

Local Government Pensions Committee
Secretary, Mike Walker

LGPC BULLETIN NO. 43 – MARCH 2006

OVERSEAS TRANSFERS – POSITION TO 5 APRIL 2006

Purpose of the Bulletin

1. This Bulletin replaces Bulletin 8 of March 2001 to take account of changes introduced by the Contracting-out, Protected Rights and Safeguarded Rights (Transfer Payment) Amendment Regulations 2005 [SI 2005/555] which remove the requirement on transferring pension schemes to establish that the member requesting a transfer abroad has permanently emigrated overseas and which also permit the transfer of an accrued GMP to an "overseas arrangement" as well as an "overseas scheme".
2. The Bulletin sets out the statutory provisions that cover overseas transfers until 5 April 2006. New rules will govern overseas transfers as from 6 April 2006 – see section 169 of the Finance Act 2004. **Subject to the DWP and HM Revenue and Customs (HMRC) rules set out in the Bulletin, the following provisions apply until 5 April 2006:**

For overseas transfers out

- a **member** of the LGPS may transfer the cash equivalent of his / her accrued pension rights to
 - a) an "**overseas scheme**" (i.e. an overseas occupational pension scheme), or
 - b) an "**overseas arrangement**" that has effect, or is capable of having effect, so as to provide benefits on termination of employment or on death or retirement to or in respect of earners

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- a **Pension Credit member** may transfer the cash equivalent of his / her Pension Credit rights to
 - a) an "**overseas scheme**" (i.e. an overseas occupational pension scheme), or
 - b) an "**overseas arrangement**" that has effect, or is capable of having effect, so as to provide benefits on termination of employment or on death or retirement to or in respect of earners

But

- i) a transfer including safeguarded rights can only be made to an "**overseas scheme**" or, if it is to be made to an "**overseas arrangement**", it must be an arrangement to which a transfer payment can be made in accordance with regulation 9 of the Pension Sharing (Safeguarded Rights) Regulations 2000 [SI 2000/1055] **NB:** the requirements of the aforementioned regulation 9 are such that it is highly unlikely that a transfer including safeguarded rights can be made to an "**overseas arrangement**" (because one of the requirements is that the transfer can only be made to another salary related contracted-out scheme or to a money purchase contracted-out scheme, if the person with safeguarded rights is an active member of such a scheme, or to an appropriate personal pension scheme)
- ii) a transfer that includes no safeguarded rights can be made to an "**overseas scheme**" or an "**overseas arrangement**".

For overseas transfers in

- a **member** of the LGPS can only transfer rights into the LGPS from an "**overseas scheme**" (but not from an "**overseas arrangement**") and then only with the specific authorisation of the Pension Schemes Office of the Inland Revenue
 - a transfer of rights from an "**overseas scheme**" or an "**overseas arrangement**" cannot be accepted in respect of a **Pension Credit member**.
3. Special arrangements exist for transfers between the UK and Jersey, the Isle of Man, Guernsey, and the Republic of Ireland. Copies of the relevant HMRC rules are attached as an appendix to this Bulletin.

Terry Edwards
 Assistant Director (Pensions)
 April 2006

SECTION A - TRANSFERS OUT - ACTIVE AND DEFERRED MEMBERS

Can an overseas transfer in respect of LGPS benefits be made?

1. Regulation 116(2) of the Local Government Pension Scheme Regulations 1997 and the Local Government Pension Scheme (Scotland) Regulations 1998 stipulates that Chapter IV of Part IV of the Pension Schemes Act 1993 shall apply to all members of the Scheme regardless of the date of termination of their pensionable service (i.e. even if they left pre 1 January 1986).
2. By virtue of regulation 4 of the Local Government Pension Scheme (Transitional Provisions) Regulations 1997 and the Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 1998 the transfer values of members who became deferred members prior to 1 April 1988 are to be dealt with under the provisions of, respectively, the Local Government Pension Scheme Regulations 1997 and the Local Government Pension Scheme (Scotland) Regulations 1998.
3. Section 93 of the Pension Schemes Act 1993 states that Chapter IV of Part IV of the Pension Schemes Act 1993 (right to a cash equivalent transfer value) applies to any member of an occupational pension scheme (such as the LGPS)
 - a) whose pensionable service has terminated at least one year before normal pension age, and
 - b) who on the date on which pensionable service terminated had accrued rights to benefit under the scheme.

The proviso that section 93 only applies if the member ceased pensionable service on or after 1 January 1986 - see regulation 2 of the Occupational Pension Schemes (Transfer Values) Regulations 1996 [SI 1996/1847] has been disapplied in the LGPS by virtue of regulation 116(2) of the Local Government Pension Scheme Regulations 1997 and the Local Government Pension Scheme (Scotland) Regulations 1998 - see paragraph 1 above.

4. Section 95(2) of the Pension Schemes Act 1993 provides that a member who acquires a right to a cash equivalent transfer value may only exercise that right by opting, at least one year before the date on which the member attains normal pension age or, if later, within six months of the termination date, for the managers of the scheme (the LGPS) to transfer the value so as to
 - a) acquire transfer credits in another occupational pension scheme, or
 - b) acquire rights under a personal pension scheme, or
 - c) purchase one or more annuities from one or more insurance companies, or
 - d) subscribe to some other pension arrangement which meets prescribed conditions.

5. Section 73(2)(b) of the Pension Schemes Act 1993 states that a scheme **may**, instead of providing a short service benefit (i.e. a deferred pension), provide such alternatives to short service benefit as may be prescribed. Regulation 11A of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 [SI 1991/167] stipulates that, for the purposes of section 73(2) of the Pension Schemes Act 1993 a scheme **may**, instead of providing a short service benefit, provide for the member's accrued rights to be transferred, if the member consents, to an "**overseas arrangement**". It [what is "it", is it the PA93 or the 1991 SI plus do\ need to add footnote 1] defines an "**overseas arrangement**" as a scheme or arrangement, other than an occupational pension scheme, which
- a) has effect, or is capable of having effect, so as to provide benefits on termination of employment or on death or retirement to or in respect of earners;
 - b) is not an appropriate scheme; and
 - c) is administered wholly or primarily outside the United Kingdom.

However, there is nothing in the Local Government Pension Scheme Regulations 1997 or the Local Government Pension Scheme (Scotland) Regulations 1998 which specifies that, for the purposes of section 73(2) of the Pension Schemes Act 1993, the LGPS **shall** provide for a transfer to an "**overseas arrangement**" in place of a short service benefit. Section 73(2) cannot, therefore, be relied upon as giving the statutory power to administering authorities to make a transfer to an "**overseas arrangement**".

6. We must, therefore, look to the provisions contained in section 95(2)(d) of the Pension Schemes Act 1993 (see paragraph 4 above). By virtue of section 95(5)(a) of the Pension Schemes Act 1993, section 95(2)(d) is generally to be omitted, apart from where prescribed circumstances apply. Those prescribed circumstances are set out in regulations 12(4) and (5) of the Occupational Pension Schemes (Transfer Values) Regulations 1996 [SI 1996/1847]. The circumstances are that a member who has acquired a right to a cash equivalent transfer value has asked the managers of the scheme to use the cash equivalent to subscribe to an "**overseas arrangement**" or a self-employed pension arrangement.

An "**overseas arrangement**"¹ is defined in regulation 1 of the Contracting-out (Transfer and Transfer Payment) Regulations 1996 [SI 1996/1462] as a scheme or arrangement, other than an occupational pension scheme, which

- a) has effect, or is capable of having effect, so as to provide benefits on termination of employment or on death or retirement to or in respect of earners;

¹ An "overseas" arrangement is also defined in section 181(1) of the Pension Schemes Act 1993. The definition is the same as in SI 1996/1462 with the exception that section 181(1) refers to "Great Britain" rather than "the United Kingdom".

- b) is not an appropriate personal pension scheme; and
- c) is administered wholly or primarily outside the United Kingdom.

Regulation 12(5) of the Occupational Pension Schemes (Transfer Values) Regulations 1996 [SI 1996/1847] specifies that, for the purposes of section 95(2)(d) of the Pension Schemes Act 1993, the prescribed requirements that have to be met for a transfer to an "**overseas arrangement**" are :

- i) for a transfer from a statutory scheme (such as the LGPS), that the "**overseas arrangement**" satisfies the requirements of the Inland Revenue (now HMRC), and
- ii) if the transfer to an "**overseas arrangement**" includes section 9(2B) rights (benefits accrued after 5 April 1997), the "**overseas arrangement**" is one to which a transfer of such rights may be made under regulation 11 of the Contracting-out (Transfer and Transfer Payments) Regulations 1996 [SI 1996/1462].

7. Regulation 11 of the Contracting-out (Transfer and Transfer Payments) Regulations 1996 [SI 1996/1462] states that a transfer payment in respect of an earner's section 9(2B) rights may be made to an "**overseas scheme**" or an "**overseas arrangement**" if

- a) the earner consents in writing;
- b) the 'trustees' of the transferring scheme have taken reasonable steps to satisfy themselves that, where the receiving scheme is an occupational pension scheme, the earner has entered employment to which the receiving scheme applies;
- c) the earner has acknowledged in writing that he accepts that the scheme or arrangement to which the transfer payment is to be made may not be regulated in any way by the law of the United Kingdom and that as a consequence there may be no obligation under that law on the receiving scheme or arrangement or its trustees or administrators to provide any particular value or benefit in return for the transfer payment; and
- d) the 'trustees' of the transferring scheme have taken reasonable steps to satisfy themselves that the earner has received a statement from the receiving scheme or arrangement showing the benefits to be awarded in respect of the transfer payment and the conditions (if any) on which these could be forfeited or withheld.

