



Statutory Document No.40/07

THE PENSION SCHEMES ACT 1995

THE PENSIONS ACT 2004

(AS THAT ACT OF PARLIAMENT HAS EFFECT IN THE ISLE OF MAN
BY VIRTUE OF THE PENSIONS ACT 2004 (APPLICATION) ORDER 2006)

**GUIDANCE FOR TRUSTEES
REGULATORY CODE OF PRACTICE No. 1:
EARLY LEAVERS – REASONABLE PERIODS**

Laid before Tynwald 20th February 2007

Coming into operation in accordance with Article 1

Issued 26th February 2007

In exercise of the powers conferred on the Department of Health and Social Security by section 1 of the Pension Schemes Act 1995¹, sections 90(2)(a) and 91(5), (9) and (10) of the Pensions Act 2004² (as that Act of Parliament has effect in the Isle of Man)³ and of all other enabling powers, the following code is hereby issued:-

Citation and commencement

1. This Code may be cited as Guidance for Trustees Regulatory Code of Practice No. 1: Early Leavers – Reasonable Periods and shall come into force on the day on which it is issued.

Price: £2.00

Band: B

¹ 1995 c.11.

² 2004 c.35.

³ S.D. 296/06.

Department of Health and Social Security

Guidance for Trustees

Regulatory Code of Practice No. 1:

Early Leavers – Reasonable Periods

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Introduction

1. The Department of Health and Social Security (“the DHSS”), the body that regulates certain aspects of work-based pension arrangements (occupational pension schemes and personal pensions), is required by the pensions legislation to issue codes of practice on certain pensions matters, including this code⁴.
2. The DHSS’s objectives include the protection of pension scheme members’ benefits.
3. The DHSS has a number of regulatory tools, including issuing codes of practice, to help it to meet this objective.
4. Codes of practice provide practical guidelines on the requirements of pensions legislation and set out the standards of conduct and practice expected of those who must meet these requirements⁵. The intention is that the standards set out in the code are consistent with how a well-run pension scheme would choose to meet its legal obligations.
5. Throughout this code, references to a scheme’s trustees should be read as references to a scheme’s trustees or managers, as appropriate.

Who does this code of practice apply to?

6. This code of practice applies to *trustees of occupational pension schemes where the scheme rules do not provide vested rights to benefits for members with at least three months’ service, but less than two years’ service*. It will also be of use to sponsoring employers of such schemes, pensions administrators, professional advisers and pensions practitioners in general.

The status of codes of practice

7. Codes of practice are not statements of the law and there is no penalty for failing to comply with them.⁶ It is not necessary for all the provisions of a code of practice to be followed in every circumstance. Any alternative approach to that appearing in the code of practice will nevertheless need to meet the underlying legal requirements, and a penalty may be imposed if these requirements are not met. When determining whether the legal requirements have been met, a court or tribunal must take any relevant provisions of a code of practice into account⁷.

Interaction with regulations

8. There will be some interaction between the provisions of this code and regulations, such as those relating to winding up⁸.

⁴ See section 90(2)(a) of the Pensions Act 2004 (as it has effect in the Isle of Man) (see S.D. 296/06).

⁵ See section 90(1) of the Pensions Act 2004 (as it has effect in the Isle of Man) (see S.D. 296/06).

⁶ See section 90(4) of Pensions Act 2004 (as it has effect in the Isle of Man) (see S.D. 296/06).

⁷ See section 90(5) of Pensions Act 2004 (as it has effect in the Isle of Man) (see S.D. 296/06).

⁸ The Occupational Pension Schemes (Winding Up etc) Regulations 2005 (S.I. 2005/706) (see (S.D. 149/06).

The code at a glance

The code sets out the following:

- The rights given to those leaving occupational pension schemes after three months and with less than two years' pensionable service and without vested rights to benefit under the scheme rules.
- The duties placed upon trustees by the legislation.
- The DHSS's view as to what constitutes the reasonable time periods set out in the legislation for:
 - (i) notifying a member of their rights and telling them how they can exercise those rights;
 - (ii) a member's response to trustees;
 - (iii) trustees to give effect to a member's chosen option; and
 - (iv) the default process where a member fails to respond to their notification.

