 2005



Minister for Health and Social Security

EXPLANATORY NOTE

(This note is not part of the Order)

1. Section 1 of the Pension Schemes Act 1995 enables the Department by Order to apply to the Island, as part of the law of the Island and incorporating such exceptions, adaptations and modifications as may be specified by the Order, any legislation to which that Act applies.
2. *Inter alia*, the Act applies to the Pension Schemes Act 1993 (an Act of the United Kingdom Parliament) and to any statutory instrument made or having effect as if made under that Act.
3. This Order applies to the Island the legislation referred to in Article 2(1) of the Order, the provisions of which are summarised in paragraphs 4 to 6 below. The applied legislation is deemed to have come into force on the same day as the corresponding provisions came into force in Great Britain. Where necessary, the provisions have been applied to the Island administratively pending their application by order.
4. **The Protected Rights (Transfer Payment) (Amendment) Regulations 2005 (S.I. 2005/2906)**
 - 4.1 An employer may establish an occupational pension scheme which is contracted-out of the State's additional pension scheme (formerly SERPS; now the State Second Pension). Employees who are contracted-out members of the scheme do not build up entitlement to an additional State pension, instead they accrue benefits under their employer's pension scheme. People may also contract themselves out of the State's additional pension, by taking out an appropriate personal pension.
 - 4.2 Employers who contract-out of the State scheme benefit from rebates of National Insurance contributions, as do employees who are members of the scheme. People with an appropriate personal pension similarly benefit from National Insurance rebates. Those rebates (and the investment return on them) give rise to "protected rights" scheme benefits. Legislation requires special conditions to apply to contracted-out pension rights (including protected rights). One of those conditions is that the scheme members' pension rights can only be transferred from one scheme to another with all the members' consent. But obtaining each member's consent may be difficult, especially if some of the members left the scheme some time ago and there is no up-to-date address for them.
 - 4.3 An employer may have a number of company pension schemes (perhaps as a result of mergers and acquisitions) and may want to consolidate them into one scheme, for ease of administration and to reduce costs. Doing so involves transferring members' pension rights from one scheme to another. For most kinds of pension rights formal consent of the member is not needed to these transfers, although there are other safeguards in legislation which must be satisfied. However, transferring protected rights does require the formal consent of every member of the scheme.
 - 4.4 These regulations amend the legislation to allow the bulk transfer of protected rights from one scheme to another without having first obtained the consent of all the members. As a result, the transfer of protected rights will now be on the same footing as the transfer of other pension rights.

4.5 There will now be two methods of making bulk transfers of protected rights.

- *Method 1*

The member will be told of the proposal to transfer their protected rights and will be given an opportunity to object to that transfer. If they do not object, the transfer can go ahead.

- *Method 2*

The member's rights can be transferred without first giving the member the chance to object to that transfer, as long as an actuary certifies that the pension rights the member is to acquire in the new scheme are broadly no less favourable than in the transferring scheme.

4.6 Both methods also require the transferring and receiving pension schemes either –

- to apply to employment with the same employer; or
- to apply to employment with different employers as long as the member concerned is one of a group in respect of whom transfers are being made from one scheme to another and either –
 - the transfer is a consequence of a transfer between the employers; or
 - the employers are connected with one another.

5. A detailed explanation of how each provision of these Regulations amends the Protected Rights (Transfer Payment) Regulations 1996 ("the principal Regulations") now follows.

6.1 Regulation 1 provides for the citation, commencement and interpretation of the Regulations.

6.2 Regulation 2 inserts a definition of "mixed benefit contracted-out scheme" into the principal Regulations (i.e. one which provides money purchase and final salary benefits).

6.3 Regulation 3 amends regulation 2 of the principal Regulations to include among the schemes that may give effect to a member's protected rights by making a transfer payment to an appropriate personal pension scheme or an occupational pension scheme, the money purchase part of a mixed benefit contracted-out scheme and a scheme which has ceased to be the money purchase part of a mixed benefit contracted-out scheme.

6.4 Regulation 4 amends regulation 3 of the principal Regulations so that it no longer applies to transfer payments to money purchase contracted-out schemes (but see below). Regulation 3 of the principal Regulations (as amended) now applies to transfer payments to appropriate personal pension schemes only.

6.5.1 Regulation 5 inserts new regulations 3B and 3C into the principal Regulations in order to provide for transfer payments to be made to a money purchase contracted-out scheme or the money purchase part of a mixed benefit contracted-out scheme.

6.5.2 New regulation 3B provides for transfers with a member's consent.

6.5.3 New regulation 3C provides for transfers without a member's consent. The conditions for satisfying method 1 (referred to in paragraph 4.5 of this note) are set out in paragraphs (3) and (4) of regulation 3C; the second method is found in paragraph (8) of regulation 3C.