8. Regulation 6 of the Contracting-out (Transfer and Transfer Payments) Regulations 1996 [SI 1996/1462] states that a transfer payment including a GMP may be made to an "**overseas scheme**" or to an "**overseas arrangement**" if

- a) the earner consents in writing;
- b) the 'trustees' of the transferring scheme have taken reasonable steps to satisfy themselves that, where the receiving scheme is an occupational pension scheme, the earner is in employment to which the receiving scheme applies;

- c) the transfer payment (whether or not it forms part of a larger payment in respect of both guaranteed minimum pensions and other rights) is of an amount at least equal to the cash equivalent of the earner's accrued rights to guaranteed minimum pensions, as calculated and verified in a manner consistent with regulations made under section 97 of the Pension Schemes Act 1993;
- d) the earner has acknowledged in writing that he accepts that the scheme to which the transfer payment is to be made may not be regulated in any way by the law of the United Kingdom and that as a consequence there may be no obligation under that law on the receiving scheme or arrangement or its trustees or administrators to provide any particular value or benefit in return for the transfer payment; and
- e) the 'trustees' of the transferring scheme have taken reasonable steps to satisfy themselves that the earner has received a statement from the receiving scheme or arrangement showing the benefits to be awarded in respect of the transfer payment and the conditions (if any) on which these could be forfeited or withheld.

An "**overseas scheme**" is defined in regulation 1 of the Contracting-out (Transfer and Transfer Payment) Regulations 1996 [SI 1996/1462] as an occupational pension scheme which is administered wholly or primarily outside the United Kingdom but does not include a salary-related contracted-out scheme nor one in respect of which section 53 of the Pension Schemes Act 1993 applies by virtue of section 52(1) of that Act (former contracted-out schemes under the supervision of the Inland Revenue).

A salary-related contracted-out scheme is defined in regulation 1 of the Contracting-out (Transfer and Transfer Payment) Regulations 1996 [SI 1996/1462] as an occupational pension scheme which is contracted-out by virtue of satisfying section 9(2) of the Pension Schemes Act 1993.

An occupational pension scheme is defined by section 1 of the Pension Schemes Act 1993 as:

(1)

- a pension scheme -

(a) that -

- (i) for the purpose of providing benefits to, or in respect of, people with service in employments² of a description³, or
- (ii) for that purpose and also for the purpose of providing benefits to, or in respect of, other people,

is established by, or by persons who include, a person to whom subsection (2) applies when the scheme is established or (as the case may be) to whom that subsection would have applied when the scheme was established had that subsection then been in force, and

² Employment includes any trade, business, profession, office or vocation and "employed" shall be construed accordingly

³ This includes a description framed by reference to an employment being of any of two or more kinds.

(b) that has its main administration in the United Kingdom or outside the member States,

- or a pension scheme that is prescribed or is of a prescribed description.

(2) This subsection applies -

- (a) where people in employments of the description concerned are employed by someone, to a person who employs such people,
- (b) to a person in an employment of that description, and
- (c) to a person representing interests of a description framed so as to include -
 - (i) interests of persons who employ people in employments of the description mentioned in paragraph (a), or
 - (ii) interests of people in employments of that description.

(3) For the purposes of subsection (2), if a person is in an employment of the description concerned by reason of holding an office (including an elective office) and is entitled to remuneration for holding it, the person responsible for paying the remuneration shall be taken to employ the office-holder.

The prescribed descriptions for the purposes of sub-paragraph (1) above are set out in regulation 2 of the Pension Schemes (Categories) Regulations 2005 [SI 2005/2401]. This prescribes three descriptions of pension scheme as occupational pension schemes i.e.

- (a) schemes established by a person other than an employer of persons benefiting from the scheme, but in respect of whom such employers contribute to the scheme;
- (b) pension schemes established pursuant to the North/South Co-operation (Implementation Bodies) (Northern Ireland) Order 1999 [S.I. 1999/859] (which might not otherwise be occupational pension schemes because they do not have their main administration in the United Kingdom); and
- (c) schemes fulfilling the criteria set out in the definition of "public service pension scheme" in section 1(1) of the Pension Schemes Act 1993 (except the requirement to be an occupational pension scheme).

Summary

9. So, a member of the LGPS may transfer the cash equivalent of his / her accrued pension rights to

- a) an "**overseas scheme**" (i.e. an overseas occupational pension scheme), or
- b) an "**overseas arrangement**" that has effect, or is capable of having effect, so as to provide benefits on termination of employment or on death or retirement to or in respect of earners

10. If a member transfers his / her main LGPS benefits to an “**overseas scheme**” or to an “**overseas arrangement**”, any AVC pot will also be transferred to that scheme or arrangement. For pre 6 April 2006 transfers there appears to have been no requirement that the receiving scheme or arrangement should only provide a pension, but no lump sum, in respect of the transferred AVC pot.

What conditions have to be met?

11. There are two sets of requirements to be met for an overseas transfer to be able to proceed. The first set of requirements relate to the transfer of contracted-out rights (i.e. pre 6 April 1997 GMP and post 5 April 1997 section 9(2B) rights). The second set of requirements are those imposed by HMRC. The requirements of each are set out below.

Requirements to be met where the transfer includes contracted-out rights

The transfer includes a GMP

12. Regulation 6 of the Contracting-out (Transfer and Transfer Payments) Regulations 1996 [SI 1996/1462] states that a transfer payment including a GMP may be made to an “**overseas scheme**” (i.e. an overseas occupational pension scheme) or an “**overseas arrangement**” if

- a) the earner consents in writing;
- b) the 'trustees' of the transferring scheme have taken reasonable steps to satisfy themselves that, where the receiving scheme is an occupational pension scheme, the earner is in employment to which the receiving scheme applies;
- c) the transfer payment (whether or not it forms part of a larger payment in respect of both guaranteed minimum pensions and other rights) is of an amount at least equal to the cash equivalent of the earner's accrued rights to guaranteed minimum pensions, as calculated and verified in a manner consistent with regulations made under section 97 of the Pension Schemes Act 1993;
- d) the earner has acknowledged in writing that he accepts that the scheme to which the transfer payment is to be made may not be regulated in any way by the law of the United Kingdom and that as a consequence there may be no obligation under that law on the receiving scheme or arrangement or its trustees or administrators to provide any particular value or benefit in return for the transfer payment; and
- e) the 'trustees' of the transferring scheme have taken reasonable steps to satisfy themselves that the earner has received a statement from the receiving scheme or arrangement showing the benefits to be awarded in respect of the transfer payment and the conditions (if any) on which these could be forfeited or withheld.

The transfer includes section 9(2B) rights

13. Regulation 11 of the Contracting-out (Transfer and Transfer Payments) Regulations 1996 [SI 1996/1462] states that a transfer payment in respect of an earner's section 9(2B) rights may be made to an "**overseas scheme**" (i.e. an overseas occupational pension scheme) or an "**overseas arrangement**" if
- a) the earner consents in writing;
 - b) the 'trustees' of the transferring scheme have taken reasonable steps to satisfy themselves that, where the receiving scheme is an occupational pension scheme, the earner has entered employment to which the receiving scheme applies;
 - c) the earner has acknowledged in writing that he accepts that the scheme or arrangement to which the transfer payment is to be made may not be regulated in any way by the law of the United Kingdom and that as a consequence there may be no obligation under that law on the receiving scheme or arrangement or its trustees or administrators to provide any particular value or benefit in return for the transfer payment; and
 - d) the 'trustees' of the transferring scheme have taken reasonable steps to satisfy themselves that the earner has received a statement from the receiving scheme or arrangement showing the benefits to be awarded in respect of the transfer payment and the conditions (if any) on which these could be forfeited or withheld.

Inland Revenue requirements that have to be met

14. The Inland Revenue requirements are set out in Appendix VI to IR12 which is reproduced below.

Appendix VI

Transfers to Overseas Schemes

Contents

6.0 In this appendix:

A General conditions applying to all overseas transfers

B Overseas transfers meeting conditions of the reciprocal agreements

C Transfers to certain schemes for staff of European Union Institutions

D Other overseas transfers

I Further transfer conditions: evidence required for satisfaction of the conditions

II Transfers not requiring the prior consent of IR SPSS

III Transfers requiring the prior consent of IR SPSS

E Acceptable formats of certificates

F Glossary: definitions for use with this Appendix only (in bold in the text)

Flowchart for overseas transfers

6.1 The text refers only to transferring schemes or occupational schemes and to administrator/trustees. Proposed overseas transfers from buy-out policies are also subject to these conditions. References to transferring schemes or

occupational schemes should be read as including buy-out policies and references to administrator/trustees should be read as including Life Offices.