Note

If a scheme is contracted out of the State Second Pension and a refund of contributions is to be paid, trustees will need to take account of the time constraints for the payments of a contributions equivalent premium (see paragraphs 10, 14 and 31 of the code) when considering the reasonable time periods set out in the code.

The requirement to notify early leavers of their rights

9. When a member of an occupational pension scheme leaves pensionable service after three months and with less than two years' pensionable service and without vested rights to benefit under the scheme rules, they must be notified of their statutory rights to take a cash transfer sum or a contribution refund⁹.
10. Those rights are to take either –
- a cash transfer sum, calculated in the same way as a cash equivalent transfer value, or
 - a refund of their own contributions, if any (less tax and any contributions equivalent premium¹⁰ paid as appropriate).
- These may be reduced or increased where permitted or required by legislation, for example if the scheme is underfunded.
11. The three-month condition is satisfied if pensionable service under that scheme, taken together with –
- any previous period of pensionable service under the scheme; and
 - any period of employment in linked qualifying service¹¹ under another scheme amounts to at least three months¹².
12. Within a reasonable period of a member leaving service as above, trustees of the scheme must provide them with a written notice¹³ giving adequate information to explain –
- the nature of the right acquired to a cash transfer sum or a contribution refund under the legislation¹⁴;
 - the amount of both the cash transfer sum and contribution refund;
 - how and by when they may exercise the right; and

⁹ Chapter 5 of Part IV of the Pension Schemes Act 1993, inserted by section 264 of the Pensions Act 2004 (see S.D. 220/05).

¹⁰ Contributions equivalent premium is the premium paid by the scheme managers/trustees in cases where a leaver has less than 2 years' pensionable service and is not entitled to any benefits from a contracted-out salary related scheme, but has rights in the state scheme that can be restored.

¹¹ "Linked qualifying service" means actual service in a previous scheme which gives rise to a transfer credit, which ranks as qualifying service (section 179 of Pension Schemes Act 1993 (see S.D. 531/95)). Only service which has been transferred into another scheme, and which gives rise to benefits under that scheme, can be linked qualifying service.

¹² Section 101AA(2) of Pension Schemes Act 1993.

¹³ Section 101AC(2) of Pension Schemes Act 1993.

¹⁴ Section 101AB of Pension Schemes Act 1993.

- such other information as may be prescribed.
13. The DHSS expects that notices will be provided to a member as soon as reasonably possible and that this should normally be within three months of the member leaving pensionable service.
 14. The DHSS would have no concerns if a member were notified of their rights well within this period.

If schemes are contracted out of the State Second Pension (S2P)¹⁵ and there is the possibility of the payment of contributions equivalent premiums to the state, trustees may need to ensure that any affected member is notified within a shorter period in order to ensure that the payment can be made in time (see paragraph 31 on contracting-out).

15. If the trustees are aware that it will take longer than three months to notify any member they should, as a matter of good practice, keep them informed of the situation, and notify them of their rights in full as soon as possible.

Leaving schemes in wind-up

16. Where an active member has at least three months' pensionable service and with less than two years' pensionable service and no vested rights when a scheme commences wind-up, they will be entitled only to a refund of their own contributions (if any). They will not have the option to take a cash transfer sum¹⁶.
17. The refund must then be made within a reasonable time, as it would in an ongoing scheme.
18. Where a member leaves a scheme in the circumstances set out in paragraph 16 above but wind-up is commenced *after* they have left, they still have the option to take a cash transfer sum, but this may be reduced or increased in accordance with legislation (even after the member has replied to the trustees) before the transfer is made by the trustees.