A General conditions applying to all overseas transfers

6.2 Where a member requests a transfer to an overseas scheme of non-contracted-out rights and/or non-safeguarded rights the transfer cannot be made if any of the following general conditions are not met:

- No part of the benefit under the UK scheme has come into payment or become due and payable (apart from the commencement of pension in the form of income drawdown from an additional voluntary contributions fund).
- The transfer is made directly from the administrator/trustees of the UK scheme to the administrator/trustees (or equivalent) of the overseas scheme. Cheques and other payments must specify that the money is being transferred to the administrator/trustees (or equivalent) in that capacity. Should that not be possible because of software limitations in the cheque production process the cheque or other payment must be accompanied by a letter specifying a similar instruction. In that case the administrator/trustees of the UK scheme must check that payment has been made in full to the administrator/trustees (or equivalent) of the overseas scheme in that capacity, and must notify IR SPSS if such confirmation is not obtained within three months of the transfer date. Where non-cash assets are being transferred, legal ownership of those assets must be transferred to the administrator/trustees (or equivalent) in that capacity.
- The transfer value and the value of other aggregable funds do not exceed the amount which is sufficient to provide the maximum approvable benefit for the transferee. Maximum approvable benefit means, for the purpose of an overseas transfer, the maximum permissible benefit at the date the member left pensionable service plus any appropriate increases in respect of the period from then until the date of transfer. Where the member's rights to benefits have been reduced by a pension sharing order, agreement or equivalent provision, this maximum approvable benefit must take account of any reduction required for the value of the negative deferred pension as at the date of transfer. A reduction will be required where the member was not a moderate earner (as defined in SI 2000 No 1085) at the date of the divorce/annulment.
- The transfer value does not include an asset which is a loan made by the UK scheme trustees to an employer that is participating, or has participated, in the scheme or to an associated employer.
- Where a member does not have a cash equivalent right to a transfer the rules of the transferring scheme must permit the transfer of his/her rights to an overseas scheme. A member has a cash equivalent right to a transfer provided his/her pensionable service ceases at least one year before normal pension age under the provisions of the Pension Schemes Act 1993.

Where any of these conditions is not met a transfer is not permissible. No transfer application should be submitted to IR SPSS.

Transfers of contracted-out rights and safeguarded rights must also meet the requirements of DWP Regulations. UK scheme trustees and administrators should notify the Inland Revenue National Insurance Contributions Office of transfers of contracted-out rights as follows

- GMP and/or post 97 COSR rights - complete form CA1890. See Termination of Contracted-out Employment Manual, CA14, for further information.
- Protected Rights - complete form CA1895. See Termination of Contracted-out Employment Manual, CA14A, for further information.

Completed forms CA1890 and CA1895 should be sent to Inland Revenue National Insurance Contributions Office, Contracted-out Employment Group (COEG), Longbenton, Newcastle upon Tyne NE98 1ZZ.

The National Insurance Contributions Office does not need to be notified of transfers of safeguarded rights, but they can only be transferred if DDWP Regulatory requirements are met.

The telephone number for general enquiries on transfers of contracted-out rights and safeguarded rights is 0191 225 0150.

B Overseas transfers meeting the conditions of the reciprocal agreements

6.3 The Inland Revenue has reciprocal transfer agreements with Jersey, the Isle of Man, Guernsey and the Republic of Ireland. The texts of these agreements are set out in forms PS 119,120,121 and 122 respectively (see Appendix).

6.4 Where the proposed transfer is permitted under the terms of the reciprocal agreement and the conditions in A above are satisfied, the transfer may be made without seeking the specific consent of IR SPSS. The transferring scheme administrator/trustees should arrange for the information evidencing the meeting of the conditions in the reciprocal agreement and those in **A above** to be kept for a period of six years from the date of transfer.

6.5 Where the proposed transfer does not meet the requirements of the particular reciprocal agreement, the transfer must be considered under the procedure at either **C or D below**.

C Transfers to certain schemes for staff of European Union institutions

6.6 There are special arrangements for transfers to:

- the pension scheme for the staff of the institutional bodies of the European Union
- the European Investment Bank staff pension scheme
- the pension scheme of the European Patent Office.

The conditions that apply to such transfers are with two exceptions, the same as those set out in **A and in D.I below**. The transferee must have left the UK, but need not have done so on a permanent basis. And, although the scheme and the transferee have to be established/resident abroad, they do not have to be in the same European Union country.

6.7 Where the conditions are met a transfer may be made without the specific approval of IR SPSS. The transferring scheme administrator/trustees should arrange for the information evidencing the meeting of those conditions to be kept for a period of six years from the date of the transfer. For further guidance about evidence requirements see **D.I below**.

6.8 Where any of the conditions is not met a transfer is not permissible. No transfer application should be submitted to IR SPSS.

D Other overseas transfers

6.9 I. Further transfer conditions: evidence required for satisfaction of the conditions

Where any of the following conditions is not met the transfer is not permissible. No transfer application should be submitted to IR SPSS.

- The transferee has left the UK on a permanent basis with no intention of returning to the UK to work or to retire.
Evidence: written confirmation from the transferee.
- The transferee is already in employment or self-employment overseas. This condition is not met if the transferee is working for an overseas branch or representative office of a UK tax resident employer.
Evidence: a letter from the overseas employer (or if self-employed a copy contract for services rendered or a copy of an invoice of services or goods provided)
- The transferee's employment arrangements have been severed completely, and the transferee does not exercise any self-employment within the UK.
Evidence:
 - written confirmation from the transferee that he/she holds no current employment either in the UK or overseas with a UK tax resident employer, that he/she holds no current employment with the UK branch or representative office of an overseas employer, and that he/she does not exercise any self-employment in the UK, and
 - the payroll record showing when the transferee left the employment to which the scheme relates, and
 - if the transferee was in self-employment after he/she left the employment to which the transferring scheme relates, a copy of the cessation accounts of the transferee's business.
- The transferee and the receiving scheme are resident/established in the same country.
Evidence: written confirmation of residence from the transferee, and written confirmation of the country of establishment of the overseas scheme from its administrator (or equivalent).

- The overseas scheme(s) has/have been authorised or recognised as a pension scheme by the relevant tax or supervisory authority of the country in which it is / they are established. The transferee's rights can be transferred to more than one overseas scheme.
Evidence: a copy of the letter issued by the overseas tax or supervisory authority (either the overseas scheme's letter of authorisation/recognition or a letter from the authority providing confirmation of authorisation/recognition).
- The overseas scheme is capable of receiving the transfer. This condition cannot be met if the overseas scheme is a book reserve scheme, an unfunded scheme or a "pay as you go scheme". Transfers to US "qualified" retirement plans, including individual retirement arrangements (IRAs), cannot be made as such plans are not permitted to accept funds transferred or "rolled over" from UK schemes.
Evidence: written confirmation from the overseas scheme administrator (or equivalent).

6.10 II. Transfers not requiring the prior consent of IR SPSS

If at the date of requesting a transfer the member is a controlling director or a high earner the transfer cannot be made without the prior consent of IR SPSS. Where that is the case, go to **D.III below**.

6.11 Transfers of the rights of other members can be made without obtaining the prior consent of IR SPSS, provided all of the conditions in **A and D.I** are satisfied. The administrator/trustees should arrange for the information evidencing the meeting of the conditions in **A and D.I** to be kept for a period of six years from the date of transfer. A copy of the information evidencing that the member was not a controlling director or a high earner should be kept for a similar period.

6.12 For members who are not controlling directors and for whom no evidence of remuneration is available the administrator/trustee may rely on a certificate provided by the member in the format at **E.I below**. The transfer can then be made provided all of the conditions in **A and D.I** are satisfied, but the administrator/trustees must send a copy of the **E.I** certificate to IR SPSS within 90 days of the transfer.

6.13 III. Transfers requiring the prior consent of IR SPSS

In order for IR SPSS to consider whether the transfer is permissible the transferring scheme administrator/trustees will need to provide it with the following information:

- The evidence specified at **D.I above** and confirmation that the conditions in the first bullet point (and, if appropriate, the fifth bullet point) in **A above** are satisfied.

About the transferee

- His/her name and National Insurance number, and the last Schedule E District and reference number applicable to him/her.

- The name and IR SPSS reference of any other approved occupational scheme providing aggregable benefits (including Free standing Additional Voluntary Contribution Schemes). The name of the insurer, and the policy number, of any buy-out policy bought by an approved occupational scheme which was providing aggregable benefits. The name and IR SPSS reference number of any personal pension scheme which holds a transfer value from an approved occupational scheme which was providing aggregable benefits.
- A certificate (or letter on headed paper) from the tax authorities of the overseas country stating that the transferee is resident there for the purposes of income tax, or proof of the granting to the transferee of permanent resident status in the overseas country. If the documentation is not in English it should be accompanied by a translation. An acceptable format for the tax residence certificate is shown in **E.II below** (a letter should provide similar assurance).

About the transfer value

- The amount of the transfer value from the transferring scheme.
- A copy of the written actuarial advice or the calculations showing that the transfer amount does not exceed the amount required to provide the maximum approvable benefit.
- Full details of any part of the proposed transfer payment which is not in the form of cash, including a current open market valuation for each such asset.

E Acceptable formats of certificates

6.14 I. Certificate relating to high earner condition in D.II

Member's name:

Member's National Insurance number:

I certify that the total amount of remuneration paid to me in any year of assessment falling (wholly or partly) during the period of six years prior to the date on which the transfer request was made did not exceed [£x - insert here the figure for the permitted maximum for the year of assessment in which the transfer request was made].

Member's signature:

Date:

Explanatory Note

"Remuneration" should be construed in accordance with section 612(1) of the Income and Corporation Taxes Act 1988. For the purposes of this certificate it is limited to remuneration in respect of any employment to which the proposed transfer payment relates. You should ignore any income that is not assessable to income tax under Schedule E.

Information to be provided by the administrator/trustees of the transferring scheme or, if the transfer is from a buy-out policy, by the insurance company

Name of transferring scheme or name of insurer of buy-out policy:

IR SPSS reference of transferring scheme or number of buy-out policy:

Name of overseas scheme:

Amount of transfer value:

Date of transfer request:

II. Certificate referred to in fourth bullet point in D.III

As an official representative of the Taxation Authorities of [name of overseas country] I certify that [name of transferee] is resident in [name of overseas country] for the purposes of income tax.

Signature:

Name:

Official Address:

Telephone Number:

Date:

Official Stamp:

F Glossary

6.15 The following definitions for use with this Appendix only (unless stated otherwise legislative references are to the Income and Corporation Taxes Act 1988)

"Additional Voluntary Contributions" are contributions by an employee other than Basic or Contractual Contributions i.e. over and above contributions (if any) required as a condition of membership and include any such contribution paid under a Free standing Additional Voluntary Contribution Scheme.

"Administrator" is defined in section 611AA.

"Associated Employers" are defined in section 590A(3) and (4) as companies where one is directly or indirectly controlled by the other or both or all are controlled by a third person. Control is construed in accordance with section 416 in relation to close companies or with section 840 for other corporate bodies.

"Contracted-Out Rights" are such rights, under or derived from an occupational pension scheme, or an appropriate scheme, as fall within the following categories:

- entitlement to payment of, or accrued rights to, guaranteed minimum pensions (section 8(2) of the Pension Schemes Act 1993 refers);
- section 9(2B) rights (section 9(2B) of the Pension Schemes Act 1993 refers);
- protected rights (section 10 of the Pension Schemes Act 1993 refers); or
- any of the rights above which themselves derive from any of those rights which have been the subject of a transfer payment.

"Controlling Director" is defined in paragraph 5(5) of Schedule 23 as a person who is a director and within paragraph (b) of section 417(5) of ICTA 1988 in respect of any employment to which the proposed transfer payment relates. For practical purposes this means a member who, at any time within 10 years of requesting a transfer of accrued pension rights to an overseas scheme, has been a director, and either on his own or with one or more associates has beneficially owned or been able to control, directly, indirectly or through other companies, 20% or more of the ordinary share capital of the company. For the purposes of this definition:

(i) "Associate" means in relation to a director, any relative (i.e. spouse, forebear, issue or sibling) or partner (within the meaning of the Partnership Act 1890), the trustees of any settlement in relation to which the director is, or any relative of his or her (living or dead) is or was, a settlor and, where the director is interested in any shares or obligations of the company which are subject to any trust, or are part of the estate of a deceased person, the trustees of the settlement

concerned or, as the case may be, the personal representatives of the deceased, and

(ii) The expression "either on his own or with one or more associates" requires a person to be treated as owning or, as the case may be, controlling what any associate owns or controls even if he or she does not own or control share capital on his or her own.

"DWP Regulations" are the Contracting-out (Transfer and Transfer Payment) Regulations 1996, the Protected Rights (Transfer Payment) Regulations 1996 and the Pension Sharing (Pension Credit Benefit) Regulations 2000 as amended by the Contracting-out, Protected Rights and Safeguarded Rights (Transfer Payment) Amendment Regulations 2005.

"Employment Arrangements" means the arrangements whereby the transferee currently serves:

- in the UK or elsewhere for a UK tax resident employer as an employee within the meaning given in section 612, and/or
- in the UK as an employee within the meaning of section 612 for the UK branch or representative office of an overseas tax resident employer.

N.B. The references to ex-employees in section 612 are to be excluded for the purpose of this definition.

"Equivalent Pension Benefit" has the meaning given by section 57(1) of the National Insurance Act 1965.

"Free standing Additional Voluntary Contribution Scheme" means a retirement benefits scheme approved by virtue of section 591(2)(h), established by a pension provider or the trustees of an approved centralised scheme for non-associated employers to which the employer does not contribute and which provides benefits additional to those provided by a scheme to which the employer does contribute.

"High Earner" is a member whose total amount of remuneration in any year of assessment falling (wholly or partly) during the period of six years prior to the date on which the transfer request was made exceeded the permitted maximum for the year of assessment in which the transfer request was made.

"Institutional Bodies of the European Union" means, for the purposes of this Appendix, the Commission, the European Parliament, the Council, the Court of Justice, the Court of Auditors, the Economic and Social Committee and the Committee of the Regions, the European University Institute in Florence, as well as any other organisation devoted to furthering the European Communities' interests whose personnel are subject to the Staff Regulations of the Officials of the European Communities.

"Negative Deferred Pension" is the current value in terms of pension of a pension debit as revalued under section 31 Welfare Reform and Pensions Act 1999.

"Normal Pension Age" is defined in section 180 of the Pension Schemes Act 1993.

"Permitted Maximum" is defined in section 590C. The figure for 2000/2001 is £91,800.

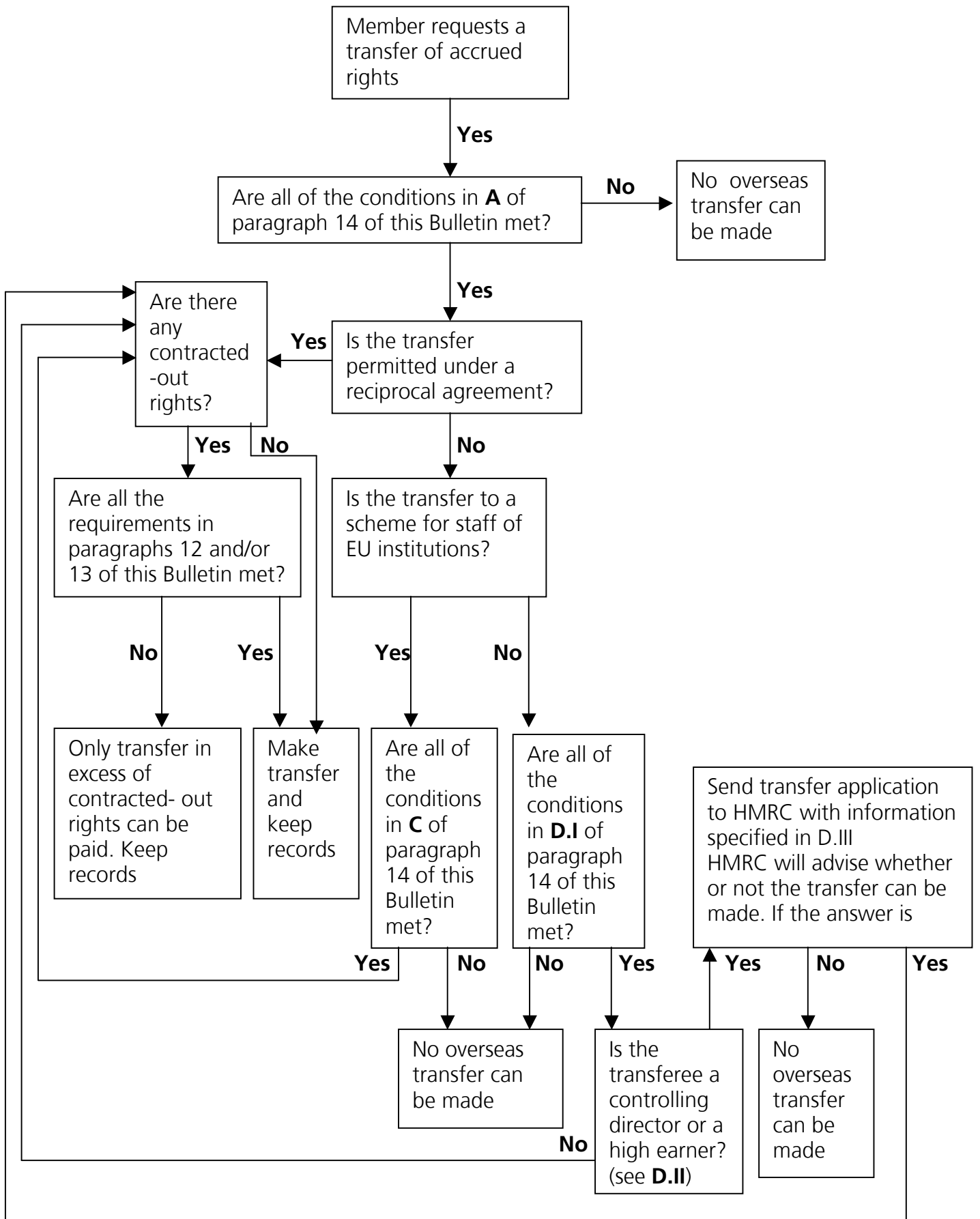
"Pensionable Service" means service for an employer in respect of which benefits (other than benefits payable solely on death before retirement) accrue under an approved scheme.