¹⁵ State Second Pension (or S2P) is an amount of pension provided by the State that is additional to the basic state pension. If members of a scheme are contracted-out of S2P then they pay lower National Insurance contributions (as does the employer). They may still be entitled to some rights to S2P, depending on the level of earnings.

¹⁶ Regulation 5 of the Occupational Pension Schemes (Winding Up etc.) Regulations 2005 (SI 2005/706) (see S.D. 149/06).

The reply date

19. When a member is provided with a statement of their rights¹⁷ they must be given a reasonable period within which to reply to the trustees in order to exercise those rights¹⁸. The last date upon which the member may reply must be set out in the statement¹⁹.
20. The member may exercise their rights by notifying their chosen option to the trustees in writing.
21. The DHSS expects that the member would normally be given three months from the date that the statement is given to them to the reply date. The member can always respond sooner than the end of the period, but should not be pressured into making a decision without time to take proper financial advice.
22. If the member requests further time to reply, the trustees can extend the reply period, but they are not obliged to do so²⁰.
23. When the reply date (and any further period noted in paragraph 22 above) has passed, the member may be provided with a contributions refund under the default procedure²¹.

Giving effect to the member's rights

24. On receiving the member's written reply the trustees must, within a reasonable period, do what is needed to carry out the member's election.
25. If the member is exercising their right to a cash transfer, they must specify how it is to be used. Cash transfers can be used to acquire benefits or rights under another occupational or personal pension scheme, or to purchase an annuity, or in any other way that the legislation may prescribe²².
26. If the member chooses to take a contributions refund, they may require the trustees to pay it directly to them, or at their direction to someone else²³.
27. The DHSS expects that trustees will give effect to a member's rights without unjustifiable delay after the member has elected how they wish to receive them, and in any event this should normally be within three months of the member making the election.
28. In exceptional circumstances a longer period may be justifiable.

¹⁷ See paragraph 9.

¹⁸ Section 101AC(2)(b) of Pension Schemes Act 1993.

¹⁹ Section 101AC(3)(c) of Pension Schemes Act 1993.

²⁰ Section 101AI(2) of Pension Schemes Act 1993.

²¹ See paragraph 29.

²² Section 101AE of Pension Schemes Act 1993.

²³ Section 101AG(4) of Pension Schemes Act 1993.

Default procedure

29. Where a member does not reply to the trustees to exercise the right to a cash transfer sum or contribution refund²⁴ within the reply period (or within that period as extended by the trustees), the trustees may, within a reasonable period from the reply date or from the end of any further period allowed by them, pay the contribution refund to the member²⁵.
30. The DHSS would expect the trustees to allow a period of one month after the reply date before paying a member a contribution refund (as an exercise of the default option).