"Personal Pension Scheme" means a scheme approved under Chapter IV, Part XIV.

"Remuneration" should be construed in accordance with section 612(1), and for the purposes of this Appendix is limited to remuneration in respect of any employment to which the proposed transfer payment relates. Any income that is not assessable to income tax under Schedule E is to be ignored.

"Safeguarded Rights" are defined in section 68A of the Pension Schemes Act 1993, inserted by section 36 of the Welfare Reform and Pensions Act 1999.

OVERSEAS TRANSFERS FLOWCHART - ACTIVE AND DEFERRED MEMBERS



SECTION B - TRANSFERS OUT - PENSION CREDIT MEMBERS

Can an overseas transfer in respect of LGPS benefits be made?

15. Regulation 147(1) of the Local Government Pension Scheme Regulations 1997 stipulates that an administering authority may discharge its liability in respect of a pension credit in accordance with either sub-paragraph (2) or sub-paragraph (3) of paragraph 1 of Schedule 5 to the Welfare Reform and Pensions Act 1999.
16. Regulation 144(1) of the Local Government Pension Scheme (Scotland) Regulations 1998 stipulates that an administering authority may discharge its liability in respect of a pension credit in accordance with paragraph 1(2)(b) of Schedule 5 to the Welfare Reform and Pensions Act 1999.
17. Regulation 7 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 [SI 2000/1053] cross refers to paragraph 1 of Schedule 5 of the Welfare Reform and Pensions Act 1999 which sets out the mode of discharge of liability for a Pension Credit from a funded pension scheme as follows (and which is mirrored in regulations 144(2) and (3) of the Local Government Pension Scheme (Scotland) Regulations 1998):
 - " 1. - (1) This paragraph applies to a pension credit which derives from-
 - (a) a funded occupational pension scheme, or
 - (b) a personal pension scheme.
 - (2) The trustees or managers of the scheme from which a pension credit to which this paragraph applies derives may discharge their liability in respect of the credit by conferring appropriate rights under that scheme on the person entitled to the credit-
 - (a) with his consent, or
 - (b) in accordance with regulations made by the Secretary of State.
 - (3) The trustees or managers of the scheme from which a pension credit to which this paragraph applies derives may discharge their liability in respect of the credit by paying the amount of the credit to the person responsible for a qualifying arrangement with a view to acquiring rights under that arrangement for the person entitled to the credit if
 - (a) the qualifying arrangement is not disqualified as a destination for the credit,
 - (b) the person responsible for that arrangement is able and willing to accept payment in respect of the credit, and
 - (c) payment is made with the consent of the person entitled to the credit, or in accordance with regulations made by the Secretary of State.
 - (4) For the purposes of sub-paragraph (2), no account is to be taken of consent of the person entitled to the pension credit unless-

- (a) it is given after receipt of notice in writing of an offer to discharge liability in respect of the credit by making a payment under subparagraph (3), or
- (b) it is not withdrawn within 7 "days" of receipt of such notice."

To summarise, regulation 7 sets out the process to follow where the person entitled to the credit ("ex-spouse") has failed to provide her/his consent to have the pension credit conferred upon her/him. The Scheme can discharge the liability by granting a Pension Credit in the Scheme or by paying the amount of the credit to a qualifying arrangement with a view to acquiring rights under that arrangement for the "ex-spouse" i.e. the Scheme must make a decision on their behalf.

In the LGPS, the default option is a Pension Credit in the LGPS. A transfer to a qualifying arrangement will only be made where the "ex-spouse" so requests.

18. Regulation 10 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 [SI 2000/1053] and regulation 24 of the Pension Sharing (Pension Credit Benefit) Regulations 2000 [SI 2000/1054] stipulate that the value of the pension credit must be calculated and verified in such a manner as approved by the Government Actuary (or an actuary authorised by the Government Actuary to act on his behalf) using the same methods adopted and assumptions made as when other pension rights are received, and must be consistent with the Guidance Note 11 'Retirement Benefit Schemes – Transfer Values', published by the Institute of Actuaries and the Faculty of Actuaries.
19. Regulation 11 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 [SI 2000/1053], when read in conjunction with paragraph 6 (1) of Schedule 5 of the Welfare Reform and Pensions Act 1999, sets out the qualifying arrangements for the destination of a pension credit (which are mirrored in regulation 145 of the Local Government Pension Scheme (Scotland) Regulations 1998) . These are-
 - a) an occupational pension scheme,
 - b) a personal pension scheme,
 - c) an appropriate annuity contract,
 - d) an appropriate policy of insurance, and
 - e) an overseas arrangement within the meaning of the Contracting-out (Transfer and Transfer Payment) Regulations 1996.

20. Regulation 12 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 [SI 2000/1053] and Paragraph 7 of Schedule 5 of the Welfare Reform and Pensions Act 1999 disqualifies a pension arrangement as a destination for a pension credit unless, where the credit is derived from a scheme approved under Part XIV of the Income & Corporation Taxes Act 1988, the pension arrangement is

- a) approved to receive pension credits; or
- b) satisfies such requirements as the Secretary of State may prescribe, i.e. it is:
 - i) an arrangement which carries on pension business as defined by section 431B of the Income and Corporation Taxes Act 1988 (meaning of pension business); or
 - ii) an overseas arrangement within the meaning given by regulation 1(2) of the Contracting-out (Transfer and Transfer Payment) Regulations 1996 [SI 1996/1462] (citation, commencement and interpretation); or
 - iii) an overseas scheme within the meaning given by regulation 1(2) of the Contracting-out (Transfer and Transfer Payment) Regulations 1996 [SI 1996/1462].

This is mirrored in regulation 146(1) of the Local Government Pension Scheme (Scotland) Regulations 1998.

21. Regulation 13 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 [SI 2000/1053] and Paragraph 7 of Schedule 5 of the Welfare Reform and Pensions Act 1999 disqualify a pension arrangement as a destination for a pension credit unless, where the rights by reference to which the amount of the credit is determined are or include contracted-out or "safeguarded rights", the pension arrangement is

- 1) of a description prescribed by the Secretary of State, namely:
 - a) a contracted-out salary related occupational pension scheme which satisfies the requirements of section 9(2) of the Pension Schemes Act 1993 (requirements for certification of occupational salary related schemes); or
 - b) a contracted-out money purchase occupational pension scheme which satisfies the requirements of section 9(3) of the Pension Schemes Act 1993 Act (requirements for certification of occupational money purchase schemes); or
 - c) a contracted-out occupational pension scheme to which section 149 of the Pensions Act 1995 (hybrid occupational pension schemes) applies; or
 - d) an appropriate personal pension scheme within the meaning of section 7(4) of the Pension Schemes Act 1993 Act (issue of appropriate scheme certificates); or
 - e) an annuity contract or an insurance policy which satisfies the requirements of paragraph 6 of Schedule 5 to the Welfare Reform and Pensions Act 1999 (qualifying arrangements);
 - f) an overseas arrangement within the meaning given by regulation 1(2)

of the Contracting-out (Transfer and Transfer Payment) Regulations 1996 [SI 1996/1462]; or

g) an overseas scheme within the meaning given by regulation 1(2) of the Contracting-out (Transfer and Transfer Payment) Regulations 1996 [SI 1996/1462], and

2) satisfies such requirements as the Secretary of State may prescribe, i.e. in relation to the descriptions of pension arrangement referred to in paragraphs (1)(f) and (g) above, the requirements specified in regulation 11 of the Contracting-out (Transfer and Transfer Payment) Regulations 1996 [SI 1996/1462] (transfer payments to overseas schemes or arrangements in respect of section 9(2B) rights), as if the references in that regulation to -

- (i) 'earner' were to 'the person entitled to a pension credit'; and
- (ii) 'accrued section 9(2B) rights' were to 'safeguarded rights'.

These provisions are mirrored in regulation 146(2) of the Local Government Pension Scheme (Scotland) Regulations 1998.

22. Where a transfer, including "safeguarded rights", is to be made to an "**overseas scheme**" or an "**overseas arrangement**", regulations 19 and 21 of the Pension Sharing (Pension Credit Benefit) Regulations 2000 [SI 2000/1054] require the administering authority to

- a) only do so with the Pension Credit member's consent
- b) take reasonable steps to satisfy itself that, where the receiving scheme is an occupational pension scheme, the person with the pension credit rights has entered employment to which the receiving scheme applies
- c) ensure the transfer payment (or, if it forms part of a larger payment giving effect to both safeguarded and other rights, that part which gives effect to safeguarded rights) is of an amount at least equal to the cash equivalent of the safeguarded rights to which effect is being given, as calculated and verified in a manner consistent with regulations 3 to 7 of the Pension Sharing (Valuation) Regulations 2000 [SI 2000/1052]
- d) take reasonable steps to satisfy itself that the person with the Pension Credit rights has received a statement from the receiving scheme or arrangement showing the benefits to be awarded in respect of the transfer payment and the conditions (if any) on which these could be forfeited or withheld
- e) ensure the person with the Pension Credit rights acknowledges that he / she accepts the scheme or arrangement to which the transfer payment is to be made may not be regulated in any way by the law of the United Kingdom and that as a consequence there may be no obligation under that law on the receiving scheme or arrangement or on its trustees or managers to provide any particular value or benefit in return for the transfer payment
- f) ensure the transfer satisfies the requirements of the Inland Revenue, and
- g) where the transfer is to an overseas arrangement and the transfer includes safeguarded rights, ensure that the arrangement is one to which

a transfer payment can be made in accordance with regulation 9 of the Pension Sharing (Safeguarded Rights) Regulations 2000 [SI 2000/1055]. One of the requirements is that the transfer can only be made to another salary related contracted-out scheme or to a money purchase contracted-out scheme, if the person with safeguarded rights is an active member of such a scheme, or to an appropriate personal pension scheme.

An "**overseas arrangement**" is defined in regulation 1 of the Contracting-out (Transfer and Transfer Payment) Regulations 1996 [SI 1996/1462] as a scheme or arrangement, other than an occupational pension scheme, which

- a) has effect, or is capable of having effect, so as to provide benefits on termination of employment or on death or retirement to or in respect of earners;
- b) is not an appropriate personal pension scheme; and
- c) is administered wholly or primarily outside the United Kingdom.

An "**overseas scheme**" is defined in regulation 1 of the Contracting-out (Transfer and Transfer Payment) Regulations 1996 [SI 1996/1462] as an occupational pension scheme which is administered wholly or primarily outside the United Kingdom but does not include a salary-related contracted-out scheme nor one in respect of which section 53 of the Pension Schemes Act 1993 applies by virtue of section 52(1) of that Act (former contracted-out schemes under the supervision of the Inland Revenue).

A salary-related contracted-out scheme is defined in regulation 1 of the Contracting-out (Transfer and Transfer Payment) Regulations 1996 [SI 1996/1462] as an occupational pension scheme which is contracted-out by virtue of satisfying section 9(2) of the Pension Schemes Act 1993.

An occupational pension scheme is defined by section 1 of the Pension Schemes Act 1993 as:

(1)

- a pension scheme -

(a) that -

- (i) for the purpose of providing benefits to, or in respect of, people with service in employments⁴ of a description⁵, or
- (ii) for that purpose and also for the purpose of providing benefits to, or in respect of, other people,

is established by, or by persons who include, a person to whom subsection (2) applies when the scheme is established or (as the case may be) to whom that subsection would have applied when the scheme was established had that subsection then been in force, and

⁴ Employment includes any trade, business, profession, office or vocation and "employed" shall be construed accordingly

⁵ This includes a description framed by reference to an employment being of any of two or more kinds.

(b) that has its main administration in the United Kingdom or outside the member States,

- or a pension scheme that is prescribed or is of a prescribed description.

(2) This subsection applies -

- (a) where people in employments of the description concerned are employed by someone, to a person who employs such people,
- (b) to a person in an employment of that description, and
- (c) to a person representing interests of a description framed so as to include -
 - (i) interests of persons who employ people in employments of the description mentioned in paragraph (a), or
 - (ii) interests of people in employments of that description.

(3) For the purposes of subsection (2), if a person is in an employment of the description concerned by reason of holding an office (including an elective office) and is entitled to remuneration for holding it, the person responsible for paying the remuneration shall be taken to employ the office-holder.

The prescribed descriptions for the purposes of sub-paragraph (1) above are set out in regulation 2 of the Pension Schemes (Categories) Regulations 2005 [SI 205/2401]. This prescribes three descriptions of pension scheme as occupational pension schemes i.e.

- (a) schemes established by a person other than an employer of persons benefiting from the scheme, but in respect of whom such employers contribute to the scheme;
- (b) pension schemes established pursuant to the North/South Co-operation (Implementation Bodies) (Northern Ireland) Order 1999 [S.I. 1999/859] (which might not otherwise be occupational pension schemes because they do not have their main administration in the United Kingdom); and
- (c) schemes fulfilling the criteria set out in the definition of "public service pension scheme" in section 1(1) of the Pension Schemes Act 1993 (except the requirement to be an occupational pension scheme).

23. Section 101G(2) of the Pension Schemes Act 1993 states that a Pension Credit member may not exercise the right to transfer out a Pension Credit if there is less than a year to go until the Pension Credit member reaches Normal Benefit Age (i.e. NBA = age 65).

Summary

24. So, a Pension Credit member may transfer the cash equivalent of his / her Pension Credit rights to

- a) an "**overseas scheme**" (i.e. an overseas occupational pension scheme), or

- b) an "**overseas arrangement**" that has effect, or is capable of having effect, so as to provide benefits on termination of employment or on death or retirement to or in respect of earners

But

- i) a transfer including safeguarded rights can only be made to an "**overseas scheme**" or, if it is to be made to an "**overseas arrangement**", it must be an arrangement to which a transfer payment can be made in accordance with regulation 9 of the Pension Sharing (Safeguarded Rights) Regulations 2000 [SI 2000/1055] **NB:** the requirements of the aforementioned regulation 9 are such that it is highly unlikely that a transfer including safeguarded rights can be made to an "**overseas arrangement**" (because one of the requirements is that the transfer can only be made to another salary related contracted-out scheme or to a money purchase contracted-out scheme, if the person with safeguarded rights is an active member of such a scheme, or to an appropriate personal pension scheme)
- ii) a transfer that includes no safeguarded rights can be made to an "**overseas scheme**" or an "**overseas arrangement**".

What conditions have to be met?

25. There are two sets of requirements to be met for an overseas transfer to be able to proceed. The first set of requirements relate to the transfer of safeguarded rights (i.e. rights included in the Pension Credit that derive from pre 6 April 1997 GMP and post 5 April 1997 section 9(2B) rights). The second set of requirements are those imposed by HMRC. The requirements of each are set out below.

Requirements to be met where the transfer includes safeguarded rights

26. Where a transfer, including "safeguarded rights", is to be made to an "**overseas scheme**" or an "**overseas arrangement**", regulations 19 and 21 of the Pension Sharing (Pension Credit Benefit) Regulations 2000 [SI 2000/1054] require the administering authority to
- a) only do so with the Pension Credit member's consent
 - b) take reasonable steps to satisfy itself that, where the receiving scheme is an occupational pension scheme, the person with the pension credit rights has entered employment to which the receiving scheme applies
 - c) ensure the transfer payment (or, if it forms part of a larger payment giving effect to both safeguarded and other rights, that part which gives effect to safeguarded rights) is of an amount at least equal to the cash equivalent of the safeguarded rights to which effect is being given, as calculated and verified in a manner consistent with regulations 3 to 7 of the Pension Sharing (Valuation) Regulations 2000 [SI 2000/1052]
 - d) take reasonable steps to satisfy itself that the person with the Pension Credit rights has received a statement from the receiving scheme or

arrangement showing the benefits to be awarded in respect of the transfer payment and the conditions (if any) on which these could be forfeited or withheld

- e) ensure the person with the Pension Credit rights acknowledges that he / she accepts the scheme or arrangement to which the transfer payment is to be made may not be regulated in any way by the law of the United Kingdom and that as a consequence there may be no obligation under that law on the receiving scheme or arrangement or on its trustees or managers to provide any particular value or benefit in return for the transfer payment
- f) ensure the transfer satisfies the requirements of the Inland Revenue, and
- g) where the transfer is to an "**overseas arrangement**" and the transfer includes safeguarded rights, ensure that the arrangement is one to which a transfer payment can be made in accordance with regulation 9 of the Pension Sharing (Safeguarded Rights) Regulations 2000 [SI 2000/1055]
NB: the requirements of the aforementioned regulation 9 are such that it is highly unlikely that a transfer including safeguarded rights can be made to an "**overseas arrangement**" (because one of the requirements is that the transfer can only be made to another salary related contracted-out scheme or to a money purchase contracted-out scheme, if the person with safeguarded rights is an active member of such a scheme, or to an appropriate personal pension scheme).

Requirements to be met where the transfer does not include safeguarded rights

27. Where a transfer, which does not include "safeguarded rights", is to be made to an "**overseas scheme**" or an "**overseas arrangement**", regulations 19 and 21 of the Pension Sharing (Pension Credit Benefit) Regulations 2000 [SI 2000/1054] require the administering authority to

- a) only do so with the Pension Credit member's consent
- b) take reasonable steps to satisfy itself that, where the receiving scheme is an occupational pension scheme, the person with the pension credit rights has entered employment to which the receiving scheme applies
- c) ensure the transfer payment (or, if it forms part of a larger payment giving effect to both safeguarded and other rights, that part which gives effect to safeguarded rights) is of an amount at least equal to the cash equivalent of the safeguarded rights to which effect is being given, as calculated and verified in a manner consistent with regulations 3 to 7 of the Pension Sharing (Valuation) Regulations 2000 [SI 2000/1052]
- d) take reasonable steps to satisfy itself that the person with the Pension Credit rights has received a statement from the receiving scheme or arrangement showing the benefits to be awarded in respect of the transfer payment and the conditions (if any) on which these could be forfeited or withheld
- e) ensure the person with the Pension Credit rights acknowledges that he / she accepts the scheme or arrangement to which the transfer payment is to be made may not be regulated in any way by the law of the United