Contracting-out

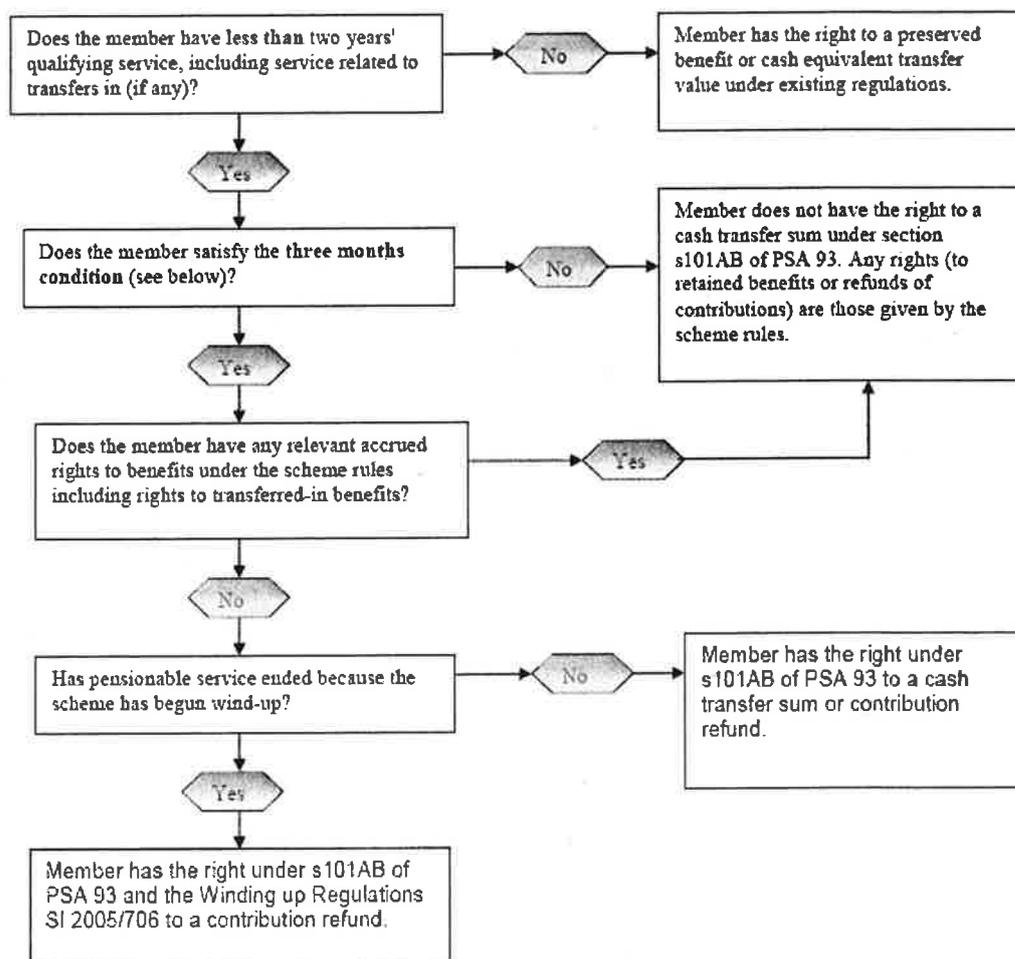
31. If a scheme is contracted out of the S2P and there is the possibility of the payment of contributions equivalent premiums to re-instate the member's rights in the S2P, action will need to be taken within six months from the date they leave service. Accordingly, the total of the period allowed to notify a member of their rights, the reply period, and the default period, should come to less than six months to correspond to this period. In order not to prejudice the member's position, in these circumstances the DHSS would expect to see them notified of their rights as quickly as possible.

²⁴ Section 101AB of Pension Schemes Act 1993.

²⁵ Section 101AH(1) and (2) of Pension Schemes Act 1993.

Flowchart 1

Early leaver – new rights



Three months condition

On the date on which pensionable service terminates, the period of the member's pensionable service under the scheme, taken together with:

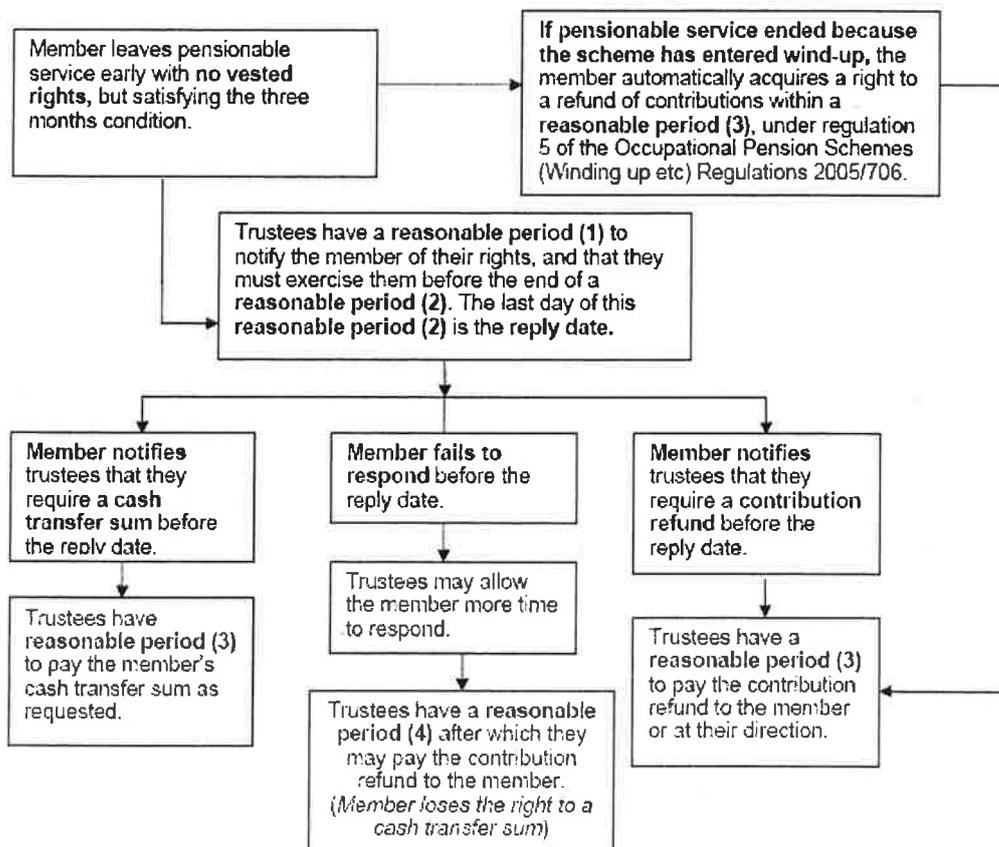
- a) any previous period of their pensionable service under the scheme; and
- b) any period throughout which they were employed in * linked qualifying service under another scheme, amounts to at least three months.

* 'Linked qualifying service' means actual service in a previous scheme which gives rise to a transfer credit, which ranks as qualifying service (s179 PSA 93). Only service which has been transferred in to another scheme, and which gives rise to benefits under that scheme, can be linked qualifying service.

Flowchart 2 – The process

This chart shows the process involved when a member leaves pensionable service early with less than two years' pensionable service and no vested rights to a benefit under the scheme, but satisfies the **three months condition** (see Flowchart 1).

Note: If the scheme is contracted out of the State Second Pension and the trustees wish to pay a contributions equivalent premium, (see paragraph 2 of the code) the overall time taken to do this will need to be less than six months to allow for such a payment.



- Reasonable period (1)** The Regulator expects that this would usually be within a period of three months from the date of the member leaving pensionable service.
- Reasonable period (2)** The Regulator expects that this would usually be a period of at least three months from the date that member is notified of their rights.
- Reasonable period (3)** The Regulator expects that this would usually be within a period of three months from the date of the member's notification or deemed notification (regulation 5 of the Occupational Pension Schemes (Winding up etc) Regulations 2005/706) to the trustees.
- Reasonable period (4)** The Regulator expects that this would usually be a period of one month from the reply date or the end of any further period of time notified to the member by the trustees.
- Reply date** Is the last day of the reasonable period (2).

(Here “the Regulator” means the DHSS.)

Issued 26th February 2007



Minister for Health and Social Security

EXPLANATORY NOTE

(This note is not part of the Code)

1. This Code gives guidance for trustees in relation to the requirement to tell those persons who—
 - leave their employer’s occupational pension scheme after at least three months’ but less than two years’ pensionable service; and
 - who have no vested rights to pension benefits under the scheme rules,of their statutory rights to take a cash transfer sum or a refund of the pension contributions they have paid.
2. When an occupational pension scheme member leaves pensionable service the scheme’s trustees must, within *reasonable periods* –
 - notify the members of their statutory rights and how they can exercise them; and
 - give effect to the member’s chosen option of a cash transfer sum or a contribution refund.
3. The Code also sets out the DHSS’s views as to what constitutes “reasonable periods” in this context.
4. The Code comes into force on the day on which it is issued.