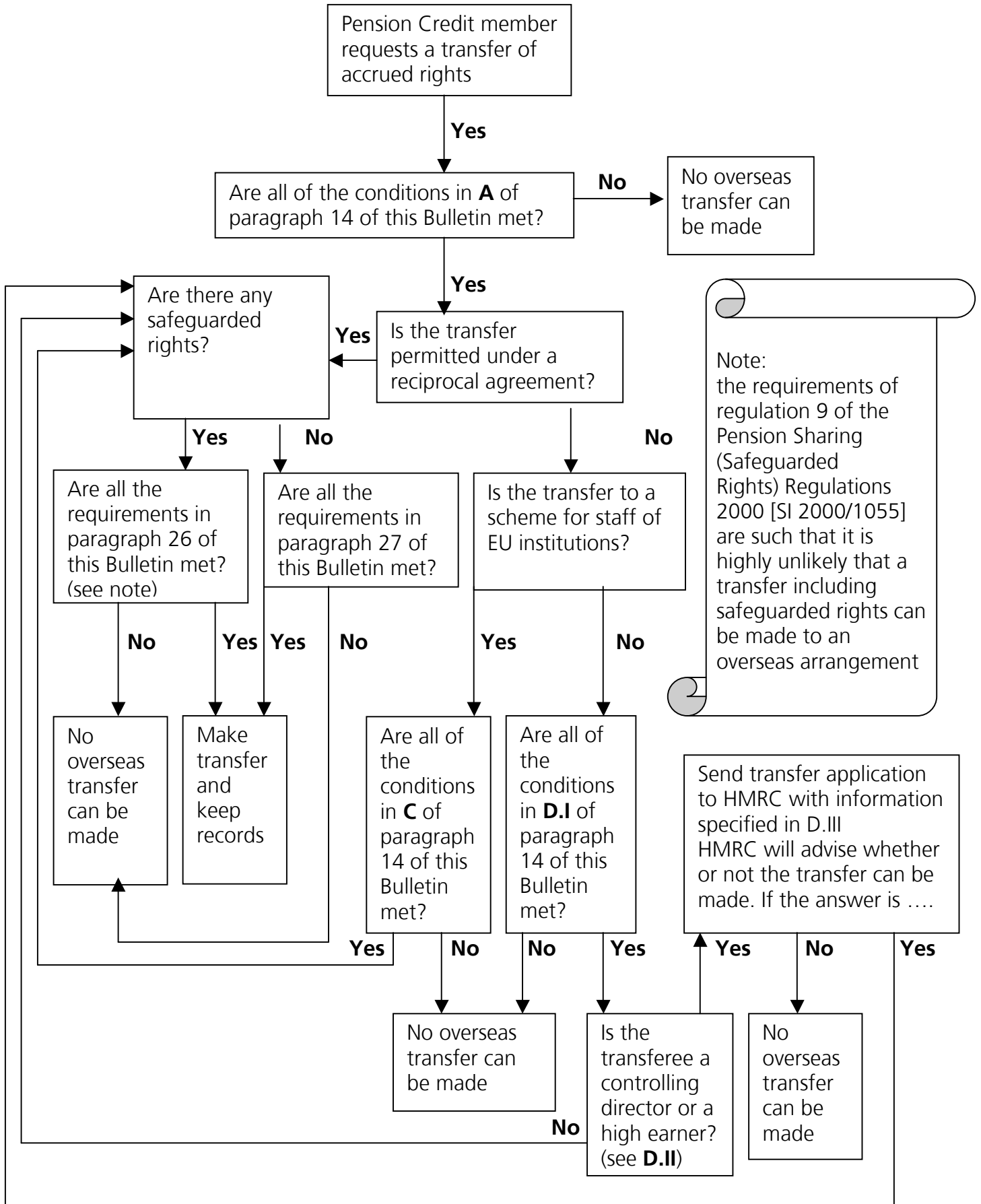
Kingdom and that as a consequence there may be no obligation under that law on the receiving scheme or arrangement or on its trustees or managers to provide any particular value or benefit in return for the transfer payment, and

f) ensure the transfer satisfies the requirements of the Inland Revenue.

Inland Revenue requirements that have to be met

28. The Inland Revenue requirements are set out in Appendix VI to IR12. They have been reproduced in paragraph 14 of this Bulletin.

OVERSEAS TRANSFERS FLOWCHART - PENSION CREDIT MEMBERS



SECTION C - TRANSFERS IN

Active Scheme Members

29. A transfer in from an overseas occupational pension scheme cannot be accepted in respect of an active scheme member without the specific authority of the Pension Schemes Office of the Inland Revenue. Before authorising such a transfer, the PSO will need to be satisfied that the transferring member has been employed for a significant period (normally not less than 2 years) in the overseas employment to which the transfer benefits relate. The transfer should be unconditional and made direct between the schemes. Although the Inland Revenue rules would also permit a transfer in from an overseas Personal Pension Scheme type arrangement (subject to the aforementioned conditions), regulation 121 of the Local Government Pension Scheme Regulations 1997 and the Local Government Pension Scheme (Scotland) Regulations 1998 does not provide for a transfer in from such an arrangement. A transfer from an overseas occupational pension scheme is, however, covered by regulation 121.

Pension Credit Members

30. A transfer in from an "overseas scheme" or an "overseas arrangement" cannot be accepted in respect of a Pension Credit member (see regulation 160 of the Local Government Pension Scheme Regulations 1997 which debars such transfers and regulation 155 of the Local Government Pension Scheme (Scotland) Regulations 1998 which does not make any provision for such transfers).

Terry Edwards
Assistant Director (Pensions)
April 2006

Appendix

PS 119 (4/01) - Arrangements for the transfer of pension rights between the United Kingdom and Jersey

1 Arrangements have been made, on a reciprocal basis, to facilitate the transfer of pensions rights where, on a change of job, an individual moves from Jersey to the United Kingdom or vice versa. There is no formal starting date for the arrangements, and if desired a transfer payment may be made under them in respect of an individual who has moved in the past so long as he or she was given at the time preserved pension etc. benefits and did not receive a refund of his contributions. Details of the arrangements follow. (It should be noted that schemes under Articles 131A and 131C of the Income Tax (Jersey) Law 1961, as amended, are NOT covered by these reciprocal arrangements nor will transfers to or from schemes be authorised by Inland Revenue (Savings, Pensions, Share Schemes).)

Transfers from Jersey to the United Kingdom

2 Where an employed or self-employed member of a superannuation fund approved in Jersey by the Comptroller of Income Tax under Article 131 or 131B of the Income Tax (Jersey) Law 1961, as amended, becomes a member of a United Kingdom pension scheme which is

- a) a "statutory scheme", as defined in section 612(1) Income and Corporation Taxes Act 1988, or

- b) accepted by the Board of Inland Revenue as an "exempt approved scheme" for the purposes of Chapter I, Part XIV, ICTA 1988, or

- c) a Personal Pension Scheme approved under Chapter IV, Part XIV, ICTA 1988 (but not a "transfers only" scheme as described IR76)

a transfer payment may be made in respect of him or her from the Jersey scheme to the United Kingdom scheme.

3 No Jersey tax will be payable under Article 6 of the Income Tax (Superannuation Funds) (Jersey) Order 1972 in respect of the transfer payment.

4 In the event of any subsequent refund of the individual's own contributions, or of the commutation in special circumstances of the whole of his pension, the service in respect of which the transfer payment was made will be treated as if it were service in the United Kingdom for the purposes of the charge to United Kingdom tax under section 598 or 599, ICTA 1988.

5 It will not be possible for a transfer payment to be made from a Jersey scheme approved under Article 131 or 131B to a United Kingdom scheme which is not within the 3 categories described in paragraph 2 above.

Transfers from the United Kingdom to Jersey

6 Where an individual who is a member of a United Kingdom occupational or personal pension scheme becomes an employed or self-employed member of a superannuation fund in Jersey which is approved by the Comptroller of Income Tax under Article 131 or 131B, a transfer payment may be made in respect of him from the United Kingdom scheme to the Jersey scheme.

7 No United Kingdom tax will be payable under section 598 or 599, ICTA 1988 in respect of the transfer payment.

8 The service to which the transfer payment relates will be treated as if it were service in Jersey for the purposes of any charge to Jersey tax under Article 6 of the Income Tax (Superannuation Funds) (Jersey) Order 1972, in respect of a refund of the individual's contributions or of a commutation payment.

<p>Inland Revenue (Savings, Pensions, Share Schemes) Yorke House PO Box 62 Castle Meadow Road Nottingham NG2 1BG</p>

<p>States of Jersey Income Tax PO Box 56 Cyril le Marquand House The Parade St Helier Jersey JE4 8PF</p>

PS 120 (4/01) - Arrangements for the transfer of pension rights between the United Kingdom and the Isle of Man

1 Arrangements have been made, on a reciprocal basis, to facilitate the transfer of pensions rights, where, on a change of job, an individual moves from the Isle of Man to the United Kingdom or vice versa. There is no formal starting date for the arrangements. If desired, a transfer payment may be made under them in respect of an individual who has moved in the past, so long as he or she was given at the time preserved pension etc. benefits and did not receive a refund of his or her contributions. Details of the arrangements follow.

Transfers from the Isle of Man to the United Kingdom

2 Where an employed or self-employed member of an Isle of Man occupational or personal pension scheme becomes a member of a United Kingdom pension scheme which is

- a) a "statutory scheme", as defined in section 612(1) Income and Corporation Taxes Act 1988, or
- b) accepted by the Board of Inland Revenue as an "exempt approved scheme" for the purposes of Chapter I, Part XIV, ICTA 1988, or
- c) a personal pension scheme approved under Chapter IV, Part XIV, ICTA 1988 (but not a "transfers only" scheme as described in paragraph 3.1b of IR76)

a transfer payment may be made in respect of him or her from the Isle of Man scheme to the United Kingdom scheme.

3 The service, in respect of which the transfer payment was made, will be treated as if it were service in the United Kingdom for the purposes of the charge to United Kingdom tax under section 598 or 599 ICTA 1988 in the event of any subsequent refund of the individual's own contributions, or of the commutation in special circumstances of the whole of his or her pension, or for the purposes of determining Schedule E liability on the pension if the individual resides outside the United Kingdom after retirement.

4 It will not be possible for a transfer payment to be made from an Isle of Man scheme to a United Kingdom scheme which is not within the 3 categories described in paragraph 2 above.

5 Before a transfer payment is made by an Isle of Man approved scheme the Administrator must ascertain from the trustee or Administrator of the receiving scheme the section and Act under which it is approved in the United Kingdom.

Transfers from the United Kingdom to the Isle of Man

6 Where an employed or self-employed member of a United Kingdom occupational or personal pension scheme becomes a member of an Isle of Man pension scheme which is

- a) a "statutory scheme" as defined in section 14(1) Income Tax (Retirement Benefit Schemes) Act 1978, as amended, or
- b) accepted by the Assessor of Income Tax as an "exempt approved scheme" for the purposes of the Income Tax (Retirement Benefit Schemes) Act 1978, as amended, or
- c) a personal pension scheme approved under Part 1, Income Tax Act 1989, as amended

a transfer payment may be made in respect of him or her from the United Kingdom scheme to the Isle of Man scheme.

7 Under sections 8 or 9 of the Income Tax (Retirement Benefit Schemes) Act 1978 as amended, the service to which the transfer payment relates will be treated as if it were service in the Isle of Man for the purposes of any charge to Isle of Man tax in respect of a refund of the individual's contributions, or of a commutation payment, or of any annuity or pension.

**Inland Revenue (Savings,
Pensions, Share Schemes)
Yorke House
PO Box 62
Castle Meadow Road
Nottingham NG2 1BG**

**The Treasury
Income Tax Division
Government Offices
Douglas
Isle of Man
IM1 3TX**

PS 121 (4/01) - Arrangements for the transfer of pension rights between the United Kingdom and Guernsey

1 Arrangements have been made, on a reciprocal basis, to facilitate the transfer of pensions rights, where, on a change of job, an individual moves from Guernsey to the United Kingdom or vice versa. There is no formal starting date for the arrangements, and if desired, a transfer payment may be made under them in respect of an individual who has moved in the past so long as he or she was given at the time preserved pension etc. benefits and did not receive a refund of his contributions. Details of the arrangements follow.

NB: Schemes under sections 40(o) and 40(ee) of the Income Tax (Guernsey) Law 1975, as amended, are NOT within the terms of these reciprocal arrangements nor will transfers to or from such schemes be authorised by IR (Savings, Pensions, Share Schemes).

Transfers from Guernsey to the United Kingdom

2 Where an employed or self-employed member of a Guernsey occupational or personal pension scheme becomes a member of a United Kingdom pension scheme which is

- a) a "statutory scheme", as defined in section 612(1) Income and Corporation Taxes Act 1988, or
- b) accepted by the Board of Inland Revenue as an "exempt approved scheme" for the purposes of Chapter I, Part XIV, ICTA 1988, or
- c) a Personal Pension Scheme approved under Chapter IV, Part XIV, ICTA 1988 (but not a "transfers only" scheme as described in paragraph 3.1b of IR76)

a transfer payment may be made in respect of him or her from the Guernsey scheme to the United Kingdom scheme.

3 Under section 153 and section 157C of the Income Tax (Guernsey) Law 1975, as amended, no Guernsey tax will be payable in respect of the transfer payment

4 The service in respect of which the transfer payment was made will be treated as if it were service in the United Kingdom for the purposes of the charge to United Kingdom tax under section 598 or 599 ICTA 1988 in the event of any subsequent refund to the individual of his own contributions or of the commutation in special circumstances of the whole of his pension or for the purposes of determining Schedule E liability on the pension if the individual resides outside the United Kingdom after retirement.

5. It will not be possible for a transfer payment to be made from a Guernsey scheme to a United Kingdom scheme which is not within the 3 categories described in paragraph 2 above.

6. Before a transfer payment is made by a Guernsey approved scheme the administrator must ascertain from the trustee or Administrator of the receiving scheme the section and Act under which it is approved in the United Kingdom and inform the Administrator of Income Tax in Guernsey quoting the full title of the scheme and the Pension Schemes Office reference number.

Transfers from the United Kingdom to Guernsey

7 Where a member of a United Kingdom occupational or personal pension scheme becomes an employed or self-employed member of an Guernsey pension scheme which is

- a) a statutory scheme, or
- b) a scheme authorised by Resolution of the States of Guernsey, or
- c) a scheme approved or deemed to be approved under section 150 of the Income Tax (Guernsey) Law 1975, as amended, or
- d) a scheme approved under section 157A of the Income Tax (Guernsey) Law 1975, as amended

a transfer payment may be made in respect of him or her from the United Kingdom scheme to the Guernsey scheme.

8 No United Kingdom tax will be payable under section 598 or 599 ICTA 1988, in respect of the transfer payment.

9 Under section 153 of the Income Tax (Guernsey) Law 1975, as amended, the service to which the transfer payment relates will be treated as if it were service in Guernsey for the purposes of any charge to Guernsey tax in respect of a refund of the individual's contributions or of a commutation payment, or of any annuity or pension.

10 The Pension Schemes Office will require the Guernsey scheme to give an undertaking that the rights arising from the transfer payment will not subsequently be transferred to a scheme under section 40(o) or 40(ee) of the Income Tax (Guernsey) Law 1975, as amended.

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PS 122 (4/01) - Arrangements for the transfer of pension rights between the United Kingdom and the Republic of Ireland

1 Arrangements have been made, on a reciprocal basis, to facilitate the transfer of pensions rights where, on a change of employment, an individual moves from the Republic of Ireland to the United Kingdom or vice versa. There is no formal starting date for the arrangements, and if desired a transfer payment may be made under them in respect of an individual who has moved in the past so long as he or she was given at the time preserved pension etc. benefits and did not receive a refund of his or her contributions. Details of the arrangements follow.

Transfers from the Republic of Ireland to the United Kingdom

2 Where a member of an occupational pension scheme in the Republic of Ireland becomes a member of a United Kingdom pension scheme which is

- a) a "statutory scheme", as defined in section 612(1) Income and Corporation Taxes Act 1988, or
- b) accepted by the Board of Inland Revenue as an "exempt approved scheme" for the purposes of Chapter I, Part XIV, ICTA 1988, or
- c) a personal pension scheme approved under Chapter IV, Part XIV, ICTA 1988 (but not a "transfers only" scheme as described in paragraph 3.1b of IR76)

a transfer payment may be made in respect of that member from the Republic of Ireland scheme to the United Kingdom scheme.

3 The service, in respect of which the transfer payment was made will be treated as if it were service in the United Kingdom for the purposes of the charge to United Kingdom tax under section 598 or 599 ICTA 1988 in the event of any subsequent refund of the individual's own contributions or of the commutation in special circumstances of the whole of his or her pension or for the purposes of determining Schedule E liability on the pension if the individual resides outside the United Kingdom after retirement.

4 Transfer payments may only be made from Republic of Ireland schemes which are either "statutory schemes" or "exempt approved schemes" as described in paragraph 7. Payments may not be made from retirement annuity contracts or retirement trust schemes approved respectively under section 235(1) and 235(4) of the Income Tax Act 1967.

5 It will not be possible for a transfer payment to be made from a the Republic of Ireland scheme to a United Kingdom scheme which is not within the 3 categories described in paragraph 2 above.

6 Before a transfer payment is made by a Republic of Ireland approved scheme the administrator must ascertain from the trustee or administrator of the receiving scheme the section and Act under which it is approved in the United Kingdom.

Transfers from the United Kingdom to the Republic of Ireland

7 Where a member of a United Kingdom occupational or personal pension scheme becomes a member of an occupational pension scheme in the Republic of Ireland which is

- a) a "statutory scheme" as defined in section 13(1) Finance Act 1972, or
- b) a scheme accepted by the Revenue Commissioners as an exempt approved scheme for the purposes of Chapter II Part I Finance Act 1972,

a transfer payment may be made in respect of him or her from the United Kingdom scheme to the Republic of Ireland scheme.

8 The service in respect of which the transfer payment is made will be treated as if it were service in the Republic of Ireland for the purposes of any charge to tax in the Republic of Ireland under section 21 or 22 Finance Act 1972 in the event of any refund to the individual or personal contributions or of the commutation in special circumstances of the whole of the

individual's pension or for the purposes of determining Schedule E liability on the pension if the individual resides outside the Republic of Ireland after retirement.

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